

the obligations imposed by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part. Each failure to pay an individual worker properly or to honor the terms or conditions of a worker's employment required by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part constitutes a separate violation.

(b) In determining the amount of penalty to be assessed for each violation, the WHD Administrator shall consider the type of violation committed and other relevant factors. The factors that may be considered include, but are not limited to, the following:

- (1) Previous history of violation(s) of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part;
- (2) The number of H-2A workers, workers in corresponding employment, or U.S. workers who were and/or are affected by the violation(s);
- (3) The gravity of the violation(s);
- (4) Efforts made in good faith to comply with 8 U.S.C. 1188, 20 CFR part 655, subpart B, and the regulations in this part;
- (5) Explanation from the person charged with the violation(s);
- (6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated 8 U.S.C. 1188;
- (7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

(c) A civil money penalty for each violation of the work contract or a requirement of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part will not exceed \$1,500 per violation, with the following exceptions:

- (1) A civil money penalty for each willful violation of the work contract, or of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, or for each act of discrimination prohibited by § 501.4 shall not exceed \$5,000;
- (2) A civil money penalty for a violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, that proximately causes the death or serious injury of any worker shall not exceed \$50,000 per worker;
- (3) For purposes of this section, the term serious injury includes, but is not limited to:
 - (i) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);
 - (ii) Permanent loss or substantial impairment of the function of a bodily member, organ or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or
 - (iii) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(4) A civil money penalty for a repeat or willful violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, that proximately causes the death or serious injury of any worker, shall not exceed \$100,000 per worker.

(d) A civil money penalty for failure to cooperate with a WHD investigation shall not exceed \$5,000 per investigation.

(e) A civil money penalty for laying off or displacing any U.S. worker employed in work or activities that are encompassed by the approved *Application for Temporary Employment Certification* for H-2A workers in the area of intended employment either within 60 days preceding the date of need or during the validity period of the job order, including any approved extension thereof, other than for a lawful, job-related reason, shall not exceed \$15,000 per violation per worker.

(f) A civil money penalty for improperly rejecting a U.S. worker who is an applicant for employment, in violation of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, shall not exceed \$15,000 per violation per worker.

§ 501.20 Debarment and revocation.

(a) *Debarment of an employer.* The WHD Administrator may debar an employer or any successor in interest to that employer from receiving future labor certifications under 20 CFR part 655, subpart B, subject to the time limits set forth in paragraph (c) of this section, if: the WHD Administrator finds that the employer substantially violated a material term or condition of its temporary labor certification, with respect to H-2A workers, workers in corresponding employment, or U.S. workers improperly rejected for employment, or improperly laid off or displaced, by issuing a Notice of Debarment.

(b) *Debarment of an agent or an attorney.* The WHD Administrator may debar an agent or attorney from participating in any action under 8 U.S.C. 1188, 20 CFR part 655, subpart B or 29 CFR part 501, if the WHD

Administrator finds that the agent or attorney participated in an employer's substantial violation, by issuing a Notice of Debarment. The OFLC Administrator may not issue future labor certifications to any employer represented by a debarred agent or attorney, subject to the time limits set forth in paragraph (c) of this section.

(c) *Statute of Limitations and Period of Debarment.*

(1) The WHD Administrator must issue any Notice of Debarment no later than 2 years after the occurrence of the violation.

(2) No employer, attorney, or agent may be debarred under this subpart for more than 3 years from the date of the final agency decision.

(d) *Definition of violation.* For the purposes of this section, a violation includes:

(1) One or more acts of commission or omission on the part of the employer or the employer's agent which involve:

(i) Failure to pay or provide the required wages, benefits or working conditions to the employer's H-2A workers and/or workers in corresponding employment;

(ii) Failure, except for lawful, job-related reasons, to offer employment to qualified U.S. workers who applied for the job opportunity for which certification was sought;

(iii) Failure to comply with the employer's obligations to recruit U.S. workers;

(iv) Improper layoff or displacement of U.S. workers or workers in corresponding employment;

(v) Failure to comply with one or more sanctions or remedies imposed by the WHD Administrator for violation(s) of contractual or other H-2A obligations, or with one or more decisions or orders of the Secretary or a court under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part;

(vi) Impeding an investigation of an employer under 8 U.S.C. 1188, 20 CFR part 655, Subpart B, or the regulations in this part;

(vii) Employing an H-2A worker outside the area of intended employment, or in an activity/activities not listed in the job order or outside the validity period of employment of the job order, including any approved extension thereof;

(viii) A violation of the requirements of 20 CFR 655.135(j) or (k);

(ix) A violation of any of the provisions listed in § 501.4(a) of this subpart; or

(x) A single heinous act showing such flagrant disregard for the law that future

compliance with program requirements cannot reasonably be expected.

(2) In determining whether a violation is so substantial as to merit debarment, the factors set forth in § 501.19(b) shall be considered.

(e) *Procedural Requirements.* The Notice of Debarment must be in writing, must state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, must identify appeal opportunities under § 501.33 and a timeframe under which such rights must be exercised and must comply with § 501.32. The debarment will take effect 30 days from the date the Notice of Debarment is issued, unless a request for review is properly filed within 30 days from the issuance of the Notice of Debarment. The timely filing of an administrative appeal stays the debarment pending the outcome of the appeal as provided in § 501.33(d).

(f) *Debarment involving members of associations.* If, after investigation, the WHD Administrator determines that an individual employer-member of a joint employer association has committed a substantial violation, the debarment determination will apply only to that member unless the WHD Administrator determines that the association or another association member participated in the violation, in which case the debarment will be invoked against the association or other complicit association member(s) as well.

(g) *Debarment involving associations acting as sole employers.* If, after investigation, the WHD Administrator determines that an association acting as a sole employer has committed a substantial violation, the debarment determination will apply only to the association and any successor in interest to the debarred association.

(h) *Debarment involving associations acting as joint employers.* If, after investigation, the WHD Administrator determines that an association acting as a joint employer with its members has committed a substantial violation, the debarment determination will apply only to the association, and will not be applied to any individual employer-member of the association. However, if the WHD Administrator determines that the member participated in, had knowledge of, or had reason to know of the violation, the debarment may be invoked against the complicit association member as well. An association debarred from the H-2A temporary labor certification program will not be permitted to continue to file as a joint employer with its members during the period of the debarment.

(i) *Revocation.* The WHD may recommend to the OFLC Administrator the revocation of a temporary agricultural labor certification if the WHD finds that the employer:

(1) Substantially violated a material term or condition of the approved temporary labor certification.

(2) Failed to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, or law enforcement function under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part; or

(3) Failed to comply with one or more sanctions or remedies imposed by the WHD, or with one or more decisions or orders of the Secretary or a court order secured by the Secretary under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part.

§ 501.21 Failure to cooperate with investigations.

(a) No person shall refuse to cooperate with any employee of the Secretary who is exercising or attempting to exercise this investigative or enforcement authority.

(b) Where an employer (or employer's agent or attorney) does not cooperate with an investigation concerning the employment of an H-2A worker, a worker in corresponding employment, or a U.S. worker who has been improperly rejected for employment or improperly laid off or displaced, WHD may make such information available to OFLC and may recommend that OFLC revoke the existing certification that is the basis for the employment of the H-2A workers giving rise to the investigation. In addition, WHD may take such action as appropriate, including initiating proceedings for the debarment of the employer from future certification for up to 3 years, seeking an injunction, and/or assessing civil money penalties against any person who has failed to cooperate with a WHD investigation. The taking of any one action shall not bar the taking of any additional action.

§ 501.22 Civil money penalties—payment and collection.

Where a civil money penalty is assessed in a final order by the WHD Administrator, by an ALJ, or by the Administrative Review Board (ARB), the amount of the penalty must be received by the WHD Administrator within 30 days of the date of the final order. The person assessed such penalty shall remit the amount ordered to the WHD Administrator by certified check or by money order, made payable to the Wage and Hour Division, United States Department of Labor. The remittance

shall be delivered or mailed to the WHD Regional Office for the area in which the violations occurred.

Subpart C—Administrative Proceedings

§ 501.30 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process that will be applied with respect to a determination to assess civil money penalties, to debar, or to increase the amount of a surety bond and which may be applied to the enforcement of provisions of the work contract, or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, or to the collection of monetary relief due as a result of any violation. Except with respect to the imposition of civil money penalties, debarment, or an increase in the amount of a surety bond, the Secretary may, in the Secretary's discretion, seek enforcement action in Federal court without resort to any administrative proceedings.

Procedures Relating To Hearing

§ 501.31 Written notice of determination required.

Whenever the WHD Administrator decides to assess a civil money penalty, to debar, to increase a surety bond, or to proceed administratively to enforce contractual obligations, or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, including for the recovery of the monetary relief, the person against whom such action is taken shall be notified in writing of such determination.

§ 501.32 Contents of notice.

The notice required by § 501.31 shall:

(a) Set forth the determination of the WHD Administrator including the amount of any monetary relief due or actions necessary to fulfill a contractual obligation or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, the amount of any civil money penalty assessment, whether debarment is sought and the term, and any change in the amount of the surety bond, and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the WHD Administrator shall become final and unappealable.

(d) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 501.33.

§ 501.33 Request for hearing.

(a) Any person desiring review of a determination referred to in § 501.32, including judicial review, shall make a written request for an administrative hearing to the official who issued the determination at the WHD address appearing on the determination notice, no later than 30 days after the date of issuance of the notice referred to in § 501.32.

(b) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

- (1) Be typewritten or legibly written;
- (2) Specify the issue or issues stated in the notice of determination giving rise to such request;
- (3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;
- (4) Be signed by the person making the request or by an authorized representative of such person; and
- (5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the official who issued the determination, at the WHD address appearing on the determination notice, within the time set forth in paragraph (a) of this section. Requests may be made by certified mail or by means normally assuring overnight delivery.

(d) The determination shall take effect on the start date identified in the written notice of determination, unless an administrative appeal is properly filed. The timely filing of an administrative appeal stays the determination pending the outcome of the appeal proceedings, provided that any surety bond remains in effect until the conclusion of any such proceedings.

Rules of Practice

§ 501.34 General.

(a) Except as specifically provided in the regulations in this part, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this part.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the

Office of Administrative Law Judges (29 CFR part 18, subpart B) will not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The ALJ may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ 501.35 Commencement of proceeding.

Each administrative proceeding permitted under 8 U.S.C. 1188 and the regulations in this part shall be commenced upon receipt of a timely request for hearing filed in accordance with § 501.33.

§ 501.36 Caption of proceeding.

(a) Each administrative proceeding instituted under 8 U.S.C. 1188 and the regulations in this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In the Matter of _____,
Respondent.

(b) For the purposes of such administrative proceedings the WHD Administrator shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

Referral for Hearing

§ 501.37 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 501.33, the WHD Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, will, by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief ALJ, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under the regulations in this part or 29 CFR part 18.

(b) A copy of the Order of Reference, together with a copy of the regulations in this part, shall be served by counsel for the WHD Administrator upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 501.38 Notice of docketing.

Upon receipt of an Order of Reference, the Chief ALJ shall appoint an ALJ to hear the case. The ALJ shall promptly notify all interested parties of the docketing of the matter and shall set the time and place of the hearing. The date of the hearing shall be not more than 60 days from the date on which the Order of Reference was filed.

§ 501.39 Service upon attorneys for the Department of Labor—number of copies.

Two copies of all pleadings and other documents required for any administrative proceeding provided herein shall be served on the attorneys for the DOL. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

Procedures Before Administrative Law Judge

§ 501.40 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the ALJ, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the ALJ; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their

authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the ALJ; or

(2) Inform the ALJ that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the ALJ, within 30 days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

Post-Hearing Procedures

§ 501.41 Decision and order of Administrative Law Judge.

(a) The ALJ shall prepare, within 60 days after completion of the hearing and closing of the record, a decision on the issues referred by the WHD Administrator.

(b) The decision of the ALJ shall include a statement of the findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the WHD Administrator. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the ARB.

(d) The decision concerning civil money penalties, debarment, monetary relief, and/or enforcement of other contractual obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, and/or this part, when served by the ALJ shall constitute the final agency order unless the ARB, as provided for in

§ 501.42, determines to review the decision.

Review of Administrative Law Judge's Decision

§ 501.42 Procedures for initiating and undertaking review.

(a) A respondent, the WHD, or any other party wishing review, including judicial review, of the decision of an ALJ shall, within 30 days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition shall be served on all parties and on the ALJ. If the ARB does not issue a notice accepting a petition for review of the decision within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the ALJ shall be deemed the final agency action.

(b) Whenever the ARB, either on the ARB's own motion or by acceptance of a party's petition, determines to review the decision of an ALJ, a notice of the same shall be served upon the ALJ and upon all parties to the proceeding.

§ 501.43 Responsibility of the Office of Administrative Law Judges (OALJ).

Upon receipt of the ARB's Notice pursuant to § 501.42, the OALJ shall promptly forward a copy of the complete hearing record to the ARB.

§ 501.44 Additional information, if required.

Where the ARB has determined to review such decision and order, the ARB shall notify the parties of:

(a) The issue or issues raised;

(b) The form in which submissions shall be made (*i.e.*, briefs, oral argument, etc.); and

(c) The time within which such presentation shall be submitted.

§ 501.45 Final decision of the Administrative Review Board.

The ARB's final decision shall be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ.

Record

§ 501.46 Retention of official record.

The official record of every completed administrative hearing provided by the regulations in this part shall be maintained and filed under the custody and control of the Chief ALJ, or, where the case has been the subject of administrative review, the ARB.

§ 501.47 Certification.

Upon receipt of a complaint seeking review of a decision issued pursuant to this part filed in a U.S. District Court, after the administrative remedies have been exhausted, the Chief ALJ or, where the case has been the subject of administrative review, the ARB shall promptly index, certify and file with the appropriate U.S. District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Signed in Washington this 3rd day of February, 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

Nancy Leppink,

Deputy Administrator, Wage and Hour Division.

Editorial Note: The following attachment will not appear in the Code of Federal Regulations.

BILLING CODE 4510-FN-P

OMB Approval: 1205-0466
 Expiration Date: 11/30/2011

Application for Temporary Employment Certification
 ETA Form 9142
 U.S. Department of Labor



Please read and review the filing instructions carefully before completing the ETA Form 9142. 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): *	
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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 *	6. End Date *
	(mm/dd/yyyy)	(mm/dd/yyyy)
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 (indicate the total workers in each applicable category based on the total workers identified above)		
<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 * without change with the same employer	<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(s) §
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 a 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 *		1a. Overtime Rate of Pay (if applicable) §	
From: \$ ____ . ____ To (Optional): \$ ____ . ____		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 (In H-2A this date is 50% of contract period) *
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, and 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.2 or Appendix B.1 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.2. §	<input type="checkbox"/> Yes <input type="checkbox"/> No 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.1. §	<input type="checkbox"/> Yes <input type="checkbox"/> No 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 initial §
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

L. OMB Paperwork Reduction Act (1205-0466)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's reply to these reporting requirements is mandatory to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101 (a)(15)(H)(ii)). Public reporting burden for this collection of information is estimated to average 1 hour per response for H-2A and 2 hours 45 minutes for H-2B, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW * Washington, DC * 20210. **Do NOT send the completed application to this address.**

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For Use in Filing Applications Under the H-2A Agricultural Program ONLY

A. Attorney or Agent Declaration

I hereby certify that I am an employee of, or hired by, the employer listed in Section C of the ETA Form 9142, and that I have been designated by that employer to act on its behalf in connection with this application. If I am an agent and not an employee of the employer, then I have attached a Letter of Representation from the employer. I also certify that to the best of my knowledge the information contained herein is true and correct. 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** the following conditions of employment:

1. The job opportunity is a full-time temporary position, the qualifications for which do not substantially deviate from the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations and crops.
2. The specific job opportunity for which the employer is requesting H-2A certification is not vacant because the former occupant(s) is (are) on strike or locked out in the course of a labor dispute involving a work stoppage.
3. The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted and will continue to conduct the required recruitment, in accordance with regulations, and has been unsuccessful in locating sufficient numbers of qualified U.S. applicants for the job opportunity for which certification is sought. Any U.S. workers who applied or apply for the job were or will be rejected only for lawful, job-related reasons, and the employer must retain records of all rejections as required by 20 CFR 655.167.
4. The job opportunity offers 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-2A workers and complies with the requirements at 20 CFR 655, Subpart B.
5. The employer understands that it must offer, recruit at, and pay a wage that is the highest of the adverse effect wage rate in effect at the time the job order is placed, the prevailing hourly or piece rate, the agreed-upon collective bargaining rate (CBA), or the Federal or State minimum wage, and, furthermore, that if a new Adverse Effect Wage Rate is published, or the employer is notified of a new prevailing wage rate during the contract period, and that new rate is higher than the wage determined by the NPC (except the CBA) during the application process the employer will increase the pay of all employees in the same job occupation to the higher rate.
6. There are no U.S. workers available in the area(s) capable of performing the temporary services or labor in the job opportunity, and the employer will conduct positive recruitment as specified by the NPC and continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an application is made) for the job opportunity until completion of 50% of the contract period calculated from the first date of need indicated in Section B.5 of ETA Form 9142.
7. All fees associated with processing the temporary labor certification will be paid in a timely manner.

ETA Form 9142 – Appendix A.2 **FOR DEPARTMENT OF LABOR USE ONLY**

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8. During the period of employment that is the subject of the labor certification application, the employer:
- (i) Will comply with applicable Federal, State and local employment-related laws and regulations, including employment-related health and safety laws;
 - (ii) Will provide for or secure housing for workers who are not reasonably able to return to their permanent residence at the end of the work day that complies with the applicable local, State, or Federal standards and guidelines for housing without charge to the worker;
 - (iii) Where required, has timely requested a preoccupancy inspection of the housing and received certification;
 - (iv) Will provide insurance, without charge to the worker, under a State workers' compensation law or otherwise, that meets the requirements of 20 CFR 655.122(e).
 - (v) Will provide transportation in compliance with all applicable Federal, State or local laws and regulations between the worker's living quarters (i.e., housing provided by the employer under 20 CFR 655.122(h)) and the employer's worksite without cost to the worker.
9. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the Application for Temporary Employment Certification in the area of intended employment except for lawful, job related reasons within 60 days of the date of need, or if the employer has laid off such workers, it has offered the job opportunity that is the subject of the application to those laid-off U.S. worker(s) and the U.S. worker(s) refused the job opportunity, was rejected for the job opportunity for lawful, job-related reasons, or was hired.
10. The employer and its agents have not sought or received payment of any kind from the H-2A worker for any activity related to obtaining labor certification, including payment of the employer's attorneys' fees, application fees, or recruitment costs. For purposes of this paragraph, 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.
11. The employer has and will contractually forbid any foreign labor contractor or recruiter whom the employer engages in international recruitment of H-2A workers to seek or receive payments from prospective employees, except as provided for in DHS regulations.
12. The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has with just cause:
- (i) Filed a complaint under or related to Sec. 218 of the INA (8 U.S.C. 1188), or any Department regulation promulgated under Sec. 218 of the INA;
 - (ii) Instituted or caused to be instituted any proceeding under or related to Sec. 218 of the INA, or any Department regulation promulgated under Sec. 218 of the INA;
 - (iii) Testified or is about to testify in any proceeding under or related to Sec. 218 of the INA or any Department regulation promulgated under Sec. 218 of the INA;
 - (iv) Consulted with an employee of a legal assistance program or an attorney on matters related to Sec. 218 of the INA or any Department regulation promulgated under Sec. 218 of the INA; or
 - (v) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by Sec. 218 of the INA, or any Department regulation promulgated under Sec. 218 of the INA.
13. The employer has not and will not discharge any person because of that person's taking any action listed in paragraph 12(i) through (v) listed above.
14. The employer will inform H-2A workers of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, as required under 20 CFR 655.135(i), unless the H-2A worker is being sponsored by another subsequent employer.
15. The employer has posted the Notice of Workers' Rights as required by 20 CFR 655.135(l) in a conspicuous place frequented by all employees,
16. If the application is being filed as an H-2A Labor Contractor the following additional attestations and obligations apply under 20 CFR 655.132:
- (i) The H-2A Labor Contractor has provided a copy of the MSPA Farm Labor Contractor (FLC) certificate of registration if required under MSPA, 1801 U.S.C. et seq., to have such a certificate identifying the specific farm labor contracting activities it is authorized to perform;
 - (ii) The H-2A Labor Contractor has provided with this application a list of the names and locations of each fixed-site agricultural business to which the H-2A Labor Contractor expects to provide H-2A workers, the expected beginning and ending dates when the H-2A Labor Contractor will be providing the workers to each fixed site, and a description of the crops and activities the workers are expected to perform at such fixed site;

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The H-2A Labor Contractor is able to provide proof of its ability to discharge financial obligations under the H-2A program and has secured a surety bond as required by 29 CFR 501.9, the original of which is attached and shows

- (iii) the name, address, phone number, and contact person for the surety, and provides the amount of the bond (as calculated pursuant to 29 CFR 501.9);
- (iv) The H-2A Labor Contractor has engaged in and will engage in recruitment efforts in each area of intended employment in which it has listed a fixed-site agricultural business as required in 20 CFR 655.121, 655.150-155; and
- (v) The H-2A Labor Contractor has obtained from each fixed-site agricultural business that will provide housing or transportation to the workers a written statement stating that:
 - a. All housing used by workers and owned, operated, or secured by the fixed-site agricultural business complies with the applicable housing standards in 20 CFR 655.122(d); and
 - b. All transportation between the worksite and the workers' living quarters that is provided by the fixed-site agricultural business complies with all applicable Federal, State, or local laws and regulations and will provide, at a minimum, the same vehicle safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR part 500, except where workers' compensation is used to cover such transportation as described in § 655.122(e); and
 - c. Attach to the statement certificates of occupancy from the SWA for all employer owned housing and copies of all drivers' licenses, vehicle registration, and insurance policies for all drivers and vehicles used to transport H-2A workers.

I hereby acknowledge that the agent or attorney identified in section E (if any) of the ETA Form 9142 and section A above is authorized 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.

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

OMB Paperwork Reduction Act

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's reply to these reporting requirements is mandatory to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101 (a)(15)(H)(ii)). Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW * Washington, DC * 20210. **Do NOT send the completed application to this address.**

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