

ATTACHMENT A
Special Procedures: Labor Certification Process for Applications in the
Itinerant Animal Shearing Industry under the H-2A Program

This document outlines special procedures for applications submitted by employers in the itinerant animal shearing industry under the H-2A Program. Unless otherwise specified in this attachment, applications submitted for shearing 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 shearing occupations must comply with the requirements of 20 CFR Parts 655, Subpart B, 653 Subparts B and F, and 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 or piece rate, the agreed-upon collective bargaining wage, or the Federal or state minimum wage, in effect at the time the itinerant animal shearing services are performed and for each state listed in an approved itinerary. In establishing agricultural prevailing piece rates for itinerant animal shearing 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 piece rate findings covering itinerant animal shearing activities to the OFLC between May 1st and June 1st of each calendar year. Following a review of the SWA-reported piece rate findings, the OFLC will publish the new agricultural prevailing piece rates in a Federal Register notice with an immediate effective date.

In circumstances where a SWA is unable to produce a piece rate finding for an occupation, due to an inadequate sample size or another valid reason, the wage setting procedures allow the OFLC to continue to issue a prevailing piece rate for that state based on the piece rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activities.

If the OFLC cannot establish a prevailing wage rate by using comparable survey data from an adjoining or proximate SWA, the OFLC will give consideration to aggregating survey data from the itinerant sheep shearing activities across states to create regional prevailing piece 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 the USDA Farm Labor Survey.

- B. Job Orders and SWA Review (20 CFR 655.121). An employer engaged in animal shearing 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 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 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 orders submitted to the SWAs and the Chicago NPC for animal shearing activities 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 qualifications and requirements.

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 as a shearer covering multiple seasons and may require reference(s) to verify the experience performing these activities. Applicants must provide the name, address, and telephone number of any previous employer being used as a reference. Except as provided below, the appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Shearing Method. An employer may require that the workers perform the "Australian" or "free-style" method of shearing as a lawful, job-related requirement. A U.S. worker who otherwise qualifies for the job but whose experience has been limited to shearing using the "tying" method must be afforded a specified break-in period, which may not be any fewer than 5 working days, to improve his/her performance and adapt to the "free-style" method.

Completion of Itinerary. An animal shearing employer may require in its job offer that an applicant for the job must be available to work for the remainder of the entire animal shearing 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 animal shearing 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. An animal shearing 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 shearing 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 animal shearing 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. An employer in the H-2A Program must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned. The Department's regulations have previously recognized that the wage rates prevailing in the animal shearing industry reflect a historical and common practice of employees providing their own tools. Employers were permitted, upon prior approval by the Department, to require that workers provide their own tools. Alternatively, employers who did provide tools to the workers were permitted to apply a wage differential of \$ 0.05 per animal shorn to the required wage. However, after the enactment of the 2010 Final Rule, an animal shearing employer may no longer require that employees provide their own tools. In addition, an animal shearing employer may no longer deduct from an employee's pay the cost of any item that is an employer's business expense where doing so would reduce the employee's wages below the required wage rate, consistent with 20 CFR 655.120(a) and 655.122(f) and (p).

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. Rates of pay. If paying by the piece rate, the animal shearing employer must specify in the job order the established piece rates (i.e., rate of pay per head sheared) for each state where shearing will be performed and that is no less than the piece rate prevailing for the activity in the area of intended employment.

If the worker is paid on a piece rate basis, the worker's pay must be supplemented if at the end of the pay period the piece rate does not result in average hourly rate earnings at least equal to the amount the worker would have earned had the worker been paid at the highest of the AEW, the prevailing hourly wage rate, the agreed-upon collective bargaining wage, or the Federal or state minimum wage, in effect at the time and in the state where shearing work was performed.

Productivity Standards. Where an employer pays a piece rate and requires that workers meet a minimum productivity standard in order to retain employment, that productivity standard must be specified in the job offer and must be consistent with 20 CFR 655.122(l)(2)(iii).. The SWA and/or Chicago NPC will review the employer's minimum production requirements and may request additional documentation to substantiate the appropriateness of any requirement prior to approving the application.

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;
 - An itinerary listing the names and contact information of all employers and identifying, with as much geographic specificity as possible 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. 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 animal shearing 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 itinerant animal shearing employer who desires to employ one or more nonimmigrant workers on an itinerary to provide itinerant animal shearing services to fixed-site farmers/ranchers is, by definition, an H-2ALC. Therefore, the itinerant animal shearing 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 sheep shearing

activities from the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (29 U.S.C. 1801, 1803 (a)(3)(E) et seq.).

III. POST-ACCEPTANCE REQUIREMENTS

- A. Additional Positive Recruitment (20 CFR 655.154). An animal shearing employer will be required to conduct positive recruitment within a multistate region of traditional or expected labor supply where the Chicago NPC finds that there are a significant number of qualified U.S. workers who, if recruited, would be willing to make themselves available for work at the time and place needed.

Based on long standing practice, one primary source of domestic workers for animal shearing has traditionally been the labor organization that represents sheep shearers, the Sheep Shearers Union of North America. Therefore, when the Chicago NPC issues a Notice of Acceptance, the employer will receive instructions to contact the Sheep Shearers Union of North America. In accordance with 20 CFR 655.154(d), the Certifying Officer will specify the documentation or other supporting evidence that must be maintained by the employer as proof that this positive recruitment requirement was met.