

## PERM REGULATION PUBLISHED

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*A very brief summary*

The long-anticipated PERM regulation has been published in the Federal Register today. The PERM regulations will go into effect on March 28, 2005, after which date all Labor Certifications must be filed under the new PERM system. In the meantime, employers must continue to submit labor certifications applications under the current regulations.

PERM is the "Program Electronic Review Management" system. It is intended to streamline the Labor Certification process for Employment-Based Immigrant Visa Petitions, and reduce waiting times from several years to several weeks or months. PERM will allow employers to submit an Application for Permanent Employment Certification (ETA-9089) directly to the DOL, online if they wish, and receive an approval within 45 to 60 days if there is no DOL audit.

The ETA-9089 is essentially an attestation which requires the employer to check "Yes" or "No" to a series of questions, and to describe the job and specific skills or other requirements. It will also attest to the types of recruitment that were completed before the filing of the ETA-9089. The employer need not submit any supporting documentation with the form, but must maintain and supply such documentation if requested by the Certifying Officer in the form of an audit. The new law requires employers to retain such documentation for five years from the date of filing the ETA-9089.

The DOL will audit certain PERM applications according to specific identifiers within problematic applications. It will also conduct random audits as a means of quality control. When an audit is conducted, the employer must provide all the documentation within 30 days.

As is presently the case with RIR labor certifications, PERM will require employers to recruit for the job BEFORE filing their applications. They must place a job order with the SWA and run two Sunday newspaper advertisements. If the application is for a professional occupation, the employer must conduct three additional steps from a list found in the regulation.

There is no processing fee, and this regulation does not specify what the penalties will be for failure to comply with PERM. Penalties will be enumerated in a subsequent regulation. If the DOL denies a labor certification, the employer may appeal the denial to BALCA. DOL may, instead of denying an application, order supervised recruitment for the job opportunity.

The new PERM regulations also allow employers to "convert" already filed RIR and Traditional Labor Applications to the new streamlined PERM system by withdrawing their prior application and resubmitting it under the new system. Such cases will be able to maintain their priority date if (1) no job order is placed with the SWA before withdrawal of the case, (2) the job opportunity is identical, and (3) employers comply with all advertising requirements. The PERM applications will not be processed, however, in the order of their priority dates; they will be processed in the order they are received at the National Processing Centers.

Pursuant to the new Omnibus Legislation, the PERM regulations have also confirmed that all employers will be required to pay 100% of the prevailing wage. There will also be four levels of wages commensurate with education and experience, on which the DOL will issue guidance at a later date.

For a complete copy (all 97 pages) of the new regulations as published in the Federal Register simply click on the Current Events section of Immigration News at our web site:

<https://www.immigrationsupport.com/news/currentevents.asp>