

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
2022 H-2A Final Rule FAQs

Round 5: Joint Employers
March 14, 2023

1. May multiple employers file a single H-2A application, and related job order, to jointly employ H-2A workers?

Yes. The Department’s regulations at 20 CFR 655.131 address the two scenarios in which an employer may submit a Form ETA-9142A, *H-2A Application for Temporary Employment Certification* on behalf of itself and one or more additional employers who seek to jointly employ H-2A workers in full-time employment to perform the job opportunity described in the Form ETA-790A, *H-2A Agricultural Clearance Order*, and Form ETA-9142A.

An agricultural association, acting as a joint-employer with its employer-members, may file a “master application” as provided in 20 CFR 655.131(a). A “master application” requires that all of the employer-members listed on the H-2A application seek workers to perform work in the same occupation or comparable agricultural services or labor. The places of employment in a master application may be in multiple areas of intended employment (AIEs) so long as the application spans no more than two contiguous States. In addition, all of the employer-members must require work to begin within the same 14-calendar-day period. *See* 20 CFR 655.131(a)(2).

Individual employers may file a “joint employer application” as provided in 20 CFR 655.131(b). This filing option is intended to allow employers who, individually, cannot offer at least 35 hours of work per workweek (i.e., do not have full-time job opportunities to offer) to combine their labor need, as joint employers, in a single, shared H-2A application. A “joint employer” application requires that all of the employers listed on the H-2A application seek workers to perform the same agricultural services or labor at places of employment located within a single AIE throughout the same period of employment. In addition, no single joint employer may offer to employ an H-2A worker, or any combination of H-2A workers, more than a total of 34 hours in any workweek.

2. For a “joint employer application” filed under 20 CFR 655.131(b), is each joint employer required to sign the H-2A application?

Yes. For each of the individual employers whose name is listed on the Form ETA-790A, *H-2A Agricultural Clearance Order*, Addendum B, the NPC must receive a signed Form ETA-9142A, *H-2A Application for Temporary Employment Certification*, Appendix A. *See* 20 CFR 655.121(a)(3).

Important Note: Each Form ETA-9142A, Appendix A, must contain the joint employer's original signature. For electronic submission, the original signature requirement may be satisfied with an electronic (scanned) copy of the original signature or a valid, verifiable electronic signature method, as directed by the OFLC Administrator.

Reminder: If applicable, the joint employer's attorney or agent's original signature is also required.

NPC Processing

3. For a "joint employer application" filed under 20 CFR 655.131(b), what supporting documentation must be submitted with the H-2A application?

Employers filing an H-2A application jointly in accordance with 20 CFR 655.131(b) are required to submit the following documents to the NPC:

- Form ETA-9142A, *H-2A Application for Temporary Employment Certification*, that includes a signed Form ETA-9142A, Appendix A, for each joint employer. *See* 20 CFR 655.131(b)(1)(iii).
- Form ETA-790A, *H-2A Agricultural Clearance Order*, that includes:
 - Addendum B completed with the names, addresses, and crop(s) and agricultural work to be performed for each of the joint employers;
 - In Item A.6, clear disclosure of the daily and weekly work schedule that the joint employers intend to offer the H-2A worker(s), which must be at least 35 hours per work for each worker;
 - Using Addendum C to provide additional information for Item A.6, clear disclosure of the daily and weekly work schedule that each of the joint employers intends to offer to the H-2A worker(s), none of which may offer more than 34 hours per workweek to any one H-2A worker or combination of H-2A workers. *See* 20 CFR 655.131(b)(1)(i) and (ii).
- Proof that the employers' housing is in compliance with applicable program requirements. *See* 20 CFR 655.122(d).
- Proof of workers' compensation insurance coverage for each of the joint employers. *See* 20 CFR 655.122(e).
- A written recruitment report, signed by each of the joint-employers, submitted on the date specified by the CO in the Notice of Acceptance (NOA). *See* 20 CFR 655.156.

The joint employers may also choose to submit justification for any qualifications required for the job opportunity that are listed on their job order and/or application at the time of filing. The CO has the authority, through a Notice of Deficiency (NOD), to request that the employer provide documentation evidencing the appropriateness of these job qualifications. *See* 20 CFR 655.122(b).

Required documents may be submitted at the time of filing the H-2A application using the electronic filing system's document upload feature. If the employer does not have the documentation ready at the time it submits the H-2A application, the CO will direct the

employer to submit each of these documents before certification may be granted. The CO may issue a NOA when an H-2A application is complete and compliant for recruitment purposes, even though requirements for certification that are unrelated to recruitment (e.g., final housing approval) may not have been completed yet.

4. For a “joint employer application” filed under 20 CFR 655.131(b), what information must be included on the job order (i.e., Form ETA-790A, *H-2A Agricultural Clearance Order*) with regard to the number of workhours offered?

The job order (i.e., Form ETA-790A, *H-2A Agricultural Clearance Order*) must contain the material terms and conditions of employment that the employer(s) will offer to workers. See 20 CFR 655.103(b) (definition of “job order”). In addition, in the absence of a separate written work contract incorporating the required terms and conditions of employment, agreed to by both the employer and the worker, the Form ETA-790A serves as the work contract between employers and workers. As a result, material terms and conditions of employment, such as the days and hours of work per workweek offered—both by joint employers, collectively, and by each joint employer, individually—must be clearly disclosed on the Form ETA-790A. See 20 CFR 655.103(b) (definition of “work contract”); see also 20 CFR 655.122(q).

Using Form ETA-790A, Item A.6, all employers must clearly disclose the total number of workhours and daily work schedule offered (i.e., anticipated days and hours of work per day and per week). For an H-2A job order presenting a joint employment job offer under 20 CFR 655.131(b), the joint employers will use Item A.6 to disclose the normal workhours and daily work schedule that the joint employers—as a group—offer to prospective applicants. For example, in the sample Item A.6 below, three joint employers state that the one worker to be hired will normally work 42 hours of work per workweek, with the following daily schedule: Sundays 0 hours; Mondays 8 hours; Tuesdays 7 hours; Wednesdays 8 hours; Thursdays 7 hours; Fridays 8 hours; and Saturdays 4 hours:

6. Anticipated days and hours of work per week (an entry is required for each box below) *							
42	a. Total Hours	8	c. Monday	8	e. Wednesday	8	g. Friday
0	b. Sunday	7	d. Tuesday	7	f. Thursday	4	h. Saturday

In such joint employment situations, additional information about the weekly and daily workhours offered for each of the joint employers, individually, is necessary to clearly disclose the job offer in the H-2A job order. The instructions to Form ETA-790A remind employers to use the Form ETA-790A, Addendum C, to disclose additional information about Item A.6. In Addendum C, the joint employers will provide the Item A.6 information (i.e., anticipated days and hours of work per week) to be offered by each of the joint employers, individually. This additional information apprises workers of the less-than-full-time workhours that each of the joint employers intends to offer and the schedule of work for that employer. Continuing the example above, in the sample Addendum C expansion of Item A.6 below, the same three joint employers state the total hours per workweek normally

offered by each employer to the one worker they seek to jointly employ (i.e., 8, 24, and 10, respectively) and the daily workhours for each employer:

H. Additional Material Terms and Conditions of the Job Offer	
a. Job Offer Information 1	
1. Section/Item Number *	2. Name of Section or Category of Material Term or Condition *
A.6	Anticipated days and hours of work per week
3. Details of Material Term or Condition (up to 3,500 characters) *	
Farm ABC offers 8 hours per workweek: Sundays 0; Mondays 0; Tuesdays 4; Wednesdays 0; Thursdays 4; Fridays 0; Saturdays 0.	
Farm JKL offers 24 hours per workweek: Sundays 0; Mondays 8; Tuesdays 0; Wednesdays 8; Thursdays 0; Fridays 8; Saturdays 0.	
Farm XYZ offers 10 hours per workweek: Sundays 0; Mondays 0; Tuesdays 3; Wednesdays 0; Thursdays 3; Fridays 0; Saturdays 4.	

Additional Example: Three employers filing jointly to employ two workers

Form ETA-790A, Item A.6 informs workers that the joint employers, collectively, will normally offer each worker 40 hours of work per workweek:

6. Anticipated days and hours of work per week (an entry is required for each box below) *							
40	a. Total Hours	8	c. Monday	8	e. Wednesday	8	g. Friday
0	b. Sunday	8	d. Tuesday	8	f. Thursday	0	h. Saturday

Form ETA-790A, Addendum C, provides additional information regarding Item A.6—the total daily and weekly workhours offered by each joint employer, individually, to any combination of workers to be jointly employed. This disclosure informs workers of the workhours and workdays that each of the joint employers requires and confirms the total hours per workweek normally offered by each joint employer (i.e., 32, 24, and 24, respectively) to the workers:

H. Additional Material Terms and Conditions of the Job Offer	
a. Job Offer Information 1	
1. Section/Item Number *	2. Name of Section or Category of Material Term or Condition *
A.6	Anticipated days and hours of work per week
3. Details of Material Term or Condition (up to 3,500 characters) *	
Farm ABC offers 32 hours per workweek: Sundays 0; Mondays 8; Tuesdays 8; Wednesdays 8; Thursdays 0; Fridays 8; Saturdays 0.	
Farm JKL offers 24 hours per workweek: Sundays 0; Mondays 8; Tuesdays 0; Wednesdays 8; Thursdays 0; Fridays 8; Saturdays 0.	
Farm XYZ offers 24 hours per workweek: Sundays 0; Mondays 0; Tuesdays 8; Wednesdays 0; Thursdays 16; Fridays 0; Saturdays 0.	

Note: In the example above, Farm XYZ discloses a need for each of the two workers requested to work 8 hours—for a total of 16 hours—on Thursdays.

The examples above include the minimally necessary information that all joint employer H-2A job orders filed under 20 CFR 655.131(b) must disclose in the H-2A job order. This information apprises workers of the normal days and hours of work offered by the joint employers, and it confirms—for workers, joint employers and the Department—that the job offer is for full-time employment and that no single joint employer will employ any H-2A worker, or combination of H-2A workers, for more than the maximum 34 hours per workweek permitted. See 20 CFR 655.131(b)(1)(ii). If possible, employers may further describe their joint employment plan (e.g., both workers will be on Farm ABC for four hours on Mondays, followed by 4 hours on Farm JKL, or one of the two workers will be on Farm ABC, while the other is on Farm JKL, for the full day on Mondays).

Amendment Requests

- 5. May an employer filing an *Application for Temporary Employment Certification* under 655.131(b) request an amendment to add or remove one or more of the joint employers from its H-2A application?**

No. The Department's H-2A regulations at 20 CFR 655.145 only permit an employer to request amendments to the number of workers and/or period of employment while the Form ETA-9142A, *Application for Temporary Employment Certification* is pending with the NPC.

Post-certification

- 6. If an employer who was included in a “joint employer application” filed under 20 CFR 655.131(b) needs more labor than normal or anticipated during a particular workweek, may the joint employer adjust workhours from those disclosed on the Form ETA-790A, *H-2A Agricultural Clearance Order*?**

Joint employers may adjust work hours for a particular workweek during the work contract period, as necessary, for example, due to unforeseen weather or crop conditions. However, such adjustments are limited by the 34-hour maximum limit on any single joint employer's employment of any H-2A worker, or combination of H-2A workers. *See* 20 CFR 655.131(b)(1)(ii).

Important Note: When signing Form ETA-9142A, *H-2A Application for Temporary Employment Certification*, Appendix A, each employer included in the joint employer application filed under 20 CFR 655.131(b) attested, in part, that they accurately disclosed the joint employers' anticipated, normal workhour needs. If the Department becomes aware that workers were not, in fact, consistently offered the normal workhours disclosed on the Form ETA-790A during the employment period, the Department will request documentation from the joint employers to address differences between the workhours offered and the actual workhours performed and may find that the joint employers violated the terms and conditions of the certification.