



FEB 16 2005

MEMORANDUM

TO: State Workforce Agency Administrators

FROM: Emily Stover DeRocco



On September 29, 2004, I shared with you an update on our streamlining activities in the foreign labor certification process. In the interim, we have provided you with guidance on shipping backlogged permanent labor certification cases to either the Dallas or Philadelphia Backlog Processing Center. We appreciate your assistance with this process and your support for our efforts.

I am pleased to provide you with the following **Transition Guidance** which builds upon our previous discussions. This information addresses our next steps in the re-engineering of the permanent labor certification program and clearly defines the role of State Workforce Agencies (SWAs) with the recent publication of the PERM regulation. In addition, we will be providing you with your FY 2005 state allocations in the very near future.

Attachment

**State Workforce Agency
Foreign Labor Certification
FY 2005 Transition Guidance**

Current Status

On December 27, 2004, the Employment and Training Administration (ETA) published in the Federal Register the final rule implementing the re-engineered permanent labor certification system. See 69 FR 77326. This final rule, often referred to as PERM, is effective March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. Applications filed under the new rule will be processed in ETA's Atlanta or Chicago National Processing Center. Permanent labor certification applications filed prior to March 28, 2005, will continue to be processed under the existing regulation (except as employers choose to "refile" under the new PERM regulation) in accordance with this guidance memo. This guidance memo updates the FY 2005 Transition Guidance issued to SWAs on September 29, 2004.

State Workforce Agencies (SWAs) and PERM

1. Starting March 28, 2005, SWAs will no longer accept and process ***any new*** (emphasis added) permanent labor certification applications postmarked March 28, 2005, or later.
2. SWAs must continue to accept (date stamp and log) permanent labor certification applications filed (post marked) no later than March 27, 2005. In the near future, SWAs will receive additional ETA guidance regarding the shipping of pending backlogged permanent labor certification cases, cases received after January 1, 2005, and cases postmarked no later than March 27, 2005, to the appropriate backlog processing center located in Dallas or Philadelphia.
3. Under PERM, employers filing permanent labor certification applications on or after March 28, 2005, must file with ETA's Atlanta or Chicago National Processing Center, not with a State Workforce Agency. Therefore, SWAs must return to the sender any applications received by the SWA that are postmarked March 28, 2005 or later, so that the sender may file the application in accordance with the new PERM procedures.

4. Under PERM, SWAs will continue to provide prevailing wage determinations. Employers will be required to offer 100% of the prevailing wage rather than the previous requirement of 95%. In addition, SWAs will have to provide 4 levels of wages instead of the current 2 levels. These requirements are part of the recently passed H-1B Visa Reform Act (part of the 2005 Consolidated Appropriations Act, Public Law 108-447, December 8, 2004). ETA will be developing and sending guidance on these new requirements to SWAs prior to the effective date for these changes on March 8, 2005.

Permanent Labor Certification Case Acceptance and Processing Instructions

State Workforce Agencies are requested to follow these instructions as they receive applications for permanent labor certification:

- Continue to accept, date stamp, and log cases received with a postmark of no later than March 27, 2005;
- Box and ship cases postmarked no later than March 27, 2005, in accordance with instructions issued by the Division of Foreign Labor Certification and its backlog elimination contractor, Team Exceed (additional instructions to follow shortly);
- Return cases postmarked March 28, 2005 or later to the sender;
- Refer all inquiries regarding the new PERM program to the following e-mail address: PERM.DFLC@dol.gov.

State Workforce Agencies and Temporary Non-Immigrant Labor Certification Programs

SWA responsibilities under the temporary non-immigrant labor certification programs (i.e., H-2A and H-2B) are unchanged. ETA will fund the SWAs for all of FY 2005 to administer the state role in these programs, as well as to provide prevailing wage determinations for both the H-1B/H-1B1 program and PERM.

FY 2005 State Workforce Agency Funding

ETA is in the process of finalizing FY 2005 Foreign Labor Certification State Workforce Agency allocations. The September 29, 2004 SWA transition guidance provided details as to the role of states during FY 2005, and specifically, in the event the re-engineered PERM rule was published. While the effective date of the PERM regulation is different than that described in the September 29th guidance, the fundamental role of the states and ETA's funding commitment have not changed. Therefore, the FY 2005 state allocations will include funding as described in the September 29th guidance package. Please review the actual state funding level as it may have slightly changed from the last guidance package.

Thank you for your continued cooperation as we re-engineer the permanent labor certification program. Please feel free to contact Bill Carlson, Chief, Division of Foreign Labor Certification, at (202) 693-3010 or at carlson.william@dol.gov, if you have any questions.