

<b>EMPLOYMENT AND TRAINING ADMINISTRATION          ADVISORY SYSTEM          U.S. DEPARTMENT OF LABOR          Washington, D. C. 20210</b>	<b>CLASSIFICATION</b> H-2B Non-Agricultural Program
	<b>CORRESPONDENCE SYMBOL</b> OFLC
	<b>ISSUE DATE</b> June 12, 2007

**ADVISORY: FOREIGN LABOR CERTIFICATION  
 TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 27-06**

**TO: OFLC-NATIONAL PROCESSING CENTER DIRECTORS  
 STATE WORKFORCE AGENCY ADMINISTRATORS**

**FROM: EMILY STOVER DeROCCO /s/  
 Assistant Secretary**

**SUBJECT: Special Guidelines for Processing H-2B Temporary Labor Certification in  
 Tree Planting and Related Reforestation Occupations**

1. **Purpose.** To outline special guidelines as part of the H-2B labor certification process for employers who desire to employ tree planters and related reforestation occupations in the United States.
2. **References.** Immigration and Nationality Act (INA) sec. 101(a)(15)(H)(ii)(b); 20 Code of Federal Regulations (CFR) Parts 652 and 655; 8 CFR 214.2(h)(6); Federal Register Notice, Vol. 70, No. 137, pps. 41430-41438; Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801, et seq.; 29 CFR Part 500; and Training and Employment Guidance Letter (TEGL) 21-06, Procedures for H-2B Temporary Labor Certification in Non-Agricultural Occupations.
3. **Background.** The H-2B nonimmigrant program permits employers to hire foreign workers to come to the United States (U.S.) and perform temporary non-agricultural services or labor on a one-time, seasonal, peakload, or intermittent basis. The H-2B visa classification requires the Secretary of Homeland Security to consult with appropriate agencies before admitting H-2B nonimmigrants. Homeland Security regulations require the intending employer first to apply for a temporary labor certification from the Secretary of Labor advising the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) as to whether qualified U.S. workers are available and whether the alien's employment will adversely affect the wages and working conditions of similarly employed U.S. workers, or a notice that such certification cannot be made, prior to filing an H-2B visa petition with USCIS. Historically, H-2B applications for non-agricultural occupations were processed through the Employment and Training Administration's (ETA) Regional Offices.

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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However, in December 2004, the Department opened two new National Processing Centers (NPCs), one each located in Atlanta and Chicago. These Centers have been designated to process applications to employ foreign workers for temporary positions under the H-2B program. The Department published a notice in the Federal Register (Vol. 70, No. 137, pages 41430-41438) on July 19, 2005, clarifying that employers must file two (2) originals of the ETA Form 750, Part A, directly with the State Workforce Agency (SWA) serving the area of intended employment and, once reviewed, the SWA will send the complete application to the appropriate NPC. That process does not apply to employer applications for emergency boilermakers, entertainers, logging, and professional team sports, which were given special filing instructions in the notice.

The guidelines outlined in this document work in conjunction with this centralized filing process, and ensure greater consistency in the processing of these H-2B applications through the Centers.

4. **Procedures for Tree Planting and Related Reforestation Activities.** Due to a number of complexities, special guidelines for processing H-2B applications for tree planting and related reforestation occupations are required. For example, although the occupations of Tree Planter, Forest Worker and Laborer, and Brush Clearer have many similarities to agriculture, they are not so classified under either the Internal Revenue Code or the Fair Labor Standards Act (FLSA). Therefore, under the Immigration and Nationality Act (INA) they are not authorized for the H-2A visa and must be processed as H-2B occupations. However, two court decisions (Bresgal v. Brock, 833 F. 2d 763 (9th Cir. 1987), and Bracamantes v. Weyerhaeuser Co., 840 F.2d 271 (5th Cir. 1988)) directed the Department to cover migrant and seasonal forestry workers under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). In addition, because forestry occupations may have elements of both agricultural and non-agricultural occupations or involve multi-state itineraries, these applications cannot be solely processed according to the general procedures for H-2B in TEGL 21-06.

Attachment A outlines special guidelines for processing labor certification applications submitted by employers for occupations involved in tree planting and related reforestation activities under the H-2B program, subject to these special provisions. Unless otherwise specified in Attachment A, applications submitted for these occupations must comply with the requirements for H-2B applications contained in TEGL 21-06 issued on April 4, 2007.

5. **Effective Date.** This guidance applies to all temporary labor certification applications for occupations involved in tree planting and related reforestation activities received by the SWAs on or after July 1, 2007.
6. **Action Required.** NPC Directors and SWA Administrators are requested to provide Center and SWA staff involved in the processing of H-2B applications with a copy of these procedures.
7. **Inquiries.** Questions from State Workforce Agency staff should be directed to the appropriate NPC Certifying Officer.
8. **Attachment.**

Attachment A: Special Guidelines for Occupations Involving Tree Planting and Related Reforestation Activities under the H-2B Program