

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Alien Labor Certification
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER No. 19-04

TO: STATE WORKFORCE AGENCIES

FROM: EMILY STOVER DeROCCO
Emily Stover DeRocco
Assistant Secretary for Employment and Training

SUBJECT: FY 2005 ALIEN LABOR CERTIFICATION GRANT GUIDANCE

1. **Purpose.** To provide guidance for the funding and management of FY 2005 annual grant allocations for the Alien Labor Certification (ALC) program.
2. **References.** The Immigration and Nationality Act, Sections 101(a), 212(n), 214(c) and 218
 - 8 CFR 214
 - The Wagner-Peyser Act, Section 7(d)
 - 29 CFR Part 93
 - OMB Circular A-87
 - Employment and Training Administration (ETA) Handbook No. 385
 - Guide for Employment Service Reimbursable Grant Activities
 - ETA No. 398, *H-2A Program Handbook*, January 1988
 - Labor Certification Technical Assistance Guide (TAG) No. 656, 1981
 - Other ETA instructions as noted
3. **Background.** The purpose of this memorandum is to define the roles state agencies play in the ALC program, the funding that will be allocated to the state agencies to support these activities, the required actions necessary on the part of the states to request funding, and the required activities on the part of the National Office to monitor grant funds.

RESCISSIONS: None	EXPIRATION DATE: Continuing
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4. **Changes to Alien Labor Certification Activities.** On July 21, 2004, the Department of Labor (DOL) published an interim final rule to amend 20 CFR Part 656 by adding Section 656.24a. This section provides the National Certifying Officer (Chief, Division of Foreign Labor Certification) with the discretion to direct State Workforce Agencies (SWAs) and Employment and Training Administration (ETA) Regional Offices to transfer pending permanent labor certification applications to centralized processing (backlog) centers. The rule also allows DOL to “combine” state and Federal processing functions at the backlog centers, one each in Philadelphia and Dallas. The opportunity to process cases in this fashion will generate certain efficiencies and allow for less duplication of effort.

Over the next several months, we anticipate making significant progress in removing backlogged permanent cases from state agencies and transferring them to the two Federal backlog reduction centers. The guidance for transferring cases from your agency to the appropriate backlog reduction center has been issued via an information memorandum from the Division of Foreign Labor Certification (DFLC).

A Notice of Proposed Rulemaking (NPRM), 20 CFR Parts 655 and 656, Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System, was published in the Federal Register on May 6, 2002. The NPRM comment period closed on July 6, 2002, and comments were organized, reviewed, and evaluated. A final regulation implementing the reengineered permanent labor certification program (PERM) was published on December 27, 2004.

Since this final rule includes a 90-day implementation period, SWAs will continue to accept applications for permanent labor certification until March 28, 2005. However, unlike current practice, SWAs will not process these applications but will instead “date stamp” and log in the applications before sending them to their respective backlog reduction center. SWAs will continue all other DOL-funded functions of alien labor certification, i.e., providing prevailing wage determinations, conducting H-2A activities (job orders, housing inspections, and prevailing wage/practice surveys), and processing H-2B applications.

Under the PERM program, beginning on March 28, 2005, SWAs will issue to employers prevailing wage determinations to accompany their applications for permanent labor certification. These wage determinations will be provided to employers in a responsive and timely manner. All other functions of permanent labor certification will be performed by the national processing centers, one each in Atlanta and Chicago.

Changes in the Reimbursable Grant

- In FY 2005, states will receive funds to accept and process open permanent labor certification cases, transfer backlogged permanent cases to the backlog processing centers, provide prevailing wage determinations, conduct H-2A activities (job orders, housing inspections, and prevailing wage/practice surveys), and process H-2B applications.
- All new applications for permanent labor certification that are received after January 1, 2005, and before March 28, 2005, are not to be processed by the SWA, but rather transferred to the appropriate backlog center for processing based on the schedule provided by ETA. SWAs must “date stamp” and log in the applications before sending them to their respective backlog center (Dallas or Philadelphia). By law, these cases must be processed under the current program’s regulations.
- Once the backlog permanent cases are transferred to the backlog centers, SWAs will remain responsible for the following labor certification activities:
 - (1) Receiving new applications for permanent labor certification until March 28, 2005, and then transferring these unprocessed cases to the Dallas or Philadelphia backlog center;
 - (2) Processing H-2A cases, including performing prevailing wage and prevailing practice surveys, ensuring that housing inspections are made, and processing job orders;
 - (3) Providing prevailing wage determinations for all non-agricultural labor certification programs; and
 - (4) Processing H-2B cases in accordance with existing policy.
- The final rule to reengineer the permanent program provides ETA with 90 days to implement and transition to the PERM program. Therefore, SWAs will stop accepting applications for permanent labor certification from employers on March 28, 2005.
- Under the PERM program, employers will no longer send applications to the SWAs beginning on March 28, 2005. Instead, employers will apply directly to one of the two national processing centers for the processing of applications for permanent labor certification.
- Under the PERM program, SWAs will issue to employers prevailing wage determinations to accompany their applications for permanent labor certification. These wage determinations will be provided to employers in a responsive and timely manner.

- Once the PERM program is fully implemented and the backlogged cases are eliminated at the state level, SWAs will remain responsible for the following labor certification activities:
 - (1) Processing H-2A cases, including performing prevailing wage and prevailing practice surveys, ensuring that housing inspections are made, and processing job orders;
 - (2) Providing prevailing wage determinations for all non-agricultural labor certification programs; and
 - (3) Processing H-2B cases in accordance with existing policy.

Changes in the Prevailing Wage Determination Function

Under the PERM program, employers will be required to obtain a prevailing wage determination from the SWA prior to submitting their application for processing to DOL. This differs from past practice where the wage offered on the ETA 750 was reviewed by the SWA after the application was submitted.

Employers will request a prevailing wage determination from the SWA using the appropriate State Workforce Agency Prevailing Wage Determination form. The SWA will respond to the employer with the wage determination, which the employer may be required to supply to the Department in support of the PERM application, in the case of an audit being conducted. A new directive updating GAL 2-98 and succeeding directives regarding prevailing wage determinations will be issued prior to the program's effective date.

SWAs should send appropriate staff to program training, when such training is offered. The costs of SWA travel to regional and national meetings and training sessions are included in grant funds. Attendance at these sessions is a condition of the grant.

5. **Actions**. State Workforce Agencies are required to complete the actions listed below.
- Respond to these guidelines within **thirty (30) days** of receipt to ensure allocation of remaining funds.
 - Establish program priorities. This will include identifying how program funds would best be utilized including the split of the enclosed ALC planning allocation between agricultural and non-agricultural activities.
 - Inform the National Office via written communication of the proposed program priorities and the split that will be used to allocate funds between agricultural and non-agricultural activities.

6. **Inquiries.** Alien Labor Certification funding questions should be directed to Mr. Greg Wilson at (202) 693-2954. All program related questions should be directed to Ms. Melanie Shay at (202) 693-3055.
7. **Mailing Address.** U.S. Department of Labor, Division of Foreign Labor Certification, 200 Constitution Avenue, NW, Room C-4312, Washington, D.C. 20210.
8. **Attachments.**

Attachment Name	Attachment Number
Grant Guidance and Information Package	1
FY 2005 ALC Funding Levels	2
Statement of Work and Work Plan for Ag and Non-Ag Programs	3
Major SWA responsibilities for the ALC Ag Program	4
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