



**Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers
Under Section 105 of Division H of the Consolidated Appropriations Act, 2019 Public
Law 116-6 (February 15, 2019)
Form ETA-9142-B-CAA-3
General Instructions
U.S. Department of Labor**

Please read these instructions carefully before completing the Form ETA-9142-B-CAA-3, Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act for Fiscal Year (FY) 2019. These instructions contain explanations of the attestations and information collection that make up the Form ETA- 9142-B-CAA-3. In accordance with Federal Regulations at 8 CFR 214.2, 20 CFR 655.64 and 20 CFR 655.66, an eligible employer must prepare and file a completed Form ETA-9142-B- CAA-3 with the Department of Homeland Security's (DHS), United States Citizenship and Immigration Services (USCIS), at the appropriate service center in order to employ H-2B workers in fiscal year 2019. All required fields/items must be completed.

OMB NOTICE:

Members of the public are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to reply are required (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Public reporting burden for this collection of information, which is to assist with program management and to meet Congressional and statutory requirements is estimated to average 5.75 hours per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Members of the public may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 200 Constitution Ave., NW, Suite PPII 12-200, Washington, DC, 20210. (Paperwork Reduction Project OMB 1205-0535) DO NOT send the completed attestation to this address.

HOW TO FILE:

The attestation must be filed on Form ETA-9142-B-CAA-3, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act* (OMB Approval Number 1205-0535). Once the Form ETA-9142-B-CAA-3 is completed, the employer or its authorized attorney or agent must submit the completed attestation to USCIS along with the approved Form ETA-9142B, *Application for Temporary Employment Certification*, a copy of the signed and dated Appendix B, and all forms, fees and documentation required by USCIS to support a petition with USCIS under the H-2B visa classification.

In accordance with Federal Regulations at 8 CFR 214.2 and 20 CFR 655.64, an eligible employer must prepare and file a completed Form ETA-9142-B-CAA-3 directly with the DHS USCIS at the appropriate service center in order to employ H-2B workers in fiscal year 2019.

ATTESTATIONS:

The employer must carefully read and agree to attestation statements (A) through (H) on the form and demonstrate agreement to accuracy and compliance by signing the form. An employer completes this attestation to document its agreement to abide by certain requirements as a condition of receiving authorization to employ certain nonimmigrant workers under the H-2B visa classification. This signed attestation form, along with all other supporting documentation and information, must be retained by the employer in accordance with 20 CFR 655.66, 20 CFR 655.56, and 29 CFR 503.17.

Note: This attestation does not apply to workers who have already been counted under the fiscal year 2019 H-2B (66,000) cap or those who are exempt from the fiscal year 2019 H-2B cap.

Attestation (A): The employer must verify that it has a valid and certified Form ETA-9142B seeking to employ H-2B nonimmigrant workers for temporary employment within the United States.

Attestation (B): The employer must verify that it has an approved Form ETA-9142B issued by the Department of Labor (DOL) containing a completed Section K and a certified start date of work before October 1, 2019, and the certified end date of work has not elapsed.

Attestation (C): The employer must attest, pursuant to 20 CFR 655.64(b) and (d), to the likelihood of irreparable harm if the employer's business cannot employ all the H-2B nonimmigrant workers requested on its I-129 petition, and provide all documents and records in the event of an audit, investigation, or other request by DOL or DHS. The documents and records must provide evidence that sufficiently establishes that the employer met its burden to demonstrate that if the petitioner's business is unable to employ H-2B workers for the remainder of this fiscal year, it would likely suffer irreparable harm (that is, permanent and severe financial loss).

Important Note: If an audit, investigation, or other request for documentation occurs, DHS or DOL will review all evidence to confirm that the petitioner properly attested and establish to DHS its business needs. The attestation, however, only constitutes *prima facie* evidence that the petitioner satisfies the eligibility requirements for petitions filed under.

Attestation (D): The employer must attest that it has a *bona fide* temporary need for the H-2B workers listed on its approved Form ETA-9142B.

Attestation (E): The employer must attest that each of the workers, whether named or unnamed, it will be requesting in its petition and/or instructing to apply for a visa under this petition have been issued an H-2B visa or otherwise granted H-2B status during one of the last three (3) fiscal years (Fiscal Years 2016, 2017 or 2018), consistent with 8 CFR 214.2(h)(6)(x).

Attestation (F): The employer must agree that if it is filing the Form ETA-9142-B-CAA-3 and the Form I-129 petition 45 or more days after the certified start date of work, as shown on the Form ETA-9142B, it will complete the additional recruitment required by 20 CFR 655.64. The additional

recruitment, if required, must be completed in advance of H-2B workers commencing employment.

Attestation (F)(1): The employer must agree to place a new job order for the job opportunity with the State Workforce Agency (SWA) serving the area of intended employment that contains the job assurances and contents set forth in 20 CFR 655.18 for recruitment of U.S. workers at the place of employment for at least 5 days beginning not later than the next business day after 3 submitting a petition for an H-2B nonimmigrant worker(s) and this accompanying attestation to U.S. Citizenship and Immigration Services. The employer should use the job order previously placed with the SWA and associated with the approved Form ETA 9142B, Application for Temporary Employment Certification, with minor adjustments to apprise prospective U.S. applicants that the job opportunity remains open to any qualified and eligible U.S. worker who apply.

Attestation (F)(2): The employer must agree to place one newspaper advertisement, which may be published on any day of the week, meeting the advertising requirements of 20 CFR 655.41, during the period of time the SWA is actively circulating the job order for intrastate clearance.

Attestation (F)(3): The employer must offer the job to all qualified and available U.S. workers who apply for the job, or who are referred to the job, consistent with the hiring requirements in 20 CFR 655.40(a).

Attestation (G): The employer must agree to retain a copy of this signed attestation form, along with evidence reasonably establishing that its business is likely to suffer irreparable harm (that is, permanent and severe financial loss) without these H-2B nonimmigrant workers as set out in 20 CFR 655.64(b) and (d), for a period of 3 years from the date of certification, consistent with the document retention requirements under 20 CFR 655.66, 20 CFR 655.56, and 29 CFR 503.17.

Attestation (H): The employer must agree to retain documentary evidence that each of the workers, whether named or unnamed, it will be requesting on its H-2B petition are only workers who have been issued an H-2B visa or otherwise granted H-2B status during one of the last three (3) fiscal years (Fiscal Years 2016, 2017 or 2018), consistent with 8 CFR 214.2(h)(6)(x).

Attestation (I): The employer must agree to comply with all assurances, obligations, and conditions of employment set forth in the Application for Temporary Employment Certification (Form ETA-9142B and Appendix B) certified by the DOL for its job opportunity. Employers are reminded to review and ensure they understand the obligations and assurances of Appendix B of Form ETA-9142B.

PERJURY STATEMENT AND SIGNATURE

You must review and ensure that you are eligible and affirm all attestations prior to signing. When you sign Form ETA-9142-B-CAA-3, Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, you are declaring under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Form ETA-9142-B-CAA-3 will not be considered complete and valid if the application is not signed and dated by an individual who has the authority to sign Form ETA-9142-B-CAA-3. An attorney or agent should not sign this section unless the attorney or agent is an employee of the employer and has authority to sign as the employer.

Anyone who knowingly and willingly furnishes any false information in the preparation and submission of the Form ETA-9142-B-CAA-3 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).

1. Enter the last (family) name of the person with authority to sign as the employer. Enter the first (given) name of the person with authority to sign as the employer.
2. Enter the case number for your DOL-certified Form ETA-9142B.
3. The person with authority to sign as the employer must sign the application. Read the entire application and verify all contained information prior to signing. The person with authority to sign as the employer must date the application.
4. Use a month/day/full year (MM/DD/YYYY) format.