

performance of longshore activity by alien crewmembers, or anytime up to 24 hours before the first performance of the activity if the delay could not have been reasonably anticipated. An attestation must be filed only once per year for locations at which alien crewmembers will be used. Therefore, the 30-day filing requirement applies only to the first performance of longshore work after the attestation is filed. Subsequent arrivals to the same location in the State of Alaska in the same year do not require that an additional attestation be filed.

Under the prevailing practice exception, the regulations require that a separate attestation be filed for each port at which the employer intends to use alien crewmembers to perform longshore work. The Department has determined that, under the Alaska exception, it is appropriate to accept attestations which contain multiple locations. An attestation must be filed by each individual employer but may apply to multiple vessels and multiple locations within the State of Alaska. For other States, the prevailing practice exception is port-specific and the employer is required to attest that there is no collective bargaining agreement *in the port* covering at least 30 percent of the longshore workers, and that it is the prevailing practice *in the port* for alien crewmembers to perform longshore work. There is no such port-specific or location-specific attestation element or other provision under the Alaska exception.

The Department requires that crewmember attestations for locations in the State of Alaska be submitted to and accepted by the Employment and Training Administration (ETA) regional office in Seattle, Washington. The address of the Seattle regional office is listed in the instructions for completing the Form ETA 9033-A.

ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation in a timely manner after the acceptance of the attestation.

#### B. Acceptance for Filing

In accepting an attestation for filing, the regulations require that the application be filed with ETA at least 30 days before the first performance of the longshore activity (or anytime up to 24 hours before the first performance of the activity, upon a showing that the employer could not have reasonably anticipated the need to file an attestation for that location at that time).

The term "could not have reasonably anticipated" is intended to be a broader and more flexible standard than under the prevailing practice exception, which permits late filing only in the event of an "unanticipated emergency." Depending on the particular circumstances, delays occasioned by adverse weather conditions, changes in commercial requirements, changes in fish migration patterns, or other unforeseen circumstances may be sufficient to file less than 30 days in advance.

The regulations provide that the Department review an attestation only to ensure that it is completed properly, that it is accompanied by the required documentation specified in the regulations, and that the documentation is not, on its face, inconsistent with the attestation.

#### Level of Federal Review of Attestations

The Department has determined that the general approach to its review of employer attestations under the prevailing practice exception shall apply to attestations filed under the Alaska exception. The Department will review an attestation to ensure that it has been filed at least 30 days prior to the first performance of the longshore activity (or anytime up to 24 hours before the first performance of the activity, upon a showing that the employer could not have reasonably anticipated the need to file an attestation for that location at that time), that it is completed properly, that it has the appropriate accompanying documentation, and that the documentation is not, on its face, inconsistent with the attestation. In addition, the Department will review attestations to determine the following: (1) Whether the Administrator, Wage and Hour Division, DOL, has advised ETA that it has issued a cease and desist order currently in effect that would affect the attesting employer and particular location; (2) whether the Administrator has advised ETA of a determination that an employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, requiring the Attorney General to bar the employer from entry to any U.S. port for up to one year; and (3) whether the Administrator has advised ETA that the employer has failed to comply with any penalty or remedy assessed.

#### Appeals Process

The regulations do not include an administrative appeal process for attestations during the filing phase under the Alaska exception. When an

attestation is returned because it is untimely, improperly completed, or lacking proper documentation, an employer may resubmit another attestation to the Department. Attestations which have been accepted by ETA may be objected to by an aggrieved party through the complaint process in subpart G, and procedures for investigation, hearing, and appeal are provided therein. The Department believes that this approach is consistent with the statute's intent for a streamlined attestation filing process and a complaint-driven enforcement system for the statute's requirements.

#### C. Attestation Elements

##### Bona-fide Request for United States Longshore Workers

An employer or its agent filing an attestation under the Alaska exception must attest that it will make a bona fide request for dispatch of United States longshore workers who, by industry standards in the State of Alaska, including safety considerations, are qualified and available in sufficient numbers to perform the longshore activity at the particular time and location. Such requests must be directed to contract stevedoring companies and operators of private docks at which the employer intends to use longshore workers. Wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a single qualified labor organization, the employer need request longshore workers from only one of such contract stevedoring companies. Qualified labor organizations are those which have been recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which make available or intend to make available longshore workers to the particular location where the longshore work is to be performed. An employer is not required to request dispatch of United States longshore workers from contract stevedoring companies or private dock operators which do not meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) or, in the case of contract stevedoring companies, which are not licensed to do business in the State of Alaska. Evidence of coverage is a copy of the DOL Office of Workers' Compensation Programs (OWCP) Certificate of Compliance, which is maintained by the contract stevedoring company or private dock operator. Further, a request for dispatch from a private dock operator