

DOL Rule Allows for Electronic Filing of H-1B Labor Condition Applications

Employers seeking to hire highly skilled, temporary foreign workers under the H-1B visa program will be able to fill out the requisite labor condition applications electronically under a new Labor Department rule.

In addition to filing labor condition applications (LCAs) by facsimile transmission or by mail, employers will be given the option of using an electronic filing system under the new rule published in the Dec. 5 Federal Register and effective Jan. 14. Intended to improve customer service, the rule will allow employers to submit their LCAs electronically on a Labor Department Web site.

"The electronic filing system will be convenient and less burdensome for employers, since, unlike a system based on filing applications by FAX or by mail, the new system will allow the filing of an application without the submission of a "hard copy," according to the rule. Electronic filing will enable DOL's Employment and Training Administration to process LCAs more efficiently, "without the technical and administrative uncertainties inherent in the technology currently available to process applications that are submitted by FAX," the rule said.

Employers seeking to hire under the H-1B visa program must first complete an LCA to provide certain information to the Labor Department regarding wages, working conditions, and benefits available to the foreign workers. Employers that are dependent on H-1B workers or who have been found in violation of the visa program's requirements also must attest on the LCAs that they have sought to recruit U.S. workers, to offer positions to U.S. workers who are equally or better qualified than the H-1B workers, and to avoid displacement of U.S. workers.

The new labor condition application form (Form ETA 9035-E) and electronic submission and certification system will be accessible on a DOL Web site -- www.lca.doleta.gov--currently under development. "Because the electronic filing system includes guidance to the employers in filling out their LCAs 'on line,' the LCAs will have fewer incomplete or obviously inaccurate entries and will, therefore, ordinarily be acceptable for immediate electronic certification," according to the rule.

Accompanying the new rule is a request for comments to the Office of Management and Budget regarding new information collection provisions related to Form ETA 9035-E. Affected parties do not have to comply with the rule's revised information collection requirements until the Labor Department publishes a notice approving the revisions in the Federal Register.