

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
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Attachment No.: 1

Grant Guidance and Information Package

Introduction

This document provides the necessary guidelines to be used by State Workforce Agencies (SWAs) to request funds in order to administer their Alien Labor Certification (ALC) responsibilities.

Wagner-Peyser funding allocations for SWA National Activities in FY 2005 (shown in Attachment 2), are only for agricultural and non-agricultural ALC programs. Planning targets, included in this document, reflect a postage assessment of 2.8 percent.

The available FY 2005 allocation for state ALC activities is \$17,007,998. Of this amount, \$5,665,000 was provided in November during the Continuing Resolution period. This guidance package coincides with the distribution of the remaining \$11,342,998. Each SWA's total FY 2005 funding (see Attachment 2) is identical to their planning figure provided in the September 29, 2004, FY 2005 Transition Guidance.

FY 2005 Annual Plan

The procedures for submission of the twelve (12) month plan (October 1, 2004, through September 30, 2005) are provided in Attachment 6. Upon receipt and approval of the plan at the national office (Division of Foreign Labor Certification), the National Office Grant Officer (Division of Federal Assistance) will issue an additional Notice of Obligation to provide the balance of funds due to each state from its annual allocation.

Each state will be funded for two quarters to process applications for permanent labor certification and to transfer unprocessed cases to the appropriate backlog center. At a minimum, SWAs must fund one full-time position devoted to coordinating the transition from a state-Federal system to primarily a federally administered program. This position is responsible for coordinating, with ETA's backlog center contractor, the shipping of "pending" permanent labor certification cases either currently residing with the SWA or which are filed with the state prior to the full implementation of the PERM program. The FY 2005 funding for permanent, prevailing wage, H-2B, and H-2A activities is based on the cost breakout table that was included in the FY 2004 grant package. The minimum funding level for a state to conduct ALC activities has increased from \$60,000 to \$75,000 in FY 2005. This amount will account for at least one full-time ALC position in each state.

Changes in General Administration

ETA Regional Offices are no longer responsible for the review and approval of ALC annual plans. Also, Certifying Officers are no longer responsible for monitoring of the cost reimbursable grants. Instead, plan approval and monitoring of these cost reimbursable grants will be handled entirely by national office DFLC staff.

National Office Responsibilities

The national office responsibilities include the review and approval of the grant plan applications, analysis of expenditure and performance data, execution of programmatic plan modifications, and on-site reviews. States are advised to administer the plan in accordance with the approved plan and the terms and conditions of the Wagner-Peyser Annual Funding Agreement. The National Office Grant Officer funding authority remains with the national office, Division of Federal Assistance.

Labor certification funds are provided for labor certification activities only and cannot be used for other Wagner-Peyser activities, such as the routine referral of workers on job bank orders, MSFW activities, and processing of complaints under the SWA complaint system.

SWA Responsibilities

SWAs are responsible for administering grant funds for ALC programs within established guidelines. These responsibilities include:

1. Certifications and Assurances.

Regulations require recipients of SWA grants to submit various standard certifications and assurances. These have already been provided under the FY 2005 Annual Funding Agreement. Current SWA regulations at 20 CFR, Part 658, subpart E (20 CFR 658.400-658-426) cover the complaint and appeals procedures. Regulations at 20 CFR, Part 653, subpart F, and 20 CFR, Part 654, subpart E apply to housing inspection activities under the reimbursable grant. Other applicable regulatory provisions and special assurances are incorporated in the Statements of Work (attached).

2. Utilize Mandated Forms for Inter-Agency Communications.

SWAs must utilize the proper formats to ensure uniform communications. These formats include, but may not be limited to, the following:

- **Form ETA-7147**
Form ETA-7147 is the Alien Certification State Agency Transmittal of Application for an alien employment certification.
- **Form ETA-232**
Form ETA-232 is the Domestic Agricultural In-Season Wage Report.

3. Reporting Responsibilities.

The required reports are listed below:

- **SF-269**
The SF-269 is the Financial Status Report and must be submitted by the SWA on a quarterly basis for each fiscal year of funds.
- **Form ETA-9037**
Form ETA-9037 is the Semi-Annual Alien Labor Certification Activity Report.

4. Fiscal Management Responsibilities.

The national office will retain flexibility to recommend the modification of the negotiated split of ALC funds between agricultural and non-agricultural ALC activities for a given state. Recommendations must be submitted in writing to the Chief, Division of Foreign Labor Certification for approval.

National office approval must be obtained for all equipment purchases made using ALC funds that are above five thousand dollars (\$5,000) in value. If such requests are included in the work plan and are clearly detailed in a cover memorandum, the national office can pre-approve the purchases. Otherwise, states must provide a written justification and cost estimate for the purchase(s). The national office will not approve capital purchases such as buildings and vehicles.

Although Employment Service (ES) grants are valid for three (3) years, ALC grants are intended to be used during the Fiscal Year that they are issued. Any carry over funds in excess of fifteen (15) percent of the total grant value are subject to recuperation by the national office. See the Employment and Training Order "Closeout Procedures for ETA Expired Grants, Agreements, and National Office Contracts" for information regarding the procedures for closing grants.

5. Training.

SWAs are required to 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. If SWAs do not attend mandatory meetings, funds may be recaptured.

Conclusion

Grant funding balances will be issued to SWAs as soon as possible. The National Office Grant Officer will issue a Notice of Obligation (NOO) to SWAs upon approval of the SWA Alien Labor Certification Plan. Budgets can only be approved for annual plans after the national office (Division of Foreign Labor Certification) has approved the Statement of Work and Work Plans for the Agricultural/Non-Agricultural programs.

Attachment No.: 2

Alien Labor Certification Agricultural and Non-Agricultural Programs FY 2005 Funding Levels*

Atlanta National Processing Center

U.S. Department of Labor
Employment and Training Administration
Harris Tower
233 Peachtree Street, Suite 410
Atlanta, Georgia 30303
Phone: (404) 893-0101
Fax: (404) 893-4642

Chicago National Processing Center

U.S. Department of Labor
Employment and Training Administration
844 North Rush Street, 12th Floor
Chicago, Illinois 60611
Phone: (312) 886-8000
Fax: (312) 886-1688

Alabama	\$ 87,500	Alaska	\$ 80,000
Connecticut	\$ 291,848	Arizona	\$ 299,688
Delaware	\$ 111,034	Arkansas	\$ 92,500
Florida	\$ 658,994	California	\$ 2,732,381
Georgia	\$ 613,080	Colorado	\$ 260,503
Kentucky	\$ 368,401	Guam	\$ 75,000
Maine	\$ 327,581	Hawaii	\$ 75,000
Maryland	\$ 571,840	Idaho	\$ 238,227
Massachusetts	\$ 867,218	Illinois	\$ 475,893
Mississippi	\$ 105,000	Indiana	\$ 80,000
New Hampshire	\$ 97,996	Iowa	\$ 90,000
New Jersey	\$ 678,141	Kansas	\$ 134,623
New York	\$ 1,543,704	Louisiana	\$ 182,900
North Carolina	\$ 227,929	Michigan	\$ 332,338
Pennsylvania	\$ 631,133	Minnesota	\$ 113,327
Puerto Rico	\$ 75,000	Missouri	\$ 139,866
Rhode Island	\$ 80,000	Montana	\$ 85,000
South Carolina	\$ 100,753	Nebraska	\$ 117,912
Tennessee	\$ 187,662	Nevada	\$ 90,411
Vermont	\$ 114,357	New Mexico	\$ 92,500
Virgin Islands	\$ 75,000	North Dakota	\$ 102,360
Virginia	\$ 953,266	Ohio	\$ 229,586
Washington DC	\$ 132,032	Oklahoma	\$ 87,500
West Virginia	\$ 82,500	Oregon	\$ 97,282
		South Dakota	\$ 90,000
		Texas	\$ 1,059,310
		Utah	\$ 111,106
		Washington	\$ 234,783
		Wisconsin	\$ 143,539
		Wyoming	\$ 82,500

* = Amount includes funds distributed in November during the Continual Resolution period

Attachment No.: 3

Agricultural/Non-Agricultural Programs *Statement of Work and Work Plan*

As a condition for receiving funds in support of the Secretary's responsibilities under Sections 101(a)(15)(H)(i)(b) and 212(n), Sections 101(a)(15)(H)(ii)(a) and 218, and Section 212(a)(5)(A) of the Immigration and Nationality Act (Act), under the United States Citizenship and Immigration Services (USCIS) regulations at 8 CFR 214.2(h)(6) under Sections 101(a)(15)(H)(ii)(b) and 214(c) of the Act, under Section 221 of the Immigration Act of 1990, and under Department of Labor (DOL) regulations at 20 CFR parts 655 and 656, _____ (agency name) agrees to assist ETA to determine the availability of U.S. workers and the potential adverse effect on wages and working conditions that the admission of alien workers might have on similarly employed U.S. workers before employers can obtain a labor certification, and agrees to assist ETA by conducting the Occupational Employment Survey and appropriate agricultural surveys and providing wage determination information to employers wishing to file or update a labor attestation or labor condition application.

The sections of the Act and regulations cited above relate to DOL programs involving foreign workers as follows:

- Section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101 (a)(15)(H)(i)(b)), called H-1B nonimmigrant classification, applies to professionals in specialty occupations and certain models; Section 212(n) (8 U.S.C. 1182(n)), specifies the requirements or labor condition applications which must be filed by employers seeking to employ such workers.
- Section 101(a)(15)(H)(ii)(a) (8 U.S.C. 1101 (a)(15)(H)(ii)(a)), called H-2A nonimmigrant classification, applies to agricultural workers; Section 218 (8 U.S.C. 1188), specifies the conditions for admission of temporary H-2A workers. DOL regulations at 20 CFR part 655 specify the labor certification requirements.
- Section 101(a)(15)(H)(ii)(b) (8 U.S.C. 1101(a)(15)(H)(ii)(b)), called H-2B nonimmigrant classification, applies to temporary non-agricultural workers. USCIS regulations at 8 CFR 214.2(h)(6) and section 214(c) of the Act require consultation with DOL before aliens are admitted to the United States. The regulations for the H-2B program are found in DOL regulations at 20 CFR part 655. Procedures pursuant to those regulations are documented in General Administration Letter (GAL) No. 1-95, GAL No. 1-95, Change 1 and Field Memorandum No. 25-98. The H-2B program is authorized only if two conditions are met:
 - The alien must be coming temporarily to the U.S., and
 - The services or labor which the alien will be performing must also be temporary in nature.
- Section 212(a)(5)(A) requires a labor certification from the Secretary of Labor for permanent employment of aliens in the United States. DOL regulations at 20 CFR part 656 specify the requirements for permanent labor certification.

State Workforce Agency Requirements and Responsibilities

(Agency Name) shall:

- Provide labor certification services to protect job opportunities for U.S. workers and prevent adverse effect on U.S. workers' wages and working conditions which may be caused by the employment of aliens;
- Provide labor certification application forms and conduct certain labor market services necessary for the Secretary of Labor to make determinations on applications for permanent and temporary alien labor certification; and
- Conduct certain labor market services necessary for the Secretary of Labor to accept for filing attestations and labor condition applications with respect to the employment of certain nonimmigrant aliens.

1. SWA Responsibilities under Labor Certification Programs.

Employers requesting permanent labor certification, H-2A temporary agricultural certification, or H-2B temporary non-agricultural certification for alien workers are required to do the following:

- Demonstrate that they have attempted to recruit U.S. workers through advertising, the State Workforce System, and/or by other specified means.
- Offer prevailing wages and working conditions that will not adversely affect similarly employed U.S. workers.
- Fulfill the duties listed in regulation 20 CFR 656.21 listed below:
 - Performing initial processing of non-agricultural applications
 - Conducting special recruitment (outside of regular workforce agency recruitment and referral activities) for U.S. workers
 - Conducting prevailing wage surveys for agricultural occupations
 - Determining prevailing wage rates using the Occupational Employment Statistics system and review of employer supplied surveys
 - Preparing Form ETA 232 reports
 - Obtaining data needed for making prevailing practice determinations
 - Submitting required reports
 - Gathering other information which forms the basis for Division of Foreign Labor Certification determinations to grant or deny labor certifications

2. SWA Responsibilities under Labor Attestation and Labor Condition Application Programs.

Employers filing labor attestations and labor condition applications for H-1B nonimmigrant workers must file such attestations directly with the H-1B processing center. Employers filing labor condition applications for H-1B nonimmigrant workers have the option of requesting prevailing wage data from the SWA or using other legitimate sources such as appropriate published wage surveys.

If requested to do so, the SWA must provide to employers or their representatives requesting such information the prevailing wage data for the occupation in the area of intended employment. This wage determination must be made from the Occupational Employment Statistics data unless the SWA is requested by an employer or employer's representative to review a survey provided for prevailing wage purposes to determine if the survey meets standards published by DOL. If so requested, the SWA must inform the employer or the employer's representative if the survey may be used as the prevailing wage in that instance.

3. Special Assurances.

- Services provided for activities shall be in conformity with regulations at 20 CFR parts 655 and 656, handbooks, field issuances, and other instructions issued by DOL, e.g., Technical Assistance Guide No. 656 Labor Certifications, ETA Handbook No. 398 (H-2A Program Handbook), ETA Handbook No. 385 (Employment Service Forms Preparation Handbook), General Administration Letter (GAL) No. 1-95, "Procedures for H-2B Temporary Labor Certifications in Non-Agricultural Occupations" (November 10, 1994), GAL No. 1-95, Change 1, "Procedures for H-2B Temporary Labor Certifications in Non-Agricultural Occupations" December 1997), Field Memorandum No. 25-98, "H-2B Temporary Non-Agricultural Labor Certification Program Requirements" (April 1998), Training and Employment Guidance Letter No. 12-03, "Policy Clarification for Processing H-2B Temporary Labor Certification for Occupations in the Landscaping Industry, 2004-2005", Training and Employment Guidance Letter No. 4-03, "Procedures for Temporary Labor Certification in the Entertainment Industry", and GAL 1-97, Change 1, "Measures for Increasing Efficiency in the Permanent Labor Certification Process" (May 1999).
- Services provided for temporary agricultural and logging alien certification activity shall be in conformity with regulations at 20 CFR part 655, handbooks, field issuances, and other instructions issued by the DOL, e.g., ETA Handbook No. 398, issued March 4, 1988;
- Summary data relating to prevailing wage surveys conducted by the SWA shall be released to those who request it. However, information identifying, or which might contain, information leading to the identification of a specific employer surveyed shall not be released by the SWA since such action could result in possible competitive damage to the employer and could inhibit the employer from cooperating in future surveys;
- The state shall assure that job orders placed into the regular SWA recruitment system pursuant to regulations at 20 CFR 656.21(f) do not contain symbols or words which identify the job order as an alien certification order, and that SWA staff are instructed to refrain from discouraging U.S. workers who seek referral to employers on such job orders;
- Contracting out any aspects of the ALC programs will not be allowed without a pre-approval in writing from the national office. If such requests are included in the work plan and are clearly detailed in a cover memorandum, the national office can provide pre-approval. Otherwise, states must provide a written justification and cost estimate; and
- Advertisements, though they must include many specific elements of information, should be written in a style consistent with non-ALC advertisements, organized, titled, and placed in a logical section of the publication so as to reach the maximum number of U.S. workers.

4. Allowable Costs.

- Costs may be attributed to activities directly in support of the regulations at 20 CFR part 656; 20 CFR part 655, subparts A, B, C, H, and L, including costs for all activities related to the preparation of and submittal of ETA 232 and ETA 9037 reports, and for indirect support as a fair share of overhead.
- Regular workforce agency activities under Wagner-Peyser, such as referring workers to job bank orders, migrant and seasonal farmworker recruitment, and the processing of complaints under the SWA complaint system, are not allowable costs unless the activity can be directly attributed to extraordinary functions in the processing of a specific labor certification application/attestation.

5. Performance Standards.

- The state's performance shall be reviewed according to labor certification TAG No. 656; GAL No. 1-95, "Procedures for H-2B Temporary Labor Certifications in Non-Agricultural

Occupations"(November 10, 1994), Field Memorandum No. 25-98, "H-2B Temporary Non-Agricultural Labor Certification Program Requirements" (April 1998), General Administration Letter No. 2-98, "Prevailing Wage Policy for Non-Agricultural Immigration Programs" (October 31, 1997) and Field Memorandum No. 1-00, "Availability and Use of Occupational Statistics Survey Data for Alien Labor Certification Prevailing Wage Purposes" (May 16, 2000); ETA Handbooks Nos. 398 and 385; and any subsequent ETA advisories concerning alien certification activities. Fund utilization will be reviewed against the Funding Plan and actual workload levels, and when expenditures are significantly below plan, ETA may de-obligate funds for redistribution.

- The state shall continue to staff prevailing wage activities for labor certification/attestation programs with individuals who have relevant skills. Current programs; however, require enhanced knowledge, skills, and expertise in evaluating prevailing wage surveys and in making prevailing wage determinations. To increase the state's capacity to perform this work, and to assure credibility, validity, and reliability of wage surveys and determinations, state allocations include funding to support a prevailing wage expert function. In states with a small labor certification workload, it is appropriate for that function to be filled on a part-time basis. Each state shall:
 1. Staff this function with an individual who has at least a bachelor's degree in statistics or economics, or a degree in another field with a minimum of six (6) hours in statistics, and at least two years of experience in data collection, statistical analysis, sampling techniques, labor market analysis, or conducting wage surveys and classifying jobs;
 2. Make the incumbent responsible for implementing national prevailing wage policies, evaluating prevailing wage surveys for labor certification/attestation programs, training other staff, responding to prevailing wage issues and challenges, and giving expert testimony in litigation cases.
- When requested by the national office, states shall ensure that appropriate labor certification staff travel within or outside the state to attend meetings, training sessions, speaking engagements, or other activities deemed necessary by the national office to carry out effective program operations. Travel for such activities is accounted for within program funding levels.
- The state shall continue to maintain an automated Alien Certification Processing System(s) for receiving and tracking applications, writing letters, and maintaining a prevailing wage database.
- Due to continued growth of the H-2B non-agricultural temporary labor program, states are expected to initially screen each H-2B application to ensure that the employer's need for the duties to be performed is truly temporary. That need may be neither ongoing nor continuous. The employer has the burden of establishing the facts necessary to support such a finding in the application. States should immediately consult with their respective national processing center when there is doubt. Because of the need to make a determination on applications within 60 days of receipt by states, the state is responsible for informing its Certifying Officer regarding the status of the H-2B case workload on a monthly basis to ensure timely completion. ***H-2B applications should be processed in an expedited manner and processed applications should be transmitted to the Certifying Officer within 30 days from the date the application was received by the state.***

6. Reporting Requirements.

- Basic reporting requirements for Labor Certification include financial and program reporting requirements as specified by ETA. The required program reports, including the ETA 9037 and the ETA 232 reports, will be submitted in accordance with ETA TAG No. 656, ETA Handbook No. 385, and ETA Handbook No. 398.
- Financial reports relating to staff time and other charges to the alien certification reimbursable grant shall be available to national office staff. Inappropriate charges shall be questioned and may be disallowed.

- Informally, states will report to the field office increases in H-2A and H-2B activity. In addition, states should report all new occupations or crop activity for these programs.

ENCLOSURE I

Work Plan (Attached to Statement of Work)

(Agency Name) shall prepare a narrative plan which explains how it will deliver labor certification/attestation services in FY 2005. This narrative should include, at a minimum, the following:

- A. The projected number of permanent applications to be processed until the effective date of the PERM program.
- B. The projected number of job orders related to temporary agricultural alien certification applications to be processed.
- C. The projected number of temporary non-agricultural alien certification applications to be processed.
- D. The projected number of prevailing wage surveys to be conducted in agricultural activities including projected wage surveys in anticipation of H-2A requests (this includes logging).
- E. The projected number of housing inspections to be conducted in anticipation of H-2A orders (this includes logging).
- F. The projected number of prevailing wage determinations to be provided to employers for non-agricultural occupations by the following categories: Permanent program; H-1B nonimmigrant program; and H-2B program.
- G. Any plans for changes in existing operations including the prevailing wage program that will substantially affect negotiated goals.

ENCLOSURE II

Work Plan (Attached to Statement of Work)

Statement of Work for Housing Inspections

Note: Due to the special nature of housing inspections, a separate Statement of Work is included.

____ (Agency Name) shall prepare a narrative plan which explains how it will deliver this activity in FY 2005. This narrative should include, at a minimum, the following:

1. Statement of the negotiated goals to be achieved. Number of pre-occupancy housing inspections to be conducted;
2. Plans for changes in the existing operations, if any, which may substantially affect negotiated goals.

In addition, as a condition for receiving funds in support of the Secretary's responsibility, ____ (Agency Name) agrees to do the following:

- Conduct pre-occupancy inspections of housing to be furnished to migrant and seasonal farmworkers or other U.S. workers, or to nonimmigrant aliens admitted to the United States under temporary labor certification programs for temporary employment in agriculture or logging.
- Assist employers in recruiting agricultural and logging workers. These employers are required to provide housing at no cost, or public housing, for workers who are not reasonably able to return to their place of residence the same day. In the case of employers seeking H-2A agricultural or logging labor, free housing must be provided. The housing must meet ETA standards described in 20 CFR part 654, subpart E or OSHA standards at 29 CFR 1910.142 and be sufficient to house the number of workers required.
- Determine, through a pre-occupancy inspection, that such housing is, in fact, available and meets appropriate standards. The employer seeking labor certification may also provide rental or other public accommodation-type housing. Such housing must meet applicable local or state standards, and does not have to be inspected by state agency staff when such standards exist. However, in the absence of applicable local or state standards, such housing must meet Federal standards at 29 CFR 1910.142 (OSHA) and must be inspected by the state agency or other appropriate public agency prior to occupancy.

1. Special Assurances.

- The state shall adhere to regulations at: 20 CFR, part 655, subparts B and C, Labor Certification Process for Temporary Agricultural and Logging Employment; part 654, subpart E, Housing for Agricultural Workers; and, part 653 subpart F, Agricultural Clearance Order Activity. Actual housing inspections may be conducted under certain conditions in accordance with OSHA standards at 29 CFR 1910.142, Temporary Labor Camps.
- SWAs should encourage employers who expect to obtain their certification 30 days before the date of need to have housing ready for inspection at the time of filing their H-2A application or earlier.
- SWAs should be prepared to conduct housing inspections prior to the filing of applications.
- SWAs should plan to schedule housing inspections prior to the filing of H-2A applications for those employers who regularly use the H-2A program.

- SWAs should be encouraged to evaluate alternative methods of conducting pre-occupancy housing inspections. (i.e., State Health Department, Agricultural Department, etc.)

2. Allowable Costs.

- Costs may be attributed to activities in support of tasks described in 20 CFR part 654 subpart E, Housing for Agricultural Workers and/or 29 CFR 1910.142, Temporary Labor Camps, and for indirect support as a fair share of overhead.

3. Performance Standards.

- The state's performance will be reviewed according to the applicable Housing Inspection Checklist in ETA Handbook No. 398, the applicable Federal housing standards.

4. Reporting.

- Required reporting of activity is specified on the ETA 9037, semi-annual report. Financial reporting will be as specified by the Employment and Training Administration.
- States should plan to track the costs associated with conducting pre-occupancy housing inspections to assist the national office in the allocation of future resources. The costs include, but are not limited to, staff resources, travel expenditures, and administrative costs (see Attachment 6).
- **States should submit an estimate of their annual cost for conducting pre-occupancy housing inspections by April 29, 2005 (see Attachment 7).**

ENCLOSURE III

Work Plan (Attached to Statement of Work)

Statement of Work for Agricultural Wage Surveys

Note: Due to the special nature and importance of agricultural prevailing wage surveys, a separate Statement of Work is included.

_____(Agency Name)_____ shall prepare a narrative plan which explains how it will deliver this activity in FY 2005. This narrative should include the number of prevailing wage surveys to be conducted and for which crop activity.

As a condition for receiving funds in support of the Secretary's responsibility, _____(Agency Name) agrees to conduct prevailing wage surveys of agricultural and logging activities in accordance with ETA Handbook No. 385. The SWA assists employers in recruiting agricultural and logging workers. Since those workers do not have knowledge of wages in distant locations, the SWA provides a level of wage protection by requiring that intra- and inter-state clearance orders offer a prevailing wage (20 CFR 653.501(d)(4)), if it is higher than the state or Federal minimum. For H-2A orders involving alien workers, the prevailing wage must be offered if it is higher than the state or Federal minimum and the Adverse Effect Wage Rate (AEWR) (20 CFR 655.102(b)(9)).

In order to establish the required prevailing wages, surveys must be done in accordance with ETA Handbook No. 385 for each agricultural reporting area in which a crop activity meets the threshold specified in Section I, C. 1. a. of the Handbook. When the data are collected and compiled in accordance with the Handbook, a signed Form ETA 232 must be submitted to the national office for review and confirmation before publication.

1. Special Assurances.

- **The state shall submit to the national office a plan for the surveys it is scheduling for the coming year.** This plan must include all the surveys which will be conducted by the state in the upcoming season. Accordingly, the state's survey targets should be based on estimated job order activity to be produced by H-2A applications. Prevailing wage surveys must be completed in the following instances: 1) When there were more than 100 workers in one crop last season or you expect more than 100 workers in the current season; 2) When there were H-2A workers last season or you expect H-2A workers in the current season; 3) When it is a very complex method of payment (i.e., piece rates); and 4) all mandatory national interest surveys such as Custom Combine, Sheep and Goat herding, Nurseries, and East Coast apples. **Wage surveys should not be conducted if they do not fit into the above categories.** The plans should be mailed to Mr. Ben Orona, Division of Foreign Labor Certification, 200 Constitution Avenue, NW, Room C-4312, Washington, D.C 20210 or fax to (202) 693-2768.
- The state shall submit the results of its prevailing wage surveys (ETA 232) promptly to the national office as well as to the respective national processing center (Atlanta or Chicago), so the correct wage is established for the next cycle of crop activity. Timely submission is critical to ensure release of wage determinations by the national office well ahead of the crop activity start date. The ETA 232 forms should be mailed to Mr. Ben Orona, Division of Foreign Labor Certification, 200 Constitution Avenue, NW, Room C-4312, Washington, D.C. 20210 or fax to (202) 693-2768.

2. Allowable Costs.

- Costs may be attributed to tasks described in ETA Handbook No. 385 for crop activities which meet the criteria specified above and for indirect support as a fair share of overhead.

3. Performance Standards.

- The state's performance will be reviewed according to its adherence to the procedures for wage surveys in ETA Handbook No. 385. Irrespective of the Adverse Effect Rate (AEWR) published for a given state each year, the procedures contained in the ETA Handbook No.385 require that prevailing wage surveys be conducted for any crop activity that is anticipated in the upcoming season.

4. Reporting.

- Completed surveys will be submitted on the ETA-232. Financial reporting will be as specified by ETA. The ETA-9037 will continue to be used to report activity on a semi-annual basis.
- States should plan to track the costs associated with conducting prevailing wages in order to assist the national office in the allocation of future resources. The costs include, but are not limited to, staff resources, travel expenditures, and administrative costs (see Attachment 6).
- **States should submit an estimate of their annual cost for conducting H-2A prevailing wage surveys by April 29, 2005 (see Attachment 7).**

Attachment No.: 4

Major SWA Responsibilities for the ALC Agricultural Program

1. Before Required Filing Date.

- Meet with employers to encourage early filing; inform employers of any new/emerging requirements; and assist employers in preparing job offers/orders. Special emphasis shall be placed by SWAs in the areas of Agricultural Prevailing Wage Surveys, assisting employers to prepare job orders and positive recruitment plans which are most likely to reach and encourage response by U.S. workers, and in increased use of America's Job Bank (AJB) for all H-2A orders.
- Conduct prevailing wage surveys and submit them to the national office for verification.
- Conduct housing inspections (where conditional access is not involved). Housing inspections should be scheduled by the State Agency **prior** to the filing of applications for those employers who regularly use the H-2A program.
- Gather information and provide advice to the national processing center (Atlanta or Chicago) on prevailing practices (family housing, utilization of crewleaders and crewleader overrides, transportation advances, and frequency of payment).
- Gather information on U.S. worker availability to assist the national processing center in determining positive recruitment requirements.

2. Forty-Five (45) Days Before Date of Need.

- Receive duplicate of employer application and job offer.
- Prepare local job order and begin local recruitment.
- Advise the national processing center if any components appear unacceptable for H-2A clearance purposes.
- Maintain record of referrals and actions taken thereon; report to the national processing center any "questionable" refusals to hire.
- Respond to national processing center requests for assistance/clarification on employer's application.
- Begin preparation of clearance order based on employer's job offer portion of application (if not done before).
- Assist employer in preparing advertisement plans based on the requirements from the national processing center.

3. Upon Receiving Notification by Telephone (or E-mail) from the National Processing Center on Whether or not the Application is Accepted.

- If application accepted, finalize clearance order; clear to states designated by the national processing center.
- If application not accepted, revise clearance order to incorporate modifications required by the national processing center (but do not submit).
- Consult with employer to determine if employer agrees to modifications.

- If employer intends to appeal to the Administrative Law Judge (ALJ), put clearance order in abeyance.
- Assist employer in making modifications, if appropriate (Form ETA 795 if clearance order already prepared and ready for transmittal).

4. After Clearance Order Approved by the National Processing Center.

- Enter order into AJB.
- Mail order to other areas specified by the national processing center.
- Perform other actions related to recruitment specified by the national processing center.
- Review employer advertising--ensure it is published/broadcast.
- Refer workers; facilitate referrals from other states; (maintain records of referrals and actions taken thereon).
- Assist employer in processing requests for amendments (the national processing center must approve).
- Ensure that approved amendments are included in job order package.
- Ensure previous editions of job orders are corrected or updated.

5. Housing Inspections.

- Complete all scheduled housing inspections.
- If deficiencies are found, inform employer(s) that they have five calendar days to correct. Re-inspect five days later.
- If housing not approved after the re-inspection, the clearance order must be canceled and referred workers should be notified.
- The Immigration and Nationality Act requires that employers furnish housing that meets applicable standards before certification can be issued (INA 218(c)(4)). Documentation that the employer's housing meets applicable standards must be received by the Certifying Officer prior to certification being granted. SWAs should encourage employers who expect to obtain their certification 30 days before the date of need to have housing ready for inspection at the time of filing their application or earlier. SWAs should be prepared to conduct housing inspections prior to the filing of applications, as appropriate; and should even plan to schedule housing inspections prior to filing for those employers who regularly use the H-2A program.

6. Twenty-Four (24) Hours Before Date of Need (Suggested).

- Submit report on SWA recruitment to the national processing center.

7. After Certification Determination.

- Continue to refer workers who apply for the job.
- If proof of advertising is not received, prior to the granting of the labor certification, obtain from employer.
- Respond to national processing center requests for assistance/advice on re-determination requests.

8. After Date of Need.

- Continue to refer workers who apply if comparable alternative employment is not available (up to 50 percent of the contract period).
- Advise the national processing center if employer refuses to accept referred workers.
- Respond to national processing center requests for assistance/advice on re-determination requests and recruitment of replacement workers (employer must report workers not accepted or fired to the SWA; the national processing center has 72 hours to act on re-determination requests).
- Refer worker complaints on non-performance of contracts to the Wage and Hour Division (DOL).
- Provide information (and other assistance) to the Wage and Hour Division in its investigations.
- Investigate employer complaints on 50 percent rule violations (655.106(g)).
- Advise employers, and the national processing center if appropriate, of legal or regulatory actions mandating changes in work situation.
- Conduct field checks at job sites only where U.S. workers have been placed through the clearance system (coordinate with the national processing center and Wage and Hour Division; do not duplicate Wage and Hour targeted enforcement visits).
- Cancel job order when 50 percent of work contract has elapsed.

Attachment No.: 5

Major SWA Responsibilities for the ALC Non- Agricultural Programs

1. Before Filing of Application.

- Respond to written and telephone inquiries about non-agricultural certification and attestation programs.
- Advise employers, applicants, and aliens, as appropriate, about requirements of non-agricultural labor certification and attestation programs.
- Refer employers, applicants, and aliens, as appropriate, to the national processing center for further information regarding non-agricultural labor certification and attestation programs.
- Provide prevailing wage information.
- Mail forms, regulations, instructions, etc., to employers, attorneys, and other interested members of the public.

2. After Filing of Application (H-2B program).

- Review application for completeness.
- Advise employers, as appropriate, of deficiencies and corrections that should be made to application.
- Provide prevailing wage determinations to employers.
- Prepare job orders from the ETA 750 and transmit to Job Bank for regular SWA recruitment activity. Monitor and collect referrals from SWA verification system.
- Advise employers of recruitment and other regulatory requirements.
- Screen applicant resumes received against advertisements to assure that applicants meet employer requirements and make referrals of only qualified applicants to employers.
- Collect recruitment results from employers on all applicants who responded to the employer's recruitment efforts, including those who responded directly to the employer.
- Prepare case file for review by the Certifying Officer.
- Transmit case file to the national processing center with state recommendations.
- Furnish information on applications, employers, and beneficiaries to the U.S. Citizenship and Immigration Services (USCIS) and other law enforcement agencies.

3. After Transmission of Case File to the National Processing Center.

- Respond to requests for further information from the national processing center and law enforcement agencies, such as USCIS and the Office of the Inspector General.

Attachment No.: 6

Annual Plan Procedures

1. Annual Funding Agreement.

The current agreement includes an Assurances and Certifications package to encompass all PY 2004/FY 2005 program activities. Notice of Obligation documents for the allotment balances will be issued by the National Office Grant Officer based upon national office approval of Annual Plans.

2. Annual Plan.

The Annual Plan includes an Application for Federal Assistance (SF-424), transmittal letter, work statements, and budget information. Consistent with national office guidelines, negotiations between ETA and the Grantee will determine each state's annual level of funding for Alien Labor Certification.

- The Annual Plan will have a performance period of 12 months beginning October 1, 2004, and ending September 30, 2005.
- The plan package submitted from the states to the National Office Grant Officer should consist of a transmittal letter and one original and two copies of the following:
 - A. Application for Federal Assistance (SF-424)
 - B. Annual Budget and Quarterly Funding Plan (SF-424A—Section D only)
Note: Please include a budget supplement to explain and list all proposed equipment purchases of \$5,000 or more and any subcontracts.
 - C. Statement of Work/Work Plan
- The national office will negotiate work plans with states for each activity to be funded. The state is to prepare a description of the goals to be achieved as negotiated with the national office.

3. Plan Modifications.

The national office and the state may jointly modify the Annual Plan including negotiated changes in funding levels during the year. The grant modification requests must include a transmittal letter, a revised annual budget, and the quarterly spending plan. The National Office Grant Officer has the authority to execute funding adjustments where a state is not spending at agreed upon levels. When an adjustment is necessary, a unilateral modification may be issued. In the event that the Secretary of Labor may be required by future legislation to carry out other responsibilities, not currently anticipated, the states will be requested to submit a modification to the Annual Plan in order to carry out these additional duties.

4. Financial Reconciliation.

After the end of the fiscal year, a financial reconciliation procedure will be conducted to reconcile accounting records maintained by the grantee and the Department of Labor's original accounts. It may become necessary to revise funding levels in the new plan for a particular state when the reconciliation is completed.

Attachment No.: 7

Costing of H-2A Activities FY 2005 Estimate

1. Instructions.

Complete the table below using data from the prior fiscal year to estimate the cost of conducting H-2A activities. The completed table must be mailed to Mr. Greg Wilson, Division of Foreign Labor Certification, 200 Constitution Avenue, NW, Room C-4312, Washington, D.C. 20210 or fax to (202) 693-2768 by April 29, 2005.

(1) Housing Inspections:

- Include in the total cost: estimate travel time, inspection time, travel mileage, and completion of paperwork.
- If housing inspections are done by another organization, estimate the cost that the H-2A portion adds to their total cost and include this amount in the table.

(2) Prevailing Wage/Practice Surveys:

- Include in the total cost estimate the development of the survey instrument, postage, collection of responses, collation of information, and publication of results.

(3) Job Orders Processed:

- Include in the total cost estimate the creation and maintenance of files, taking into account the cost associated with receiving applications, referring applicants, and releasing orders into inter/intra-state job system.

2. Costing Sheet.

Activity	Total Number	Total Cost	Average Cost
Housing Inspections			
Prevailing Wage/Practice Surveys			
Job Orders Processed			
Total Cost of H-2A Activities			

3. Calculations.

- Average Cost = Total Cost / Total Number
- Total Cost of H-2A Activities = Total Cost of Housing Inspections + Total Cost of Prevailing Wage/Practice Surveys + Total Cost of Job Orders Processed

Attachment No.: 8

Contact Information

1. Instructions.

Contact information for this grant must be mailed to Mr. Greg Wilson, Division of Foreign Labor Certification, 200 Constitution Avenue, NW, Room C-4312, Washington, D.C. 20210 or faxed to (202) 693-2768 by April 29, 2005. If more than one contact person is appropriate, please provide the additional information.

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Email Address: _____