under OMB control number 1205-0015. This Final Rule does not include a substantive or material modification of that collection of information, because it will not add to or change paperwork requirements for employers applying for permanent labor certification. The only consequence of this amendment eliminating the current practice allowing substitution of alien beneficiaries on applications and approved permanent labor certifications is to require those relatively few employers that could have availed themselves of the substitution practice to file new applications on behalf of alien beneficiaries. The Department does not anticipate any paperwork burden resulting from the creation of a 180-day validity period for approved certifications, the prohibition on sale, purchase, and barter of applications and labor certifications and on related payments, the ban on changes to applications filed under the new streamlined permanent labor certification procedures, nor the additional enforcement mechanisms in this Final Rule. The Department anticipates an insignificant increase in volume of permanent labor certification applications filed as a result of either employers withdrawing and then filing a corrected application or employers allowing a certification to expire and then filing a new application. In either situation, employers could avoid the need to file additional applications by proofreading and complying with regulatory requirements. The Department did not receive comments related to this section.

H. Assessment of Federal Regulations and Policies on Families

This Final Rule does not affect family well-being. The Department did not receive any comments related to this section.

I. Administrative Procedure Act (APA)

The Department has made this regulation available for notice and comment and, consequently, has complied with the relevant provisions of the Administrative Procedure Act.

J. Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at Number 17.203, "Certification for Immigrant Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Employment and training, Enforcement, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

Accordingly, for the reasons stated in the preamble, part 656 of Chapter V, Title 20, Code of Federal Regulations, is amended as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1189(p)(1); section 122, Pub. L. 101-649, 109 Stat. 4978; and Title IV, Pub. L. 105-277, 112 Stat. 2681.

2. Amend § 656.3 to add the following definitions:

§ 656.3 Definitions, for purposes of this part, of terms used in this part.

* * * * *

Barter, for purposes of an Application for Permanent Employment Certification (Form ETA 9089) or an Application for Alien Labor Certification (Form ETA 750), means the transfer of ownership of a labor certification application or certification from one person to another by voluntary act or agreement in exchange for a commodity, service, property or other valuable consideration.

* * * * *

Purchase, for purposes of an Application for Permanent Employment Certification (Form ETA 9089) or an Application for Alien Labor Certification (Form ETA 750), means the transfer of ownership of a labor certification application or certification from one person to another by voluntary act and agreement, based on a valuable consideration.

Sale, for purposes of an Application for Permanent Employment Certification (Form ETA 9089) or an Application for Alien Labor Certification (Form ETA 750), means an agreement between two parties, called, respectively, the seller (or vendor) and the buyer (or purchaser) by which the seller, in consideration of the payment or promise of payment of a certain price in money terms, transfers ownership of a labor certification application or certification to the buyer.

* * * * *

3. Add § 656.11 to read as follows:

§ 656.11 Substitutions and modifications to applications.

(a) Substitution or change to the identity of an alien beneficiary on any application for permanent labor certification, whether filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, and on any resulting certification, is prohibited for any request to substitute submitted after July 16, 2007.

(b) Requests for modifications to an application will not be accepted for applications submitted after July 16, 2007.

4. Add § 656.12 to read as follows:

§ 656.12 Improper commerce and payment.

The following provision applies to applications filed under both this part and 20 CFR part 656 in effect prior to March 28, 2005, and to any certification resulting from those applications:

(a) Applications for permanent labor certification and approved labor certifications are not articles of commerce. They shall not be offered for sale, barter or purchase by individuals or entities. Any evidence that an application for permanent labor certification or an

approved labor certification has been sold, bartered, or purchased shall be grounds for investigation under this part and may be grounds for denial under § 656.24, revocation under § 656.32, debarment under § 656.31(f), or any combination thereof.

(b) An employer must not seek or receive payment of any kind for any activity related to obtaining permanent labor certification, including payment of the employer's attorneys' fees, whether as an incentive or inducement to filing, or as a reimbursement for costs incurred in preparing or filing a permanent labor certification application, except when work to be performed by the alien in connection with the job opportunity would benefit or accrue to the person or entity making the payment, based on that person's or entity's established business relationship with the employer. An alien may pay his or her own costs in connection with a labor certification, including attorneys' fees for representation of the alien, except that where the same attorney represents both the alien and the employer, such costs shall be borne by the employer. For purposes of this paragraph (b), payment includes, but is not limited to, monetary payments; wage concessions, including deductions from wages, salary, or benefits; kickbacks, bribes, or tributes; in kind payments; and free labor.

(c) Evidence that an employer has sought or received payment from any source in connection with an application for permanent labor certification or an approved labor certification, except for a third party to whose benefit work to be performed in connection with the job opportunity would accrue, based on that person's or entity's established business relationship with the employer, shall be grounds for investigation under this part or any appropriate Government agency's procedures, and may be grounds for denial under § 656.32, revocation under § 656.32, debarment under § 656.31(f), or any combination thereof.

5. Amend § 656.24 by revising paragraph (g) to read as follows:

§ 656.24 Labor certification determinations.

* * * * *

(g)(1) The employer may request reconsideration within 30 days from the date of issuance of the denial.

(2) For applications submitted after July 16, 2007, a request for reconsideration may include only:

(i) Documentation that the Department actually received from the employer in response to a request from the Certifying Officer to the employer; or

(ii) Documentation that the employer did not have an opportunity to present previously to the Certifying Officer, but that existed at the time the Application for Permanent Labor Certification was filed, and was maintained by the employer to support the application for permanent labor certification in compliance with the requirements of § 656.10(f).

(3) Paragraphs (g)(1) and (2) of this section notwithstanding, the Certifying Officer will not grant any request for reconsideration where the deficiency that caused denial resulted from the applicant's

disregard of a system prompt or other direct instruction.

(4) The Certifying Officer may, in his or her discretion, reconsider the determination or treat it as a request for review under § 656.26(a).

6. Amend § 656.26 by revising paragraph (a) and adding a new paragraph (c), to read as follows:

§ 656.26 Board of Alien Labor Certification Appeals review of denials of labor certification.

(a) Request for review. (1) If a labor certification is denied, if a labor certification is revoked pursuant to § 656.32, or if a debarment is issued under § 656.31(f), a request for review of the denial, revocation, or debarment may be made to the Board of Alien Labor Certification Appeals by the employer or debarred person or entity by making a request for such an administrative review in accordance with the procedures provided in paragraph (a) of this section. In the case of a finding of debarment, receipt by the Department of a request for review, if made in accordance with this section, shall stay the debarment until such time as the review has been completed and a decision rendered thereon.

(2) A request for review of a denial or revocation:

(i) Must be sent within 30 days of the date of the determination to the Certifying Officer who denied the application or revoked the certification;

(ii) Must clearly identify the particular labor certification determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the Final Determination.

(3) A request for review of debarment:

(i) Must be sent to the Administrator, Office of Foreign Labor Certification, within 30 days of the date of the debarment determination;

(ii) Must clearly identify the particular debarment determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the Notice of Debarment.

(4)(i) With respect to a denial of the request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal argument and only such evidence that was within the record upon which the denial of labor certification was based.

(ii) With respect to a revocation or a debarment determination, the BALCA proceeding may be de novo.

* * * * *

(c) Debarment Appeal File. Upon the receipt of a request for review of debarment, the Administrator, Office of Foreign Labor Certification, immediately must assemble an indexed Appeal File:

(1) The Appeal File must be in chronological order, must have the index on top followed by the most recent document, and must have consecutively numbered pages. The Appeal File must contain the request for review, the complete application file(s), and copies of all written materials, such as pertinent parts and pages of surveys and/or reports or documents received from any court, DHS, or the Department of State, upon which the debarment was based.

(2) The Administrator, Office of Foreign Labor Certification, must send the Appeal File to the Board of Alien Labor Certification Appeals, Office of Administrative Law Judges, 800 K St., NW., Suite 400-N, Washington, DC 20001-8002.

(3) The Administrator, Office of Foreign Labor Certification, must send a copy of the Appeal File to the debarred person or entity. The debarred person or entity may furnish or suggest directly to the Board of Alien Labor Certification Appeals the addition of any documentation that is not in the Appeal File. The debarred person or entity must submit such documentation in writing, and must send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

7. Amend § 656.30 by: revising paragraphs (a), (b), and (c); and adding a new paragraph (e)(3), to read as follows:

§ 656.30 Validity of and invalidation of labor certifications.

(a) Priority Date. (1) The filing date for a Schedule A occupation or sheepherders is the date the application was dated by the Immigration Officer.

(2) The filing date, established under § 656.17(c), of an approved labor certification may be used as a priority date by the Department of Homeland Security and the Department of State, as appropriate.

(b) Expiration of labor certifications. For certifications resulting from applications filed under this part and 20 CFR part 656 in effect prior to March 28, 2005, the following applies:

(1) An approved permanent labor certification granted on or after July 16, 2007 expires if not filed in support of a Form I-140 petition with the Department of Homeland Security within 180 calendar days of the date the Department of Labor granted the certification.

(2) An approved permanent labor certification granted before July 16, 2007 expires if not filed in support of a Form I-140 petition with the Department of Homeland Security within 180 calendar days of July 16, 2007.

(c) Scope of validity. For certifications resulting from applications filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, the following applies:

(1) A permanent labor certification for a Schedule A occupation or

sheepherders is valid only for the occupation set forth on the Application for Alien Employment Certification (Form ETA 750) or the Application for Permanent Employment Certification (Form ETA 9089) and only for the alien named on the original application, unless a substitution was approved prior to July 16, 2007. The certification is valid throughout the United States unless the certification contains a geographic limitation.

(2) A permanent labor certification involving a specific job offer is valid only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to July 16, 2007), and the area of intended employment stated on the Application for Alien Employment Certification (Form ETA 750) or the Application for Permanent Employment Certification (Form ETA 9089).

* * * * *

(e)***

(3) A duplicate labor certification shall be issued by the Certifying Officer with the same filing and expiration dates, as described in paragraphs (a) and (b) of this section, as the original approved labor certification.

8. Revise § 656.31 to read as follows:

§ 656.31 Labor certification applications involving fraud, willful misrepresentation, or violations of this part.

The following provisions apply to applications filed under both this part and 20 CFR part 656 in effect prior to March 28, 2005, and to any certifications resulting from those applications.

(a) Denial. A Certifying Officer may deny any application for permanent labor certification if the officer finds the application contains false statements, is fraudulent, or was otherwise submitted in violation of the Department's permanent labor certification regulations.

(b) Possible fraud or willful misrepresentation. (1) If the Department learns an employer, attorney, or agent is involved in possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department will refer the matter to the Department of Justice, Department of Homeland Security, or other government entity, as appropriate, for investigation, and send a copy of the referral to the Department of Labor's Office of Inspector General (OIG). In these cases, or if the Department learns an employer, attorney, or agent is under investigation by the Department of Justice, Department of Homeland Security, or other government entity for possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department may suspend processing of any permanent labor certification application involving such employer, attorney, or agent until completion of any investigation and/or judicial proceedings. Unless the investigatory agency, in writing, requests the Department to do otherwise, the Department shall provide written notification to the employer of the suspension in processing.

(2) A suspension pursuant to paragraph (b)(1) of this section may last initially for up to 180 days. No later than 180 days after the

suspension began, if no criminal indictment or information has been issued, or judicial proceedings have not been concluded, the National Certifying Officer may resume processing some or all of the applications, or may extend the suspension in processing until completion of any investigation and/or judicial proceedings.

(c) Criminal indictment or information. If the Department learns that an employer, attorney, or agent is named in a criminal indictment or information in connection with the permanent labor certification program, the processing of applications related to that employer, attorney, or agent may be suspended until the judicial process is completed. Unless the investigatory or prosecutorial agency, in writing, requests the Department to do otherwise, the Department shall provide written notification to the employer of the suspension in processing.

(d) No finding of fraud or willful misrepresentation. If an employer, attorney, or agent is acquitted of fraud or willful misrepresentation charges, or if such criminal charges are withdrawn or otherwise fail to result in a finding of fraud or willful misrepresentation, the Certifying Officer shall decide each pending permanent labor certification application related to that employer, attorney, or agent on the merits of the application.

(e) Finding of fraud or willful misrepresentation. If an employer, attorney, or agent is found to have committed fraud or willful misrepresentation involving the permanent labor certification program, whether by a court, the Department of State or DHS, as referenced in § 656.30(d), or through other proceedings:

(1) Any suspension of processing of pending applications related to that employer, attorney, or agent will terminate.

(2) The Certifying Officer will decide each such application on its merits, and may deny any such application as provided in § 656.24 and in paragraph (a) of this section.

(3) In the case of a pending application involving an attorney or agent found to have committed fraud or willful misrepresentation, DOL will notify the employer associated with that application of the finding and require the employer to notify DOL in writing, within 30 days of the notification, whether the employer will withdraw the application, designate a new attorney or agent, or continue the application without representation. Failure of the employer to respond within 30 days of the notification will result in a denial. If the employer elects to continue representation by the attorney or agent, DOL will suspend processing of affected applications while debarment proceedings are conducted under paragraph (f) of this section.

(f) Debarment. (1) No later than six years after the date of filing of the labor certification application that is the basis for the finding, or, if such basis requires a pattern or practice as provided in paragraphs (f)(1)(iii), (iv), and (v) of this section, no later than six years after the date of filing of the last labor certification application which constitutes a part of the pattern or practice, the Administrator, Office of Foreign Labor Certification, may issue to an employer, attorney, agent, or any combination thereof a Notice of Debarment from the permanent labor certification program for a reasonable period of no more than three years, based upon any

action that was prohibited at the time the action occurred, upon determining the employer, attorney, or agent has participated in or facilitated one or more of the following:

(i) The sale, barter, or purchase of permanent labor applications or certifications, or any other action prohibited under § 656.12;

(ii) The willful provision or willful assistance in the provision of false or inaccurate information in applying for permanent labor certification;

(iii) A pattern or practice of a failure to comply with the terms of the Form ETA 9089 or Form ETA 750;

(iv) A pattern or practice of failure to comply in the audit process pursuant to § 656.20;

(v) A pattern or practice of failure to comply in the supervised recruitment process pursuant to § 656.21; or

(vi) Conduct resulting in a determination by a court, DHS or the Department of State of fraud or willful misrepresentation involving a permanent labor certification application, as referenced in § 656.31(e).

(2) The Notice of Debarment shall be in writing; shall state the reason for the debarment finding, including a detailed explanation of how the employer, attorney or agent has participated in or facilitated one or more of the actions listed in paragraphs (f)(1)(i) through (v) of this section; shall state the start date and term of the debarment; and shall identify appeal opportunities under § 656.26. The debarment shall take effect on the start date identified in the Notice of Debarment unless a request for review is filed within the time permitted by § 656.26. DOL will notify DHS and the Department of State regarding any Notice of Debarment.

(g) False Statements. To knowingly and willfully furnish any false information in the preparation of the Application for Permanent Employment Certification (Form ETA 9089) or the Application for Alien Employment Certification (Form ETA 750) and any supporting documentation, or to aid, abet, or counsel another to do so is a Federal offense, punishable by fine or imprisonment up to five years, or both under 18 U.S.C. 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. 1546 and 1621.

Signed in Washington, DC, this 1st day of May, 2007.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

1 The 1991 Interim Final Rule included a provision prohibiting substitution. That provision was overturned by the U.S. Court of Appeals for the D.C. Circuit on Administrative Procedure Act procedural grounds. Kooritzky v. Reich, 17 F.3d 1509 (D.C. Cir. 1994). DOL addressed the court's concern through publication of the NPRM for notice and comment on February 13, 2006, consideration of comments received and development of this Final Rule. 71 FR 7656 (Feb. 13, 2006). It is of no small significance that the plaintiff in

that suit, an attorney, was later convicted for the criminal sale of fraudulent labor certifications used for substitution. U.S. v. Kooritzky, No. 02-502-A (E.D. Va. 2003).

2 Section "I. Recruitment Information," Subsection "e. General Information," Question 3.

3 In the PERM regulation, the Department reserved the right to request any information the Certifying Officer deems relevant to a labor certification application. 20 CFR 656.20(d). The existence of a bona fide job opportunity and the disclosure of payments are always relevant to the application.

4 The Secretary of Labor shall provide, in the labor certification process under section 212(a)(5)(A) of [the Act] that --

(2) any person may submit documentary evidence bearing on the application for certification (such as information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers). [Pub. L. 101-619, sec. 122(b), Nov. 29, 1990, 104 Stat. 4995.]

5 The Department reminds users of the labor certification program of the importance of the audit process to maintaining the integrity of PERM. As the Department stated in the 2004 preamble to the Final Permanent Labor Certification Regulation, we will "minimize" the impact of non-meritorious applications by adjusting the audit mechanism in the new system as needed. We have the authority under the regulations to increase the number of random audits or change the criteria for targeted audits. As we gain program experience, we will adjust the audit mechanism as necessary to maintain program integrity. We note that under § 656.21(a), the Certifying Officer has the authority to order supervised recruitment "when he or she determines it to be appropriate." 69 FR 77329 (Dec. 27, 2004). It should also be noted that § 656.10(f) requires employers to maintain copies of applications and supporting documentation for up to five years from the date of the submission of the application.

6

7 The O*Net OnLine summary information on Human Resources Manager positions may be found at http://online.onetcenter.org/link/summary/11-3040.00.

8 The Department's analysis followed the guidelines provided by the Office of Management and Budget (OMB) in Circular A-4. This circular constitutes OMB's guidance to Federal agencies governing regulatory analysis pursuant to Executive Order 12866 and other statutes and authorities. It is available online at http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.

9 This Final Rule's prohibition on substitution does not cover substitution requests submitted by the rule's effective date. Separately, the rule establishes a 180-day validity period for labor certifications not filed with DHS. Although we anticipate there are employers who - prior to the effective date of the rule - may either request substitutions they already know to be required or seek to file old but unused labor certifications in support of I-140 petitions with DHS, this analysis does not quantify the number of

employers or labor certifications in these categories. There is simply no information from which to draw conclusions, and any such estimate would be at best speculative.

10 This analysis assumes one substitution over the life of a labor certification application.

11 As described above, the Department estimated the annual number of substitutions to be approximately 11,595 and estimated that 10 percent of these substitutions are fraudulent. Average DOL staff time per fraudulent substitution is estimated at 40 hours and their average hourly salary (staff with pay grade GS 14, step 5) is $42.24, which was increased by 1.42 to account for employee benefits.

12 For purposes of this analysis, the Department assumed that U.S. workers favored by the new labor market tests were unemployed. However, a benefit to U.S. workers could still exist even if these workers were employed elsewhere: their departure from their old jobs would open up new employment opportunities for other U.S. workers and potentially result in higher wages being earned.

13 The Department estimated that of the 115,952 PERM applications filed between July 1, 2005 and June 30, 2006, 10 percent requested a substitution. This is also the Department's estimate of percentage of substitution requests in cases filed under the preceding regulations. This analysis estimates 15 percent of labor market tests favor U.S. workers. The average annual wage on permanent labor certifications applications in the PERM database is $69,000 per year. The average wage was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). DOL assumed that workers would have been unemployed for an additional 1.5 months. There may be some portion of these jobs filled by U.S. workers already employed. For these employees the range of benefits may, as a result of their being employed when taking the new opportunity, be less than the full salary and benefits accounted for in this range found in this analysis. This analysis does not quantify that lesser amount.

14 The Department estimated that employers spend 10 staff hours on average preparing, filing, and tracking the labor certifications. As stated in the preamble to the PERM Final Rule, it takes on average one (1) hour for an employer to prepare a recruitment report for each application it files. We estimated that 10 percent of these applications are audited, which will require an additional hour for the employer to submit the report. We assumed that Human Resources Managers (or their equivalent) conduct this activity for the employer and that their median hourly wage is $36.52, which we increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). The Department estimated that employers spend $100 in incidental costs per application.

15 It is possible some employers would not have conducted any recruiting activities to locate a second applicant if substitution were allowed (e.g., if a qualified alien was already working for the employer under a temporary H1B visa). If an employer would normally hire another alien that is already employed by the employer, then most of the recruiting activities required by PERM would be additional cost. If the employer would normally conduct an extensive recruiting effort to find a new qualified employee, few of the PERM required recruiting activities would constitute an additional cost. For the purposes of this analysis, DOL assumed that on average, an

employer would place an ad in a Sunday paper and conduct other recruiting efforts, such as placing a notice on the organization's website or attending a job fair.

16 The Department estimated that the cost of an advertisement in a Sunday paper is $750. DOL also estimated it would take an employer 0.5 hours to place the advertisement with the Sunday paper and 0.5 hours to place a job order with the SWA. In addition, this analysis assumes an employer would spend 10 hours to arrange for and track recruiting efforts and an additional 10 hours for receiving, compiling, interviewing, analyzing, and reporting the results of the recruitment.

17 According to the preamble to the PERM Final Rule, it takes on average one (1) hour for an employer to prepare a recruitment report for each application it files. DOL estimated that 10 percent of these applications are audited, which will require an additional hour for the employer to submit the report. DOL assumed that Human Resources Managers (or their equivalent) conduct this activity for the employer.

18 As mentioned above, the Department estimated that employers spend 10 staff hours on average preparing, filing, and tracking the labor certifications. DOL assumed Human Resources Managers (or their equivalent) conduct this work for the employer and that the median hourly wage for Human Resource Managers is $36.52, which DOL increased by 1.42 to account for employee benefits. This analysis assumes 85 percent of the required labor market tests favor aliens, and that employers request substitutions on 10 percent of the 115,952 applications submitted per year, resulting in approximately 9,856 additional permanent labor certification applications to be filed with DOL each year.

19 The Department estimated SWA staff spend one (1) hour on average to process job orders and determine the prevailing wage. We also estimated the hourly rate for SWA staff to be $34.94 per hour, which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics).

20 The Department estimated that 70 percent of applications are "clean" and do not raise any audit flags. "Clean" applications require 0.25 hours of DOL staff time. We assumed that the remaining applications raise audit flags and must be reviewed manually, requiring four (4) hours of DOL staff time. We estimated that the median hourly wage for DOL reviewers is $30.06 (GS 12, step 5, which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). As explained above, DOL assumed that approximately 9,856 additional permanent labor certification applications will be filed with DOL each year.

21 The Department assumed auditors spend two (2) hours to audit recruitment reports. We assumed the median hourly wage for DOL auditors is $30.06 (GS 12, step 5; source: DOL), which DOL increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). As explained above, DOL assumed that approximately 9,856 additional permanent labor certification applications will be filed with DOL each year.

22 The Department's longstanding programmatic experience, both under the previous regulation and the more current PERM rule, is that a

significant percentage of applications for permanent labor certification name aliens already here and participating in another visa program. Recent program data indicate approximately 80% name aliens on H-1B visas.

23 For example, no discounting has been applied to remove labor certification applications from the calculation that are part of a filing which includes an adjustment application and for which a visa is immediately available, which would greatly reduce the chances that a substitution to benefit another alien would follow.

24 For purposes of this analysis, the Department assumed that U.S. workers favored by the new labor market tests were unemployed. However, a benefit to U.S. workers could still exist even if these workers were employed elsewhere; their departure from their old jobs would open up new employment opportunities for other U.S. workers and a move to a new job may imply a higher wage for the U.S. worker.

25 The Department assumed that of the 115,952 PERM applications filed between July 1, 2005 and June 30, 2006, five (5) percent would expire prior to filing with DHS within 180 days. As before, we assumed 15 percent of the labor market tests favor U.S. workers. The average annual wage on permanent labor certifications applications in the PERM database is $69,000. The average wage was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). We assumed workers would have been unemployed for an additional 1.5 months.

26 The 180-day validity period will help deter unscrupulous employers, attorneys, or agents filing permanent labor certification applications with DOL because there will be fewer opportunities to profit off of fraudulent applications. In addition, Department of Justice staff time can be expected to be reduced from avoided investigation and prosecution of fraudulent applications for positions filled by U.S. workers.

27 As mentioned above, the Department estimated that employers spend 10 staff hours on average preparing, filing, and tracking the labor certifications. We assumed that Human Resource Managers (or their equivalent) conduct this activity for the employer and that their media hourly wage is $36.52, which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). We assumed that five (5) percent of all certifications will expire and that 85 percent of the required labor market tests favor aliens, resulting in an additional 4,928 permanent labor certification applications to be filed with DOL.

28 The Department estimated the cost of a Sunday paper advertisement is $750. We also estimated it would take an employer 0.5 hours to place the advertisement with the Sunday paper and 0.5 hours to place a job order with the SWA, and 1.5 hours to conduct additional recruiting, as required by PERM. In addition, DOL estimated that the employer would spend 25 hours to arrange for and track recruiting efforts and for receiving, compiling, interviewing, analyzing, and reporting the results of the recruitment. According to the preamble to the PERM Final Rule, it takes an average of one (1) hour for an employer to prepare a recruitment report for each application it files. For purposes of this analysis, we estimated that 10 percent of these applications are audited, which will require an additional hour for the employer to submit the report. We assumed that Human

Resources Managers (or their equivalent) conduct this work for the employer and that their median hourly wage is $36.52, which was increased by 1.42 to account for benefits (source: Bureau of Labor Statistics). This analysis assumes five (5) percent of all certifications will expire and that 85 percent of the required labor market tests favor aliens, resulting in an additional 4,928 permanent labor certification applications to be filed with DOL.

29 The Department estimated that 70 percent of applications are "clean" and do not raise any audit flags. "Clean" applications require 0.25 hours of our staff time. We assumed that the remaining applications raise audit flags and must be reviewed manually, requiring 4 hours of our staff time. We estimated that the median hourly wage for our staff analysts is $30.06 (GS 12, step 5, which was escalated by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). As explained above, we estimated that approximately 4,928 additional permanent labor certification applications will be filed with the Department each year as a result of this provision.

30 The Department assumed auditors spend two (2) hours to audit recruitment reports. We assumed the median hourly wage for DOL auditors is $30.06 (GS 12, step 5), which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). As explained above, we assumed approximately 4,928 additional permanent labor certification applications will be filed with DOL each year as a result of this provision.

31 At time of publication, the DHS form I-140 immigrant petition filing fee is $195 and the immigrant visa application processing fee charged by DOS is $335 per person.

32 The Department estimated of the 115,952 PERM applications filed between July 1, 2005 and June 30, 2006, 10 percent would expire prior to filing with DHS. In addition, we estimated 15 percent of labor market tests favor U.S. workers. The average annual wage on permanent labor certifications applications in the PERM database is $69,00, which was increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics). We assumed workers would have been unemployed for an additional 1.5 months.

33 The Department estimated that 10 percent of applications are fraudulent and that half of these fraudulent applications involve businesses whose names are used without authorization. We also estimated that a Human Resources Manager or their equivalent staff spends on average eight (8) hours to discuss the findings and write a letter to DOL. This analysis assumes Human Resources Managers (or their equivalent) conduct this work for the employer and that their median hourly wage is $36.52, which we increased by 1.42 to account for employee benefits (source: Bureau of Labor Statistics).

34 The DHS form I-140 application fee is $195 per application and the immigrant visa application processing fee is $335 per person. The Department did not monetize the total estimated reduction in revenue to DHS and DOS due to data limitations. In addition, the costs may be offset by the cost savings, since staff at DHS and DOS will spend less time processing applications.

35 The benefits estimated by the section of this analysis covering the elimination of substitution assume only the fraud associated with

substitution and thereby eliminated by prohibiting the practice. The benefits estimated by this section - covering the institution of debarment - considers the benefits of eliminating non-substitution fraud as well as the benefits from the substitution analysis. The Department estimated that 10 percent of applications are fraudulent and would not be filed because the employer or attorney/agent would be debarred from filing applications. We estimated the cost savings by multiplying the number of fraudulent applications that were not fraudulent substitutions by the average review time per fraudulent application (40 hours). This estimate does not include cost savings from the decrease in fraudulent substitutions to avoid double counting the cost savings that are already accounted for in the first provision of this rule, the ban on substitution. The average compensation of DOL staff reviewing the fraudulent applications (staff with pay grade GS 14, step 5) is $42.24, which was increased by 1.42 to account for employee benefits.

36 The DHS Form I-140 immigrant petition filing fee is $195, and the Form I-485 filing fee is $395. The immigrant visa application processing fee charged by DOS is $335 per person.

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