need only be made for longshore work to be performed at that dock.

Employers are not required to request dispatch of United States longshore workers from any party which has notified the employer in writing that it does not intend to dispatch workers to the location at which longshore work is to be performed. If a party that has provided such notice subsequently informs the employer in writing that it is prepared to provide workers, the employer's obligations to that party to request dispatch of, and employ qualified United States longshore workers made available in sufficient numbers, recommence 60 days from the employer's receipt of the notice.

Employment of United States Longshore Workers

An employer or its agent must attest that it will employ all United States longshore workers dispatched in response to a request made under the first attestation element who are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location attested to.

This attestation element also specifies that employers will not be required to hire less than full work units of United States longshore workers nor to provide overnight accommodations for the workers. The regulations provide that "full work unit" means the full complement of longshore workers needed to perform the longshore activity, as determined by industry standards in the State of Alaska, including safety considerations. Where the makeup of a full work unit is covered by one or more collective bargaining agreements in effect at the time and location where longshore work is to be performed, the provisions of such agreements shall be deemed to be in conformance with industry standards in the State of Alaska. This element also states the conditions under which employers will be required to provide transportation from the point of embarkation to the vessel on which longshore work is to be performed. Specifically, there is a thirty-minute travel time limit and a five-mile travel distance limit except in Klawock/Craig and Wide Bay, Alaska, where, due to the remoteness of these areas, the travel limits are extended to forty-five minutes and seven and one-half miles, respectively. Further, an employer is not required to provide transportation, even if the vessel is within the specified time and distance limitations from the point of embarkation, unless surface transportation is available and such transportation may be safely

accomplished. If a vessel where longshore work is to be performed is beyond the specified time and distance limitations from the point of embarkation, the employer is still obligated to hire any qualified U.S. longshore worker who is capable of getting to the vessel where the longshore work is to be performed at his or her own expense, even though the specified time and/or distance limitations are exceeded, but is not required to provide such transportation nor reimburse the worker for expenses incurred in getting to and from the vessel.

#### Election

An employer filing an attestation under the Alaska exception must attest that the use of alien crewmembers to perform longshore activities will not be intended or designed to influence an election of a bargaining representative for workers in the State of Alaska.

### Notice

Lastly, an employer of alien crewmembers must attest that at the time of filing the attestation, notice of the filing has been provided to: (1) Labor organizations 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 workers to the locations where the employer is attesting that the longshore work is to be performed; (2) contract stevedoring companies which are licensed to do business in the State of Alaska, meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932), and which employ or intend to employ United States longshore workers at those locations; and (3) operators of private docks at which the employer intends to use longshore workers. The operators to whom provision of notice is required shall also meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932)

The required notices shall include a copy of the Form ETA 9033–A, shall state that the attestation with accompanying documentation has been filed and is available at the National office of ETA for review by interested parties, and shall explain where complaints can be filed with respect to employer attestations. Further, in the required notice, the employer shall request a copy of the Certificate of Compliance issued by the district director of the Office of Workers' Compensation Programs under section

37 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) from contract stevedoring companies and private dock operators. The employer's obligations to request dispatch of and employ qualified United States longshore workers from any party shall commence upon receipt of the Certificate of Compliance.

Finally, the Department periodically shall publish in the Federal Register a list of employers who have submitted attestations under the Alaska exception.

### D. Automated Vessel Exception

The INA provides that longshore work consisting of the use of an automated self-unloading conveyor belt or vacuumactuated system on a vessel shall continue to be governed by the prevailing practice exception and Departmental regulations thereunder at 20 CFR 655.520 and 29 CFR 506.520. If, however, it is determined that an attestation is required for longshore work consisting of the use of automated equipment, i.e., because the Administrator has determined, pursuant to a complaint, that it is not the prevailing practice to use alien crewmembers to perform the longshore activity(ies) through the use of the automated equipment, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation, the required attestation shall be filed by the employer under the Alaska exception and not under the prevailing practice exception. The amended INA provides that the prevailing practice exception no longer applies in the case of longshore work to be performed at a particular location in the State of Alaska.

# IV. Complaints, Investigations, and Dispositions

The INA provides that the Secretary shall establish complaint, investigation, and hearing procedures and authorizes the Secretary to issue cease and desist orders against employers. The Secretary's enforcement responsibilities are assigned to the Administrator, Wage and Hour Division, of the Department's Employment Standards Administration (ESA).

## A. Complaint, Investigation, and Hearing

The INA provides that the existing process for the receipt, investigation, and disposition of complaints at section 258(c)(4) of the INA shall apply to the use of alien crewmembers to perform