

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
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**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 16-06,
Change 1**

TO: CHICAGO NATIONAL PROCESSING CENTER PROGRAM DIRECTOR
STATE WORKFORCE AGENCY ADMINISTRATORS

FROM: JANE OATES /s/
Assistant Secretary

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

- Purpose.** To transmit special procedures, updated to reflect regulatory and organization changes in the H-2A Program, for multi-state custom combine owners/operators (including Canadian) who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers as crew members to perform work in the United States.
- References.** 20 CFR Part 655, Subpart B; 20 CFR Part 653, Subparts B and F; 20 CFR Part 654, Subpart E; and Training and Employment Guidance Letter (TEGL) No. 16-06, Special Procedures for Processing H-2A Applications for Multi-State Custom Combine Owners/Operators; Field Memorandum (FM) No. 5-04 Special Procedures: Labor Certification for Processing H-2A Applications for Multi-State Custom Combine Owner/Operators; and [ETA Handbook No. 385](#).
- Background.** In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and established the H-2A Program. In 1987, the Department issued an Interim Final Rule, promulgating the first H-2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496 (Jun. 1, 1987). The 1987 regulations provided for the administration of the H-2A Program by the Employment and Training Administration (ETA) Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers. The 1987 regulations also established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

RESCISSIONS TEGL 16-06	EXPIRATION DATE Continuing
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The significance of the custom combine activity on the U.S. economy resulted in the promulgation of H-2A special procedures that were initially published in the Federal Register on April 12, 1989 (54 FR 14703). Upon a request from the U.S. Custom Harvesters, Inc., the special procedures for custom combine owners/operators were revised and transmitted by FM No. 5-04 on January 28, 2004, which was directed to all ETA Regional Administrators. The processing of H-2A applications at that time was conducted by ETA Regional Offices. FM No. 5-04 was rescinded by TEGL 16-06.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H-2A regulations on December 18, 2008. 73 FR 77110 (Dec. 18, 2008) (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet H-2A Program policy objectives, the Department commenced another rulemaking process culminating in the publication of new H-2A regulations on February 12, 2010. 75 FR 6884 (Feb. 12, 2010) (the 2010 Final Rule). The 2010 Final Rule implements changes that affect special procedures for multi-state custom combine owners and operators.

Section 20 CFR 655.102 provides the Administrator of the Office of Foreign Labor Certification (OFLC) with authority to establish, continue, revise or revoke special procedures for processing of certain H-2A applications, including those for custom combine harvesting crews, as long as those procedures do not deviate from statutory requirements under the INA.

This TEGL updates the special procedures previously established for applications for multi-state custom combine owners and operators to reflect organizational changes, in addition to new regulatory and policy objectives. It rescinds and replaces previous guidance disseminated under TEGL No. 16-06, Special Procedures for Processing H-2A Applications for Multi-State Custom Combine Owners/Operators.

4. **Special Procedures.** Attachment A outlines special procedures for applications submitted by multi-state custom combine owners/operators under the H-2A Program. Attachment B outlines standards for housing applicable to multi-state custom combine owners/operators under the H-2A Program. Unless otherwise specified in Attachments A and B, applications submitted for these occupations must comply with the requirements for processing H-2A applications contained at 20 CFR Part 655, Subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR Parts 655, Subpart B, 653 subparts B and F, and 654.
5. **Action Requested.** Chicago National Processing Center (Chicago NPC) Program Director and State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved in processing H-2A applications from multi-state custom combine owners/operators. The revised special procedures will apply to all employer applications with a start date of need on or after October 1, 2011.

6. **Inquiries**. Questions from SWA staff should be directed to the Chicago NPC. Questions from the Chicago NPC staff should be directed to the OFLC National Office.

7. **Attachments**.

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

Attachment B – Standards for Housing Applicable to Multi-State Custom Combine Owners/Operators