

Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers
Under Section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public
Law 118-47, as extended Public Law 119-37
Form ETA-9142-B-CAA-10, General Instructions
U.S. Department of Labor



Please read these instructions carefully before completing the Form ETA-9142-B-CAA-10, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by Public Law 119-37*. These instructions contain explanations of the attestations and information collection that make up the Form ETA-9142-B-CAA-10. In accordance with Federal Regulations at 8 CFR 214.2, 20 CFR 655.64, and 20 CFR 655.69, an eligible employer must prepare and file a completed Form ETA-9142-B-CAA-10 with the U.S. Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS), at the current filing location for H-2B petitions in order to employ H-2B nonimmigrant workers pursuant to a certified temporary labor certification from the Department of Labor (DOL) which required that the worker(s) begin employment on or after January 1, 2026 through September 30, 2026. All required fields/items must be completed.

Public Burden Statement:

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 hours per response, including the time to review instructions, complete and submit the form, comply with all requirements (e.g., recruitment; record keeping). 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 * Box N-5311 * Washington, DC * 20210 or by email to ETA.OFLC.Forms@dol.gov. (Paperwork Reduction Act OMB 1205-0NEW) **DO NOT send the completed attestation to this address.**

HOW TO FILE: The attestation must be filed on Form ETA-9142-B-CAA-10, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by Public Law 119-37*, (OMB Approval Number 1205-0NEW). Once the Form ETA-9142-B-CAA-10 is completed, the employer or its authorized attorney or agent must submit it to USCIS along with the approved Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval*, and all forms, fees and documentation required by USCIS to support a petition with DHS USCIS under the H-2B visa classification. A petition may be filed with only a single Form ETA-9142-B-CAA-10.

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-10 directly with DHS USCIS at the appropriate filing location in order to employ H-2B workers under this temporary final rule.

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REQUESTED ALLOCATIONS: The employer must specify, by marking one of the boxes provided in this part of the Form ETA-9142-B-CAA-10, under which Fiscal Year (FY) 2026 supplemental allocation it will be requesting workers in the H-2B petition to be filed with USCIS.

ATTESTATIONS: The employer must carefully read and agree to attestation statements (A) through (K) 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 655.69, 20 CFR 655.56, and 29 CFR 503.17.

Important Note: These attestations do not apply to workers who have already been counted under the FY 2026 H-2B statutory visa cap (66,000) or those who are exempt from the FY 2026 H-2B visa cap.

Attestation (A): The employer must verify that it received a certified Form ETA-9142B, *H-2B Application for Temporary Employment Certification and Final Determination: H-2B Temporary Labor Certification Approval*, including all appendices, issued by DOL.

Attestation (B): The employer must verify that the approved Form ETA-9142B, *H-2B Application for Temporary Employment Certification and Final Determination: H-2B Temporary Labor Certification Approval*, including all appendices, issued by DOL contains a completed footer indicating the H-2B Case Number, Case Status, Determination Date, and validity period (i.e., certified start and end dates of work) and that the certified start date of work occurs on or after January 1, 2026 through September 30, 2026, and the certified end date of work has not elapsed.

Attestation (C): The employer must attest that it ***is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss)*** without the ability to employ all of the H-2B workers requested on the Form I-129 petition filed pursuant to 8 CFR 214.2(h)(6)(xvi) in the job opportunity certified by DOL. Additionally, the employer must agree to provide all documents and records, as described below, in the event of an audit, investigation, or other request by DOL and/or DHS. The documents and records must provide evidence establishing that the employer met its burden to demonstrate that if the employer's business is unable to employ all of the H-2B workers requested on the Form I-129 petition filed with DHS USCIS, it is suffering irreparable harm or will suffer impending irreparable harm.

While the employer need not submit supporting documents with this attestation and H-2B petition, the employer must retain and be able to provide, at the time of filing the Form I-129 petition or upon request from DHS and/or DOL, all applicable type(s) of evidence to establish that the employer meets the irreparable harm standard, and mark each box that corresponds to these applicable type(s) of evidence. Providing only one form of evidence will not necessarily meet the irreparable harm standard. The employer's attestation must identify the types of evidence the employer is relying on and will retain to meet the irreparable harm standard. The employer must attest that it has created a detailed written statement describing how it is suffering irreparable harm or will suffer impending irreparable harm and describing how such evidence demonstrates irreparable harm. In addition, the employer must attest that it will provide to DHS and/or DOL upon request all of the documentation it relied upon and retained as evidence that it

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meets the irreparable harm standard, including all of the supporting documentation the employer committed to retain at the time of filing on the employer's attestation form by selecting a checkbox next to the applicable type of documentation in section C, and the written statement describing how such evidence demonstrates irreparable harm. Such evidence may include, but is not limited to:

- Executed work contracts - Select this option if the employer has retained evidence that the business is suffering irreparable harm or will suffer impending irreparable harm due to the inability to meet existing financial or contractual obligations without the services or labor of the H-2B workers in the job opportunity certified by DOL, including evidence of executed work contracts where the work will be performed during FY 2026, that have been cancelled or would be cancelled, and evidence demonstrating an inability to pay debts/bills, without the ability to employ all of the requested H-2B workers.
- Work orders, reservations, or other business arrangements - Select this option if the employer has retained evidence that the business is suffering irreparable harm or will suffer impending irreparable harm due to the inability to meet business commitments based on work orders with clients or customers necessitating the services or labor to be performed, sales or reservations, or any other business arrangements demonstrating a commitment to deliver the services or labor needed where such work will be performed during FY 2026 that have been cancelled or would be cancelled without the ability to employ all of the requested H-2B workers.
- Financial records - Select this option if the employer has retained evidence that the business is suffering irreparable harm or will suffer impending irreparable harm due to the inability to employ all of the requested H-2B workers in the job opportunity certified by DOL during the employer's period of need, as compared to prior years, such as financial statements (including profit/loss statements) comparing the period of need to prior years; bank statements, tax returns, or other documents showing evidence of current and past financial condition demonstrating an inability to pay debts/bills; and relevant tax records, employment records, or other similar documents showing hours worked and payroll comparisons from prior years to the current year.
- Payroll records or earnings statements - Select this option if the employer has retained payroll records or other earnings statements as evidence that the business is suffering irreparable harm or will suffer impending irreparable harm due to the inability to employ all of the requested H-2B workers in the job opportunity certified by DOL, such as evidence showing the number of workers needed in the previous three fiscal years (i.e., FY 2023, 2024, and 2025) to meet the employer's temporary need as compared to those currently employed or were expected to be employed at the beginning of the start date of need certified by DOL. Such evidence must show, at a minimum, the number of H-2B workers requested, the number of H-2B workers actually employed, the dates of their employment, and their hours worked, particularly in comparison to the weekly hours stated on the approved temporary labor certification from DOL. If the employer selects this option, and obtains authorization to employ H-2B workers under this rule during FY 2026, the employer must also retain evidence, at a minimum, showing the number of H-2B workers the employer's business claims are needed and the number of workers actually employed, including H-2B workers, the dates of their employment, and their hours worked, particularly in comparison to the weekly hours stated on the approved temporary labor certification from DOL.

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- Evidence of reliance on a certain number of workers to operate, based on the nature and size of the business – Select this option if the employer has retained evidence that the business is suffering irreparable harm or will suffer impending irreparable harm due to its reliance on the services or labor to be performed by H-2B workers in the job opportunity certified by DOL, based on the nature and size of the employer's business, such as documentation showing the number of workers it has needed to maintain its operations in prior years; or will in the near future need, including but not limited to: a detailed business plan, copies of purchase orders or other requests for good and services, or other reliable forecast of an impending need for workers.
- Other types of evidence demonstrating irreparable harm – Select this option if the employer has retained other evidence that the business is suffering irreparable harm or will suffer impending irreparable harm which is not covered by any one of the types of documents listed above. Once selected, the employer must use the free text field to identify the evidence retained, including the type(s) or name(s) of the documents, timeframes (e.g., year, service period) covered by the document(s), and a brief description of the business commitment or service transaction related to the document.

Important Note: If an audit, investigation, or other request for documentation occurs, DHS or DOL will review all evidence to confirm that the employer properly attested and established to DHS its business needs. As the burden rests with the petitioner to prove eligibility for supplemental H-2B visas by a preponderance of the evidence, it is the petitioner's burden to establish that it meets the irreparable harm standard. The attestation, however, only constitutes *prima facie* evidence that the employer satisfies the eligibility requirements for petitions filed under 8 CFR 214.2(h)(6)(xvi). If DHS subsequently finds that the evidence does not support the employer's attestations, DHS may deny the petition or, if the petition has already been approved, revoke the petition at any time consistent with existing regulatory authorities. In addition, where the employer has not shown sufficient proof of irreparable harm, DOL may independently take enforcement actions, including, among other things, debarring the employer from the H-2B program for 1 to 5 years from the date of the final agency decision, which also disqualifies the debarred party from filing any labor certification applications or labor condition applications with DOL for the same period set forth in the final debarment decision.

Attestation (D): The employer must attest that it has prepared a detailed written statement that it will provide upon request from DHS and/or DOL describing how its business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H-2B nonimmigrant workers requested on the Form I-129 petition, and how each type of evidence that it will maintain (as identified in the checkboxes provided in Attestation C of the form) demonstrates that its business is suffering irreparable harm or will suffer impending irreparable harm.

Attestation (E): The employer must attest that it has a *bona fide* temporary need for the total number of H-2B worker positions certified on its certified Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval*.

Attestation (F): The employer must attest that each of the workers it requests and/or instructs to apply for a nonimmigrant visa under the Form I-129 petition, whether currently named or unnamed, has been issued an H-2B visa or was otherwise granted H-2B status during one of the last 3 fiscal years (Fiscal Years 2023, 2024, or 2025) unless the Form I-129 petition submitted to DHS USCIS requests a worker(s)

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to begin employment during the period beginning May 1, 2026 through September 30, 2026, who is not subject to a returning worker requirement, consistent with 8 CFR 214.2(h)(6)(xvi)(B)(2).

Attestation (G): The employer must agree to retain, for a period of 3 years from the date of certification, a copy of the signed attestation form, evidence and a detailed written explanatory statement establishing that its business meets the standard described in paragraph (C) of the attestation, consistent with the document retention requirements under 20 CFR 655.69, 20 CFR 655.56, and 29 CFR 503.17. In addition, the employer must agree to provide this documentation to a DHS and/or DOL official upon request.

Attestation (H): The employer must agree to retain documentary evidence establishing that each of the workers it is requesting on the Form I-129 petition, whether named or unnamed, are only workers who have been issued an H-2B visa or otherwise granted H-2B status during one of the last 3 fiscal years (Fiscal Years 2023, 2024, or 2025), unless the Form I-129 petition submitted to DHS USCIS requests a worker(s) to begin employment during the period beginning May 1, 2026 through September 30, 2026, who is not subject to a returning worker requirement, consistent with 8 CFR 214.2(h)(6)(xvi)(B)(2).

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 all Appendices) 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.

Attestation (J): The employer must agree to fully cooperate with any compliance review, evaluation, verification or inspection conducted by DHS, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with immigration laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2026 supplemental allocation outlined in paragraph 8 CFR 214.2(h)(6)(xvi)(B), as a condition for the approval of the H-2B petition.

Attestation (K): The employer must agree to fully cooperate with any audit, investigation, compliance review, evaluation, verification or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2026 supplemental allocation outlined in paragraphs 20 CFR 655.64(a) and 655.69(a), as a condition for the approval of the H-2B petition. Pursuant to 20 CFR Part 655, Subpart A at 655.73 and 29 CFR 503.25, the employer must agree not to impede, interfere, or refuse to cooperate with an employee of the Secretary who is exercising or attempting to exercise DOL's audit or investigative authority. DOL may consider the failure to respond and/or comply with an investigation or audit to be a willful misrepresentation of material fact or a substantial failure to meet the terms and conditions of the *H-2B Application for Prevailing Wage Determination, Application for Temporary Employment Certification* resulting in an adverse agency action on the employer, agent, or attorney, including assessment of a civil money penalty, revocation of the temporary labor certification, or program debarment for not less than 1 year or more than 5 years from the date of the final agency decision under § 655.73 or 29 CFR 503.19. A debarred party will be disqualified from filing any labor certification applications or labor condition applications with the Department of Labor by, or on behalf of, the debarred party for the same period of time set forth in the final debarment decision.

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DECLARATION UNDER PENALTY OF 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-10, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by Public Law 119-37*, 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-10 will not be considered complete and valid if the attestation is not signed and dated by an individual who has the authority to sign Form ETA-9142-B-CAA-10. 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-10 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 5 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 attestation. Read the entire attestation and verify all contained information prior to signing. The person with authority to sign as the employer must also date the attestation.
4. Enter the date on which the attestation is signed using a month/day/full year (MM/DD/YYYY) format.