### Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your address, phone number, email address, and Social Security Number—may be made available to the public at any time. While you can request in your comment that we withhold your personal identifying information, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Next Steps**

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the Federal Register.

### Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Martin Miller,
Chief, Division of Endangered Species, Ecological Services, Northeast Region.

[FR Doc. 2019–03779 Filed 3–1–19; 8:45 am]

**BILLING CODE 4333–15–P**

### DEPARTMENT OF LABOR

**Employment and Training Administration**

**Selection Procedures for Reviewing Applications Filed by Employers Seeking Temporary Employment of H–2B Foreign Workers in the United States**

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor’s (Department’s or DOL’s) Office of Foreign Labor Certification (OFLC) is making this announcement to inform employers and other interested stakeholders of how H–2B Applications for Temporary Employment Certification, Form ETA–9142B, filed by employers on or after July 3, 2019, will be assigned to staff for review. The Department believes these procedural changes will provide for fairer and more orderly assignment and review of applications. The Department is seeking public comments on these procedural changes.

**DATES:** To be ensured for consideration, comments must be submitted in writing on or before April 3, 2019. OFLC will review all of the comments received and will make any changes it determines are appropriate prior to July 3, 2019. The new procedural changes are applicable on July 3, 2019.

**ADDRESSES:** You may submit comments by one of the following methods:

- Email: H2BReform.Comments@dol.gov

- Mail and hand delivery/courier:
  - Mail: c/o Department of Labor, Employment and Training Administration, Box PPII 12–200, 200 Constitution Avenue NW, Washington, DC 20210. Due to security-related concerns, there may be a significant delay in the receipt of submissions by United States Mail. You must consider this when preparing to meet the deadline for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, Department of Labor,
Box #12–200, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 693–2772 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/ TDD).

SUPPLEMENTARY INFORMATION:

Statutory Background

The Immigration and Nationality Act (INA), 8 U.S.C. 1101, et seq., establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker “having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.” 8 U.S.C. 1101(a)(15)(H)(ii)(b). The Secretary of the Department of Homeland Security (DHS), in administering the H–2B program, may grant an employer’s petition for an otherwise eligible H–2B nonimmigrant worker “after consultation with appropriate agencies of the Government.” 8 U.S.C. 1184(c)(1). The Secretary of DHS also may delegate to “any employee of the United States, with the consent of the head of the applicable Department or other independent establishment, . . . any of the powers, privileges, or duties conferred or imposed” on DHS under the INA. 8 U.S.C. 1103(a)(6); see also 8 CFR 2.1. DHS regulations provide that an H–2B petition for temporary employment in the United States must be accompanied by an approved Temporary Labor Certification (TLC) from DOL. 8 CFR 214.2(h)(6)[ii][iii][A]. Pursuant to and in accordance with the above authorities, the TLC serves as DHS’s consultation with DOL to determine the question of whether a qualified U.S. worker is available to fill the petitioning H–2B employer’s job opportunity and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly-employed U.S. workers. See 8 CFR 214.2(h)(6)[iii][A], (D).

In order to advise DHS on the availability of U.S. workers and the potential for adverse effect on the wages and working conditions of similarly-employed U.S. workers, OFLC provides consultation to DHS through issuance of TLCs, in accordance with 8 U.S.C. 1103(a) and 1184(c). See 8 CFR 214.2(h)(6)[iii][A], (D). DOL and DHS have jointly issued regulations that govern the standards and procedures applicable to OFLC’s issuance of TLCs under the H–2B program. See 20 CFR 655 subpart A. The regulations at 20 CFR 655 subpart A require employers seeking H–2B temporary labor certification to, among other things, file an Application for Temporary Employment Certification and all supporting documentation, hereinafter referred to as the “H–2B application,” required by this subpart to secure a TLC from the Department.

The INA sets the annual number of aliens who may be issued H–2B visas or otherwise provided H–2B nonimmigrant status to perform temporary nonagricultural work at 66,000, to be distributed semi-annually, not to exceed 33,000 in the first half of the Federal Government’s fiscal year beginning on October 1 of each year and the remainder during the second half of the Federal Government’s fiscal year beginning on April 1 of the subsequent calendar year. See 8 U.S.C. 1184(g)(1)[B], (g)(10). If insufficient petitions are approved to use all 66,000 H–2B slots in a given fiscal year, the unused slots are not carried over for petition approvals in the next fiscal year.

Generally, workers in the United States in H–2B status who extend their stay, change employers, or change the terms and conditions of employment will not be subject to the cap. Similarly, an H–2B worker who has previously been counted against the cap in the same fiscal year that the proposed employment begins, will not be subject to the cap if the employer names the worker on the petition and indicates that he/she has already been counted. A spouse and any children of H–2B workers classified as H–4 nonimmigrants are also not counted against this cap. Finally, H–2B petitions for two other categories of workers are exempt from the H–2B cap: Fish roe processors, fish roe technicians, and supervisors of fish roe processing, as well as workers performing labor or services in the Commonwealth of the Northern Mariana Islands or Guam from November 28, 2009, until December 31, 2019.

H–2B Temporary Labor Certification Process

The standards and procedures governing the submission and processing of H–2B labor certification applications are set forth in § 655.15 and §§ 655.30–655.35. These regulations generally require, among other things, that an employer file a complaint seeking an H–2B TLC for a non-emergency situation seeking an H–2B TLC file a completed H–2B application with the National Processing Center (NPC) designated by the OFLC Administrator. See 20 CFR 655.15. Except for employers that qualify for emergency procedures at § 655.17, employers that fail to register under the procedures in § 655.11 and/or that fail to submit a Prevailing Wage Determination (PWD) obtained under § 655.10 will not be eligible to file and their H–2B applications will be returned without review.

The Department’s regulations require the employer, at the time of filing, to include a signed and dated appendix attesting to compliance with all regulatory assurances and obligations; a valid PWD; a copy of the job order submitted concurrently to the State Workforce Agency serving the area of intended employment; a copy of all contracts and agreements with foreign labor recruiters executed in connection with the job opportunities; and all other applicable documentation supporting the H–2B application. See 20 CFR 655.15(a). A completed H–2B application must be filed no more than 90 calendar days and no fewer than 75 calendar days before the employer’s date of need (start date for the work). See 20 CFR 655.15(b).

The Department’s regulations provide that H–2B applications and job orders filed with the NPC are reviewed by the Certifying Officer (CO) for compliance with all applicable program requirements. See 20 CFR 655.30(a). Employers have the option of filing H–2B applications electronically or by mail, and, according to procedures announced on June 1, 2018, the NPC sequentially assigns H–2B applications to NPC analysts based on the calendar receipt date and time measured to the millisecond and on Eastern Time, e.g., 12:00:00.000 a.m. Once each H–2B application is assigned, NPC analysts initiate review of each application in the order of receipt date and time, and in accordance with all regulatory requirements.

Based on the NPC analyst’s review, the CO authorizes issuance of either a Notice of Acceptance (NOA) under § 655.33 or a Notice of Deficiency (NOD) under § 655.31. Where there are deficiencies in the H–2B application or job order, the NOD provides the employer with 10 business days to correct the deficiencies or file an appeal with the Department’s Office of Administrative Law Judges. Where necessary, the CO may authorize the issuance of a second NOD of the employer’s H–2B application or job order in order to obtain regulatory compliance. NPC analysts process employer responses to NODs as
before the date of need, employers who wish to obtain visas under the semi-
annual allotment for periods of need
beginning April 1 must promptly apply
for a TLC and file a petition with USCIS
before the 66,000 annual visa cap is
reached. As a result, OFLC typically
experiences significant “spikes” in H–
2B applications for temporary or
seasonal jobs that are expected to start
during the United States’ spring and
summer months.

Prior to 2018, OFLC processed
applications irrespective of the time of
day the application was filed and
processed applications based on the day
they were filed. On January 1, 2018,
OFLC received approximately 4,498
applications covering 81,008 worker
positions for April 1 start dates of work,
exceeding the semi-annual visa
allotment by nearly 250 percent. This
was the first time in recent years that
applications received within the first
day of the filing period exceeded the
semi-annual visa allocation. In order to
promote fairness in response to the
unprecedented volume of applications,
OFLC determined it was necessary to
adjust its application processing
procedures to better reflect the
sequential order in which applications
were filed. Thus, on January 17, 2018,
OFLC announced that it would begin to
release certified applications on
February 20, 2018, in sequential order
based on the day and time the
applications were filed (January 17
procedures).

As participation in the H–2B program
has grown significantly over the years,
OFLC anticipated that it would continue
to receive a significant surge of
applications within a short timeframe
during its next application cycle. In
order to provide an equitable solution to
this problem, on June 1, 2018, OFLC
announced that it would sequentially
assign H–2B applications to analysts
based on the calendar date and time on
which the applications were received,
based on Eastern Time, and measured to
the millisecond (e.g., 12:00:00.000 a.m.)
(June 1 procedures). Based on the June
1 procedures, once these applications
were assigned to the analysts, the
analysts would initiate review of
applications in the order of receipt date
time, and issue first actions on a rolling
basis, and issue certifications as all
regulatory requirements were met.

OFLC implemented the June 1
procedures after considering all
available data as well as OFLC’s experience in processing H–2B
applications to date. However, as a
result of stakeholder comments and the
most recent filing period, OFLC has
determined it is necessary to reassess
these procedures. The June 1
procedures were in effect in January
2019, when OFLC received
approximately 5,276 applications
covering more than 96,400 worker
positions for start dates of work on April
1, exceeding the semi-annual visa
allotment by nearly 300 percent. Within
the first five minutes of opening the
semi-annual H–2B certification process
on January 1, 2019, the Department’s
network infrastructure supporting
OFLC’s electronic filing system
experienced more than 22,900 server
login attempts, in contrast with only 721
attempts in approximately the same
time period for the 2018 filing season.
This unprecedented volume of
simultaneous system users—30 times
the number of users in the previous
year—ultimately caused the electronic
filing system to become unresponsive
and prevent almost all employers
from filing H–2B applications. Although
the Department was able to restore
OFLC’s electronic filing system by
January 7, 2019, some employers
continued to report technical difficulties
with accessing the electronic filing
system.

OFLC previously concluded that the
assignment of applications to NPC
analysts based on date and time of
receipt was the most equitable method of
addressing the significant volume of H–2B
applications received. However, it
did not anticipate the burdens this
approach would create on its electronic
filing system, network infrastructure,
and staff resources on January 1, 2019.
Given the growing demand for H–2B
visas, and related demand for TLCs,
OFLC expects that the demands on
OFLC’s information technology
infrastructure will continue to increase.
In addition, OFLC has determined that
the current approach does not account
for technological issues that an
individual user may experience on his/
her end that could impact his/her ability
Participate in the program. In
addition, because the first filing date for
each semi-annual cap period occurs on
or near a Federal holiday when many
businesses may be closed, OFLC is
amending its procedures to provide
increased flexibility to allow those
employers access to the H–2B visa
program, as well as OFLC’s experience in
processing H–2B applications to date.

Because of the intense competition for
H–2B visas in recent years, the semi-
annual visa allotment, and the
regulatory requirement that employers
apply with OFLC for temporary labor
certification 75 to 90 calendar days
before the date of need, employers who
apply with OFLC for temporary labor
applications for initial TLCs or
requests for a TLC. USCIS service centers
are the appropriate United States
attorney or agent, by means normally
employed during an application cycle.

Fair consideration of all employer
requests for a TLC must be
assured. To ensure a fair consideration of all employer
requests for a TLC, the CO may authorize the issuance of a
full or partial TLC or deny the
employer’s H–2B application. OFLC
grants a TLC only after the employer’s
H–2B application has met all the
requirements for approving labor
certification under § 655.50 and its
subpart. In accordance with regulatory
requirements, the NPC sends all
certified H–2B applications to the
employer, or the employer’s authorized
attorney or agent, by means normally
employed during an application cycle.

Due to the volume of H–2B
applications and the large number
of users in the previous filing
season, OFLC anticipated that it would
continue to experience in processing
H–2B applications for temporary or
seasonal jobs that are expected to start
during the United States’ spring and
summer months.

Upon review of the recruitment report,
the CO may authorize the issuance of a
TLC, the employer is
eligible to file a petition (Form I–129,
Petition for Nonimmigrant Worker) with
the appropriate United States
Citizenship and Immigration Services
(USCIS) service center for adjudication.

History of Changes to H–2B Processing and Reasons for Updating Current Approach

Because of the intense competition for
H–2B visas in recent years, the semi-
annual visa allotment, and the
regulatory requirement that employers
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ensuring that access to its filing system is equitable and occurs with no user disruption.

Random Selection Process for Assigning H–2B Applications

For employers seeking a TLC to employ H–2B workers beginning on or after October 1, 2019, OFLC plans to randomly establish the order in which all H–2B applications will be assigned to NPC analysts for review and processing in accordance with § 655.30. Based on its experience and feedback from stakeholders, the Department has determined that this process will be most effective in promoting a fair and orderly assignment of applications for OFLC review.

This assignment process will be dependent on when employers submit their applications and the start dates they request. OFLC will first process applications from employers seeking TLCs to employ H–2B workers beginning on the earliest start date of work permitted under the semi-annual allotments set forth at sections 214(g)(1)(B) and 214(g)(10) of the INA where those employers submitted applications during the initial three calendar days of the time period for filing for the relevant semi-annual visa allotment.

Once those applications have all received a NOD or NOA, OFLC will then begin to process applications from all other employers, including: (1) Employers seeking TLCs to employ H–2B workers beginning on dates later than the earliest start date of work permitted under the semi-annual allotments during the initial three-day filing window, and (2) employers seeking TLCs to employ H–2B workers beginning on the earliest start date of work permitted under the semi-annual visa allotment if their applications are filed outside of the initial three-day filing window.

Random Selection Process for Assigning H–2B Applications Received During the Initial Three Days of the Filing Period for the Earliest Start Date of Work

OFLC will randomly order for processing all of the completed H–2B applications requesting the earliest permissible start date of work and filed during the initial three calendar days of the time period for filing for the relevant semi-annual visa allotment. The rationale for using a three-day filing window is explained below. As an example, for employers seeking a TLC to employ H–2B nonimmigrant workers on April 1, 2020—which is the earliest start date of work permitted under the second semi-annual allotment of H–2B visas for Fiscal Year (FY) 2020—OFLC will randomly order for processing all of the completed H–2B applications that are received on January 2 through January 4 (the first three calendar days to file H–2B applications under § 655.15(b) in the second half of FY 2020 because 2020 is a leap year containing an additional day in February).

More specifically, on the next business day following this three-day filing window, using a standard computer-generated process for randomizing values in a data set, OFLC will generate and assign a unique random number to each completed H–2B application filed within the three-day filing window with the earliest start date of work. The applications will be sorted in ascending order based on the unique random number assigned to each application. Based on that randomly-generated order, OFLC will select the number of H–2B applications that, combined, contain a sufficient number of worker positions to reach the semiannual visa allotment under the INA (i.e., 33,000). These applications will be placed in an H–2B “Assignment Group” (i.e., Group A) and assigned to NPC analysts for processing in a manner consistent with §§ 655.30–33. The initial H–2B Assignment Group (i.e., Group A) will always include the number of H–2B applications containing a sufficient amount of worker positions to reach the applicable numerical visa cap, even if the numerical limits of the INA are subsequently changed.

OFLC will assign additional Assignment Groups, in ascending sequential order, all remaining H–2B applications that were filed during the initial three-day filing window that requested the earliest start date of work permitted. Each H–2B Assignment Group after Group A (e.g., Group B, Group C, etc.) will total no more than 20,000 worker positions, or roughly 1,000 applications per group.

OFLC will assign to NPC analysts all of the H–2B applications placed in Group A for issuance of NODs or NOAs. Once all applications in Group A are issued a NOD or NOA, OFLC will assign to NPC analysts all H–2B applications placed in Group B for issuance of NODs or NOAs. This process will be repeated until each group of H–2B applications is assigned to NPC analysts for processing and NODs or NOAs are issued.

That the number of applications in the initial Assignment Group (i.e., Group A) is tied to the numerical cap is not meant to be deterministic of which employers beginning on April 1, 2020 will receive H–2B visas, nor does it preclude employers whose applications are in subsequent groups from ultimately receiving H–2B visas. OFLC has simply determined that the statutory cap is a reasonable benchmark for this initial assignment and believes this—in addition to the notice provided, as explained below—will provide the public and interested stakeholders a more transparent view of the process.

If the H–2B applications received during the initial three-day period collectively request certification for fewer worker positions than the statutory numerical limitation, all H–2B applications filed within that period and requesting workers for the earliest possible start date of work will randomly be given a unique number and placed into the same group for assignment to and processing by NPC analysts.

OFLC has chosen to utilize a three-day filing window at the outset of each application cycle for several reasons. First, the three-day filing window will alleviate the strain placed on OFLC’s electronic filing system and network infrastructure that results from a surge of applications submitted at the same time. Second, the window will provide employers that file on the earliest possible date, which in most instances falls on a Federal holiday or the day before a Federal holiday, with a reasonable period of time to submit their H–2B applications or resolve any technological issues they might face during filing. Third, under the previous procedures, mailed applications were put at a distinct disadvantage. A three-day filing window allows applications filed by mail to be included in the random selection process, thus placing them on equal footing with employers who file electronically. Fourth, and as explained below, because applicants will be able to see which processing group they have been placed in, and the general number of applications in that processing group, these procedural changes may reduce some associated costs for employers who spend time and resources related to preparing applications, responding to NODs, and conducting advertising and recruitment for qualified U.S. workers without knowing whether their H–2B petitions will be accepted by USCIS due to the statutory semi-annual visa allotments.

Random Selection Process for Assigning All Other H–2B Applications

As noted above, for all other employers seeking a TLC to employ H–2B workers—including employers who are seeking a TLC to employ H–2B workers beginning on an application date later than the earliest start date of work permitted under the semi-annual
Employers and employees seeking a TLC to employ H–2B workers beginning on the earliest start date of work permitted if their application is filed outside of the initial three-day filing window—OFLC will randomly assign for processing all of the completed H–2B applications filed on a single calendar day after it finishes processing NOAs and NODs for applications filed during the initial three-day filing window (as discussed above). As an example, for employers seeking a TLC to employ H–2B nonimmigrant workers on April 2, 2020—which is the next start date of work permitted under the second semi-annual allotment of H–2B visas for FY 2020—OFLC will randomly assign to NPC analysts for processing all of the completed H–2B applications that are filed on January 3 with an April 2, 2020 start date of work, after OFLC finishes processing NOAs and NODs for the applications filed during the initial three-day filing window for the earliest start day of work.

Application Processing After Random Selection and Assignment Occur

Once the random assignment process is completed, NPC analysts will review each H–2B application in accordance with §655.30 and current standard operating procedures. Following issuance of NOAs and/or NODs in accordance with procedures outlined above, H–2B applications will be processed as each successive stage in the process is completed. Employers receiving NOAs may proceed to meet the additional regulatory requirements, including recruitment of U.S. workers and submission of recruitment reports. Employers receiving NODs must correct any deficiencies and receive NOAs before proceeding to meet the additional regulatory requirements.

Recruitment reports will be reviewed and processed based on the day they are received, and the CO will authorize the release of certified H–2B applications in accordance with standard operating procedures and where all the requirements for granting a TLC under the subpart are met as of that day. The CO will continue to process and authorize the issuance of final determinations on all H–2B applications that are received, irrespective of whether the employer is seeking to employ H–2B nonimmigrant workers in cap-exempt positions. Additionally, the CO will process and authorize the issuance of rejections, request for withdrawals, and denials of labor certification applications in accordance with standard operating procedures.

Public Notifications

OFLC intends to issue several public announcements as applications are received and processed under the procedures described above. Once the random assignment process is completed, as described above, OFLC will provide written notification to employers and, if applicable, employers’ authorized representatives of their H–2B Assignment Group. Within five business days after the random assignment process is completed, OFLC will place on its website a listing of the H–2B applications assigned to each H–2B Assignment Group. Second, OFLC will provide the public with updates on its website related to the number and percentage of H–2B applications issued a first action within each H–2B Assignment Group. Finally, OFLC will provide regular updates on its website related to the number of H–2B applications certified with the same date of filing, including the number of worker positions, so the public is aware of the general timeframes in which the semi-annual visa allotment may be reached.

Because of the public’s wide use of OFLC’s website, the posting of information on the OFLC website provides a timelier and more efficient method of disseminating such information to the public than publication of the information in the Federal Register. The public frequently turns to OFLC’s website for general information on labor certification requirements, regulations and forms, specific case status information, and processing times for H–2B applications. Therefore, all notifications regularly updating the public on implementing these procedures will be made available on or through the OFLC website at www.foreignlaborcert.doleta.gov.

Request for Comments and Effective Date

These new procedures will take effect on July 3, 2019. OFLC seeks comments on the above procedures. Comments may be sent to H2BReform.Comments@dol.gov or mailed to Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, Box PPII 12–200, 200 Constitution Avenue NW, Washington, DC 20210 until 30 days after issuance of this notice in the Federal Register. OFLC will review all of the comments received and will make any changes it determines are appropriate prior to July 3, 2019.

Molly E. Conway,
Acting Assistant Secretary for the Employment and Training, Labor.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
[NARA–2019–015]

Change in Comment Process for Records Schedules

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We are changing the process for public review of and comment on records schedules (Federal agency requests for records disposition authority) to rely on the Federal eRulemaking Portal, at https://www.regulations.gov.

DATES: This change will take place on March 4, 2019.

ADDRESSES: National Archives and Records Administration, Records Management Operations (ACR), Room 2200, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Operations, by mail at the address above, by phone at 301.837.1799, or by email at request.schedule@nara.gov. Please also contact us for information on submitting your comment by another means if you are unable to use regulations.gov or wish to include confidential information in a comment.

SUPPLEMENTARY INFORMATION: NARA publishes notices in the Federal Register for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303(a).

Each year, Federal agencies create billions of records. To control this accumulation, agencies prepare schedules proposing periods for retaining and disposing of records. These schedules, when approved by NARA, provide for transfer into the National Archives of permanent, historically valuable records and authorize disposal of all other records after the agency no longer needs them to conduct its business. Agencies may not destroy Federal records without the approval of the