DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2B logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that. The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1994 rates were published in a notice on February 4, 1994 at 59 FR 5444.

DOL has determined the percentage change between December of 1993 and December of 1994 for the CPI–U for Food was 2.4 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1995 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $6.97 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $8.71 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 20th day of January 1995.

John M. Robinson,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 95–2964 Filed 2–6–95; 8:45 am]

BILLING CODE 4510–30–M

[General Administration Letter No. 1–95]

Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor has issued General Administration Letter (GAL) No. 1–95 that transmits to State and Regional Offices revised procedures for processing H–2B temporary labor certification applications in nonagricultural occupations, including revised standards for determining the temporary nature of a job under the H–2B classification. The revised procedures and standards replace: (1) GAL 10–84, Subject: Procedures for Temporary Labor Certifications in Nonagricultural Occupations, issued April 23, 1984; (2) GAL 10–84, Change 1, Subject: Revised Standards for Determining the Temporary or Permanent Nature of a Job Offer Made in Conjunction With an Application for Nonagricultural Temporary Labor Certification, issued August 21, 1989; and (3) General Administrative Letter No. 10–84, Change 2, Subject: Handling of Temporary Labor Certification Applications for Boilermakers, issued May 9, 1990.

GAL 1–95 is published below for the information of all interested parties.

DATES: GAL 1–95 was issued on November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Denis Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219–4369 (this is not a toll-free number).

Signed at Washington, DC, this 7th day of December 1994.

John M. Robinson,

Deputy Assistant Secretary for Employment and Training.

Directive: General Administration Letter No. 1–95

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations

Classification: ES/Nonag.

Correspondence symbol: TEES

Date: Nov. 10, 1994

1. *Purpose.* To transmit revised procedures for processing H–2B temporary labor certification applications in nonagricultural occupations, including revised standards for determining the temporary nature of a job under the H–2B classification.

2. *References.* Title 20 CFR Parts 652 and 655, 8 CFR 214.2(h), 48 FR 2587, GAL 10–84.

3. *Background.* The H–2B visa classification applies to aliens coming temporarily to the U.S. to perform nonagricultural work of a temporary or seasonal nature, if U.S. workers capable of performing such service or labor cannot be found in the United States. The H–2B visa classification requires a temporary labor certification from the Secretary of Labor advising the Immigration and Naturalization Service (INS) whether or not U.S. workers capable of performing the temporary services or labor are available and whether or not 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 INS.

The attached procedures are intended to clarify and update DOL procedures for processing applications for temporary labor certification and to incorporate INS standards for determining the temporary nature of a job opportunity under the H–2B classification. They do not apply to applications filed on behalf of aliens in the entertainment industry and in professional team sports. These procedures replace:

- General Administration Letter No. 10–84: Procedures for Temporary Labor Certifications in Nonagricultural Occupations (Issued 4/23/84);
- General Administration Letter No. 10–84, Change 1: Revised Standards for Determining the Temporary or Permanent Nature of a Job Offer Made in Conjunction With an Application for Nonagricultural Temporary Labor Certification (Issued 8/21/89); and
- General Administration Letter No. 10–84, Change 2: Handling of Temporary Labor Certification Applications for Boilermakers (Issued 5/9/90).

4. *Action Required.* SESA Administrators are required to provide the attached procedures to appropriate staff, and instruct that they be followed in processing H–2B applications.

5. *Inquiries.* Inquiries should be directed to the appropriate Regional Certifying Officer.

6. *Attachments.* Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations.

Rescissions: GAL Nos. 10–84; 10–84, Ch. 1; 10–84, Ch. 2

Expiration Date: December 31, 1995

Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations

I. General

A. An H–2B temporary nonagricultural worker is an alien who is coming temporarily to the U.S. to perform temporary services or labor if qualified U.S. workers capable of performing such services or labor are not available, and whose employment will not adversely affect the wages and working conditions of similarly employed U.S. workers.

B. Immigration and Naturalization Service (INS) regulations at 8 CFR 214.2(h)(6) establish requirements for the H–2B visa classification. INS regulations require: (1) That the H–2B petitioner be a U.S. employer, or the authorized representative of a foreign employer having a location in the Untied States; and (2) that the employer apply for temporary labor certification with the Department of Labor (DOL) prior to filing a petition with INS to classify an alien as an H–2B worker in all areas of the United States, except the Territory of Guam. In Guam, an employer must apply to the Governor of Guam for an H–2B temporary labor certification.

C. A temporary labor certification is advice from the Secretary of Labor to INS on whether or not U.S. workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed U.S. workers. The INS is not bound by DOL's certification or notice that certification cannot be made.

D. DOL regulations at 20 CFR 655 Subpart A—Labor Certification Process for Temporary Employment in Occupations Other Than Agriculture, Logging, or Registered Nursing in the United States (H–2B Workers) govern the labor certification process for temporary employment in the U.S. under the H–2B visa classification. They require that DOL, through the appropriate Regional Administrator of the Employment and Training Administration, issue a temporary labor certification if it finds that qualified persons in the U.S. are not available and that the terms of employment will not adversely affect the wages and working conditions of similarly employed workers in the U.S. In making its findings, DOL considers such matters as the employer's attempts to recruit U.S. workers and the appropriateness of the wages and working conditions offered, and the policies for the U.S. Employment Service set forth at 20 CFR 652 and 20 CFR 655, subparts A, B and C.

E. This document clarifies and updates procedures issued by ETA in General Administration Letter (GAL) 10–84 and Changes 1 and 2, to carry out responsibilities of making labor certification determinations pursuant to regulations at 8 CFR 214.2(h)(6) and 20 CFR 655, subpart A. It conforms DOL standards for determining the temporary nature of a job offer under the H–2B classification with those of INS and modifies DOL recruitment requirements to provide for a more effective test of the labor market for available U.S. workers. These procedures do not apply to applications filed on behalf of aliens in the entertainment industry and in professional team sports.

II. Standards for Determining the Temporary Nature of a Job Offer Under the H–2B Classification

A. A job opportunity is temporary under the H–2B classification if the employer's need for the duties to be performed is temporary, whether or not the underlying job is permanent or temporary. As a general rule, the period of the employer's need must be 1 year or less, although there may be extraordinary circumstances where the need may be for longer than 1 year. The labor certification application may be filed for up to, but not exceeding, 12 months. If there are unforeseen circumstances where the employer's need exceeds 1 year, a new certification is required for each period beyond 1 year.

Temporary employment should not be confused with part-time employment which does not qualify for temporary (or permanent) labor certification.

B. The employer's need for the services or labor shall be either: (1) A one-time occurrence; (2) a seasonal need; (3) a peakload need; or (4) an intermittent need.

1. One-time Occurrence

The employer must establish: (1) that it has not employed workers to perform the services or labor in the past; and (2) that it will not need workers to perform the services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker.

2. Seasonal Need

The employer must establish that the service or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The employer must specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is needed is unpredictable, subject to change, or considered a vacation period for the employer's permanent employees.

3. Peakload Need

The employer must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and its needs to supplement its permanent staff on a temporary basis due to a seasonal or short-term demand with temporary employees who will not become a part of the regular operation.

4. Intermittent Need

The employer must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers for short periods.

III. Filing Instructions

A. An employer that wants to use foreign workers for temporary employment must file a temporary labor certification application with the State Employment Security Agency (SESA) serving the area of employment.

B. Every temporary application shall include:

1. An original and one copy of Form ETA 750, Part A, the offer of employment portion of the Application for Alien Employment Certification form signed by the employer. Part B, Statement of Qualifications of Alien, is not required.

2. Documentation of any efforts to recruit U.S. workers the employer may have made before filing the application.

3. A statement explaining why the job opportunity is temporary and why the employer's need for the work to be done meets the standard of either a one-time occurrence, a seasonal need, a peakload need, or an intermittent need.

C. To allow for enough recruitment of U.S. workers and enough processing time by State and Regional Offices, the State Employment Security Agency (SESA) shall advise employers to file requests for temporary labor certification at least 60 days before the labor certification is needed in order to receive a timely determination.

D. Unless the Certifying Officer specifies otherwise, the SESA should return to employers requests for temporary labor certification filed more than 120 days before the worker is needed and advise them to refile the application no more than 120 days before the worker is needed. This is necessary since the availability of temporary U.S. workers changes over short periods of time and an adequate test of the labor market cannot be made for a longer period.

E. More than one alien may be requested on an application if they are to do the same type of work on the same terms and conditions, in the same occupation, in the same area(s) of employment during the same period. However, the number requested may not exceed the actual number of job openings. The number of openings the employer intends to fill must also be specified in the advertisement and the job order required in section IV of these instructions.

F. If the employer's agent files the application, the employer must sign the ''authorization of agent'' statement on the Application for Alien Employment Certification which authorizes the agent to act on the employer's behalf. The employer is fully responsible for the accuracy of all representations made by the agent on the employer's behalf. An attorney must file a Notice of Appearance (Form G–28) naming the attorney's client(s).

G. If extraordinary circumstances establish a need that requires the services of the alien beneficiary for more than a year, a new application must be filed (see section II.A). However, in no instance may the time for which a particular job be certified exceed 3 unbroken years.

H. When the job opportunity requires the work to be done in more than one location, the application must include the itinerary of locations and dates of work in each location. Such applications will be filled with the SESA having jurisdiction over the area where the employment will begin.

IV. State Job Service Processing

A. Upon receiving a request for temporary labor certification, the SESA shall review the

job offer for completeness. A job offer containing a wage below the prevailing wage for such employment in the local area is inappropriate and would adversely affect the wages of similarly employed U.S. workers. The SESA shall determine the prevailing wage, guided by the regulations at 20 CFR 656.40.

B. If the job offer is less than full-time, or contains unduly restrictive job requirements, or has terms and conditions of employment which otherwise inhibit the effective recruitment and consideration of U.S. workers for the job, the SESA shall advise the employer to correct the deficiencies before commencing the recruitment.

C. The SESA shall prepare a job order, using the information on the application, and place it into the regular ES system for 10 days. During this period, the SESA should refer qualified applicants who walk-in and those in its active files.

D. The employer shall advertise the job opportunity after filing the application, in a newspaper of general circulation for 3 consecutive days or in a professional, trade or ethnic publication, whichever is most appropriate for the occupation and most likely to bring responses from U.S. workers. The advertisement shall:

1. Identify the employer's name and direct applicants to report or send resumes to the SESA for referral to the employer;

2. Include SESA identification number and the complete name and address of the SESA.

3. Describe the job opportunity with particularity, including the duration of the employment;

4. State the rate of pay, which shall not be below prevailing wage for the occupation;

5. Offer prevailing working conditions;

6. State the employer's minimum job requirements;

7. Offer wages, terms, and conditions of employment which are not less favorable than those offered to the alien and are consistent with the nature of the occupation, activity, and industry.

E. The employer shall document that unions and other recruitment sources, appropriate for the occupation and customary in the industry, were unable to refer qualified U.S. workers.

F. The employer shall provide the SESA the ''tearsheets'' (for each day the advertisement was published) from the publication in which the advertisement appeared and written results of all recruitment which must:

1. Identify each recruitment source by name:

2. State the name, address, and telephone number and provide resumes (if submitted to the employer) of each U.S. worker who applied for the job; and

3. Explain the lawful job-related reasons for not hiring each U.S. worker.

G. After the recruitment period, the SESA shall send the application, results of recruitment, prevailing wage findings, and other appropriate information to the regional certifying officer.

V. Temporary Labor Certification Determinations

A. The certifying officer shall determine whether to grant the temporary labor certification, or to issue a notice that such certification cannot be made based on whether or not:

1. U.S. workers are available for the temporary employment opportunity.

a. The certifying officer, in judging if a U.S. worker is available for the temporary employment opportunity, shall determine from documented results of the employer's and SESA's recruitment efforts, if there are other appropriate sources of workers where the employer should have recruited or may recruit U.S. workers. If further recruitment is required, the application should be returned to the SESA with specific instructions for the additional recruitment.

b. To determine if a U.S. worker is available, the certifying officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expense, or at the employer's expense, if the prevailing practice among employers who employ workers in the occupation is to pay such relocation expenses.

c. The certifying officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, can perform the duties involved in the occupation as customarily performed by other U.S. workers similarly employed and is willing to accept the specific job opportunity.

d. To determine if U.S. workers are available for job opportunities that will be performed in more than one location, workers must be available in each location on dates specified by the employer.

2. The employment of the alien will adversely affect wages and working conditions of U.S. workers similarly employed. To determine this, the certifying officer shall consider such things as labor market information, special circumstances of the industry, organization, and/or occupation, the prevailing wage rate for the occupation in the area of intended employment, and prevailing working conditions, such as hours of work.

3. The job opportunity contains requirements or conditions which preclude consideration of U.S. workers or which otherwise prevent their effective recruitment, such as:

a. The employment opportunity is represented as temporary and the Department of Labor believes it can and should be offered to U.S. workers on a permanent basis.

b. A permanent certification was issued to an employer for the same job opportunity.

c. The job opportunity is vacant because the former occupant is on strike or locked out in the course of a labor dispute involving a work stoppage or the job is at issue in a labor dispute involving a work stoppage.

d. The job opportunity's terms, conditions, and/or occupational environment are contrary to Federal, State, or local law.

e. The employer has no location within the U.S. to which U.S. worker can be referred and hired for employment.

f. The employer will not pay a wage or salary for the job to be performed.

g. The job's requirements are unduly restrictive.

h. The employer has not recruited U.S. workers according to DOL policies and procedures.

B. If the Certifying Officer issues a notice that a certification cannot be made, the notice shall:

(1) Detail the reasons why certification cannot be made;

(2) Address the availability of U.S. workers in the occupation, and the prevailing wages and working conditions of U.S. workers in the occupation; and

(3) Indicate the specific DOL policies which were to be followed.

C. If the Certifying Officer issues a temporary labor certification, it shall be for the duration of the temporary employment, opportunity, not to exceed 12 months. If extraordinary circumstances establish a need that require the alien beneficiary for more than 1 year, a new application must be filed. However, in no instance can the time for which a particular job may be certified exceed 3 unbroken years.

D. The date on the temporary labor certification shall be the beginning and ending dates of certified employment and the date certification was granted. The beginning date of certified employment may not be earlier than the date certification was granted.

VI. Document Transmittal

A. After making a temporary labor certification determination, the certifying officer shall notify the employer, in writing, of the determination.

B. If the labor certification is granted, the certifying officer shall send the certified application containing the official temporary labor certification stamp, supporting documents, and completed Temporary Determination Form to the employer of, if appropriate, the employer's agent or attorney. The Temporary Determination Form shall indicate that the employer should submit all documents together with the employer's petition to the appropriate INS office.

C. If a notice is issued that certification cannot be made, the certifying officer shall return one copy of the Application for Alien Employment Certification form, supporting documents, and completed Temporary Determination Form to the employer, or, if appropriate, to the employer's agent or attorney. The Temporary Determination Form shall indicate the bases on which the decision was made not to issue a temporary labor certification, and shall advise the employer of the right to appeal to the INS.

VII. Appeal of a Notice That a Certification Cannot Be Made

A. The finding by the certifying officer, that a certification cannot be made, is the final decision of the Secretary of Labor. There is no provision for reconsideration or appeal of the decision within DOL. Administrative appeal of such a finding must be made to INS, as set forth below, or the employer may file a new application.

B. Under the Act and regulations of INS, DOL's role is only advisory. The Attorney General has the sole authority for the final approval or denial of a petition for temporary alien employment. The employer can submit

countervailing evidence to INS, according to 8 C.F.R. 214.2(h)(6)(IV)(E), that qualified persons in the U.S. are not available, that wages and working conditions of U.S. workers will not be adversely affected, and the Department of Labor's employment policies were observed.

VIII. Validity of Temporary Labor Certifications

A. A temporary labor certification is valid only for the number of aliens, the occupation, the area of employment, the specific activity, the period of time, and the employer specified in the certification.

B. A temporary labor certification is limited to one employer's specific job opportunity; it may not be transferred from one employer to another.

IX. Applications Requiring Special Processing

A. Aerospace Engineers

If the temporary labor certification application is for an aerospace engineer, the SESA shall:

1. Take a job order on all aerospace engineer certification requests.

2. Require the employer to advertise in a newspaper or appropriate engineering publication. Advertisements shall describe wages, terms, and conditions of employment, and shall not identify the employer, but shall direct applicants to send resumes to the local Job Service for referral to the employer. Results of ads must be documented. Advertising copy should include the elements specified in section IV. D. above, and indicate the same wages, education, working conditions, and location of work as that in the application for alien employment and on the order taken by the SESA.

3. Require employers to offer laid-off engineers reemployment before applying for labor certification.

4. Ensure that all applications for alien employment certification from contract engineering firms identify the user aerospace companies and specify where the aliens will work.

5. Ensure that a copy of the alien's proposed contract accompanies all contract engineering firm certification requests.

6. Place into interstate clearance all alien certification job orders for aerospace engineers and related occupations.

7. Process the application according to parts II, III, and IV of these procedures, as appropriate.

B. Construction Workers

1. General

Unions representing construction workers in the same or substantially equivalent job classification as those for which labor certification is requested shall be contacted to determine availability of U.S. workers when SESAs receive requests for 10 or more workers in the same occupation for the same employer at any one time or within a 6-month period.

The Human Resources Development Institute (HRDI) is the employment and training arm of the AFL–CIO; it serves as a centralized liaison between the Department of Labor and individual unions in providing labor market information in skilled trades in order to make an informed labor certification determination.

2. Procedures

a. The SESA should process the application according to parts II, III and IV of these procedures.

b. The SESA shall advise the employer to obtain, from the union local, a letter describing the availability of qualified U.S. workers for the position offered to the alien.

c. Before making a determination, certifying officers should contact, by fax or telephone, the Executive Director, Human Resources Development, 815–16th Street, NW., Washington, DC 20006, and send the following information for each application:

(1) Name and address of company requesting certification;

(2) Location of work site;

(3) Local number and name of the union, if known;

(4) Dates of any prior certifications requested by company;

(5) Total number of aliens requested;

(6) Duration of employment of aliens;

(7) Job classification, special qualifications and wage offered;

(8) Assistance offered to aliens (subsistence housing, other); and

(9) Reasons for requesting alien labor.

d. If HRDI knows of available U.S. workers, they will provide this information to the certifying officer, along with the name of the appropriate local for the employer to contact. If no response is received within 5 days of the request, a determination will be made on information in the file.

C. Boilermakers

1. General

On occasion, boilermakers must be brought into the U.S. on an emergency basis. Such emergencies are generally precipitated by unscheduled outages in utility, petro-chemical and paper industries. Because of special considerations involved with boilermakers when there is an emergency situation, it was decided that the most efficient and effective way to process applications for boilermakers in emergency situations would be to centralize their handling in the National Office.

2. Procedures

a. Labor certifications for boilermakers in emergency situations are to be sent directly to National Office for processing. The address is: U.S. Department of Labor, Employment and Training Administration, Division of Foreign Labor, Certifications, 200 Constitution Avenue, N.W., Room N–4456, Washington, D.C. 20210.

b. Labor certification applications for boilermakers during nonemergency situations should be processed according to parts II, III, and IV of these procedures.

[FR Doc. 95–2965 Filed 2–6–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue NW., Washington, D.C. 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign