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**ADVISORY: FOREIGN LABOR CERTIFICATION
TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 8-05**

**TO: FLC-NATIONAL PROCESSING CENTER DIRECTORS
FLC-BACKLOG ELIMINATION CENTER DIRECTORS**

**FROM: EMILY STOVER DeROCCO
Assistant Secretary**



**SUBJECT: Response to Hurricanes Katrina, Rita, and Wilma – Deadlines and
Correspondence for the Permanent Labor Certification Program**

1. **Purpose.** This memorandum outlines interim procedures for the management of mail related to applications in the permanent labor certification program and reflects the decision by the Division of Foreign Labor Certification (DFLC or Division) to postpone certain regulatory and procedural deadlines pertaining to applications affected by Hurricanes Katrina, Rita, and Wilma. DFCL issued guidance for Hurricane Katrina on October 13, 2005. Stakeholders raised certain questions in response to that guidance. Therefore, this guidance replaces and supersedes all prior DFCL hurricane guidance. This guidance will be posted on DFCL's website and published in the Federal Register.
2. **References.** DFCL Field Memorandum, "Response to Hurricane Katrina" (October 13, 2005)."
3. **Background.** In late August 2005, Hurricane Katrina battered the Gulf Coast of the United States, devastating large areas of Louisiana, Alabama, and Mississippi. In late September 2005, Hurricane Rita hit the Gulf Coast of the United States, including parts of Louisiana and Texas. In late October 2005, Hurricane Wilma devastated parts of Florida. DFCL will work closely with our stakeholders to minimize disruption to the labor certification process as the country works through these disasters. This guidance outlines the Division's emergency policy related to deadlines and correspondence for permanent program applications related to Katrina, Rita, and Wilma impacted areas.

RESCISSIONS DFCL Field Memorandum, "Response to Hurricane Katrina" (October 13, 2005)

**EXPIRATION
DATE**
March 2006

4. **Discussion.**

- A. **Mail delivery.** Currently, the Post Office and other mail delivery services are not delivering mail to certain areas impacted by Hurricanes Katrina, Rita, and Wilma. In addition, many businesses, including law firms, have been destroyed by these hurricanes and subsequent flooding. Therefore, until further notice, National Processing Centers, Backlog Elimination Centers, and their satellite offices (collectively, the Centers) should not send correspondence to zip codes in the affected regions where there is either no mail service or partial mail service, as shown on the United States Postal Service website at <http://www.usps.com/communications/news/serviceupdates.htm?from=bannercommunications&page=katrina>.

Normally, copies of correspondence from DFCL regarding permanent labor certification applications are sent to both the employer and the legal representative named on the application. DFCL will continue processing every case to the extent feasible. However, to avoid potential misunderstandings regarding the status of a case, DFCL will hold all correspondence and case communications where one of the recipients of the correspondence is in an area with no or partial mail delivery, until a new address is provided by the employer or attorney in accordance with the instructions below.

- B. **Advising DFCL of new mailing addresses and contact information.** Because some employers and/or their attorneys may be relocating from disaster-impacted areas on a temporary or permanent basis, we have established e-mail addresses to receive new contact information. We will verify this new information as needed. Employers or their attorneys are asked to contact the Center with jurisdiction over each particular permanent labor certification case as follows:

Katrina.dflc@phi.dflc.us for the Backlog Elimination Center in Philadelphia;
Katrina.dflc@dal.dflc.us for the Backlog Elimination Center in Dallas;
Katrina.dflcatlanta@dol.gov for the National Processing Center in Atlanta; or
Katrina.dflcchicago@dol.gov for the National Processing Center in Chicago.

The subject line of each e-mail should designate which hurricane(s) affected the application. E-mailed notices must include: the new mailing address to which correspondence should be forwarded, any new telephone and facsimile information, and sufficient information to identify each affected application(s), including the case number(s). (Please note: global requests for a mailing address change will not be honored.) In the case of temporary or interim relocations, please note the time period when the new address/phone numbers will be in effect. Any subsequent changes to the employer or attorney's mailing address must also be e-mailed to the addresses above.

- C. **Case file.** Due to Hurricanes Katrina, Rita, and Wilma, DFCL will accept new addresses for purposes of mailing only. Addresses will not be added or amended on pending applications, as a new address can sometimes change key elements of an application – for example, a new work location can change the applicable prevailing wage rate and area of intended employment. Instead, for purposes of mailing to a new address, the Centers will create a brief cover letter to add to the prepared correspondence. This cover letter will document the date the new address request was received and the new

address itself. Center staff will then annotate the electronic case file to record the new address and the type of correspondence sent to the new address on a given date.

- D. **Due dates.** To address Hurricanes Rita and Wilma, and in response to stakeholder questions about the earlier guidance on Hurricane Katrina, DFCL provides the information below to clarify the applicability of due date deadline extensions.

For those permanent labor certification applications where either the employer or its attorney or agent is located in a Katrina, Rita, or Wilma disaster area (the counties and parishes that have been or are later designated by the Federal Emergency Management Agency as disaster areas eligible for Individual or Public Assistance because of the devastation caused by Hurricane Katrina), DFCL is postponing certain regulatory and procedural deadlines. Specifically, DFCL is extending deadlines for employer responses to Backlog Elimination Center (BEC)-issued 45-day letters (also known as continuation letters), BEC-issued Notices of Findings, National Processing Center (NPC)-issued audit requests, NPC requests for additional information, and employer appeals. In other words, any of these specifically listed application materials with a due date during the period described below will be considered timely if received by the appropriate Center by the date specified for each hurricane:

For Hurricane Katrina: If the specific deadlines listed above fall during the period from August 29, 2005, until December 1, 2005, the employer's submission will be considered timely if received by the appropriate NPC by December 1, 2005.

For Hurricane Rita: If the specific deadlines listed above fall during the period from September 23, 2005, until January 1, 2006, the employer's submission will be considered timely if received by the appropriate NPC by January 1, 2006.

For Hurricane Wilma: If the specific deadlines listed above fall during the period from October 24, 2005, until February 1, 2006, the employer's submission will be considered timely if received by the appropriate NPC by February 1, 2006.

These extensions apply even if the employer, attorney, or agent has relocated and resumed operations outside the disaster area.

The list of counties and parishes designated by FEMA as disaster areas eligible for Individual or Public Assistance as a result of Hurricanes Katrina, Rita, and Wilma has been published and amended in the Federal Register, and is available at <http://www.fema.gov/news/disasters.fema>. For the hardest hit areas, DFCL will closely monitor progress and may extend these deadlines even further. DFCL will work with stakeholders covered by an extension provided above who may receive written communications applying an earlier or incorrect deadline. We will consider other deadline issues on a case-by-case basis.

- E. **Filing Date Extensions for PERM applications impacted by Hurricane Wilma, Rita, or Katrina.** Under current PERM regulations, employers must begin their recruitment efforts no more than 180 days prior to filing a permanent labor certification application, and must complete most recruitment measures at least 30 days prior to filing. Due to recent hurricanes, employers or their attorneys within a FEMA-designated disaster area may be unable to comply with the requirement of completing their recruitment efforts within the regulatory 180-day time frame. Therefore, DFLC is extending recruitment validity periods to allow employers or their attorneys located within a FEMA-designated disaster area (as defined above) to file their permanent labor certification application by seventy-five (75) days after the date of the last of the three hurricanes, so long as recruitment was begun within 180 days prior to the specific hurricane. The last of the three hurricanes, Wilma, hit on October 24, 2005, and 75 days after that date is January 7, 2006. The specific dates applicable to each hurricane are as follows:

<u>Hurricane Date</u>	<u>Recruitment must have begun by (180 days prior to hurricane):</u>	<u>Filing must occur by:</u>
Katrina – Aug. 29, 2005	March 2, 2005	January 7, 2006
Rita – Sept. 23, 2005	March 27, 2005	January 7, 2006
Wilma – Oct. 24, 2005	April 27, 2005	January 7, 2006

Those hurricane-affected employers who may have already been denied due to the “staleness” of the recruitment on an application may file a request for reconsideration with the appropriate Certifying Officer.

Those employers wishing to submit an application under this guidance, where the recruitment period lasted longer than 180 days, must submit their application by mail to the appropriate National Processing Center. The employer must include a cover letter (signed by the employer or the employer’s representative) explaining the particular circumstances that caused the employer to *fall within the boundaries* of this guidance. Please note: Under the regulations, recruitment steps must be completed at least 30 days before filing the application. This requirement will still be enforced.

The Division will continue to revisit issues surrounding Hurricanes Katrina, Rita, and Wilma in the coming months, as needed.

5. **Action Required.** FLC Center directors are requested to inform certifying officers and staff of the information in this guidance letter and ensure they take appropriate action.
6. **Inquiries.** Please direct questions to the appropriate National Office staff.