

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. 32-10

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

FROM: JANE OATES /s/
Assistant Secretary

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

- 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.
- 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](#).
- 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

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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