



EMAIL BULLETIN

**U.S. OFFICE OF MANAGEMENT & BUDGET APPROVES THE
DEPARTMENT OF LABOR'S (DOL'S) FINAL PERM REGULATIONS
CHANGING THE PERMANENT ALIEN LABOR CERTIFICATION PROGRAM**

14 December 2004

On December 13, 2004, the U.S. Office of Management & Budget approved the Department of Labor's final PERM regulations, clearing the way for final publication in the Federal Register in the coming days. PERM stands for "Program Electronic Review Management," and it will alter the means for obtaining permanent alien labor certification for employment of foreign nationals in positions for which insufficient U.S. workers are available.

Based on information disseminated to date, there is significant concern that this automated system is designed only to accommodate the most common job titles for which there will be little room to demonstrate the uniqueness of a particular job position.

Long in the planning stages, and under review and comment during the regulation stage, PERM is designed to provide an electronic means for screening and approving Applications for Alien Employment Certification based on employer attestations. Cases will be selected for audit, either randomly or based on data entered into key fields. The audit process will provide the means for enforcement by the Department of Labor. The DOL anticipates a rapid turnaround time, perhaps as little as 21 days, on cases not selected for audit.

While the proposed adjudication time frame is appealing, employers should remember that the PERM requirements are likely to be more stringent with respect to recruitment requirements and more restrictive with respect to the lawful grounds for disqualifying U.S. applicants. Additionally, because PERM essentially collapses many positions into fewer titles and descriptions, the resulting classifications, job descriptions and requirements will likely be more generic under PERM, thus making it more difficult to disqualify applicants who are objectively not qualified for the more specific job duties associated with the actual position. Employers may also be required to guarantee 100% of the prevailing wage, as determined by the DOL, without the previously-allowed 5% variation. These and other details of the PERM regulations as they were originally proposed may be found in Tindall & Foster's June 2002 PERM article, which is posted on the Tindall & Foster web site at <http://www.tindallfoster.com/bulletins/perm.html>.

Employers considering filing Applications for Alien Employment Certification on behalf of employees in unique or highly-specialized positions which, if grouped into a more generic job classification, may yield potentially-qualified applicants during recruitment, should consider filing regular track (traditional) Applications IMMEDIATELY.

The DOL has advised that the new PERM regulations may be effective in as little as 60 days from publication and thereafter the generic, automated system will be the ONLY means of testing the job market. This means there appears to be an extremely limited and fleeting opportunity for employers to file Applications for unique cases. For more information on the application of new PERM requirements and for case-specific strategy development in connection with new regular track or PERM labor certification filings, please contact your Tindall & Foster immigration attorney.