

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL OFLC
	DATE June 14, 2011

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 32-10

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

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: Special Procedures: Labor Certification Process for Employers Engaged in Shepherding and Goatherding Occupations under the H-2A Program

1. **Purpose.** To transmit special procedures, as updated to reflect regulatory and administrative changes in the H-2A Program, for employers who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers to perform shepherding and/or goatherding activities.
2. **References.** 20 CFR Part 655, Subpart B; 20 CFR Part 653, Subparts B and F; and 20 CFR Part 654, Subpart E; and Field Memorandum (FM) 24-01, Special Procedures: Labor Certification for Shepherders and Goatherders under the H-2A Program; FM 74-89, Special Procedures: Labor Certification for Shepherders under the H-2A Program; and ETA Handbook No. 385.
3. **Background.** Historically, employers in several western states have utilized the provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1101, et seq., to import nonimmigrant foreign workers to work as shepherders and goatherders in conjunction with their ranching activities.

The unique occupational characteristics of shepherding (spending extended periods of time with grazing herds of sheep in isolated mountainous terrain; being on call to protect flocks from predators 24 hours a day, 7 days a week) have been recognized by the Department, the United States Citizenship and Immigration Service (USCIS), and Congress as significant factors in limiting the number of U.S. workers who might be available for and capable of performing these jobs.

During the early 1950's, Congress enacted three special laws authorizing the admission of a certain number of "foreign workers skilled in shepherding" for many of these jobs. Special privileges were granted with respect to the issuance of visas which enabled the foreign

RESCISSIONS FM 24-01	EXPIRATION DATE Continuing
--------------------------------	--------------------------------------

workers to gain entry into the U.S. on an expedited basis, provided that they were otherwise admissible into the U.S. for permanent residence.

During 1955 and 1956, the House Judiciary Committee (Committee), in response to requests from sheep ranchers, undertook an investigation to examine allegations that a number of foreign shepherders and goatherders admitted under the special laws were leaving shepherding shortly after arriving in the U.S., and were instead employed in other industries and occupations.

The Committee's investigation substantiated many of these allegations. In a report issued on February 14, 1957, the Committee stated that American employers and the sheep raising industry had not fully benefitted from the services of foreign shepherders, as was intended by the special legislation. The Committee recommended that no additional special legislation be enacted to admit foreign shepherders and also that the future importation of foreign shepherders be governed by the H-2 temporary worker provisions of the INA and administered by the Immigration and Naturalization Service (INS) (now, USCIS) and the Department. H.R. Rep. No. 67, 85th Cong., 1st Session (1957).

Following the issuance of the Committee's report, Congress permitted the special legislation to expire. No additional legislation for shepherders has been enacted to date. The labor certification program for temporary foreign shepherders and goatherders was implemented consistent with the H-2 program administered by INS (now, USCIS) and the Department.

In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the INA 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, procedures which did not exist until that time. Although neither the IRCA amendments nor the INA specifically address the employment of nonimmigrant foreign shepherders and goatherders in the U.S., the Department's 1987 regulations 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 to make a determination as to the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

After the promulgation of the 1987 regulations, the Department clarified precisely how and when certain new H-2A requirements and procedures would be applied to the shepherd program. Subsequently, in 1989, the Department established special procedures for shepherders and goatherders through FM 74-89. Due to the evolution of the H-2A Program, these special procedures were rescinded and new special procedures established by FM 24-01, which has been in use since August 1, 2001.

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 the occupations involved in sheep and goat herding. Section 20 CFR 655.102 (as amended by the 2010 Final Rule) provides the Office of Foreign Labor Certification (OFLC) Administrator with the authority to establish, continue, revise or revoke special procedures for processing H-2A applications, including those for sheepherders and goatherders, so long as those procedures do not deviate from statutory requirements under the INA.

This Training and Employment Guidance Letter (TEGL) updates the special procedures previously established for applications for occupations involved in sheepherding and goatherding to reflect organizational changes, in addition to new regulatory and policy objectives. It rescinds and replaces previous guidance disseminated under FM 24-01, Special Procedures: Labor Certification for Sheepherders and Goatherders Under the H-2A Program.

4. **Special Procedures.** Attachment A outlines special procedures for labor certification applications submitted by employers for occupations in sheepherding and goatherding under the H-2A Program. Attachment B outlines standards for mobile housing applicable to occupations in sheepherding and goatherding 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.** The Chicago National Processing Center (Chicago NPC) Program Director and the State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved with processing H-2A labor certification applications for sheepherders and/or goatherders. 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 Office of Foreign Labor Certification (OFLC) National Office.
7. **Attachments.**

Attachment A - Special Procedures: Labor Certification Process for Applications for Sheepherding and Goatherding Occupations under the H-2A Program

Attachment B - Standards for Mobile Housing Applicable to Sheepherders and Goatherders

ATTACHMENT A
Special Procedures: Labor Certification Process for Applications for Shepherding and Goatherding Occupations under the H-2A Program

This document outlines special procedures for applications submitted by employers for shepherding and/or goatherding occupations under the H-2A Program. Unless otherwise specified in this attachment, applications submitted for these 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 these 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)). The Department is continuing a special variance to the offered wage rate requirements contained at 20 CFR 655.120(a). Because occupations involving shepherding and/or goatherding are characterized by other than a reasonably regular workday or workweek, an employer must agree to offer, advertise in the course of its recruitment, and pay the monthly, weekly, or semi-monthly prevailing wage established by the OFLC Administrator for each state listed in an approved itinerary. As a condition of receiving an H-2A labor certification, an employer must comply with all applicable Federal, state and local employment-related laws and regulations, including the mandatory state minimum wage rates for the occupation.

In establishing the prevailing wage rate for shepherding and/or goatherding, the Department uses findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the [ETA Handbook No. 385](#), and consistent with the wage setting procedures historically applied to shepherd occupations in the Western states. SWAs are required to transmit wage rate findings covering shepherding and/or goatherding 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.

In circumstances where a SWA is unable to produce a wage rate finding for an occupation, due to an inadequate sample size or another valid reason, the wage setting procedures allow the OFLC to issue a prevailing wage rate for that state based on the wage rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activities to ensure that the wages of similarly employed workers are not adversely affected.

If the OFLC cannot establish a wage rate by using comparable survey data from an adjoining or proximate SWA, the OFLC will give consideration to aggregating survey data for shepherding and/or goatherding activities across states to create regional prevailing wage rates. When regional prevailing wages are considered, the OFLC may use the U.S. Department of Agriculture's (USDA) production or farm resource regions or other groupings of states used to conduct its Farm Labor Survey.

B. Job Orders and SWA Review (20 CFR 655.121).

1. Basic Process. An employer engaged in shepherding and/or goatherding 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 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.

2. Master Job Orders Filed by Associations. The Department is granting a waiver of the required time period and location(s) of filing job orders prepared by associations acting as a joint employer with its members. Where the job order is being prepared in connection with a future master application, the joint employer association will submit a single "master" job order directly to the Chicago NPC once each calendar year in accordance with a schedule approved by the Chicago NPC. Because of the unique nature of shepherding and/or goatherding work, and the historic shortage of domestic workers, an association is permitted to file a master job order on behalf of a number of its employer-members in more than two contiguous states as long as (a) the job order remains active on a year-round basis, (b) the job order contains the names, addresses, telephone numbers, and number of openings of each employer and identifying, with as much geographic specificity as possible and for each employer, all of the physical locations, directions, and estimated start and end dates of need where work will be performed, and (c) the association agrees to place with any of its employer-members any qualified U.S worker who applies for employment.

The Chicago NPC will review the job order for compliance with all regulatory requirements and work with the association to address any deficiencies in a manner that is consistent with 20 CFR 655.140 and 141. Once the job order is determined to meet all regulatory requirements, the Chicago NPC will issue a Notice of Acceptance consistent with 20 CFR 655.143, place a copy of the master job order on the

Department's national electronic job registry, and notify the association and all appropriate SWAs with jurisdiction over the anticipated worksites.

- C. Contents of Job Offers (20 CFR 655.122). Unless otherwise specified in this section, the content of job orders submitted to the SWAs and the Chicago NPC for sheepherding and/or goatherding occupations must comply with all of the requirements of 20 CFR Part 655, Subpart B, 653 Subparts B and F, and 20 CFR Part 654.

1. Job duties, qualifications, and requirements.

Job Duties. Based on current industry practice, the SWA may rely on the following standard description of the duties to be performed by sheepherders and/or goatherders:

Attends sheep and/or goat flock grazing on the range or pasture. Herds flock and rounds up strays using trained dogs. Beds down flock near evening campsite. Guards flock from predatory animals and from eating poisonous plants. Drenches sheep and/or goats. May examine animals for signs of illness and administer vaccines, medications and insecticides according to instructions. May assist in lambing, docking, and shearing. May perform other farm or ranch chores related to the production and husbandry of sheep and/or goats on an incidental basis.

Any additional job duties must be normal and accepted for the occupation, and the SWA and Chicago NPC have the authority to request supporting documentation substantiating the appropriateness of the duties prior to accepting the job order. Additionally, the SWA or Chicago NPC may request modifications to the job duties if additional information, such as climatic conditions and/or the size of flocks (e.g., open range bands of sheep are often 1,000 heads or more), necessitates the use of pack and saddle horses to reach the range in order to fully apprise U.S. workers of the nature of the work to be performed.

Experience. Due to the unique nature of the work to be performed, the job offer may specify that applicants possess up to 6 months of experience in sheepherding or similar occupations involving the range tending or production of livestock covering multiple seasons and may require reference(s) to verify experience in performing these 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.

Hours. The description of anticipated hours of work must show "on call for up to 24 hours per day, 7 days per week" in the job order. If an application filed for a sheepherder or goatherder does not include the requirements of being on call 24 hours per day, 7 days per week, the Chicago NPC may not process the employer's application under the special procedures enumerated in this TEG, and must instead require compliance with all the requirements of the H-2A regulations outlined in 20 CFR 655, Subpart B.

2. Housing. The employer must state in its job order 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 as set out 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. An 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 shepherding and/or goatherding 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 shepherding and/or goatherding 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 order 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.
5. Meals. Based on long standing practice in the industry, the employer must provide its U.S. and H-2A workers free of charge either three prepared meals a day, when workers are in camp, or free and convenient cooking facilities and provision of food for the workers to prepare their own meals while in camp or on the range.
6. Transportation; daily subsistence. Based on long standing practice in the industry, the employer must advance inbound transportation and subsistence costs to both U.S. and H-2A workers being recruited and extend the same benefit to workers in corresponding employment, consistent with 20 CFR 655.122(h).
7. Earnings records and statements. The employer must keep accurate and adequate records with respect to the workers' earnings and furnish to the worker on or before each payday a statement of earnings. Because the unique circumstances of employing shepherders and/or goatherders (i.e., on call 24/7 in remote locations) prevent the monitoring and recording of hours actually worked each day as well as the time the worker begins and ends each workday, the employer is exempt from

reporting on these two specific requirements at 20 CFR 655.122(j) and (k). However, all other regulatory requirements related to earnings records and statements apply.

8. Frequency of pay. The employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly or according to the prevailing practice in the area of intended employment, whichever is more frequent. Due to the unique circumstances of employing sheepherders and/or goatherders, the employer is authorized to pay the worker based on a monthly payment arrangement as long as the worker mutually agrees and the arrangement is reflected in the work contract. Employers must pay wages when due.
9. Period of Employment and Work Contract. The total period of employment (Item No. 9 on ETA Form 790) contained in a job offer must be for no more than one year.

Employers whose original certified period of employment is less than the maximum permissible duration, may negotiate a longer-term contract with an H-2A or a U.S. worker after workers arrive at the job site consistent with 20 CFR 655.170. An extension of the work contract period that is negotiated between the H-2A employer and a worker which would extend the work contract period beyond the 12 months permitted by the Department's H-2A regulations, requires that the employer obtain a new labor certification from the Department.

Short term extensions which do not exceed two weeks may be submitted directly to the Department of Homeland Security for approval. However, the employer must first submit for approval any change in the period of employment to the Chicago NPC, consistent with 20 CFR 655.170, if the change would result in an extension of the work contract period in excess of two weeks.

When a longer term contract is negotiated with a worker, the employer is not relieved of the responsibility for reimbursement to the worker for travel and subsistence expenses incurred in getting to the job site which were advanced by the employer and subsequently withheld from the worker's pay until 50 percent of the original contract period elapsed. These payments must be made at the 50 percent completion point of the original certified period of employment. The employer is also responsible for transportation and subsistence expenses from the place of employment if the worker successfully fulfills his/her obligations under the original certified terms of employment or is terminated without cause and has no subsequent H-2A employment. The employer must provide or pay for the worker's return transportation and subsistence whenever the employment relationship is severed after the completion of the original certified work contract period or where the worker is terminated without cause. Similarly, an employer is not relieved of its obligation to pay for return transportation and subsistence if an H-2A worker is displaced as a result of the employer's compliance with the 50 percent rule. Successful completion of the original certified work contract period or job order entitles the worker to return transportation and subsistence regardless of performance under any short or long-term extension of the contract.

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 foreign 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.

B. Master Applications Filed by Associations. An association filing as a joint employer may submit a master application on behalf of a number of its employer-members in more than two contiguous States covering multiple start dates of employment as long as the application identifies the names, addresses, telephone numbers, directions to all work locations/itinerary, estimated dates of need, and the number of openings for each employer-member that will employ workers. The association may prepare, sign, and submit the Appendix A.2 on behalf of its members.

An association with a master job order on file with the Chicago NPC is not required to re-submit the ETA Form 790 and all attachments unless the association is requesting modifications. The Chicago NPC will verify that the master job order associated with a master application is available on the national electronic job registry and covers all the employer-members duly named on the ETA Form 9142. Any changes to the master job order and/or application must be reviewed and approved by the Chicago NPC. Any approved modifications to the master job order will be placed on the Department's national electronic job registry and notification provided to the association and all appropriate SWAs with jurisdiction over the anticipated worksites.

For both individual employer applications and master applications, the filing procedures at 20 CFR 655.130 – 655.135 apply to “initial” applications (i.e., where the employer is requesting a labor certification to hire a nonimmigrant foreign worker to fill a vacant position) as well as to “renewal” applications (i.e., where the employer is requesting certification for a position which is already held by a nonimmigrant foreign worker completing the first or second year of a planned 3-year work period with the employer).

III. POST-ACCEPTANCE REQUIREMENTS

A. Interstate clearance of job order. The Chicago NPC Certifying Officer will place a copy of the master job order on the Department's national electronic job registry, and notify the association and all appropriate SWAs with jurisdiction over the anticipated worksites to make available a copy of the master job order on their active files and initiate

recruitment of U.S. workers. This procedure applies to applications filed by an individual employer as well as an association and satisfies the agricultural clearance order requirements at 20 CFR 653, Subpart F.

- B. Newspaper advertisements. Because of the unique nature of sheepherding and/or goatherding work, and the consistent lack of qualified applicants responding to newspaper advertisements, all applications filed by an individual employer and/or an association are exempt from the regulatory requirements at 20 CFR 655.151 to place advertisements in a newspaper of general circulation.
- C. Referrals of U.S. workers. In accordance with 20 CFR 655.155, SWAs may only refer for employment individuals who have been apprised of all the material terms and conditions of employment and have indicated, by accepting referral to the job opportunity, that he or she is qualified, able, willing, and available for employment. For master job orders, the association may accept referrals of U.S. workers, conduct interviews, and make hiring commitments on behalf of its employer-members. In such circumstances, the master job order must clearly explain how applicants will be considered for hire through the association, including the method(s) for contact (e.g., telephone, in person), hours and/or location(s) for conducting interviews, an indication that collect calls will be accepted, and whether referred applicants should report to the nearest local office of the SWA when they arrive in the area of intended employment. Employers who wish to conduct interviews must do so at little or no cost to the worker, in accordance with 20 CFR 655.152(j).

Because of the unique nature of master job orders, the association will need to determine if there is a job opening in the geographic area of the applicant's choice. The association will make every effort to place a qualified applicant with an employer-member in the geographic area of the applicant's choice within 3 working days of the telephone interview. If the applicant is determined to be qualified and the geographic assignment choice can be accommodated, the association, after receiving authorization or confirmation from the specific employer, will make a hiring commitment on behalf of the employer-member who has the job opening to which the applicant will be placed.

The association may also make available to applicants information on job openings with non-association employers, particularly in situations where the association is not able to readily accommodate the applicant's geographic choice of employment. However, receiving such a referral will not preclude the applicant from choosing a different geographic area covering an employer-member or from deferring a decision to accept a job offer until a job opening in the geographic area of choice becomes available with an employer-member. After the matter of geographic location/assignment is resolved, the association will provide notification to the SWA when the applicant has been hired and facilitate the arrangements necessary to ensure that transportation and subsistence are provided in advance to the worker by the association. The association will retain all documentation related to referrals of U.S. workers, interviews and the results of such actions for a period of 3 years and will make all materials related to the recruitment and consideration of U.S. applicants available to the Chicago NPC pursuant to a request for audit as required by 20 CFR 655.180(b).

IV. POST-CERTIFICATION: TRANSFER OF WORKERS

A. Authority

Pursuant to 8 U.S.C. 1188(d)(2), the Department's certification granted to the association may be used for the certified job opportunities of any of its members and such workers may be transferred among its members to perform the services for which the certification was granted. Although a worker may be transferred from one member to another member, the association may not transfer workers to any non-member employer or employer-members not disclosed on the master job order.

The employer must disclose in the job offer that workers may be transferred to any of its certified members and guarantee that workers will be notified at least 7 working days in advance of such transfer. When a worker objects to a transfer, the association will consider the worker's concerns and preferences. However, ultimate refusal on the part of a worker to a transfer may subject the worker to dismissal based on a lawful, job-related reason.

B. Notification to the DOL and SWA

To ensure the employer to whom a worker is being transferred has sufficient housing meeting the applicable standards, the association shall provide written notification to the SWA with jurisdiction over the area of intended employment and the Chicago NPC no less than 7 working days prior to the transfer. Such notification shall describe the details of the transfer, including the number and names of workers and employers affected and housing information. This notification will provide the SWA with time to make a determination regarding the suitability of the housing and, where such a transfer affects the available job openings of the association's employer member(s), allow the SWA and Chicago NPC to make appropriate modifications to the active master job order to reflect any changes in the employer's situation.

If the SWA determines that suitable housing is not available, the SWA shall provide written notification to the association and the Chicago NPC that the planned transfer shall be put in abeyance until the housing is determined by the SWA to be sufficient and meets the applicable standards, or the association agrees to transfer the worker to another employer where the SWA has issued a determination that housing is suitable.

C. Contractual Obligations

The employer who employs the newly transferred worker assumes the existing obligations of the work contract entered into with the previous employer including any multi-year contract negotiated with the worker. The association is responsible for maintaining and making available for inspection a copy of all work contracts for its employer-members. Where the worker is moved to another state with a different offered wage rate, the employer will be required to pay the worker the established prevailing wage for that state.

ATTACHMENT B
Standards for Mobile Housing Applicable to Shepherders and Goatherders

I. PROCEDURES

Occupations involving shepherding/goatherding generally require workers to live in remote housing of a mobile nature, rather than “a fixed-site farm, ranch or similar establishment.” This type of housing is typically referred to as mobile housing. For purposes of these special procedures, mobile housing is any housing that is capable of being moved from one area on the open range to another. The employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.

Where housing for work performed on the range is provided, the regulations at 20 CFR 655.122(d)(2) require that such housing meet standards of the DOL Occupational Safety and Health Administration (OSHA). In the absence of such standards, range housing must meet guidelines issued by OFLC. Due to the fact that OSHA standards currently do not cover mobile housing, Section II of this attachment establishes the standards for determining the adequacy of employer-provided mobile housing for use on the range.

Both mobile housing and fixed-site farm or ranch housing may be self-certified by an employer. Employers must submit a signed statement to the SWA and the Chicago NPC with the application for labor certification assuring that the housing is available, sufficient to accommodate the number of workers being requested, and meets all applicable standards. However, any other type of housing used by an employer to house the workers engaged in shepherding/goatherding activity must meet the standards applicable to such housing under 20 CFR 655.122(d).

SWAs must develop and implement a schedule which ensures that each employer’s self-certified housing is inspected no less frequently than at least once every 3 years. These inspections may be performed either before or after a request is submitted for nonimmigrant workers on the open range. Before referring a worker who is entitled to such housing, the SWA office must ensure that the housing is available and has been inspected in accordance with the inspection schedule. If the SWA determines that an employer’s housing cannot be inspected in accordance with the inspection schedule or, when it is inspected, does not meet all the applicable standards, the Chicago NPC may deny the H-2A application in full or in part or require additional inspections in order to satisfy the regulatory requirement.

II. MOBILE HOUSING STANDARDS

An employer may use a mobile unit, camper, or other similar mobile vehicle for housing workers that meets the following standards:

A. Housing Site

Mobile housing sites shall be well drained and free from depressions in which water may stagnate.

B. Water Supply

1. An adequate and convenient supply of water that meets standards of the state health authority shall be provided. The amount of water provided must be enough for normal drinking, cooking, and bathing needs of each worker; and
2. Individual drinking cups shall be provided.

C. Excreta and Liquid Waste Disposal

1. Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in accordance with requirements of the state health authority or involved Federal agency; and
2. If pits are used for disposal by burying of excreta and liquid waste, they shall be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with state and local health and sanitation requirements.

D. Housing Structure

1. Housing shall be structurally sound, in good repair, in sanitary condition and shall provide protection to occupants against the elements;
2. Housing, other than tents, shall have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering;
3. Each housing unit shall have at least one window which can be opened or skylight opening directly to the outdoors; and
4. Tents may be used where terrain and/or land regulations do not permit use of other more substantial mobile housing which provides facilities and protection closer in conformance with the Department's intent.

E. Heating

1. Where the climate in which the housing will be used is such that the safety and health of a worker requires heated living quarters, all such quarters shall have properly installed operable heating equipment which supplies adequate heat. In considering whether the heating equipment is acceptable, the Chicago NPC shall first determine if the housing will be located in a National Forest Wilderness Section as specified in the Wilderness Act (16 U.S.C. §§ 1131-1136). Such a location has a bearing on the type of equipment practicable, and whether any heavy equipment can be used. For example, the Wilderness Act (16 U.S.C. § 1133(c)) restricts certain motorized or mechanical transport on certain roads in wilderness areas. The U.S. Forest Service has regulations for this at 36 CFR Part 293. Aside from the above, other factors to consider in evaluating heating equipment are the severity of the weather and the types of protective clothing and bedding made available to the worker. If the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24 hours, no separate heating equipment is required if proper protective clothing and bedding are made available;

2. Any stoves or other sources of heat using combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. Portable electrical heaters may be used, and if approved by Underwriters' Laboratory, kerosene heaters may be used according to manufacturer's instructions. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove;
3. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe shall be made of fireproof material. A vented metal collar shall be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof; and
4. When a heating system has automatic controls, the controls shall be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

F. Lighting

1. In areas where it is not feasible to provide electrical service to mobile housing, including tents, lanterns shall be provided (kerosene wick lights meet the definition of lantern); and
2. Lanterns, where used, shall be provided in a minimum ratio of one per occupant of each unit, including tents.

G. Bathing, Laundry and Hand Washing

Movable bathing, laundry and hand washing facilities shall be provided when it is not feasible to provide hot and cold water under pressure.

H. Food Storage

When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as salting, are acceptable.

I. Cooking and Eating Facilities

1. When workers or their families are permitted or required to cook in their individual unit, a space shall be provided with adequate lighting and ventilation; and
2. Wall surfaces next to all food preparation and cooking areas shall be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas shall be of fire-resistant material.

J. Garbage and Other Refuse

1. Durable, fly-tight, clean containers shall be provided to each housing unit, including tents, for storing garbage and other refuse; and
2. Provision shall be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary. Refuse disposal shall conform to Federal, state, or local law, whichever applies.

K. Insect and Rodent Control

Appropriate materials, including sprays, must be provided to aid housing occupants in combating insects, rodents and other vermin.

L. Sleeping Facilities

A separate sleeping unit shall be provided for each person, except in a family arrangement. Such a unit shall include a comfortable bed, cot, or bunk with a clean mattress. When filing an application for certification and only where it is demonstrated to the Certifying Officer that is impractical to set up a second sleeping unit, the employer may request a variance from the separate sleeping unit requirement to allow for a second worker to temporarily join the shepherding/goatherding operation. The second worker may be temporarily housed in the same sleeping unit for no more than three consecutive days and the employer must supply a sleeping bag or bed roll free of charge.

M. Fire, Safety and First Aid

1. All units in which people sleep or eat shall be constructed and maintained according to applicable state or local fire and safety law;
2. No flammable or volatile liquid or materials shall be stored in or next to rooms used for living purposes, except for those needed for current household use;
3. Mobile housing units for range use must have a second means of escape. One of the two required means of escape must be a window which can be easily opened, a hatch, or other provision. It must be demonstrated that the custom combine worker would be able to crawl through the second exit without difficulty;
4. Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used. A heater may be used in a tent if the heater is approved by a testing service, such as Underwriters' Laboratory, and if the tent is fireproof; and
5. Adequate fire extinguishers in good working condition and first aid kits shall be provided in the mobile housing.