OMB Approval: 1205-0516
Expiration Date: 1/31/2016

Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey Form ETA-9165 – General Instructions

U.S. Department of Labor

IMPORTANT: Please read these instructions carefully before completing the Form ETA-9165 Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey. These instructions contain full explanations of the questions and attestations that make up the Form ETA-9165. ***Failure to fully and accurately complete this form may result in rejection of the use of the survey. If you need additional room to complete an answer, please begin the answer in the space provided and attach an addendum to the relevant section and item identifying each clearly. ALL required items (*) must be completed as well as any fields/items where a response is conditioned on the response to another required field/item (§).***

Anyone, who knowingly and willingly furnishes any false information in the preparation of Form ETA-9165 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).

Section A
Requestor Point of Contact

1. Enter the last (family) name of the requestor's point of contact.

2. Enter the first (given) name of the requestor's point of contact.

3. Enter the middle name(s) of the requestor's point of contact.

4. Enter the area code and telephone number of the requestor's point of contact. Include country code, if applicable.

5. Enter the extension of the telephone number of the requestor's point of contact, if applicable.

6. Enter the fax number, if applicable.

7. Enter the business e-mail address of the requestor's point of contact in the format name@emailaddress.top-level domain, if applicable.

Section B

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Employer Information

1. Enter the full legal name of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application. The employer's full legal name is the exact name of the individual, corporation, LLC, partnership, or other organization that is reported to the Internal Revenue Service.

2. Enter the full trade name or "Doing Business As" (DBA) name, if applicable, of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application.

3. Enter the area code and telephone number for the employer's principal place of business, if applicable. Include country code, if applicable.

4. Enter the extension of the telephone number for the employer's principal place of business, if applicable.

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

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

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

Section C
Employer-Provided Survey Information

1. Enter the complete name or title of survey. If the survey was commissioned by the employer and does not have a name, enter 'Employer Commissioned'.

2. Mark "Yes" or "No" as to whether a Collective Bargaining Agreement (CBA) is applicable to the job opportunity.

3. Mark "Yes" or "No" as to whether a professional sports league's rules or regulations are applicable to the job opportunity.

4. Mark the appropriate permissible survey category applicable to the survey. Only one category may be selected.

5. If the survey was conducted by a state, including any state agency, state college or state university under question 4a, provide responses to questions 5a – 5b.

5a. Enter the name of the state agency, state college or state university. Please do not enter acronyms as these vary by state. Standard abbreviations, such as "Dept.," are acceptable.

5b. Enter the last (family) name then first (given) name of the state official approving the survey.

6. If the survey is eligible under question 4b or 4c, provide responses to questions 6a-6b.

6a. Mark "Yes" or "No" as to whether the collection of data was collected by a third party permitted by ETA regulations at 20 CFR § 655.10(f) and no data for the survey was collected by any H-2B employer or any H-2B employer's agent, representative, or attorney.

6b. Enter the complete name of third party surveyor. Please do not enter acronyms. Standard abbreviations, such as Co., are acceptable.

6c. Enter the last (family) name then first (given) name of the official representative of the third party surveyor who approved the survey.

7. Mark "Yes" or "No" as to whether the survey is based on wages paid 24 months or less before the date on which the survey was submitted to ETA.

8. Mark "Yes" or "No" as to whether this is the most recent edition of the survey. (Answer "Yes" if this is the only edition of the survey.)

Section D
Relationship to job opportunity listed on the Form ETA-9141

1. Enter the title of the job(s) included in the survey.

2. Describe the duties of the job(s) included in the survey (submit an attachment if more space is required). This should be a list of tasks performed by those in the position(s) being surveyed. Any specific requirements such as licenses should be listed here as well.

3. Enter the area of intended employment covered by the survey. A list of counties is acceptable, as are standard OMB MSAs.

   Area of intended employment means the geographic area within normal commuting distance of the place (worksite address) of the job opportunity for which the certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., average commuting times, barriers to reaching the worksite, or quality of the regional transportation network). If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a location outside of an MSA may be within normal commuting distance of a location that is inside (e.g., near the border of) the MSA. See 20 CFR § 655.5.

4. Mark “Yes” or “No” as to whether the survey was expanded to include workers beyond the area of intended employment.

4a. If “Yes” in question 4, enter the geographic area surveyed.

4b. If “Yes” in question 4, check all that apply if the survey was expanded beyond the area of intended employment.

   If ‘The area surveyed was expanded for another reason’ is marked, it must be explained immediately below.

   The explanation of ‘another reason’ must be a standard survey-related cause, such as eliminating the impact of a single dominant employer.

Section E
Survey Methodology

1. Enter the number of employers who employ workers in the occupation and geographic area surveyed.

2. List the sources used to determine the number of employers employing workers in the occupation and geographic area surveyed.

3. Mark “All Employers” or “Sample”, if the surveyor attempted to contact all employers employing workers in the occupations in the geographic area surveyed or a sample of employers in the geographic area.

3a. If “Sample” in question 3, mark “Yes” or “No” as to whether the sample was selected randomly.

3b. If “Yes” in question 3a, enter a brief summary of the procedures used to randomize the sample.

4. Enter the number of employers the surveyor attempted to solicit responses from when conducting the survey.

5. Mark “Yes” or “No” (from each responding employer), if the survey included the wages of all workers in the occupation regardless of skill level or experience, education, and length of employment.

6. Mark “Yes” or “No” as to whether the survey included data collected across industries that employ workers in the occupation. To be permissible, the survey must be collected on a cross-industry basis. If an occupation surveyed occurs only in a single industry, mark “yes.”

7. Mark “Yes” or “No” as to whether the survey reflects the **mean** wage for all workers it covers.

7a. If “Yes” in question 7, enter the **mean** wage (specify whether hourly, weekly, or monthly).

8. Mark “Yes” or “No” as to whether the survey reflects the **median** wage for all workers it covers.

8a. If “Yes” in question 8, enter the **median** wage (specify whether hourly, weekly, or monthly).

9. Enter the number of employers (minimum of 3) the hourly, weekly, or monthly wage reported from the survey data is based on; enter the number of workers (minimum of 30) within the occupation in the geographic area surveyed who received those wages.

10. Mark “Yes” or “No” as to whether the hourly, weekly, or monthly wage rate reported by the survey includes all types of wages paid to workers, including base rate of pay, commissions, cost-of-living allowance, deadheading pay, guaranteed pay, hazard pay, incentive pay, longevity pay, piece rate, portal-to-portal rate, production bonus, and tips.

11. Mark "Yes" or "No" as to whether the survey included wages from workers in the occupation regardless of immigration status.

Section F
Employer Declaration

The employer must declare under penalty of perjury that they have read and reviewed this application and that to the best of their 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. Enter the last (family) name of the person with authority to sign on behalf of the employer.

2. Enter the first (given) name of the person with authority to sign on behalf of the employer.

3. Enter the middle name of the person with authority to sign on behalf of the employer.

4. Enter the job title of the person with authority to sign on behalf of the employer.

5. The person with authority to sign on behalf of the employer must sign the application. Read the entire application and verify all contained information prior to signing.

6. The person with authority to sign on behalf of the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.

Section G
OMB Paperwork Reduction Act – Please Read

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 required to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101). Public reporting burden for this collection of information is estimated to average 75 minutes 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.**