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September 8, 2015

Brian Pasternak
National Director of Temporary Programs
Office of Foreign Labor Certification, Room C-4312
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, D.C. 20210

Via email: ETA.OFLC.Forms@dol.gov

**Re: Comments Request for Information Collections in the H-2B Temporary
Non-agricultural Employment-Based Visa Program (OMB Control Number
1205-0509), Extension**

Dear Mr. Pasternak:

We submit these comments on behalf of the H-2B working group of the Low Wage Workers Legal Network (“LWWLN”) in response to the Employment and Training Administration’s (“ETA”) request for comments concerning the information collection in the H-2B temporary non-agricultural employment-based visa program. 80 Fed. Reg. 39,801 (July 20, 2015). The LWWLN is an affiliation of more than 350 legal advocates for low wage workers in over 130 organizations and 28 private law firms located in thirty-four states, the District of Columbia and Mexico. The H-2B working group has been collaborating to make the H-2B program less abusive to U.S. and foreign workers since 2007. The LWWLN appreciates the opportunity to comment on forms ETA-9142B *Application for Temporary Employment Certification*, ETA-9142B *Appendix B*, ETA-9155 *H-2B Registration* and the *Seafood Industry Attestation*.

These comments are also submitted on behalf of the plaintiff organizations in *CATA v. Perez* and related litigation. Those organizations are: Comité de Apoyo a los Trabajadores Agrícolas (CATA), Pineros y Campesinos Unidos del Noroeste (PCUN), and Northwest Forest Worker Center. In addition, these comments are submitted on behalf of the following organizations who have been involved in representation of workers in *CATA v. Perez* and related litigation:

- Northwest Workers' Justice Project (Oregon)
- Friends of Farmworkers, Inc. (Pennsylvania)
- Southern Poverty Law Center
- Centro de los Derechos del Migrante, Inc.
- Florida Legal Services, Inc.
- North Carolina Justice Center

Regulatory Requirements

The proposed forms are intended to implement the requirements of the Interim Final Rule, “Temporary Non-Agricultural Employment of H-2B Aliens in the United States,” 80 Fed. Reg. 24,042 (Apr. 29, 2015) (“2015 H-2B IFR”)

The 2015 H-2B IFR at 20 C.F.R. § 655.15(a) provides:

§ 655.15 Application filing requirements.

(a) What to file. A registered employer seeking H-2B workers must file a completed Application for Temporary Employment Certification (ETA Form 9142B and the appropriate appendices and valid PWD), a copy of the job order being submitted concurrently to the SWA serving the area of intended employment, as set forth in § 655.16, and copies of all contracts and agreements with any agent and/or recruiter, executed in connection with the job opportunities and all information required, as specified in §§ 655.8 and 655.9.

The 2015 H-2B IFR at 20 C.F.R. § 655.18 provides:

§655.18 Job order assurances and contents.

(a) *General.* Each job order placed in connection with an *Application for Temporary Employment Certification* must at a minimum include the information contained in paragraph (b) of this section. In addition, by submitting the *Application for Temporary Employment Certification*, an employer agrees to comply with the following assurances with respect to each job order:

(1) *Prohibition against preferential treatment.* The employer's job order must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2B workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H-2B workers. This does not relieve the employer from providing to H-2B workers at least the minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

(2) *Bona fide job requirements.* Each job qualification and requirement must be listed in the job order and must be bona fide and consistent with the normal and accepted qualifications and requirements imposed by non-H-2B employers in the same occupation and area of intended employment.

(b) *Contents.* In addition to complying with the assurances in paragraph (a) of this section, the employer's job order must meet the following requirements:

- (1) State the employer's name and contact information;
- (2) Indicate that the job opportunity is a temporary, full-time position, including the total number of job openings the employer intends to fill;
- (3) Describe the job opportunity for which certification is sought with sufficient information to apprise U.S. workers of the services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;
- (4) Indicate the geographic area of intended employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;
- (5) Specify the wage that the employer is offering, intends to offer, or will provide to H-2B workers, or, in the event that there are multiple wage offers, the range of wage offers, and ensure that the wage offer equals or exceeds the highest of the prevailing wage or the Federal, State, or local minimum wage;
- (6) If applicable, specify that overtime will be available to the worker and the wage offer(s) for working any overtime hours;
- (7) If applicable, state that on-the-job training will be provided to the worker;
- (8) State that the employer will use a single workweek as its standard for computing wages due;
- (9) Specify the frequency with which the worker will be paid, which must be at least every 2 weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent;
- (10) If the employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, disclose the provision and cost of the board, lodging, or other facilities, including fringe benefits or assistance to be provided;
- (11) State that the employer will make all deductions from the worker's paycheck required by law. Specify any deductions the employer intends to make from the worker's paycheck which are not required by law,

including, if applicable, any deductions for the reasonable cost of board, lodging, or other facilities;

(12) Detail how the worker will be provided with or reimbursed for transportation and subsistence from the place from which the worker has come to work for the employer, whether in the or abroad, to the place of employment, if the worker completes 50 percent of the period of employment covered by the job order, consistent with §655.20(j)(1)(i);

(13) State that the employer will provide or pay for the worker's cost of return transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer, if the worker completes the certified period of employment or is dismissed from employment for any reason by the employer before the end of the period, consistent with §655.20(j)(1)(ii);

(14) If applicable, state that the employer will provide daily transportation to and from the worksite;

(15) State that the employer will reimburse the H-2B worker in the first workweek for all visa, visa processing, border crossing, and other related fees, including those mandated by the government, incurred by the H-2B worker (but need not include passport expenses or other charges primarily for the benefit of the worker);

(16) State that the employer will provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned, in accordance with §655.20(k);

(17) State the applicability of the three-fourths guarantee, offering the worker employment for a total number of work hours equal to at least three-fourths of the workdays of each 12-week period, if the period of employment covered by the job order is 120 or more days, or each 6-week period, if the period of employment covered by the job order is less than 120 days, in accordance with §655.20(f); and

(18) Instruct applicants to inquire about the job opportunity or send applications, indications of availability, and/or resumes directly to the nearest office of the SWA in the State in which the advertisement appeared and include the SWA contact information.

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

Annexed hereto and incorporated herein is a marked up ETA Form 9142B reflecting comments below

General Note on ETA 9142B Instructions

These comments do not attempt to fully address deficiencies in the accompanying instructions and the commenters would strongly recommend that DOL review the instructions to insure that they fully reflect the requirements of the April 2015 Interim H-2B rule and that they incorporate changes to the forms recommended below. As similarly noted in reference to the ETA Form 9142B below, the instructions continue to include references applicable to H-2A rather than H-2B employment.¹

Form ETA-9142B: Section B. Temporary Need Information

This section should be updated to reflect the new requirement that employers first go through H-2B registration demonstrating the nature of their need meets H-2B program requirements. 20 CFR § 655.11. In addition, in joint employer (job contractor) situations each joint employer must have submitted an ETA Registration Form.

The annexed marked up ETA Form 9142B includes the following requirements:

ETA Form 9155 Registration Number: _____

ETA Form 9155 Approval Period From: _____ To: _____

Set out all changes from ETA Form 9155 first year registration statement:

Change in number of temporary positions: _____

Change in period of employment: _____

Change in nature of temporary need: _____

All other changes: _____

Joint Employer ETA Form 9155 Registration Number (if any): _____

The instructions to this section need to be fully revised to reflect and reference proposed ETA Form 9155 registration procedures and requirements. This should include a specific requirement that the job duties and occupational code must match those on the ETA Form 9155 or a new Form 9155 must be submitted. Also note that the instructions to Section B at Part 4 ignore the IFR definition of full time at 20 C.F.R. § 655.5 as note less than 35 hours.

¹ For example, see instructions Section B.8. reference to “temporary agricultural....work:

Form ETA-9142B: Section C. Employer Information and Section D. Employer Point of Contact Information and Section D. Employer Point of Contact Information

The proposed ETA Form 9142B fails to reflect that this form is applicable to H-2B employment only and that the ETA Form 9142A is appropriate for H-2A employment. All references to H-2A employers should be stricken. See annexed marked up ETA Form 9142B. This requires changes to the “Important Note” at the beginning of this section and to C.17 references to H-2A employment. As to C.17 see ETA Form 9155 at C.17.

Under the 2015 IFR, H-2B *job contractors* are allowed to submit applications for H-2B certification only if they submit the application as a *joint employer* with the employer applicant. 20 CFR § 655.19. These sections should be modified to clarify that if a joint employer job contractor is applying there is space for both the employer and job contractor to provide all of the information requested in sections C and D. See annexed marked up ETA 9142B.

Form ETA-9142B: Section F.a. Job Description Information

Section F.a. collects information about the job description including the hourly work schedule (box 3). The form at Part F.a.3. should be edited so that employers are instructed to attach an anticipated work schedule if it is variable by day. The current version of form ETA 9142B just asks for one start and stop time, however it is very common for employers to have a different start and/or stop time for weekend work. Therefore, in order to get better information from employers about the anticipated work schedule the form should ask for the hourly work schedule for each workday. This will also be important when workers are invoking their right to the three-fourths guarantee in the 2015 IFR. 20 CFR § 655.20(f).

Form ETA-9142B: Section F.b. Minimum Job Requirements

DOL should re-examine the appropriateness of most of the provisions of Section F.b which were related to the definition of skill levels under prior regulatory schemes.

Section F.B.5 Special Requirements should be carefully scrutinized by DOL in order to determine that they are genuinely necessary rather than a mechanism to discourage U.S. workers from applying for jobs.

Form ETA-9142B: Section G. Rate of Pay

ETA Form 9142B should be amended to require the entry of the ETA 9141 Prevailing wage tracking number as is the case for the PERM program ETA 9089 Part F.1. The ETA Form 9141 prevailing wage determination should be attached to the publicly disclosed ETA Form 9142B and incorporated into the terms of the finally approved ETA Form 9142B.² In the past

² The ICERT portal <https://icert.doleta.gov/index.cfm?event=ehLCJRExternal.dspAdvJobOrderSearch> makes it possible for the public to access both Job Orders and redacted ETA 9142B labor certification

DOL's computerized record systems for the H-2B program have been unable to link ETA 9141 prevailing wage determinations to ETA 9142B labor certifications. Inclusion of this information on computerized processing of the ETA 9142B through the ICERT portal would ease administration of the H-2B program.

Question 2 of Section G. allows the employer to choose whether its basic rate of pay reflects hourly, weekly, bi-weekly, monthly, annual, or piece rate pay. Employer should only be permitted to supply the minimum basic rate of pay consistent with the terms of the ETA 9141 prevailing wage determination (including whether a prevailing wage is an hourly or weekly wage rate). Any employer seeking to pay on a weekly basis who received an ETA 9141 minimum hourly wage determinations must be required to guarantee that the weekly wage rate will at all times be no less than the minimum required hourly prevailing wage rate and to disclose that minimum hourly wage rate to workers.

In our experience with H-2B workers, many employers who use a flat weekly rate which meets the minimum wage standard for a 35 or 40 hour workweek, pay that flat weekly rate regardless of how many hours the workers are forced to work. For instance, workers in the fair and carnival industry have been required to work more than 80 hours a week for a weekly rate of approximately \$300 dollars. Three hundred dollars a week may have met minimum or prevailing wage standards for a 35 hour workweek at \$8.57, but fails to meet any reasonable standard for 80 hours a week at \$3.75 an hour.³ In order to prevent and monitor this potential form of exploitation, DOL should require that the employer promise to pay not less than the minimum hourly wage rate and disclose that required rate.

Form ETA-9142B: Section H. Recruitment Information

We understand that the current Section H.2 which collects recruitment information about placing the job order with the SWA will no longer be needed because under the 2015 IFR employers will conduct domestic recruitment after their application has been accepted. *See* Sections H.2a. and H.2b. *See also*, 20 C.F.R. § 655.15(a) providing for simultaneous filing of a proposed job order with a SWA and with DOL. However, this information as to the state SWA job order should be otherwise recorded by DOL on the form during its processing after the SWA has assigned the number.

For the H-2A program DOL has developed ETA Forms 790 and 795 to reflect the requirements for **Job Orders**. It is essential to develop similar forms and instructions for Job Orders for the H-2B program and to insure that this information is made available both to U.S.

decisions. However, it is unclear at this time if DOL intends to continue to make both forms available. Commenters strongly urge DOL to do so and to insure that the terms of ETA 9141 prevailing wage determinations are included therein.

³ Centro de los Derechos del Migrante, Inc., *Taken for a Ride: Migrant Workers in the U.S. Fair and Carnival Industry* 8 (Feb. 2013), available at http://www.cdmigrante.org/wp-content/uploads/2013/02/110145_Taken_for_a_Ride_Report_Final.pdf

and non-immigrant foreign workers. Many of the requirements of the ETA 9142B Appendix B reference terms of “Job Orders” and it is critical that the ETA 9142B include those provisions as an attachment to it. See 20 C.F.R. § 655.18 requirements.

DOL has provided some interim guidance on the H-2B recruitment process “Recruitment Procedures and the Recruitment Report” on its website at: http://www.foreignlaborcert.doleta.gov/pdf/H-2B_2015_IFR_FAQs_Round7.pdf. Employers are required to submit proposed Job Orders for approval by DOL with the ETA Form 9142B. See 20 C.F.R. § 655.15(a). In order to implement this the ETA 9142B at part H.6 should include an instruction to “Attach proposed Job Order and Distribute the approved final job order to all prospective U.S. and non-immigrant workers.”

The final approved Job Orders should be required to be provided to workers in the native language and copies of translated Job Orders should be required to be filed with DOL.

Recruitment of Non-Immigrant Foreign Workers

DOL should create a new section on the ETA 9142B or otherwise to collect information about the recruitment of foreign workers. 20 CFR § 655.9. The 2015 IFR require all employers to provide information about any persons or organizations they hire to recruit workers and anyone that works with those people or organizations. This form should collect the identity and location of everyone that will be involved in foreign recruitment that is known to the employer when the application is submitted and should notify employers that they have a duty to update that information whenever it changes. .

Since employers are now required to provide copies of *all* agreements with agents or recruiters who engage or plan to engage in recruitment of H-2B workers on behalf of the employer as part of the Application for Temporary Employment Certification an expanded recruitment section in the actual form will assist DOL with the collection of information regarding such agreements, as well as contribute to the uniformity of employer-provided information regarding recruitment plans for H-2B workers.

A section on foreign recruitment is also essential to ensure that employers are complying with § 655.9(b) of the 2015 IFR , which requires disclosure of the any agent or recruiter – as well as any actors or entities hired by those agents or recruiters – with whom the employer has a recruitment agreement. Questions regarding foreign recruitment should be incorporated into the form and the application should be rejected if such information is not included. Only if an employer directly recruits its own H-2B workers should these fields be optional, and, in that case, an explanation and proof of direct recruitment must be provided for the application to be approved.

Given the importance of recognizing all the actors in the chain of recruitment for purposes of preventing fraud, *Section H. Recruitment Information* should be altered to include questions regarding the employer’s planned recruitment strategy for H-2B workers. Questions should require that the employer list any and all actors that will be involved in the recruitment of

foreign workers and remind employers to update the Department if any other actor becomes involved in the recruitment process. This question should go beyond the requirement of disclosing formal relationships with agencies and recruiters. Employers should make an effort to list *any* actor who will be involved in the recruitment process. This will help DOL collect information on recruiters and agents so that it will be able to properly maintain the publicly available list of such actors who are involved in agreements with U.S. employers to recruit H-2B workers, under § 655.9(c) of the 2015 IFR.

ETA Form 9142B - Appendix B

Part A Attorney or Agent Declaration

A significant percentage of the agents for H-2B employers continue to be non-attorneys and there have been numerous documented cases with evidence of non-attorney H-2B agent fraud including cases resulting in criminal prosecutions.

The declaration by an attorney or agent – unlike the declaration of the employer – is not made “under penalty of perjury.” Pursuant to 18 U.S.C. § 1546:

...Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact - ...

Requiring agent declarations to be made under penalty of perjury would increase the ability of the government to enforce these provisions against agents of employers.

Part B Employer Declaration

In accordance with the 2015 H-2B IFR the employer certifications have been appropriately significantly approved over the terms of the previous ETA Form 9142B. As noted above this Declaration references the “job order” and it is essential that the full terms of the “job order” are included in by reference in the ETA 9142B.

In Item 1: the Employer should state that he has not only listed all qualifications and requirements in the job order but also all applicable terms and conditions of work.

Significantly missing from the employer certifications on the ETA 9142B and otherwise is a certification that the employer who had previously been certified to employ H-2B workers has complied with the terms of past H-2B labor certifications and has paid all wages due to workers for their prior employment. This requirement could alternatively be included within the ETA Form 9155 Registration process. This lapse is material as to employers who have failed to pay required wages from prior years and who may seek to avoid liability therefore by invoking statute of limitations defenses. Commenters continue to believe that thousands of workers employed by employers who did not appeal the 2013 supplemental prevailing wage determinations have failed to pay full wages due to such workers. Imposing a requirement that such employers certify to past compliance in order to be permitted to participate in the H-2B

program is essential. This certification could be added to Item 5 through the additional statement: “I further certify that I have paid all wages which were due to H-2B workers and corresponding U.S. workers under prior H-2B labor certifications.”

Item 9 should include a certification that the employer has not sought or received “...and will not seek or receive...” Employers should not be permitted to truthfully make such assertions and then seek to receive such payments in the future.

Item 20: states that employer will disclose “job order to all H-2B workers no later than the date the worker applies for a visa if located abroad” When the worker applies for the visa is vague. Workers pay visa fees through a bank at one time, file a DS 156 at another time, and appear for an interview at some later date. DOL should clarify that disclosure should be made at the time of recruitment of the non-immigrant worker and in any event no later than the payment of any visa fees. Item 20 disclosures should also include a copy of the Employer Declaration certifications attached to the 9142B.

Item number 23 of the list of declarations made by H-2B employers is a certification that the employer “has and will contractually forbid” anyone involved in international recruitment from seeking recruitment fees and that the employer has provided copies of all agreements with anyone who will be involved in international recruitment. At the time an employer submits the signed Appendix B they usually have not begun to engage in international recruitment since they have not yet had their application for H-2B employment certified. Therefore, it is very possible that the identities of people engage in international recruitment may change or new people may become involved. DOL should have employers certify that they will continue to provide DOL with information about recruiters throughout the period of H-2B certification.

Our understanding based on the 2015 IFR and the FAQs available on www.foreignlaborcert.doleta.gov is that when job contractors submit 9142B as joint employers both the job contractor and the employer-client are required to separately sign and submit the declarations in Appendix B. DOL should consider creating a version of Appendix B that would allow the joint employers to sign the same document so that is very clear to the two entities that they are both agreeing to be responsible for all of the assurances listed in Appendix B.

ETA Form 9142B - Seafood Industry Attestation

The attestation form at Part (C) indicates that a copy of the form will be provided to the worker. The form should include a requirement to provide a copy of the form to the worker in English and in their native language.

The employer should be required to certify that the Job Order for recruitment of U.S. workers will remain active with the State Workforce Agency until 21 days before the last H-2B seafood worker is anticipated to begin employment.

The form should reflect that any qualified U.S. worker will be entitled to be employed if they are available as of the last date on which the last H-2B worker will be scheduled to begin employment.

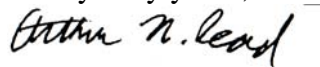
ETA Form 9155

Although it is presumably the intent that Joint Employers (including Job Contractors) will jointly submit requests for Registration based on the need of the actual situs employer (not the Job Contractor) it is not clear from the form itself and its instructions who Joint Employers will physically complete the ETA Form 9155. It might be that a modified Form 9155 for joint employment would be most appropriate in this regard.

As with comments on the ETA Form 9142B Appendix B, we would suggest that the ETA Form 9155 should require the signatories to execute the form under penalty of perjury.

We would suggest that DOL make the ETA Form 9155 in appropriate public disclosure format publicly available on the ICERT website as an annex to the ETA 9142B labor certifications or otherwise.

Very truly yours,

A handwritten signature in black ink, appearing to read "Arthur N. Read", followed by a horizontal line.

Arthur N. Read
General Counsel
Friends of Farmworkers, Inc.

Comments on Changes to ETA Form 9142B

OMB Approval: 1205-0509
Expiration Date: 10/31/2015

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



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? *

☐ Yes ☐ No

Period of Intended Employment

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

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)

a. New employment *

d. New concurrent employment *

b. Continuation of previously approved employment *
without change with the same employer

e. Change in employer *

c. Change in previously approved employment *

f. Amended petition *

8. Nature of Temporary Need: (Choose only one of the standards) *

☐ Seasonal ☐ Peakload ☐ One-Time Occurrence ☐ Intermittent or Other Temporary Need

9. Statement of Temporary Need *

ETA Form 9155 Registration Number: _____

ETA Form 9155 Approval Period From: _____ To: _____

Set out all changes from ETA Form 9155 first year registration statement:

Change in number of temporary positions: _____

Change in period of employment: _____

Change in nature of temporary need: _____

All other changes: _____

Joint Employer ETA Form 9155 Registration Number (if any): _____

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with the same information for the joint employer

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 **Remove**, 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"/> Remove		
<input type="checkbox"/> Job Contractor		
<input type="checkbox"/> Association – Sole Employer (H-2A only)		
<input type="checkbox"/> Association – Joint Employer (H-2A only)		
<input type="checkbox"/> Association – Filing as Agent (H-2A only)		

H-2B Job Contractor
Redact H-2A reference

H-2B Job Contractor / Joint Employer
Redact H-2A reference. See ETA 9155 C.17

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 **Remove H-2A**, enter **only** the contact information for the main or primary employer (e.g., contact for an association filing as joint employer) under the application. **Include an attachment with the same information for the joint employer.**

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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U.S. Department of Labor



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 * <i>Attach anticipated schedule if variable by day</i> 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 **Prevailing Wage Tracking Number (ETA 9141):** _____

<p>1. Basic Rate of Pay Offered *</p> <p>From: \$ ____ . ____ To (Optional): \$ ____ . ____</p>	<p>1a. Overtime Rate of Pay (if applicable) \$</p> <p>From: \$ ____ . ____ To (Optional): \$ ____ . ____</p>
<p>2. Per: (Choose only one) *</p> <p style="text-align: center;"> <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 </p>	
<p>2a. If Piece Rate is indicated in question 2, specify the wage offer requirements: \$</p>	
<p>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. \$</p> <p style="color: purple; font-weight: bold;">Attach ETA 9141 and state approved guaranteed minimum hourly prevailing wage rate: _____</p>	

H. Recruitment Information

<p>1. Name of State Workforce Agency (SWA) serving the area of intended employment *</p>		
<p style="color: purple; font-weight: bold;">Remove Changed Regulations</p>		
<p>3. Is there a Sunday edition of a newspaper (of general circulation) in the area of intended employment? *</p>		<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Name of Newspaper/Publication (in area of intended employment for H-2B only) *</p>		<p>Dates of Print Advertisement \$</p>
4.	From:	To:
5.	From:	To:
<p>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. *</p> <p style="color: purple; font-weight: bold;">Attach proposed Job Order and Distribute the final approved job order to all prospective U.S. and non-immigrant workers in their native language</p>		

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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.

Remove	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
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.**