

ATTACHMENT A
Special Procedures: Labor Certification Process for Applications for Multi-State Custom Combine Owners/Operators under the H-2A Program

This document outlines special procedures for applications submitted by multi-state custom combine owners/operators under the H-2A Program. Unless otherwise specified in this attachment, applications submitted for custom combine occupations must comply with the requirements for processing H-2A applications outlined in 20 CFR Part 655, Subpart B. Similarly, unless otherwise specified, job orders submitted for custom combine occupations must comply with the requirements of 20 CFR Part 655, Subpart B, 20 CFR Part 653, Subparts B and F, and 20 CFR Part 654.

I. PREFILING PROCEDURES

- A. Offered Wage Rate (20 CFR 655.120(a)). An employer must offer, advertise in the course of its recruitment, and pay a wage that is the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage, the agreed-upon collective bargaining wage, or the Federal or state minimum wage, in effect at the time custom combine work is performed and for each state listed in an approved itinerary. In establishing agricultural prevailing wages, including those for custom combine activities, the Department continues to use findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the [ETA Handbook No. 385](#). SWAs are required to transmit wage rate findings covering custom combine activities to the OFLC between May 1st and June 1st of each calendar year. Following a review of the SWA wage rate findings, the OFLC will publish the new agricultural prevailing wage rates in a Federal Register notice with an immediate effective date.
- B. Job Orders and SWA Review (20 CFR 655.121). An employer engaged in custom combine activities is allowed to submit a single Agricultural and Food Processing Clearance Order, ETA Form 790 (job order), Office of Management and Budget (OMB) control number 1205-0134, and all appropriate attachments covering a planned itinerary of work in multiple states. If the job opportunity is located in more than one state, either within the same area of intended employment or multiple areas of intended employment, the employer must submit the job order and all attachments (including a detailed itinerary) to the SWA having jurisdiction over the anticipated worksite(s) where the work is expected to begin. The employer must submit the job order no more than 75 calendar days and no less than 60 calendar days before the employer's first date of need.

Unless otherwise specified in these special procedures, the job order submitted to the SWA must satisfy the requirements for agricultural clearance orders outlined in 20 CFR Part 653, Subpart F and the requirements set forth in 20 CFR 655.122. The SWA will review the job order for regulatory compliance and will work with the employer to address any noted deficiencies. Upon its clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

The job order shall remain active until 50 percent of the work contract period has elapsed for all SWAs in possession of the employer's job order (including those receiving it in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

- C. Contents of Job Offers (20 CFR 655.122). Unless otherwise specified in this section, the content of job offers submitted to the SWAs and the Chicago NPC for custom combine activities must comply with all of the requirements of 20 CFR part 655, Subpart B, part 653 Subparts B and F, and part 654.

1. Job qualifications and requirements.

Experience. Due to the unique nature of the work to be performed, the job offer may require that applicants possess up to 6 months of experience in custom combining activity and may require reference(s) to verify experience in performing such activities. Applicants must provide the name, address, and telephone number of any previous employer being used as a reference. The appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Completion of Itinerary. An employer engaged in multi-state custom combine activity may require in its job offer that an applicant for the job must be available to work for the remainder of the entire itinerary. An applicant referred to the employer after the labor certification has been granted, but before 50 percent of the work contract period for the entire itinerary has elapsed, must be available and willing to join the crew at whatever place the crew is located at the time and remain with the crew for the duration of the custom combine itinerary.

2. Housing. The employer must state in its job offer that sufficient housing will be provided at no cost to H-2A workers and any workers in corresponding employment who are not reasonably able to return to their residence within the same day. Except for long-established standards for mobile housing in Attachment B, all employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. A custom combine employer whose itinerary requires mobile housing may provide mobile housing to its workers.
3. Workers' compensation. The employer must provide workers' compensation insurance coverage as described in 20 CFR 655.122(e) in all states where custom combine work will be performed. Prior to the issuance of the Temporary Labor Certification, the employer must provide the Certifying Officer (CO) with proof of workers' compensation coverage, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or, if appropriate, proof of state law coverage for each state where the custom combine work will be performed. In the event that the current coverage will expire before the end of the certified work contract period or the insurance statement does not include all of the information required under the regulations at 20 CFR 655.122(e), the employer will be required to supplement its proof of workers' compensation for that state before a final determination is due. Where the employer's coverage will expire before the end of the certified work contract period, the employer may submit as

proof of renewed coverage a signed and dated statement or letter showing proof of intent to renew and maintain coverage for the dates of need. The employer must maintain evidence that its workers' compensation was renewed, in the event the Department requests it.

4. Employer-provided items. Due to the remote and unique nature of the work to be performed, the employer must also specify in the job offer and provide at no cost to workers an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency. These means are necessary to perform the work and can include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems to assist workers in performing assigned duties.

II. APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FILING PROCEDURES

- A. Application Filing Requirements (20 CFR 655.130). An individual employer that desires to apply for temporary employment certification for one or more nonimmigrant workers must file the following documentation with the Chicago NPC no less than 45 calendar days before the employer's date of need:

- ETA Form 9142 (OMB control number 1205-0466), Application for Temporary Employment Certification, and Appendix A.2;
- Copy of the ETA Form 790 and all attachments previously submitted to the SWA;
- A planned itinerary listing the names and contact information of all farmers/ranchers and identifying, with as much geographic specificity as possible and for each farmer/rancher, all of the physical locations and estimated start and end dates of need where work will be performed; and
- All other required documentation supporting the application.

Because of delays in mail delivery from Canada, Canadian employers are encouraged to use express overnight mail service to expedite the delivery and receipt of communications between employers and the Chicago NPC, so as to ensure meeting regulatory deadlines.

- B. H-2A Labor Contractor (H-2ALC) Filing Requirements (20 CFR 655.132). The Department is granting a special variance to the application filing procedures for H-2ALCs contained at 20 CFR 655.132(a). Specifically, an employer engaged in multi-state custom combine activities is authorized to file an Application for Temporary Employment Certification covering one or more areas of intended employment based on a definite itinerary. An employer who desires to employ one or more nonimmigrant workers on an itinerary to provide custom combine services to fixed-site farmers/ranchers is, by definition, an H-2ALC. Therefore, the custom combine labor contractor must identify itself as the employer of record on the ETA Form 9142 by completing Section C and marking item C.17 as "H-2A Labor Contractor," and submitting, in addition to the documentation required under 20 CFR 655.130, all other required documentation supporting an H-2ALC application. The only special variance to the requirements at 20

CFR 655.132(b) is the recognized exemption of custom combine activities from the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (29 U.S.C. 1801, 1803(a)(30)(E) et seq.).

III. POST-ACCEPTANCE REQUIREMENTS

Billing (20 CFR 655.163(a)). When Canadian custom combine owners/operators are billed for approved labor certifications, the billing notice will instruct the employer to pay by check or money order (including International Money Order), and require that the check or money order be payable in U.S. currency.