

### *B. Debarment Timing (Notice to Attorney General)*

The statute requires that the Secretary notify the Attorney General (AG) of an employer's violation(s). Pursuant to § \_\_\_\_\_.665(b) of the Interim Final rule, the Administrator is required to notify the AG and ETA of the final determination of a violation by an attesting employer or of the ineligibility of an employer for the automated vessel exception, upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an attesting employer or a finding of nonapplicability of the automated vessel exception, and no timely request for hearing is made pursuant to § \_\_\_\_\_.630 of this part;

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an attesting employer or finding inapplicable the automated vessel exception; or

(3) Where the administrative law judge finds that there was no violation by an attesting employer or that the automated vessel exception does apply, and the Secretary, upon review, issues a decision pursuant to § \_\_\_\_\_.655 of this part, holding that a violation was committed by an attesting employer or holding that the automated vessel exception does not apply.

This regulatory construct creates a situation where the Administrator notifies the AG of a violation upon a finding of a violation or upon a finding that the automated vessel exception does not apply by an ALJ, even though such finding subsequently may be appealed to the Secretary and eventually overturned. An attesting employer thus could be debarred after a finding of violation by an ALJ, serve part or all of the debarment period, and subsequently be found by the Secretary not to have committed a violation. Similarly, if the ALJ finds that the employer is ineligible for the automated vessel exception, the employer could be required not to use alien crewmembers to perform longshore activities at the specified port without first filing an attestation with ETA, and subsequently be found to be eligible for the automated vessel exception by the Secretary.

To correct this anomaly, § \_\_\_\_\_.665(b) has been amended to require notification to the AG after a finding of a violation or a finding of nonapplicability of the automated vessel exception by an ALJ only under the following circumstances: (a) where there is no appeal from the ALJ's finding to the Secretary; (b) where, upon appeal, the Secretary declines to review the ALJ's finding; and (c) where, upon review, the Secretary affirms the ALJ's finding.

### VI. Summary

The Department welcomes comments on these and any other issues addressed in the regulations and on any issues not addressed that commenters believe need to be addressed.

#### *Regulatory Impact and Administrative Procedure*

E.O. 12866:

In accordance with Executive Order 12866, the Department of Labor has determined that this is not a significant regulatory action as defined in section 3(f) of the Order.

#### *Regulatory Flexibility Act:*

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Absent a final rule for attestations under this program, employers are precluded from using alien crewmembers for longshore activity at a particular location in the State of Alaska unless the employer had a valid attestation for the location on file with ETA on the date of the Coast Guard Act's enactment. This program affects a limited class of individuals and entities in Alaska. The Department consulted with representatives of all relevant parties in the development of this interim final rule and, for good cause, has determined that issuance of a proposed rule is unnecessary. 5 U.S.C. 553(b)(B).

Further, there is ongoing longshore work being performed off the coast of Alaska in connection with the fishing industry. Since delay in the issuance of an interim final rule precludes employers from filing attestations in Alaska in order to use the "Alaska exception", such employers may be encouraged by economic exigencies to utilize foreign crewmembers in longshore work illegally or to reflag their vessels to qualify for the reciprocity exception for vessels under the flags of countries which permit U.S. crewmembers to perform longshore work. Either of these actions by shippers would diminish employment opportunities for Alaskan stevedores, contrary to the purposes of the Act. Indeed, DOL has received information that further delay in implementing the

Alaska exception could adversely impact the employment opportunities for Alaskan workers seeking longshore work. The Department, for good cause, has determined that this potential harm makes it impracticable and contrary to the public interest to delay implementation by publishing the rule as a proposed rule. 5 U.S.C. 553(b)(B).

Nevertheless, the Department is very interested in receiving comments on the interim final rule. These comments will be considered in the development of a final rule.

#### *Catalog of Federal Domestic Assistance Number*

This program is not listed in the *Catalog of Federal Domestic Assistance*.

#### *List Of Subjects*

##### *20 CFR Part 655*

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion Models, Forest and Forest Products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

##### *29 CFR Part 506*

Administrative practice and procedures, Aliens, Crewmembers, Employment, Enforcement, Immigration, Labor, Longshore work, Penalties, Reporting and recordkeeping requirements.

#### *Text of the Joint Interim Final Rule*

For the reasons set forth in the common preamble, the text of the joint interim final rule as adopted by ETA and the Wage and Hour Division, ESA, and in this document appears below:

#### **Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports**

##### *General Provisions*

###### *Sec.*

- \_\_\_\_\_.500 Purpose, procedure and applicability of subparts F and G of this part.
- \_\_\_\_\_.501 Overview of responsibilities.
- \_\_\_\_\_.502 Definitions.
- \_\_\_\_\_.510 Employer attestations.
- \_\_\_\_\_.520 Special provisions regarding automated vessels.

##### *Alaska Exception*

- \_\_\_\_\_.530 Special provisions regarding the performance of longshore activities at locations in the State of Alaska.
- \_\_\_\_\_.531 Who may submit attestations for locations in Alaska?
- \_\_\_\_\_.532 Where and when should attestations be submitted for locations in Alaska?