Proposed DOL PERM Changes: Current Rule v. Proposed Rule

Section references in the right-hand column are to proposed 20 C.F.R. part 656 unless otherwise noted; current rule cites are to 20 C.F.R. part 656 (2026).

Topic	Current Rule	Proposed Rule	Proposed Cite / NPRM Page
Schedule A (nurses, physical therapists; exceptional ability)	Pre-certified occupations; uncertified ETA-9089 filed directly with USCIS with the I-140 (§§656.5, 656.15).	Eliminated; subpart B removed and reserved; §656.15 reserved. Full recruitment and OFLC filing. Former Group II assessed under the "at least as qualified" standard.	§§656.15, 656.24(b)(2)(ii); NPRM at 63–71, 292, 327
Sheepherders	Alternative filing with DHS for aliens with 33 of the preceding 36 months as nonimmigrant sheepherders (§656.16).	Eliminated; standard PERM process.	NPRM at 120–121
Recruitment structure	Professional: SWA order + two Sunday ads + three of ten additional steps. Nonprofessional: SWA order + two newspaper ads (§656.17(e)).	One standard for all occupations: SWA order(s) for each place of employment; employer website(s); one or more job search websites; customary social media; one or more job fairs, campus events or placement offices.	§656.17(b); NPRM at 311–312
Length of recruitment	SWA job order 30 days; no minimum duration for other steps.	At least 90 calendar days, or the employer's customary non-PERM duration over the prior 12 months if longer, for steps (b)(1)–(4).	§656.17(c); NPRM at 312
Recruitment window	Recruitment 30 to 180 days before filing; only one additional step within 30 days of filing.	Advertisements completed 30 to 60 days before expected filing; application filed within 30 days after recruitment ends.	§§656.10(b), 656.17(d); NPRM at 294, 312

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Good-faith / "same manner"	Attestation that the job is open to U.S. workers; no express comparability standard.	Same manner, channels and terms as non-PERM hiring; remote interviews by a U.S. worker; PERM-specific channels presumed not in good faith and referred to DOJ/EEOC.	§656.13(d); NPRM at 304–306
Advertisement content	Name the employer; direct applicants to the employer; describe the job; no wage below the prevailing wage (§656.17(f)).	Applies to all recruitment: name and contact information; duties, minimum requirements, weekly hours; location and remote/telework/hybrid status; wage or range; overtime; full-time status and number of openings. Applicant tracking systems must capture PERM applications.	§656.17(e); NPRM at 313–314
Actual minimum requirements	Normal to occupation; within SVP unless business necessity (§656.17(h)–(i)).	New definition adds comparison to the employer's non-PERM postings in the prior 12 months.	§656.3; NPRM at 279
Recruitment report	Prepared and retained; general description of steps and results; submitted only on request (§656.17(g)(1)).	Submitted with the application together with every U.S. applicant's resume; itemized for each applicant; names of reviewers; URLs and confirmation numbers; must be updated after any layoff.	§§656.10(a), 656.17(f); NPRM at 293–294, 314–316
Layoffs (pre-filing)	Layoff in the AIE within 6 months: notify and consider laid-off workers (§656.17(k)).	Filing barred if the employer laid off U.S. workers in the same SOC code or a substantially comparable position in the AIE within 2 years.	§656.13(e)(1); NPRM at 306
Layoffs (post-filing)	No post-filing obligation.	Through I-140 adjudication: notify the NPC (and USCIS) within 5 business days, offer the job to laid-off workers, update the recruitment report.	§§656.13(e)(2), 656.17(f)(2); NPRM at 306, 315

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Third-party placements	No express restriction.	Placement barred with another employer showing indicia of employment (H-1B §655.738(d)(2) test) that had covered layoffs from 2 years before filing through I-140 adjudication; third-party worksites disclosed at filing.	§656.13(f); NPRM at 307
Permanent employment	Not separately defined; job must be permanent and full-time (§656.3 "Employment").	Year-round need, no required breaks, and no temporary staffing agreement to place the alien with third-party clients.	§656.3; NPRM at 286
Employer	U.S. location, FEIN; independent contractors excluded.	Employment relationship; contact method; employs at least one full-time individual at the place of business; foreign missions excluded.	§656.3; NPRM at 282–283
Roving / remote / telework	Field Memorandum No. 48-94: "various unanticipated locations" plus headquarters.	Roving: nearest office plus "various unanticipated locations." Remote: alien's city, county, ZIP and BLS area. Telework: physical reporting site. DOL considering excluding fully remote jobs.	NPRM at 40–48 (preamble approach)
Notice of filing	At least 10 consecutive business days, 30–180 days before filing; physical posting plus in-house media (§656.10(d)).	Within 10 business days before filing and continuing through I-140 adjudication; at least two locations at each place of employment; electronic posting in lieu of physical; third-party worksites; submitted with the application.	§§656.10(a)(2), 656.14; NPRM at 293, 308–310

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Attestations	Ten attestations (§656.10(c)).	Consolidated §656.13(a)–(j) assurances; declarant must be the official most familiar with the job; no cost-based rejection; strict ability-to-pay language; FLSA, anti-trafficking and passport obligations; cooperation with compliance reviews.	§656.13; NPRM at 300–308
Ability to pay	Attestation of sufficient funds (§656.10(c)(3)).	"Existing, internally-available, non-contingent financial resources owned and controlled by the employer at the time of filing."	§656.13(c)(4); NPRM at 304
Method of filing	Electronic filing through FLAG in practice; mail permitted.	Electronic filing mandatory; mail only for lack of access or as a disability accommodation; postmark date governs mailed filings.	§656.10(c), (f); NPRM at 294–295, 298
Incomplete applications	Denied (§656.17(a)(1)).	Returned without review; no filing date retained; no reconsideration or review.	§656.10(g); NPRM at 298–299
Record retention	5 years from filing (§656.10(f)).	5 years from the latest of I-140 approval, certification expiration, or denial or withdrawal; attorneys and agents retain the engagement agreement.	§§656.5(a), 656.10(h); NPRM at 290, 299
Employer signature	Employer signs the ETA-9089 (§656.17(a)(1)); recruitment report signed by the employer or its representative (§656.17(g)(1)).	Signs the application and all documentation submitted to DOL.	§656.4(b); NPRM at 289
Successors in interest	No PERM-specific rule.	Liability, multi-factor test, and denial or revocation of filings by successors to debarred parties.	§656.6; NPRM at 290–292

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College/university teachers; athletes and coaches	Optional competitive recruitment for teachers; filing within 18 months of selection (§656.18).	Option extended to athletes and coaches; print or electronic journal advertisement; documentation filed with the application; 30-day filing rule.	§656.18; NPRM at 316–317
Audit	30-day response; one extension of the initial deadline (§656.20).	Up to 30 days; one extension of any one deadline; all consequences stated in the notice; referral to other agencies.	§656.20; NPRM at 321–324
Supervised recruitment	Mandatory print advertisements; applicants respond to the CO (§656.21).	CO-tailored methods and content; resumes may go to the employer or the NPC; denial without review for late documents; NOF update; debarment risk.	§656.21; NPRM at 324–326
Reconsideration / BALCA	Reconsideration provision at §656.24(g); no stated standard of review; no remand.	NORD codified; unclear requests treated as reconsideration; arbitrary-and-capricious standard; remand authority.	§§656.26–656.27; NPRM at 329–335
Validity of certification	180 days to file an I-140 (§656.30(b)).	Valid only for the "initial Immigrant Petition" filed within 180 days; priority-date and duplicate-certification provisions removed.	§656.30; NPRM at 335
Debarment	Up to 3 years; enumerated grounds; 6-year look-back (§656.31(f)).	New grounds (vii) attorney/agent templated duties and (viii) failure to pay the offered wage; debarment from all DOL foreign labor programs; independent fraud finding.	§656.31(f); NPRM at 338–340
PWD filing and RFIs	Electronic filing not mandated; documentation requested through RFIs.	Electronic filing mandatory; documentation at filing; one application per job, AIE and wage year; 7-day RFI or abandonment; CO may amend.	§656.40(a)–(c); NPRM at 341–345

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PWD surveys	Median permitted if the mean is not provided.	Arithmetic mean required.	§656.40(d); NPRM at 212–213
PWD validity and review	90 days to 1 year; file or begin recruitment within validity (§656.40(c)); supplemental-information submission (§656.40(h)), then review by the NPC director (§656.41).	90–365 days; recruitment must begin within validity; review request invalidates the PWD; redetermination eliminated.	§656.40(h); NPRM at 213–217, 348
Severability	None.	New §656.50.	NPRM at 350

Outline of the DOL's Stated Reasoning

The DOL frames the rulemaking as necessary to align the labor market test with modern recruitment and to reach "the broadest pool of qualified and available U.S. workers." It also places the rule within the Administration's broader immigration-enforcement priorities.

Proposed Change	DOL's Stated Reasons
Eliminate Schedule A	• Statutory: the INA "does not exempt workers in a particular occupation" from the labor market test (NPRM at 65). • Evidentiary: the 2023 RFI produced no reliable shortage methodology (NPRM at 14–15, 66). • Group II focuses on individuals rather than occupations; DHS, not DOL, judges exceptional ability (NPRM at 67–68). • Employer reliance on Schedule A "does not outweigh" rigorous adherence to the INA (NPRM at 68–69).
Replace print and menu recruitment	• Print is "no longer a meaningful method for recruitment" (NPRM at 124). • Menu data show methods poorly matched to degreed jobs (NPRM at 127–129). • Recruitment should match how the employer hires outside PERM (NPRM at 129).

Proposed Change	DOL's Stated Reasons
90-day minimum; 30–60-day window; 30-day filing	• Consistent with BLS job-search duration data (NPRM at 135–136). • Short online posting periods in current filings (NPRM at 136–137). • Avoid stale results (NPRM at 79, 137–138).
"Same manner" good faith; presumption	• Reports and settlements involving separate PERM recruitment channels (NPRM at 100–101). • Prevent "tailoring" and unduly restrictive postings (NPRM at 31, 97).
File recruitment report and NOF up front	• CO today certifies mostly on attestations (NPRM at 76). • Lets the CO decide on evidence without a full audit; burden described as de minimis (NPRM at 76–77).
Two-year layoff bar; post-filing duties	• Six months can be avoided by delaying filing (NPRM at 103). • Encourage retraining and rehiring (NPRM at 103–104). • Statutory availability is measured at the time of visa application and admission (NPRM at 96 n.81, 104–106).
Extended NOF	• Reaches workers on leave, affected by layoffs or hired during processing (NPRM at 114–115). • Aligns with the statutory notice requirement and remote work (NPRM at 111, 115).
Single-use certification	• Labor market test reflects "a certain point in time" (NPRM at 194). • Reduce USCIS adjudication and litigation costs (NPRM at 194, 244–245).
Debarment and successor rules	• Prevent evasion through restructuring (NPRM at 61). • Regulatory uniformity across programs (NPRM at 199).
Electronic filing; incomplete returns	• 99.61 percent of filings already electronic (NPRM at 81). • Placeholder and fictitious filings (NPRM at 86–87).
PWD changes	• Codify existing NPC practice; reduce RFIs (NPRM at 203–207). • Mean, not median, avoids wage depression (NPRM at 213). • Recruitment must offer at least the PWD (NPRM at 214).
BALCA standard and remand	• One consistent standard; align with the H-2A and CW-1 programs (NPRM at 187–188). • Cases where the CO never reached the merits (NPRM at 189–191).