

OFFICE OF INSPECTOR GENERAL
UNITED STATES DEPARTMENT OF LABOR

Investigative Advisory Report



Recommendations for Enhancing Forms Used for H-2B Non-Agricultural Temporary Workers

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Introduction

The Office of Inspector General (OIG), Office of Investigations - Labor Racketeering and Fraud, prepared this advisory report to provide the U.S. Department of Labor (DOL) with recommendations for improvements to the application forms the Employment and Training Administration's (ETA) Office of Foreign Labor Certification (OFLC) uses in the H-2B visa program.

The OIG has routinely reported that one of the top management challenges facing DOL is ensuring U.S. employers comply with statutory requirements intended to protect U.S. workers against adverse impacts on their job opportunities, wages, and working conditions when U.S. employers hire foreign workers.¹ OIG investigations have shown OFLC programs are susceptible to fraud and abuse by dishonest immigration attorneys, employers, labor brokers, and organized criminal enterprises. OIG investigations have also uncovered instances of unscrupulous employers misusing OFLC programs to engage in human trafficking, with victims often exploited for economic gain.

Our recommendations below are based on the results of our investigative work in this area.

Background

The H-2B program allows employers to bring foreign nationals to the U.S. to fill temporary, non-agricultural jobs. H-2B workers may remain in the U.S. for one-year increments, up to three years total. After three years as an H-2B visa holder, workers must depart the U.S. and cannot return for an uninterrupted period of at least three months, before seeking readmission to the U.S. as an H-2B visa worker. Spouses of H-2B workers and their unmarried children under the age of 21 may seek entry into the United States as an H-4 dependent of the H-2B worker.

Under the Immigration and Nationality Act (INA), the total number of foreign nationals who may be issued H-2B visas in any fiscal year may not exceed 66,000. There is no cap on H-4 dependents.

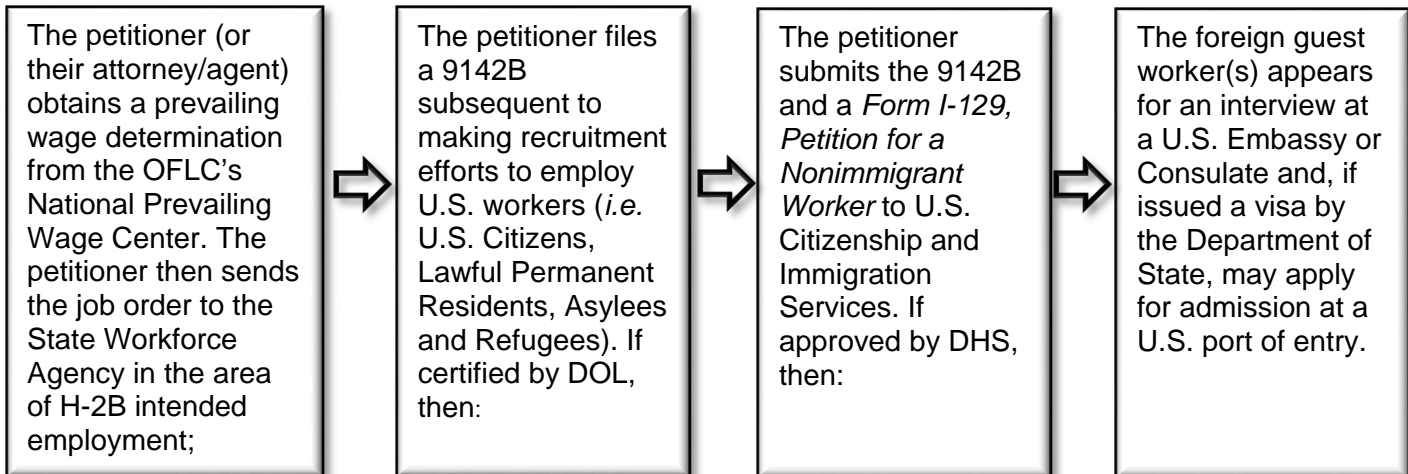
The H-2B forms referenced in this report include:

- a. The *H-2B Application for Temporary Employment Certification Form ETA-9142B* (9142B);
- b. The general instructions portion of the *H-2B Application for Temporary Employment Certification Form ETA-9142B* (General Instructions); and

¹ The *Top Management and Performance Challenges* report can be found in its entirety at www.oig.dol.gov.

c. The 9142B appendix, *H-2B Application for Temporary Employment Certification Form ETA-9142B – APPENDIX B* (Appendix B).

The general steps in obtaining authorization from the U.S. government to employ H-2B workers include:



Fraud Schemes

Over the last decade, the OIG, along with other federal partners, conducted more than 70 criminal investigations related to fraud in the H-2B program. This fraud was usually conducted by immigration attorneys, labor brokers, employers, and organized criminal enterprises. These perpetrators often conducted schemes where they filed fraudulent applications with DOL on behalf of individuals and fictitious companies. Typical schemes included:

1. **Terms of Employment Fraud:** The most common fraud investigated in the H-2B program has involved willful violations of the terms attested to by petitioners (employers seeking H-2B workers) on DOL and other government forms.

Petitioners attest under penalty of perjury that they will adhere to the established legal terms of employment for H-2B workers. Common violations of the terms of employment include: deliberate failure to pay H-2B workers the legally established wage (prevailing wage), employment of H-2B workers outside the geographic locations of record (where job is posted and advertised for U.S. workers), and receipt of prohibited payments, such as illegal deductions from a worker's pay by the petitioner.

2. **Document Preparation Fraud:** Another common fraud the OIG has encountered occurs when a petitioner seeks assistance from a representative, such as an attorney or an agent, to recruit H-2B workers and to complete and submit the government forms and paperwork required to recruit H-2B workers for a particular

job. Some unscrupulous representatives intentionally inflate the number of workers being sought by a petitioner in order to “shop” the surplus of approved workers.

For example, a petitioner might tell its representative it needs 25 H-2B workers to supplement its workforce. The representative might then falsely claim 50 H-2B workers are needed and electronically submit the false statement to OFLC on behalf of the petitioner before the petitioner’s signature is required on the 9142B. When the 50 approved H-2B workers arrive in country, the representative “shops” the extra 25 workers to other employers in need of labor. In some cases, the petitioners themselves are complicit in the fraud scheme and knowingly allow the representative to engage in this fraud scheme in exchange for something of value.

3. **Labor Contractor/Labor Leasing Fraud:** Labor leasing contractors (LL) often seek approvals for an extraordinary number of H-2B workers to lease that labor to industries where it is common to use foreign workers in their labor pool. This practice is not limited to, but is prevalent within, the hospitality industry since hotels and resorts are often “end user” clients that lease H-2B workers from LLs.

Resorts, hotels and other types of end user entities legitimately experience “seasonal” or “peak load” time periods during a given year where they have an actual need to supplement their labor force. Unscrupulous LLs take advantage of the H-2B program by fraudulently obtaining certifications/approvals for more H-2B workers than they need. Investigations involving these types of LLs have been some of the most egregious foreign labor certification fraud cases the OIG has worked over the past decade. Many OIG foreign labor certification investigations involving unscrupulous LLs included some form of exploitation of the H-2B workers.

The various H-2B fraud schemes committed by malfeasant LLs involve both the false attestations made on forms relevant to the approval process, and the violations LLs commit when they knowingly and deliberately fail to adhere to the terms of employment outlined in both the application forms and codified regulations covering the H-2B guest worker program. LLs often falsely attest to having jobs available for H-2B workers and agree to employ those workers immediately upon their arrival to the U.S., when in fact no such need exists.

In addition to the fraud scenarios described above, disreputable LLs falsely inflate the number of workers needed. This practice allows LLs to acquire surplus workers before the cap closure to “shop” out to other employers or LLs for a fee (usually a percentage of the H-2B workers’ hourly pay). To justify the request for an extraordinarily high number of H-2B workers, LLs submit fraudulent supplemental documentation to the approving government agencies to support the inflated request. The fraudulent documentation often includes fabricated employment intent letters and labor-leasing contracts from fictitious end-user clients, which claim that the LL is providing them with laborers.

The LLs often violate the agreed upon terms of employment by placing H-2B workers in occupations and geographical locations different from those listed on the certified 9142B. These LLs also fail to pay the established prevailing wage on the 9142B. These LLs will openly market their surplus H-2B workers as legally documented workers to any potential business client needing labor. This is illegal subletting which is a violation of all three employment terms previously mentioned.

Additionally, this illegal subletting promulgated by the LLs results in the workers violating the terms of their H-2B work visas, thereby invalidating them. A common example of this visa fraud, which involves all the aforementioned violations, would be when an LL receives certification to employ 60 H-2B workers at hotels in Florida. The LL has an agreement with the hotels to provide them with 30 workers. The LL has certification for 30 additional workers and learns that a packaging warehouse in Delaware needs 20 workers and a fast food restaurant in Iowa needs 10 workers because both businesses posted their labor needs on the internet. The LL responds to both posts and sublets its surplus 30 workers out accordingly to both businesses.

Findings and Recommendations

The OIG has a long-standing legislative recommendation and concern with DOL's limited ability to verify the accuracy of information provided on labor condition applications.² Based on our H-2B investigations across all regions of the U.S., we have identified areas of potential vulnerability related to DOL forms required for H-2B certification.

Our recommendations below would achieve the following: (1) Require petitioners and preparers to affirm they read and understood the attestations they declared in the application; (2) Show that the petitioner and preparer understood the consequences of providing misrepresentations on H-2B related forms; and (3) Clarify the petitioner and preparer responsibilities for accurately completing Form ETA-9142B.

Finding and Recommendation 1

- a. Finding: The key elements of H-2B employment, such as the number of workers, their period of employment, geographic location, job position, and prevailing wage, are not succinctly summarized on Appendix B. This provides the petitioner some plausible deniability in terms of understanding the most critical elements of the H-2B program requirements. As previously stated, it is common for petitioners to argue that, although they signed the attestation on Appendix B, their attorney or agent provided them only the signature page, but no other portion of the Form ETA-9142B.

² DOL-OIG's legislative recommendations can be found in the *Semiannual Report to Congress* at www.oig.dol.gov

- b. Recommendation: ETA should incorporate a summation of key attestations into Appendix B so the petitioner can expressly identify its legal responsibilities. This information could be auto-populated during the form preparation process, which would eliminate additional burden for preparers and guard against tampering.
- c. Suggested language: at attestation section of Appendix B, Page B.3:
- 1) *I intend to employ the following number of H-2B workers:* _____ [as listed in Section B.7 of 9142B]
 - 2) *For a period of employment lasting from:* _____ [as listed in Section B.5/6 of 9142B]
 - 3) *To work as (job description):* _____ [as listed in Section F.a.1 of 9142B]
 - 4) *At the following work location(s) only (County/State):* _____ [as listed in Section F.c.1 of 9142B]
 - 5) *I will pay the H-2B workers the basic rate of pay of:* _____ [as listed in Section G.1 of 9142B]
 - 6) *I will pay the H-2B workers the overtime rate of pay of:* _____ [as listed in Section G.1a of 9142B]

Finding and Recommendation 2

- a. Finding: The lack of reference to the entire body of Form ETA-9142B and Appendix B in the Appendix B attestation section leads to one of the most common defenses in both criminal and administrative cases involving the H-2B program, as many petitioners have claimed lack of knowledge of the forms filed on their behalf. It is common for petitioners to state that, although they signed the attestation on Appendix B, their attorney or agent only provided them the signature page portion of the Form ETA-9142B.
- b. Recommendation: To demonstrate the petitioner has knowledge of the forms' contents and to guard against the shifting of culpability between petitioners and/or preparers in administrative or criminal proceedings, ETA should incorporate all pages of Form ETA-9142B and Appendix B into the attestation sections on page B.3 of Appendix B.

The language additions will provide petitioners and preparers with a more defined understanding of the legal requirements and prohibitions they must adhere to regarding their role in the filing process.

These attestations are important because they help protect the foreign worker from exploitation and help dissuade nefarious petitioners, attorneys, or agents from conducting program fraud, abuse, and illegal profiteering-type activities, all of which strengthens the integrity of the H-2B program.

- c. Suggested language: additions to the declaration/attestation section of Appendix B, page B.3:

I hereby designate the agent or attorney identified in Section D (if any) of the Form ETA -9142B to represent me for the purpose of labor certification and, by virtue of my signature in Block 3 below. I take full responsibility for the accuracy of any representations made by my agent or attorney **on all Pages of the ETA-9142B.**

I have not received any illegal payment or other thing of value from prospective H-2B workers, agents, or any attorney for the submission of this application, and will not demand or accept such in the future [as listed in Section B.9. of 9142B APPENDIX B]

I declare under penalty of perjury that I have read and reviewed this application, including all Pages of Form ETA -9142B and Pages B.1-B.3 of this Appendix B, and that to the best of my knowledge the information contained therein is true and accurate. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by fines, imprisonment, or both (18 U.S.C. Sections 2, 1001, 18 U.S.C 1546 or 1621).

Finding and Recommendation 3

- a. Finding: Some deceitful attorneys and agents authorized to prepare applications on behalf of employers have violated that position of trust to facilitate H-2B fraud schemes. In some instances, employers were unknowing, while in other instances they were complicit.
- b. Recommendation: To provide authorized preparers with a full understanding of their culpability for their role in fraud schemes related to the filing of their applications, and to be consistent with the statutory language listed in the other accompanying Form ETA 9142B documents, ETA should add both the visa fraud and perjury statute code violations to the preparer declaration.
- c. Suggested language: at Attorney or Agent Declaration/attestation section of Appendix B, page B.1, last sentence:

...is a felony punishable by **fines, imprisonment, or both (18 U.S.C. Sections 2, 1001, 1546 or 1621).**

Finding and Recommendation 4

- a. Finding: The Form ETA-9142B – General Instructions has no explicit requirement to read the instructions entirely. Because of this, it can be challenging for the government to hold petitioners accountable for non-willful failure to comply program requirements when they present a defense claiming they failed to completely read the instructions. The current language in the instructions advises petitioners to “please read” the form.
- b. Recommendation: At paragraph one of the ETA-9142B – General Instructions, ETA should strengthen the language advising both petitioners and preparers that they are required to read the contents of the instructions before completing the form.
- c. Suggested language: at page 1, paragraph one of instructions:

“IMPORTANT: Employers and authorized preparers must read all instructions carefully before completing the Form...”

Finding and Recommendation 5

- a. Finding: The Form ETA-9142B – General Instructions fails to emphasize the consequences for willfully making false or misleading statements on the ETA-9142B. An additional advisement regarding the consequences for furnishing fraudulent misrepresentations provides greater emphasis for preparers to be honest.
- b. Recommendation: At page one, paragraph two of the General Instructions, ETA should include language advising of the consequences of misrepresentations made to the OFLC when filing the ETA Form 9142B.
- c. Suggested language: at page 1, paragraph two of General Instructions:

Any employer or authorized preparer, who knowingly and willingly furnishes any false information **or fraudulent misrepresentations** in the preparation of Form ETA-9142B and any supporting documentation, or aids, abets, or counsels another to do so is committing a federal offense, punishable by fines or imprisonment up to five years or both (18 U.S.C. §§ 2, 1001).

Finding and Recommendation 6

- a. Finding: The Form ETA-9142B has no explicit requirement to read the contents of the Form ETA-9142B – General Instructions. The current language in the form advises petitioners to “please read” the form. This language makes it challenging for the government to hold petitioners accountable who use their failure to

completely read the instructions as a basis for a defense of non-willful failure to comply with program requirements.

- b. Recommendation: At paragraph one of the ETA Form 9142B, ETA should strengthen the language advising both petitioners and preparers that they are required to read the contents of the instructions.
- c. Suggested language: at page 1, paragraph one of the ETA Form 9142B:

“IMPORTANT: Employers and authorized preparers must read the general instructions carefully before completing the Form...”

Conclusion

OIG investigations and our work with other federal partners continue to reveal common schemes and strategies used by petitioners and others to circumvent the laws and regulations pertaining to the H-2B program.

The OIG recognizes that ETA continues to collaborate with DOL and other federal and state partners to strengthen protections in the H-2B program. We believe the vulnerabilities we have identified in the Form ETA-9142B, Appendix B and Instructions, suggest additional commonsense safeguards are needed to further enhance the integrity of the H-2B program and improve the federal government’s ability to take action against those who seek to abuse the program.

Appendices

- 1) Form ETA - 9142B – APPENDIX B, proposed changes to pages B.1, B.2 and B.3
- 2) Form ETA - 9142B – General Instructions, proposed changes to page 1
- 3) ETA Form 9142B, proposed changes to page 1
- 4) CURRENT Form ETA - 9142B – APPENDIX B
- 5) CURRENT Form ETA - 9142B – General Instructions
- 6) CURRENT ETA Form 9142B
- 7) ETA's response to the report

APPENDIX 1

Pages B.1, B.2, and B.3 - proposed changes

H-2B Application for Temporary Employment Certification
Form ETA-9142B – APPENDIX B

H-2B Application for Temporary Employment Certification

Form ETA-9142B – APPENDIX B
U.S. Department of Labor



For Use in Filing Applications Under the H-2B Non-Agricultural Program ONLY¹

A. Attorney or Agent Declaration

*I hereby declare under penalty of perjury that I am an attorney for the employer, or that I am an employee of, or hired by, the employer listed in Section C of the Form ETA-9142B, and that I have been designated by that employer in accordance with 20 CFR 655.8 to act on its behalf in connection with this application, as evidenced by the attached agency agreement. I also certify that to the best of my knowledge the information contained herein is true and accurate, including the employer's declaration regarding activities I have undertaken on the employer's behalf in connection with this application. I understand that to knowingly furnish false information in the preparation of this form and any supplement hereto or to aid, abet, or counsel another to do so is a felony punishable by **fines, imprisonment, or both (18 U.S.C. Sections 2, 1001, 1546 or 1621).***

1. Attorney or Agent's last (family) name	2. First (given) name	3. Middle initial
4. Firm/Business name		
5. E-Mail address		
6. Signature		7. Date signed

B. Employer Declaration

By virtue of my signature below, I HEREBY CERTIFY my knowledge of and compliance with the following conditions of employment applicable to H-2B workers and/or U.S. workers who are hired during the recruitment period for positions covered by this application, including any approved extension thereof:

1. The job opportunity is a bona fide, full-time temporary position (of at least 35 hours per workweek), the qualifications and requirements for which are consistent with the normal and accepted qualifications and requirements imposed by non-H-2B employers in the same or comparable occupations and area of intended employment. The employer has listed all qualifications and requirements in the job order.
2. There is no strike or lockout at any of the employer's worksites within the area of intended employment for which the employer is requesting an H-2B certification.
3. The job opportunity was/is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, disability, or citizenship. U.S. workers who apply for the job will be rejected only for lawful, job-related reasons, and the employer will retain records of all rejections.
4. The employer has not/will not offer terms, wages, and working conditions to U.S. workers that are less favorable than those offered or will be offered to H-2B workers or impose restrictions or obligations on U.S. workers that are not imposed on H-2B workers. This does not relieve the employer from providing H-2B workers with at least the minimum benefits, wages, and working conditions that must be offered to U.S. workers under 20 CFR 655.18, except for those required by 20 CFR 655.18(b)(17).
5. The offered wage equals or exceeds the highest of the most recent prevailing wage for the occupation that is or will be issued by the Department to the employer for the time period the work is performed, or the applicable Federal, State, or local minimum wage, and the employer will pay at least the offered wage, free and clear, either in cash or in a negotiable instrument payable at par, during the entire period of this application. The employer guarantees to supplement a piece rate wage if at the end of the workweek, the piece rate does not result in average hourly piece rate earnings during the workweek at least equal to the offered wage.

¹ The Department of Labor Appropriations Act, 2016, Division H, Title I of Public Law 114-113 ("2016 DOL Appropriations Act"), provides that the Department of Labor ("Department") may not use any funds to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any reference thereto. See Sec. 113. Therefore, in order to comply with the 2016 DOL Appropriations Act, the Department has removed references to these provisions from the Form ETA-9142B – Appendix B. However, the 2016 DOL Appropriations Act did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the Department will not use any Fiscal Year 2016 funds to enforce them.



H-2B Application for Temporary Employment Certification

Form ETA - 9142B – APPENDIX B

U.S. Department of Labor

6. The offered wage is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage earned every workweek that equals or exceeds the offered wage.
7. During the period of employment that is the subject of this application, the employer will comply with applicable Federal, State and local employment-related laws and regulations, including, but not limited to, employment-related health and safety laws, 20 CFR part 655, Subpart A, 29 CFR Part 503. In addition, the employer and its agents and attorneys are prohibited from holding or confiscating workers' passports, visas, or other immigration documents pursuant to 18 U.S.C.1592(a).
8. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation and area of intended employment within the period beginning 120 days before the date of need through the end of the period of certification, unless the layoff is for lawful, job-related reasons and all H-2B workers are laid off first.
9. The employer and its agents, attorneys, and/or employees have not sought or received, and will not seek to receive, payment of any kind from the worker for any activity related to obtaining certification or employment, including but not limited to payment of the employer's attorney or agent fees, application or petition fees, or recruitment costs. Payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor.
10. Upon the separation from employment of any H-2B or U.S. worker(s) employed under this application, if such separation occurs prior to the end date of the employment specified in this application, the employer will notify the Department in writing of the separation from employment not later than 2 work days after such separation is discovered by the employer. The employer will also notify DHS in writing (or any other manner specified by DHS) of such separation of an H-2B worker.
11. The employer will not place any H-2B workers employed pursuant to this application outside the area of intended employment or in a job classification not listed on the approved application unless the employer has obtained a new approved Form ETA-9142B.
12. The employer has demonstrated that it has a temporary need, as defined in 8 CFR 214.2(h)(6)(ii)(B), on Form ETA-9142B or an H-2B Registration, as applicable, and been granted the H-2B Registration, when applicable.
13. The employer will make all deductions from workers' paychecks required by law and only those additional authorized and reasonable deductions disclosed in the job order. Deductions not disclosed will be prohibited. Reasonableness of authorized deductions is determined under the principles stated in 29 CFR part 531. The wage payment requirement in condition 5 of this Declaration will not be met where unauthorized or unreasonable deductions, deposits, rebates, or refunds reduce the wage payment below the offered wage or where the worker "kicks back" any part of the wages to the employer or another person for the employer's benefit.
14. The employer has specified in the job order any applicable minimum productivity standard which the workers must meet in order to retain the job. With respect to any applicable productivity standard, the employer is able to demonstrate that such standard is normal and usual for non-H-2B employers for the same occupation in the area of intended employment.
15. If, before the expiration date specified in the job order, the services of a worker are no longer required for reasons beyond the control of the employer due to fire, weather, other Act of God, or similar, unforeseeable man-made catastrophic event, the employer may terminate the job order with written approval of the Certifying Officer, and will make efforts to transfer the workers to comparable employment, or if transfer is not effected, provide return transportation for the worker as specified in the regulations.
16. The employer will keep a record of workers' earnings and provide the workers with the required earnings statements on or before each payday, which must be at least every 2 weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent.
17. The employer has disclosed how it will provide transportation and subsistence costs in the job order. The employer will either advance all visa, visa-related, border crossing, subsistence, and transportation expenses to workers traveling to the employer's worksite, pay for them directly, or reimburse such expenses, other than travel and subsistence, in the first workweek and reimburse the remainder of the expenses no later than the time workers complete 50 percent of the period covered by the job order. (Advancement of transportation and subsistence costs to U.S. workers employed under this application is required when it is the prevailing practice of non H-2B employers in the occupation in the area of intended employment or when the employer extends such benefits to similarly situated H-2B workers). Provided that workers work until the end of the certified period of employment or are dismissed from employment for any reason before the end of that period, the employer will pay for such workers' return transportation and daily subsistence if the workers have no immediate subsequent H-2B employment. All employer-provided transportation must comply with all applicable Federal, State, or local laws and regulations.
18. The employer will provide to workers, without charge or deposit, all tools, supplies, and equipment required to perform the duties assigned.
19. The employer will provide a copy of the job order to all H-2B workers no later than when the worker applies for a visa if located abroad, no later than the time of the job offer if the H-2B worker is changing employment from one H-2B employer to a subsequent H-2B employer, and to U.S. workers employed under this application no later than on the day work commences.

H-2B Application for Temporary Employment Certification

Form ETA - 9142B – APPENDIX B
 U.S. Department of Labor



20. The employer has posted a Department-provided poster detailing H-2B and U.S. workers' rights and protections in a conspicuous location at the place of employment. The employer will request and post additional posters in languages common to a significant portion of the workers if they are not fluent in English.
21. The employer has not and will not (and has not and will not cause another person to) intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any person who, with respect to 8 U.S.C. 1184(c), 20 CFR Part 655, Subpart A, 29 CFR Part 503, or any other Department regulation promulgated thereunder; has filed a complaint; instituted or caused to be instituted any proceeding; testified or is about to testify; consulted with a worker's center, community organization, labor union, legal assistance program, or attorney; or exercised or asserted on behalf of himself/herself or others any right or protection.
22. The employer has and will contractually forbid in writing any agent or recruiter (or any employee of such agent or recruiter) whom the employer engages, directly or indirectly, in international recruitment of H-2B workers to seek or receive payments or other compensation from prospective workers. The employer and its attorney and/or agent has provided with this application to the Department a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the international recruitment of H-2B workers, as well as the identity and location of all persons or entities hired by or working for the agent or recruiter, and any of their agents or employees, to recruit prospective foreign workers for the H-2B job opportunities offered by the employer.
23. The employer will conduct all required recruitment activities pursuant to 20 CFR 655.40 through 655.46 including but not limited to: additional recruitment if required by the Certifying Officer and contacting all of its former U.S. workers employed in the occupation at the place of employment during the previous year, disclosing the terms of the job order, and soliciting their return, unless they were dismissed for cause or abandoned the worksite.
24. The employer has and will continue to cooperate with the SWA by accepting referrals and will hire all qualified and eligible U.S. workers who apply for the job opportunity until 21 days before the date of need.
25. The employer will cooperate with any agent of the Secretary of Labor who is exercising or attempting to exercise the Department's authority pursuant to 8 U.S.C. 1184(c), including investigations as described in 29 CFR 503.25.
26. The employer will retain all documents pertaining to this application and registration, the recruitment-related documents, the payroll records, and related documents for 3 years as required by the regulations at 20 CFR 655.56 and 29 CFR 503.17.

I hereby designate the agent or attorney identified in section D (if any) of the Form ETA -9142B to represent me for the purpose of labor certification and, by virtue of my signature in Block 3 below. **I take full responsibility** for the accuracy of any representations made by my agent or attorney **on all Pages of Form ETA-9142B**.

I intend to employ the following number of H-2B workers:		For a period of employment lasting from:	
To work as (job description):		At the following work location(s) only (County/State):	
I will pay the H-2B workers the basic rate of pay of:		I will pay the H-2B workers the overtime rate of pay of:	

I have not received any illegal payment or other thing of value from prospective H-2B workers, agents, or any attorney for the submission of this application, and will not demand or accept such in the future [as listed in Section B.9. of 9142B APPENDIX B].

I declare under penalty of perjury that I have read and reviewed this application, including all Pages of Form ETA-9142B and Pages B.1-B.3 of Appendix B, and that to the best of my knowledge the information contained therein is true and accurate. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by fines, imprisonment, or both (18 U.S.C. Sections 2, 1001, 1546 or 1621).

1. Last (family) name	2. First (given) Name	3. Middle initial
4. Title		
5. Signature		6. Date signed

Public Burden Statement (1205-0509)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification • U.S. Department of Labor • Suite 12-200 • 200 Constitution Ave., NW, • Washington, DC 20210. **Please do not send the completed application to this address.**

APPENDIX 2

Page 1 - proposed changes

H-2B Application for Temporary Employment Certification
Form ETA-9142B – General Instructions

H-2B Application for Temporary Employment Certification
Form ETA-9142B – General Instructions
U.S. Department of Labor



IMPORTANT: Employers and authorized preparers must read all instructions carefully before completing the Form ETA-9142B –Application for Temporary Employment Certification. These instructions contain full explanations of the questions and attestations that make up the Form ETA-9142B. **In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If you need additional room to complete an answer, please begin the answer in the space provided and attach an addendum to the relevant section and item identifying each clearly, ALL required items must be completed as well as any fields/items where a response is conditioned on the response to another required field/item.**

Any employer or authorized preparer, who knowingly and willingly furnishes any false information **or fraudulent misrepresentations** in the preparation of Form ETA-9142B and any supporting documentation, or aids, abets, or counsels another to do so is committing a federal offense, punishable by fines or imprisonment up to five years or both (18 U.S.C. §§ 2, 1001). Other penalties apply as well to fraud or misuse of this immigration document and to perjury with respect to this form (18 U.S.C. §§ 1546, 1621).

Public Burden Statement (1205-0509)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW, * Washington, DC * 20210. **Please do not send the completed application to this address.**

**Section A
Employment - Based Nonimmigrant Visa Information**

1. Enter the following classification symbol to indicate the type of visa supported by this application: **"H-2B"**.

**Section B
Temporary Need Information**

1. Enter the title of the job opportunity for which the application for temporary employment certification is being sought by the employer.
2. Enter the six or eight-digit Standard Occupational Classification (SOC)/Occupational Network (O*NET) code for the occupation, which most clearly describes the work to be performed. For example, the six-digit SOC code for a fruit or vegetable harvester or orchard worker is 45-2092.02 (Farmworkers and Laborers, Crop).
3. Enter the occupational title associated with the SOC/O*NET (OES) code. For example, the occupational title associated with SOC/O*NET code 45-2092.02 is "Farmworkers and Laborers, Crop".
4. Enter whether this position is full-time by indicating "Yes" or "No". Although there is no regulatory definition for full-time employment, the Department generally considers 35 hours per week as the distinction point between full-time and part-time.
5. Enter the beginning date for the worker's period of employment. Use a month/day/full year (MM/DD/YYYY) format.
6. Enter the end date for the worker's period of employment. Use a month/day/full year (MM/DD/YYYY) format.
7. The collection of this item contains two parts. First, enter the number of workers being requested for certification. Second, use collection items (a) through (f) to enter the number of workers in each applicable category based on the answer to the first part of this item. Every box **MUST** be filled. If the employer has no workers in a particular category, please indicate "0 (zero)."
8. Mark the appropriate box to indicate the nature of the employer's temporary need for the services or labor to be performed. Only one standard of temporary need may be selected. The following definitions generally apply to temporary agricultural and non-agricultural work:

APPENDIX 3

Page 1 - proposed changes

H-2B Application for Temporary Employment Certification
ETA Form 9142B

H-2B Application for Temporary Employment Certification
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U.S. Department of Labor



IMPORTANT: Employers and authorized preparers must read the general instructions carefully before completing the ETA Form 9142B. A copy of the instruction can be found at <http://www.foreignlaborcert.doleta.gov/>. In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If submitting this form non-electronically, ALL required fields/items containing an asterisk (*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol): *	
--	--

B. Temporary Need Information

1. Job Title *		
2. SOC (ONET/OES) code *	3. SOC (ONET/OES) occupation title *	
4. Is this a full-time position? *	Period of Intended Employment	
<input type="checkbox"/> Yes <input type="checkbox"/> No	5. Begin Date * (mm/dd/yyyy)	6. End Date * (mm/dd/yyyy)
7. Worker positions needed/basis for the visa classification supported by this application		
<input type="text"/> Total Worker Positions Being Requested for Certification *		
Basis for the visa classification supported by this application (indicate the total workers in each applicable category based on the total workers identified above)		
<input type="text"/> a. New employment *	<input type="text"/> d. New concurrent employment *	
<input type="text"/> b. Continuation of previously approved employment * without change with the same employer	<input type="text"/> e. Change in employer *	
<input type="text"/> c. Change in previously approved employment *	<input type="text"/> f. Amended petition *	
8. Nature of Temporary Need: (Choose only one of the standards) *		
<input type="checkbox"/> Seasonal <input type="checkbox"/> Peakload <input type="checkbox"/> One-Time Occurrence <input type="checkbox"/> Intermittent or Other Temporary Need		
9. Statement of Temporary Need *		

APPENDIX 4

H-2B Application for Temporary Employment Certification
Form ETA-9142B – APPENDIX B

CURRENT VERSION

H-2B Application for Temporary Employment Certification

Form ETA-9142B – APPENDIX B
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For Use in Filing Applications Under the H-2B Non-Agricultural Program ONLY¹

A. Attorney or Agent Declaration

I hereby declare under penalty of perjury that I am an attorney for the employer, or that I am an employee of, or hired by, the employer listed in Section C of the Form ETA-9142B, and that I have been designated by that employer in accordance with 20 CFR 655.8 to act on its behalf in connection with this application, as evidenced by the attached agency agreement. I also certify that to the best of my knowledge the information contained herein is true and accurate, including the employer's declaration regarding activities I have undertaken on the employer's behalf in connection with this application. I understand that to knowingly furnish false information in the preparation of this form and any supplement hereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in a Federal penitentiary or both (18 U.S.C. 1001).

1. Attorney or Agent's last (family) name	2. First (given) name	3. Middle initial
4. Firm/Business name		
5. E-Mail address		
6. Signature		7. Date signed

B. Employer Declaration

By virtue of my signature below, I HEREBY CERTIFY my knowledge of and compliance with the following conditions of employment applicable to H-2B workers and/or U.S. workers who are hired during the recruitment period for positions covered by this application, including any approved extension thereof:

1. The job opportunity is a bona fide, full-time temporary position (of at least 35 hours per workweek), the qualifications and requirements for which are consistent with the normal and accepted qualifications and requirements imposed by non-H-2B employers in the same or comparable occupations and area of intended employment. The employer has listed all qualifications and requirements in the job order.
2. There is no strike or lockout at any of the employer's worksites within the area of intended employment for which the employer is requesting an H-2B certification.
3. The job opportunity was/is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, disability, or citizenship. U.S. workers who apply for the job will be rejected only for lawful, job-related reasons, and the employer will retain records of all rejections.
4. The employer has not/will not offer terms, wages, and working conditions to U.S. workers that are less favorable than those offered or will be offered to H-2B workers or impose restrictions or obligations on U.S. workers that are not imposed on H-2B workers. This does not relieve the employer from providing H-2B workers with at least the minimum benefits, wages, and working conditions that must be offered to U.S. workers under 20 CFR 655.18, except for those required by 20 CFR 655.18(b)(17).
5. The offered wage equals or exceeds the highest of the most recent prevailing wage for the occupation that is or will be issued by the Department to the employer for the time period the work is performed, or the applicable Federal, State, or local minimum wage, and the employer will pay at least the offered wage, free and clear, either in cash or in a negotiable instrument payable at par, during the entire period of this application. The employer guarantees to supplement a piece rate wage if at the end of the workweek, the piece rate does not result in average hourly piece rate earnings during the workweek at least equal to the offered wage.

¹ The Department of Labor Appropriations Act, 2016, Division H, Title I of Public Law 114-113 ("2016 DOL Appropriations Act"), provides that the Department of Labor ("Department") may not use any funds to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any reference thereto. See Sec. 113. Therefore, in order to comply with the 2016 DOL Appropriations Act, the Department has removed references to these provisions from the Form ETA-9142B – Appendix B. However, the 2016 DOL Appropriations Act did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the Department will not use any Fiscal Year 2016 funds to enforce them.



H-2B Application for Temporary Employment Certification
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U.S. Department of Labor

6. The offered wage is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage earned every workweek that equals or exceeds the offered wage.
7. During the period of employment that is the subject of this application, the employer will comply with applicable Federal, State and local employment-related laws and regulations, including, but not limited to, employment-related health and safety laws, 20 CFR part 655, Subpart A, 29 CFR Part 503. In addition, the employer and its agents and attorneys are prohibited from holding or confiscating workers' passports, visas, or other immigration documents pursuant to 18 U.S.C. 1592(a).
8. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation and area of intended employment within the period beginning 120 days before the date of need through the end of the period of certification, unless the layoff is for lawful, job-related reasons and all H-2B workers are laid off first.
9. The employer and its agents, attorneys, and/or employees have not sought or received, and will not seek to receive, payment of any kind from the worker for any activity related to obtaining certification or employment, including but not limited to payment of the employer's attorney or agent fees, application or petition fees, or recruitment costs. Payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor.
10. Upon the separation from employment of any H-2B or U.S. worker(s) employed under this application, if such separation occurs prior to the end date of the employment specified in this application, the employer will notify the Department in writing of the separation from employment not later than 2 work days after such separation is discovered by the employer. The employer will also notify DHS in writing (or any other manner specified by DHS) of such separation of an H-2B worker.
11. The employer will not place any H-2B workers employed pursuant to this application outside the area of intended employment or in a job classification not listed on the approved application unless the employer has obtained a new approved Form ETA-9142B.
12. The employer has demonstrated that it has a temporary need, as defined in 8 CFR 214.2(h)(6)(ii)(B), on Form ETA-9142B or an H-2B Registration, as applicable, and been granted the H-2B Registration, when applicable.
13. The employer will make all deductions from workers' paychecks required by law and only those additional authorized and reasonable deductions disclosed in the job order. Deductions not disclosed will be prohibited. Reasonableness of authorized deductions is determined under the principles stated in 29 CFR part 531. The wage payment requirement in condition 5 of this Declaration will not be met where unauthorized or unreasonable deductions, deposits, rebates, or refunds reduce the wage payment below the offered wage or where the worker "kicks back" any part of the wages to the employer or another person for the employer's benefit.
14. The employer has specified in the job order any applicable minimum productivity standard which the workers must meet in order to retain the job. With respect to any applicable productivity standard, the employer is able to demonstrate that such standard is normal and usual for non-H-2B employers for the same occupation in the area of intended employment.
15. If, before the expiration date specified in the job order, the services of a worker are no longer required for reasons beyond the control of the employer due to fire, weather, other Act of God, or similar, unforeseeable man-made catastrophic event, the employer may terminate the job order with written approval of the Certifying Officer, and will make efforts to transfer the workers to comparable employment, or if transfer is not effected, provide return transportation for the worker as specified in the regulations.
16. The employer will keep a record of workers' earnings and provide the workers with the required earnings statements on or before each payday, which must be at least every 2 weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent.
17. The employer has disclosed how it will provide transportation and subsistence costs in the job order. The employer will either advance all visa, visa-related, border crossing, subsistence, and transportation expenses to workers traveling to the employer's worksite, pay for them directly, or reimburse such expenses, other than travel and subsistence, in the first workweek and reimburse the remainder of the expenses no later than the time workers complete 50 percent of the period covered by the job order. (Advancement of transportation and subsistence costs to U.S. workers employed under this application is required when it is the prevailing practice of non H-2B employers in the occupation in the area of intended employment or when the employer extends such benefits to similarly situated H-2B workers). Provided that workers work until the end of the certified period of employment or are dismissed from employment for any reason before the end of that period, the employer will pay for such workers' return transportation and daily subsistence if the workers have no immediate subsequent H-2B employment. All employer-provided transportation must comply with all applicable Federal, State, or local laws and regulations.
18. The employer will provide to workers, without charge or deposit, all tools, supplies, and equipment required to perform the duties assigned.
19. The employer will provide a copy of the job order to all H-2B workers no later than when the worker applies for a visa if located abroad, no later than the time of the job offer if the H-2B worker is changing employment from one H-2B employer to a subsequent H-2B employer, and to U.S. workers employed under this application no later than on the day work commences. The disclosure must be in a language understood by the workers, as necessary and reasonable.



H-2B Application for Temporary Employment Certification
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20. The employer has posted a Department-provided poster detailing H-2B and U.S. workers' rights and protections in a conspicuous location at the place of employment. The employer will request and post additional posters in languages common to a significant portion of the workers if they are not fluent in English.
21. The employer has not and will not (and has not and will not cause another person to) intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any person who, with respect to 8 U.S.C. 1184(c), 20 CFR Part 655, Subpart A, 29 CFR Part 503, or any other Department regulation promulgated thereunder; has filed a complaint; instituted or caused to be instituted any proceeding; testified or is about to testify; consulted with a worker's center, community organization, labor union, legal assistance program, or attorney; or exercised or asserted on behalf of himself/herself or others any right or protection.
22. The employer has and will contractually forbid in writing any agent or recruiter (or any employee of such agent or recruiter) whom the employer engages, directly or indirectly, in international recruitment of H-2B workers to seek or receive payments or other compensation from prospective workers. The employer and its attorney and/or agent has provided with this application to the Department a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the international recruitment of H-2B workers, as well as the identity and location of all persons or entities hired by or working for the agent or recruiter, and any of their agents or employees, to recruit prospective foreign workers for the H-2B job opportunities offered by the employer.
23. The employer will conduct all required recruitment activities pursuant to 20 CFR 655.40 through 655.46 including but not limited to: additional recruitment if required by the Certifying Officer and contacting all of its former U.S. workers employed in the occupation at the place of employment during the previous year, disclosing the terms of the job order, and soliciting their return, unless they were dismissed for cause or abandoned the worksite.
24. The employer has and will continue to cooperate with the SWA by accepting referrals and will hire all qualified and eligible U.S. workers who apply for the job opportunity until 21 days before the date of need.
25. The employer will cooperate with any agent of the Secretary of Labor who is exercising or attempting to exercise the Department's authority pursuant to 8 U.S.C. 1184(c), including investigations as described in 29 CFR 503.25.
26. The employer will retain all documents pertaining to this application and registration, the recruitment-related documents, the payroll records, and related documents for 3 years as required by the regulations at 20 CFR 655.56 and 29 CFR 503.17.

I hereby designate the agent or attorney identified in section D (if any) of the Form ETA -9142B to represent me for the purpose of labor certification and, by virtue of my signature in Block 3 below, **I take full responsibility** for the accuracy of any representations made by my agent or attorney.

I declare under penalty of perjury that I have read and reviewed this application and that to the best of my knowledge the information contained therein is true and accurate. *I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in the Federal penitentiary or both (18 U.S.C. 1001).*

1. Last (family) name	2. First (given) name	3. Middle initial
4. Title		
5. Signature		6. Date signed

Public Burden Statement (1205-0509)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification • U.S. Department of Labor • Suite 12-200 • 200 Constitution Ave., NW, • Washington, DC 20210. **Please do not send the completed application to this address.**

APPENDIX 5

H-2B Application for Temporary Employment Certification
Form ETA-9142B – General Instructions

CURRENT VERSION

H-2B Application for Temporary Employment Certification
Form ETA-9142B – General Instructions
U.S. Department of Labor



IMPORTANT: Please read these instructions carefully before completing the Form ETA-9142B –Application for Temporary Employment Certification. These instructions contain full explanations of the questions and attestations that make up the Form ETA-9142B. ***In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If you need additional room to complete an answer, please begin the answer in the space provided and attach an addendum to the relevant section and item identifying each clearly, ALL required items must be completed as well as any fields/items where a response is conditioned on the response to another required field/item.***

Anyone, who knowingly and willingly furnishes any false information in the preparation of Form ETA-9142B and any supporting documentation, or aids, abets, or counsels another to do so is committing a federal offense, punishable by fine or imprisonment up to five years or both (18 U.S.C. §§ 2, 1001). Other penalties apply as well to fraud or misuse of this immigration document and to perjury with respect to this form (18 U.S.C. §§ 1546, 1621).

Public Burden Statement (1205-0509)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW, * Washington, DC * 20210. **Please do not send the completed application to this address.**

**Section A
Employment - Based Nonimmigrant Visa Information**

1. Enter the following classification symbol to indicate the type of visa supported by this application: **"H-2B"**.

**Section B
Temporary Need Information**

1. Enter the title of the job opportunity for which the application for temporary employment certification is being sought by the employer.
2. Enter the six or eight-digit Standard Occupational Classification (SOC)/Occupational Network (O*NET) code for the occupation, which most clearly describes the work to be performed. For example, the six-digit SOC code for a fruit or vegetable harvester or orchard worker is 45-2092.02 (Farmworkers and Laborers, Crop).
3. Enter the occupational title associated with the SOC/O*NET (OES) code. For example, the occupational title associated with SOC/O*NET code 45-2092.02 is "Farmworkers and Laborers, Crop".
4. Enter whether this position is full-time by indicating "Yes" or "No". Although there is no regulatory definition for full-time employment, the Department generally considers 35 hours per week as the distinction point between full-time and part-time.
5. Enter the beginning date for the worker's period of employment. Use a month/day/full year (MM/DD/YYYY) format.
6. Enter the end date for the worker's period of employment. Use a month/day/full year (MM/DD/YYYY) format.
7. The collection of this item contains two parts. First, enter the number of workers being requested for certification. Second, use collection items (a) through (f) to enter the number of workers in each applicable category based on the answer to the first part of this item. Every box **MUST** be filled. If the employer has no workers in a particular category, please indicate "0 (zero)."
8. Mark the appropriate box to indicate the nature of the employer's temporary need for the services or labor to be performed. Only one standard of temporary need may be selected. The following definitions generally apply to temporary agricultural and non-agricultural work:

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Seasonal Need: The employer must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The employer shall 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 not needed is unpredictable or subject to change or is considered a vacation period for the employer's permanent employees.

Peakload Need: The employer must establish that (1) it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand, and (2) the temporary additions to staff will not become a part of the employer's regular operation.

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

Intermittent or Other Temporary 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 to perform services or labor for short periods.

9. Provide a statement clearly describing the employer's temporary need for the services or labor to be performed. The employer's statement must explain (a) the nature of the employer's business or operations, (b) why the job opportunity and number of workers being requested for certification reflect a temporary need, and (c) how the employer's request for the services or labor to be performed meets the chosen standard under Question 8 of a seasonal, peakload, one-time occurrence, or an intermittent basis.

Section C
Employer Information

1. Enter the full name of the individual employer, joint employer, job contractor, partnership, corporation, i.e. the employer filing this application. The employer's full legal name is the exact name of the individual, corporation, LLC, partnership, or other organization that is reported to the Internal Revenue Service.
2. Enter the full trade name or "Doing Business As" (DBA) name, if applicable, of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application.
3. Enter the street address of the employer's principal place of business.
4. If additional space is needed for the street address, use this line to complete the employer's street address.
5. Enter the city of the employer's principal place of business. If the city and country are the same, the name must still be entered in both fields.
6. Enter the state of the employer's principal place of business.
7. Enter the postal (zip) code of the employer's principal place of business.
8. Enter the country of the employer's principal place of business. If the city and country are the same, the name must still be entered in both fields.
9. Enter the province of the employer's principal place of business, if applicable.
10. Enter the area code and telephone number for the employer's principal place of business. Include country code, if applicable.
11. Enter the extension of the telephone number for the employer's principal place of business, if applicable.

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12. Enter the nine-digit Federal Employer identification Number (FEIN) as assigned by the IRS. Do not enter a social security number.

Note: All employers, including private households, MUST obtain an FEIN from the IRS before completing this application. Information on obtaining an FEIN can be found at www.IRS.gov.

13. Enter the four to six-digit North American Industry Classification System (NAICS) code that best describes the employer's business, not the alien's job. A listing of NAICS codes can be found at <http://www.census.gov/epcd/www/naics.html>.

14. Mark the appropriate to indicate the type of application being filed for temporary employment certification. Only one application type may be selected.

15. Enter the employer's total annual receipts of the last complete fiscal year.

16. Enter the year the employer's business was established under the current FEIN number.

17. Mark the appropriate to indicate the type of application being filed for temporary employment certification. Only one application type can be selected.

Section D
Employer Point of Contact Information

An employer point of contact is an employee of the employer whose position authorizes the employee to provide information and supporting documentation concerning this Application for Temporary Employment Certification and to communicate with the Department of Labor on behalf of the employer. The employer point of contact should be the individual most familiar with the content of this application and circumstances of the foreign worker's employment.

Note: The employer point of contact information in this Section, specifically the name, telephone number, and email address, must be different from the attorney/agent information listed in Section E, unless the attorney is an employee of the employer.

1. Enter the last (family) name of the employer's point of contact.
2. Enter the first (given) name of the employer's point of contact.
3. Enter the middle name of the employer's point of contact.
4. Enter the job title of the employer's point of contact.
5. Enter the business street address for the employer's point of contact.
6. If additional space is needed for the street address, use this line to complete the street address.
7. Enter the city of the employer's point of contact. If the city and country are the same, the name must still be entered in both fields.
8. Enter the state of the employer's point of contact.
9. Enter the postal (zip) code of the employer's point of contact.
10. Enter the country of the employer's point of contact. If the city and country are the same, the name must still be entered in both fields.
11. Enter the province of the employer's point of contact, if applicable.
12. Enter the area code and business telephone number of the employer's point of contact. Include country code, if applicable.
13. Enter the extension of the telephone number of the employer's point of contact, if applicable.

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14. Enter the business e-mail address of the employer's point of contact in the format [name@emailaddress.top-level](#) domain.

Section E
Attorney or Agent Information (if applicable)

Note: The attorney/agent information in this Section, specifically the name, telephone number, and email address, must be different from the employer's point of contact information in Section D, unless the attorney is an employee of the employer.

1. Identify whether the employer is represented by an attorney or agent in the process of filing this application. Only mark one box. If "Yes", complete the remainder of Section E. If "No" in question 1, skip questions 2 to 19 and continue to Section F.
2. Enter the last (family) name of the attorney/agent.
3. Enter the first (given) name of the attorney/agent.
4. Enter the middle name of the attorney/agent.
5. Enter the street address of the attorney/agent.
6. If additional space is needed for the street address, use this line to complete the attorney/agent's street address.
7. Enter the city of the attorney/agent. If the city and country are the same, the name must still be entered in both fields.
8. Enter the state of the attorney/agent.
9. Enter the postal (zip) code of the attorney/agent.
10. Enter the country of the attorney/agent. If the city and country are the same, the name must still be entered in both fields.
11. Enter the province of the attorney/agent, if applicable.
12. Enter the area code and telephone number of the attorney/agent. Include country code, if applicable.
13. Enter the extension of the telephone number of the attorney/agent, if applicable.
14. Enter the e-mail address of the attorney/agent in the format [name@emailaddress.top-level](#) domain.
15. Enter the attorney/agent's law firm or business name.
16. Enter the attorney/agent's law firm or business nine-digit FEIN as assigned by the IRS.
17. Enter the attorney's state Bar number. If the attorney is licensed in more than one state, enter only one state Bar number. If submitting this form electronically and the attorney is licensed in a state which does not issue state Bar numbers, leave the field blank and once confirmed it will be automatically pre-populated with "N/A."

Note: The answers to questions 18 and 19 below should correspond to the same state for which a Bar number was provided in question 17, if any.

18. Enter the state of the highest court where the attorney is in good standing.
19. Enter the name of the highest court in the state where the attorney is in good standing.

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Section F
Job Offer Information

a. Job Description

1. Enter the same job title as the one entered under Section B question 1.
2. Enter the basic hours of work required per week and overtime hours per week in accordance with State and Federal law for the work and area of employment.
3. Enter the daily work schedule for the job opportunity (e.g., 9 a.m. to 5 p.m., 7 a.m. to 11 a.m. and 4 p.m. to 8 p. m.).
4. Mark "Yes" or "No" as to whether the job opportunity supervises the work of other employees.
5. If "Yes" is marked in question 4, enter the total number of employees the job opportunity will supervise .
6. Describe the job duties, in detail, to be performed by any worker filling the job opportunity. Specify any equipment to be used and pertinent working conditions.

b. Minimum Requirements

1. Identify whether the minimum U.S. diploma or degree required by the employer for the job opportunity is none, high school/GED, Associates, Bachelor's, Master's, Doctorate, or Other. Only mark one box.
 - 1a. If "Other" in question 1, enter the specific U.S. diploma or degree required. (Example: JD, MD, DDS, etc.). If the answer to question 1 is not "Other," enter "N/A."
 - 1b. Enter the major(s) and/or field(s) of study required by the employer for the job opportunity. You may list more than one field and/or more than one related major. If the answer to question 1 is "None" or "High School", enter "N/A."
 2. If the employer requires a second U.S. diploma or degree for the job opportunity, mark "Yes." Otherwise, mark "No."
 - 2a. If "Yes" in question 2, enter the specific second U.S. diploma or degree required. If the answer to question 2 is "No", enter "N/A."
 3. If the employer requires training for the job opportunity, mark "Yes." Otherwise, mark "No." Training may include, but is not limited to: programs, coursework, or training experience (other than employment). When answering this question, do not duplicate requirements – the training required should not be counted as education or experience required.
 - 3a. If "Yes" in question 3, enter the number of months of training required by the employer for the job opportunity. If the answer to question 3 is "No", enter "0" (zero). When answering this question, do not duplicate time requirements – the training time required should not be counted as (added to) education or experience time required.
 - 3b. If "Yes" in question 3, enter the field(s) and/or name(s) of the training required by the employer for the job opportunity. You may list more than one field and/or more than one name. If the answer to question 3 is "No", enter "N/A."
 4. If the employer requires employment experience, mark "Yes." Otherwise, mark "No."
 - 4a. If "Yes" in question 4, enter the number of months of experience required by the employer. If the answer to question 4 is "No", enter "0" (zero).
 - 4b. If "Yes" in question 4, enter the occupation in which experience is required by the employer for the job opportunity. If the answer to question 4 is "No", enter "N/A."
 5. Enter the job related special requirements. Examples are shorthand and typing speeds, specific foreign language proficiency, test results. Document business necessity for a foreign language requirement.
-

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Section F
Job Offer Information (continued)

c. Place of Employment

It is important for the employer to define the area of intended employment with as much geographic specificity as possible. This information is used for purposes of reviewing and verifying regulatory compliance with advertising, positive recruitment requirements, and prevailing wage determinations.

Important Note: For farm labor or job contractors filing under the H-2A or H-2B visa programs where multiple worksites are involved or where special procedures apply, submit a separate attachment identifying, by business name and address, all physical locations where the services or labor is expected to be performed. Enter the address of the first worksite location on the form using questions 1 through 7, and then use question 7-A to identify the business name for the first worksite location and write the words "See attached worksites".

1. Enter the street address of the worksite location identified in item 1, where work will be performed. The worksite address must be a physical location and cannot be a P.O. Box.
2. If additional space is needed for the street address, use this line. If no additional space is needed, enter "N/A."
3. Enter the city of the worksite location.
4. Enter the county of the worksite location.
5. Enter the state/district/territory of the worksite location.
6. Enter the postal (zip) code of the worksite location.
7. If work will be performed in location(s) other than the address listed in questions 1-6 above, mark "Yes" and complete question 7a. If work will not be performed in location(s) other than the address listed in questions 1-6 above, mark "No."
- 7a. If "Yes" in question 7, identify the geographic place(s) of employment with as much specificity as possible, such as the Metropolitan Statistical Areas (MSAs) or the city(ies)/township(s)/county(ies) and the corresponding state(s) where work will be performed. The employer must provide enough geographic detail to cover all the worksite locations of intended employment.

Section G
Rate of Pay

1. Enter the rate of pay to be paid to the nonimmigrant workers. If the wage offer is expressed as a range, enter the bottom of the wage range to be paid.

Enter the top of the wage range to be paid to the nonimmigrant workers in the section indicating "To (Optional)."
- 1a. Enter the rate of overtime pay, if applicable, to be paid to the nonimmigrant workers. If the wage offer is expressed as a range, enter the bottom of the wage range to be paid.

Enter the top of the wage range to be paid to the nonimmigrant workers in the section indicating "To (Optional)."
2. Enter whether the rate of pay is in terms of per year, month, two weeks, week or hour in the section indicating "Rate is Per." Mark only one box.
- 2a. If the answer to question 2 is "Piece Rate", enter the wage offer requirements. Describe the unit size that governs how the piece rate is paid, such as tree size/spacing, weight/size/number of boxes picked/packed, dimensions of bags or boxes filled. For example: 5/8 bushel, 90 pound bag or box, 10 box bin.
3. Enter any additional wage information covered by the job opportunity and the anticipated area(s) of intended employment (e.g., itinerant work, multi-state worksite locations). In order to expedite the application review process, employers are **strongly encouraged** to list all valid prevailing wage determinations received by the OFLC National Processing Center

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(NPC) in support of the application as well as all corresponding wage offers.

Section H
Recruitment Information

Important Note: Employers are no longer required to Complete Section H of the ETA Form 9142. Under the new 2015 H-2B Interim Final Rule, the employer will be required to conduct positive recruitment of U.S. workers after your H-2B application is submitted to the Department for processing. Please continue to Section I.

1. Enter the name of the State Workforce Agency which received the job offer from the employer and placed a job order on its active file for recruitment of U.S. workers.
2. Enter the unique job order number provided by the State Workforce Agency.
2-A Enter the start date of the SWA job order. Use a month/day/full year (MM/DD/YYYY) format.
2-B Enter the end date of the SWA job order. Use a month/day/full year (MM/DD/YYYY) format. H-2A applicants must enter the date that is the midpoint of the contract period, which reflects the end of the 50% rule period as described in 20 CFR 655.135(d).
3. Mark "Yes" or "No" whether there is a Sunday edition of a newspaper (of general circulation) in the area of intended employment.
Note: Only if the job opportunity is located in a rural area of intended employment that does not have a newspaper that publishes a Sunday edition, is the employer permitted to use the newspaper edition with the widest circulation in the area of intended employment, and not a Sunday edition.
4. Enter the name of the newspaper of general circulation or other publication in which the H-2B employer placed an advertisement for the job opportunity. H-2A employers enter "N/A."
For the named newspaper/publication, enter the start and end dates in which the newspaper advertisement referenced was printed. Use a month/day/full year (MM/DD/YYYY) format. If the newspaper advertisement or publication took place on 1 day, then enter the same date in the "From:" and "To:".
5. H-2B employers enter the name of the newspaper of general circulation or other publication in which the employer placed an advertisement for the job opportunity. H-2A employers enter "N/A."
For the named newspaper/publication, enter the start and end dates in which the newspaper advertisement referenced was printed. Use a month/day/full year (MM/DD/YYYY) format. If the newspaper advertisement or publication took place on 1 day, then enter the same date in the "From:" and "To:".
6. H-2B employers describe other efforts to positively recruit U.S. workers for the job opportunity. For each positive recruitment activity, identify the type or source of recruitment (e.g., additional SWA job orders, out-of-state newspaper, contact with former employees) and the date(s) on which the recruitment was conducted. H-2A employers enter "N/A."

Section I
Declaration of Employer and Attorney/Agent

Employer must read and agree to all the applicable terms, assurances, and obligations as a condition for receiving a temporary labor certification from the U.S. Department of Labor. Mark "Yes" or "No" to confirm that Appendix B is complete and is being submitted with the filing of this application.

Section J
Preparer

This section must be completed if the preparer of this application is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application.

1. Enter the last (family) name of the person preparing this application by or on behalf of the employer.
2. Enter the first (given) name of the person preparing this application by or on behalf of the employer.

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-
3. If applicable, enter the middle name of the person with preparing this application by or on behalf of the employer.
 4. Enter the job title of the person who prepared the application.
 5. Enter the Firm/Business name of the person with preparing this application by or on behalf of the employer.
 6. Enter the email address of the person with preparing this application by or on behalf of the employer. Format must be in the format [name@emailaddress.top-level](#) domain.

Section K
U.S. Government Agency User ONLY

Read this section. No entries required.

Public Burden Statement Control Number 1205-NEW1

Please read this disclosure. No entries are required.

APPENDIX B

Employer and Attorney/Agent Declarations for H-2B Employers

A. Attorney/Agent Declaration

1. Enter the last (family) name of the attorney/agent representing the employer in the filing of this application.
2. Enter the first (given) name of the attorney/agent representing the employer in the filing of this application.
3. Enter the middle initial of the attorney/agent representing the employer in the filing of this application.
4. Enter the Firm/Business name of the attorney/agent representing the employer in the filing of this application.
5. Enter the email address of the attorney/agent representing the employer in the filing of this application. Format must be in the format [name@emailaddress.top-level](#) domain.
6. The attorney/agent must sign the application. Read the entire application and verify all contained information prior to signing.
7. The attorney/agent must date the application. Use a month/day/full year (MM/DD/YYYY) format.

B. Employer Declaration

1. Enter the last (family) name of the person with authority to sign on behalf of the employer.
2. Enter the first (given) name of the person with authority to sign on behalf of the employer.
3. Enter the middle name of the person with authority to sign on behalf of the employer.
4. Enter the job title of the person with authority to sign on behalf of the employer.
5. The person with authority to sign on behalf of the employer must sign the application. Read the entire application and verify all contained information prior to signing.
6. The person with authority to sign on behalf of the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.

Important Note: The footer in Appendix B is to be completed by the employer upon certification of its ETA Form 9142B

APPENDIX 6

H-2B Application for Temporary Employment Certification
Form ETA-9142B

CURRENT VERSION

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Please read and review the filing instructions carefully before completing the ETA Form 9142B. A copy of the instructions can be found at <http://www.foreignlaborcert.doleta.gov/>. In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If submitting this form non-electronically, ALL required fields/items containing an asterisk (*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol): *	
--	--

B. Temporary Need Information

1. Job Title *			
2. SOC (ONET/OES) code *	3. SOC (ONET/OES) occupation title *		
4. Is this a full-time position? *	Period of Intended Employment		
<input type="checkbox"/> Yes <input type="checkbox"/> No	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">5. Begin Date * <small>(mm/dd/yyyy)</small></td> <td style="width: 50%; padding: 5px;">6. End Date * <small>(mm/dd/yyyy)</small></td> </tr> </table>	5. Begin Date * <small>(mm/dd/yyyy)</small>	6. End Date * <small>(mm/dd/yyyy)</small>
5. Begin Date * <small>(mm/dd/yyyy)</small>	6. End Date * <small>(mm/dd/yyyy)</small>		
7. Worker positions needed/basis for the visa classification supported by this application			
<input style="width: 50px; height: 20px;" type="text"/> Total Worker Positions Being Requested for Certification *			
Basis for the visa classification supported by this application <i>(indicate the total workers in each applicable category based on the total workers identified above)</i>			
<input style="width: 50px; height: 20px;" type="text"/> a. New employment *	<input style="width: 50px; height: 20px;" type="text"/> d. New concurrent employment *		
<input style="width: 50px; height: 20px;" type="text"/> b. Continuation of previously approved employment * <small>without change with the same employer</small>	<input style="width: 50px; height: 20px;" type="text"/> e. Change in employer *		
<input style="width: 50px; height: 20px;" type="text"/> c. Change in previously approved employment *	<input style="width: 50px; height: 20px;" type="text"/> f. Amended petition *		
8. Nature of Temporary Need: (Choose only one of the standards) *			
<input type="checkbox"/> Seasonal <input type="checkbox"/> Peakload <input type="checkbox"/> One-Time Occurrence <input type="checkbox"/> Intermittent or Other Temporary Need			
9. Statement of Temporary Need *			

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C. Employer Information

Important Note: Enter the full name of the individual employer, partnership, or corporation and all other required information in this section. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, identify the main or primary employer in the section below and then submit a separate attachment that identifies each employer, by name, mailing address, and total worker positions needed, under the application.

1. Legal business name *		
2. Trade name/Doing Business As (DBA), if applicable		
3. Address 1 *		
4. Address 2		
5. City *	6. State *	7. Postal code *
8. Country *	9. Province	
10. Telephone number *	11. Extension	
12. Federal Employer Identification Number (FEIN from IRS) *	13. NAICS code (must be at least 4-digits) *	
14. Number of non-family full-time equivalent employees	15. Annual gross revenue	16. Year established
17. Type of employer application (choose only one box below) *		
<input type="checkbox"/> Individual Employer <input type="checkbox"/> Association – Sole Employer (H-2A only)		
<input type="checkbox"/> H-2A Labor Contractor or Job Contractor <input type="checkbox"/> Association – Joint Employer (H-2A only)		
<input type="checkbox"/> Association – Filing as Agent (H-2A only)		

D. Employer Point of Contact Information

Important Note: The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, enter only the contact information for the main or primary employer (e.g., contact for an association filing as joint employer) under the application.

1. Contact's last (family) name *	2. First (given) name	3. Middle name(s)
4. Contact's job title *		
5. Address 1 *		
6. Address 2		
7. City *	8. State *	9. Postal code *
10. Country *	11. Province	
12. Telephone number *	13. Extension	14. E-Mail address

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E. Attorney or Agent Information (If applicable)

1. Is/are the employer(s) represented by an attorney or agent in the filing of this application (including associations acting as agent under the H-2A program)? If "Yes", complete Section E. *			<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Attorney or Agent's last (family) name §	3. First (given) name §	4. Middle name		
5. Address 1 §				
6. Address 2				
7. City §		8. State	9. Postal code §	
10. Country §		11. Province		
12. Telephone number §	13. Extension	14. E-Mail address		
15. Law firm/Business name §			16. Law firm/Business FEIN §	
17. State Bar number (only if attorney) §		18. State of highest court where attorney is in good standing (only if attorney) §		
19. Name of the highest court where attorney is in good standing (only if attorney) §				

F. Job Offer Information

a. Job Description

1. Job Title *	
2. Number of hours of work per week Basic *: _____ Overtime: _____	3. Hourly Work Schedule * A.M. (h:mm): ____ : ____ P.M. (h:mm): ____ : ____
4. Does this position supervise the work of other employees? * <input type="checkbox"/> Yes <input type="checkbox"/> No	4a. If yes, number of employees worker will supervise (if applicable) § _____
5. Job duties – A description of the duties to be performed MUST begin in this space. If necessary, add attachment to <u>continue and complete</u> description. *	

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F. Job Offer Information (continued)

b. Minimum Job Requirements

1. Education: minimum U.S. diploma/degree required *	
<input type="checkbox"/> None <input type="checkbox"/> High School/GED <input type="checkbox"/> Associate's <input type="checkbox"/> Bachelor's <input type="checkbox"/> Master's <input type="checkbox"/> Doctorate (PhD) <input type="checkbox"/> Other degree (JD, MD, etc.)	
1a. If "Other degree" in question 1, specify the diploma/degree required §	1b. Indicate the major(s) and/or field(s) of study required § (May list more than one related major and more than one field)
2. Does the employer require a second U.S. diploma/degree? *	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
2a. If "Yes" in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required §	
3. Is training for the job opportunity required? *	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
3a. If "Yes" in question 3, specify the number of <u>months</u> of training required §	3b. Indicate the field(s)/name(s) of training required § (May list more than one related field and more than one type)
4. Is employment experience required? *	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
4a. If "Yes" in question 4, specify the number of <u>months</u> of experience required §	4b. Indicate the occupation required §
5. Special Requirements - List specific skills, licenses/certifications, and requirements of the job opportunity. *	

c. Place of Employment Information

1. Worksite address 1 *	
2. Address 2	
3. City *	4. County *
5. State/District/Territory *	6. Postal code *
7. Will work be performed in multiple worksites within an area of intended employment or at location(s) other than the address listed above? *	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
7a. If Yes in question 7, identify the geographic place(s) of employment with as much specificity as possible. If necessary, submit an attachment to <u>continue and complete</u> a listing of all anticipated worksites. §	

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G. Rate of Pay

1. Basic Rate of Pay Offered * From: \$ ____ . ____ To (Optional): \$ ____ . ____	1a. Overtime Rate of Pay (if applicable) § From: \$ ____ . ____ To (Optional): \$ ____ . ____
2. Per: (Choose only one) * <input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Piece Rate	
2a. If Piece Rate is indicated in question 2, specify the wage offer requirements: §	
3. Additional Wage Information (e.g., multiple worksite applications, itinerant work, or other special procedures). If necessary, add attachment to <u>continue and complete</u> description. §	

H. Recruitment Information

1. Name of State Workforce Agency (SWA) serving the area of intended employment *		
2. SWA job order identification number	2a. Start date of SWA job order *	2b. End date of SWA job order *
3. Is there a Sunday edition of a newspaper (of general circulation) in the area of intended employment? *		<input type="checkbox"/> Yes <input type="checkbox"/> No
Name of Newspaper/Publication (in area of intended employment for H-2B only) *		Dates of Print Advertisement §
4.	From:	To:
5.	From:	To:
6. Additional Recruitment Activities for H-2B program. Use the space below to identify the type(s) or source(s) of recruitment, geographic location(s) of recruitment, <u>and</u> the date(s) on which recruitment was conducted. If necessary, add attachment to <u>continue and complete</u> description. *		

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I. Declaration of Employer and Attorney/Agent

In accordance with Federal regulations, the employer must attest that it will abide by certain terms, assurances and obligations as a condition for receiving a temporary labor certification from the U.S. Department of Labor. Applications that fail to attach Appendix A or Appendix B will be considered incomplete and not accepted for processing by the ETA application processing center.

1. For H-2A Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances and obligations contained in Appendix A. §	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2. For H-2B Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances and obligations contained in Appendix B. §	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

J. Preparer

Complete this section if the preparer of this application is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application.

1. Last (family) name §	2. First (given) name §	3. Middle name
4. Job Title §		
5. Firm/Business name §		
6. E-Mail address §		

K. U.S. Government Agency Use (ONLY)

Pursuant to the provisions of Section 101 (a)(15)(h)(ii) of the Immigration and Nationality Act, as amended, I hereby certify that there are not sufficient U.S. workers available and the employment of the above will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is valid from _____ to _____.

Department of Labor, Office of Foreign Labor Certification

Determination Date (date signed)

Case number

Case Status

Public Burden Statement (1205-0509)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1.5 hours to complete the form and 25 minutes per response for all other H-2B information collection requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW, * Washington, DC * 20210 or by email ETA.OFLC.Forms@dol.gov. **Please do not send the completed application to this address.**


APPENDIX 7

ETA's Response to the Report



JAN 24 2019

MEMORANDUM FOR: CHERYL GARCIA
Assistant Inspector General
Office of Investigations–Labor Racketeering and Fraud
Office of the Inspector General

FROM: MOLLY E. CONWAY 
Acting Assistant Secretary

SUBJECT: Response to the Office of Inspector General Draft Investigative
Advisory Report Number 50-19-001-03-321, *Recommendations
for Enhancing Forms Used for H-2B Non-Agricultural Temporary
Workers*

The Employment and Training Administration (ETA) appreciates the opportunity to respond to the Office of Inspector General's (OIG) November 29, 2018, draft Investigative Advisory Report (IAR) (herein referred to as IAR 3) on the Office of Foreign Labor Certification's (OFLC) *H-2B Application for Temporary Employment Certification* forms. These forms are an essential component of the Department of Labor's (Department) determination that an insufficient number of qualified U.S. workers are available to fill the employer's job opportunity and the employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Background

In early fall of 2017, OFLC notified the OIG of its intent to revise the H-2B application forms, which were set to expire on December 31, 2018. Based on the OIG's experience combatting fraud schemes in foreign labor certification programs, OFLC sought input from the OIG on ways to improve the H-2B application forms to enhance program transparency and integrity. In November 2017, the OIG submitted an initial draft of its IAR (IAR 1) containing seven findings with recommendations to improve the H-2B application forms. After carefully reviewing the findings and recommendations, OFLC worked collaboratively with representatives from the OIG to discuss each recommendation and developed appropriate proposed revisions to the H-2B application forms.

The proposed revisions incorporate many of the OIG's recommendations in IAR 1 to increase program integrity and better position the Department to combat fraud and abuse in the H-2B program. OFLC's proposed revisions to the H-2B application forms are designed to promote greater efficiency by better aligning information collection requirements with current regulatory

provisions, streamlining information collection, and reducing employer time and burden in preparing applications.

On September 7, 2018, OFLC published a 60-day *Federal Register* Notice containing its proposed revisions to the H-2B application forms (herein referred to as the H-2B 60-day package). The *Federal Register* Notice informed the public of the Department's intent to revise the H-2B application forms and afforded the public 60 calendar days, until November 6, 2018, to provide comments on the Department's proposal.

Prior to the September 7 publication, OFLC and OIG staff discussed the findings and recommendations contained in IAR 1. On October 4, 2018, the OIG submitted a revision to its initial draft IAR (IAR 2.) This revised draft IAR contained five findings with recommendations for changes to the H-2B application forms, including suggested language and other content changes. On November 29, 2018, the OIG submitted an updated version of the draft IAR (IAR 3) containing six findings with recommendations and suggested language for inclusion in OFLC's revised H-2B application forms. One recommendation submitted by the OIG in IAR 1, which concerns collecting information from employers on both the Form ETA-9142B and Appendix B, was added back into IAR 3. However, in its discussions with the OIG, OFLC had previously stated that it declined this recommendation in the Paperwork Reduction Act (PRA) package, because the PRA limits the collection of the same information on multiple forms, which is what the OIG was recommending.

This memorandum discusses the changes ETA made to the H-2B 60-day package based on the collaborative discussions between OFLC and the OIG. ETA is still in the process of seeking Office of Management and Budget approval for its proposal. The 30-day *Federal Register* Notice, which was timely submitted for purposes of obtaining month to month extensions of the forms, is currently awaiting publication in the *Federal Register* due to the partial lapse in Federal government appropriations. The PRA only permits ETA to discuss changes that fall within the scope proposed in the 60-day *Federal Register* Notice. When ETA publishes its 30-day *Federal Register* Notice, the OIG and the public will be afforded another 30 calendar days within which to provide comments on the proposed changes to the H-2B application forms. While not all of the OIG's recommendations could be adopted during this process, we look forward to continued collaboration with the OIG and continuing to improve the H-2B program with the OIG's valuable input. Responses to each of the OIG's recommendations in the November 29, 2018, IAR 3 and OFLC's proposed changes published in its H-2B 60-day package are provided below.

Recommendation 1: (Form ETA-9142B, Appendix B, page B.3)

The Form ETA-9142B, *Appendix B*, contains attestations of H-2B program assurances and obligations and requires declarations from the employer and, if applicable, its authorized attorney or agent. The OIG recommended that the *Appendix B* include a summary of information contained on the Form ETA-9142B, *Application for Temporary Employment Certification*. The OIG recommended this repetition of certain information to reduce an employer's ability to claim the employer did not understand H-2B program requirements when violations are discovered. OFLC agrees with the intent of the OIG's recommendation and included modifications to achieve the same outcome.

The OIG recommended the following language from the proposed Form ETA-9142B be included in the Appendix B, page B.3:

- 1) *I intend to employ the following number of H-2B workers: _____ [as listed in Section B.7 of 9142B]*
- 2) *For a period of employment lasting from: _____ [as listed in Section B.5/6 of 9142B]*
- 3) *To work as (job description): _____ [as listed in Section F.a.1 of 9142B]*
- 4) *At the following work location(s) only (County/State): _____ [as listed in Section F.c.1 of 9142B]*
- 5) *I will pay the H-2B workers the basic rate of pay of: ____ [as listed in Section G.1 of 9142B]*
- 6) *I will pay the H-2B workers the overtime rate of pay of: ____ [as listed in Section G.1a of 9142B]*

OFLC agrees it is important for employers to fully understand the information contained on their application prior to submission. The proposed Form ETA-9142B, in combination with the *Appendix B*, collects the necessary information to address the OIG's recommendation. In addition, the employer's signature on *Appendix B* assures the Department that it has read and reviewed all information disclosed on the Form ETA-9142B and attests to the accuracy and truthfulness of the information in the entire H-2B application.

Recommendation 2: (Form ETA-9142B, Appendix B, page B.3)

The OIG recommended that *Appendix B* incorporate the Form ETA-9142B, by reference, to demonstrate the applicant's knowledge of the information disclosed on the H-2B application forms to avoid the shifting of culpability between the employer and any preparer(s) during the course of criminal proceedings. OFLC agrees with this recommendation.

The OIG suggested the following language be included in Appendix B, page B.3 (emphasis added):

I hereby designate the agent or attorney identified in Section D (if any) of the Form ETA-9142B to represent me for the purpose of labor certification and, by virtue of my signature in Block 3 below. I take full responsibility for the accuracy of any representations made by my agent or attorney on all Pages of the ETA-9142B.

I have not received any illegal payment or other thing of value from prospective H-2B workers, agents, or any attorney for the submission of this application, and will not demand or accept such in the future [as listed in Section B.9. of 9142B APPENDIX B]

I declare under penalty of perjury that I have read and reviewed this application, including all Pages of Form ETA-9142B and Pages B.1-B.3 of this Appendix B, and that to the best of my knowledge the information contained therein is true and accurate. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by fines, imprisonment, or both (18 U.S.C. Sections 2, 1001, 18 U.S.C 1546 or 1621.)

OFLC strongly agrees and made proposed revisions in its H-2B 60-day package that substantially reflects the OIG's recommendation with one exception. The Office of the Solicitor advised OFLC that obtaining assurance regarding the receipt of any illegal payments is beyond the scope of OFLC's regulatory authority. To help address the OIG's Recommendation 2, OFLC proposed the following language (emphasis added):

I hereby designate the agent or attorney identified in Section E (if any) of the Form ETA-9142B to represent me for the purpose of labor certification and, by virtue of my signature in Block 5 below, I take full responsibility for the accuracy of any representations made by my agent or attorney on every page of the Form ETA-9142B and documentation supporting this application.

I declare under penalty of perjury that I have read and reviewed this application, including every page of the Form ETA-9142B and supporting documentation, and that to the best of my knowledge the information contained therein is true and accurate. I understand that to knowingly furnish materially false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both (18 U.S.C. 2, 1001, 1546, 1621.)

Recommendation 3: (Form ETA-9142B, Appendix B, page B.1)

As mentioned above, the *Appendix B* summarizes the regulatory assurances and obligations of the H-2B program and includes a signature requirement for employers and, if applicable, their authorized attorneys or agents to assure program compliance. Based on its investigatory experience, the OIG stated that unscrupulous attorneys and agents prepare H-2B applications on behalf of employers to facilitate fraud and abuse in the H-2B program. Because *Appendix B* requires the signature of the attorney or agent, the OIG suggested that OFLC add language to apprise attorneys and agents of the potential punishments of fines, imprisonment, or both, with applicable U.S. Code criminal citations. OFLC strongly agrees with the OIG's recommendation and proposed changes in its H-2B 60-day package that addresses the OIG's recommendation.

The OIG's suggested language is as follows (emphasis added):

...is a felony punishable by fines, imprisonment, or both (18 U.S.C. Sections 2, 1001, 1546 or 1621.)

OFLC's H-2B 60-day package includes revised language as follows (emphasis added):

I HEREBY CERTIFY that I have provided to the employer the Form ETA-9142B and all supporting documentation for review and to the best of my knowledge the information contained herein is true and accurate, including the employer's declaration regarding activities I have undertaken on the employer's behalf in connection with this application. I understand that to knowingly furnish materially false information in the preparation of this form and any supplement hereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both (18 U.S.C. 2, 1001, 1546, 1621.)

Recommendation 4: (Form ETA-9142B, General Instructions, page 1)

With regard to the General Instructions to the Form ETA-9142B, the OIG stated that the instructions lacked an explicit requirement directing employers and their authorized preparers to read the General Instructions document in its entirety before completing the H-2B application forms.

The OIG suggested that OFLC add the following language to its General Instructions:

“IMPORTANT: Employers and authorized preparers must read all instructions carefully before completing the Form...”

OFLC strongly agrees with this recommendation. To strengthen the impact of the recommendation, the H-2B 60-day package proposed to include similar language directly on the Form ETA-9142B itself (employers and their authorized preparers complete this form prior to submission to the Department), instead of just in the General Instructions. OFLC also makes the General Instructions to the Form ETA-9142B publicly available to employers and their authorized preparers, who are responsible for compliance with program requirements.

Recommendation 5: (Form ETA-9142B, General Instructions, page 1)

With regard to the General Instructions to the Form ETA-9142B, the OIG also requested changes to emphasize the consequences of willfully making false or misleading statements. Specifically, the OIG suggested the following language (emphasis added):

Any employer or authorized preparer, who knowingly and willingly furnishes any false information or fraudulent misrepresentations in the preparation of Form ETA-9142B and any supporting documentation, or aids, abets, or counsels another to do so is committing a federal offense, punishable by fines or imprisonment up to five years or both (18 U.S.C. §§ 2, 1001.)

After consulting with the Office of the Solicitor and discussion with the OIG, OFLC is retaining the current language because it is more protective, covering *any person*, not just the employer and authorized preparer, who knowingly and willingly furnish false information to the Department. Thus, OFLC included the following language in the General Instructions to the Form ETA-9142B, as well as the *Appendix B* (emphasis added):

Anyone, who knowingly and willingly furnishes any materially false information in the preparation of Form ETA-9142B and any supporting documentation, or aids, abets, or counsels another to do so is committing a federal offense punishable by fine, imprisonment, or both (18 U.S.C. §§ 2, 1001.) Other penalties apply as well to fraud or misuse of this immigration document and to perjury with respect to this form (18 U.S.C. §§ 1546, 1621.)

Recommendation 6: (Form ETA-9142B, page 1)

With regard to the Form ETA-9142B, the OIG stated that the form itself lacks an explicit requirement that applicants read the General Instructions to the application form. Specifically, the OIG suggested that the Form ETA-9142B contain the following language:

“IMPORTANT: Employers and authorized preparers must read the general instructions carefully before completing the Form...”

ETA’s H-2B 60-day package substantially conformed to the OIG’s recommendation and suggested the same language changes under this recommendation.

Conclusion

OFLC appreciates the opportunities to discuss with the OIG ways in which OFLC might strengthen its H-2B forms. As a result of those discussions, OFLC believes its form proposal contains improvements to the H-2B information collection that will enhance the integrity of the program. OFLC invites the OIG to review its 30-day form proposal, upon publication, and provide further recommendations or feedback.

Thank you for the opportunity to comment on this report and for the OIG’s dedication to assisting the Department in improving its programs. If you have any questions, please contact Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, at 202-693-2772.