

**ATTACHMENT A**  
**Special Procedures: Labor Certification Process for Applications Involved in the Open Range Production of Livestock in the H-2A Program**

This document outlines special procedures for applications submitted by employers involved in the open range production of livestock under the H-2A Program. Unless otherwise specified in this attachment, applications submitted for open range livestock 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 open range livestock 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 the open range production of livestock are characterized by other than a reasonably regular workday or workweek, an employer must continue 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. In establishing the offered wage rate for the range production of livestock, the Department uses findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the [ETA Handbook No. 385](#). SWAs are required to transmit official wage rate findings covering the range production of livestock to the OFLC between May 1<sup>st</sup> and June 1<sup>st</sup> 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.

SWA wage rate findings will continue to establish monthly, weekly, or semi-monthly prevailing wages for a statewide or other geographical area in a manner that is consistent with the wage setting procedures applied to shepherd occupations in the Western states. 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 continue 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.

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 for the range production of livestock 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 the USDA Farm Labor Survey.

- B. Job Orders and SWA Review (20 CFR 655.121). An employer engaged in the range production of livestock 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 it 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 offers submitted to the SWAs and the Chicago NPC for occupations involved in the open range production of livestock must comply with all of the requirements of 20 CFR Part 655, Subpart B, 20 CFR Part 653, Subparts B and F, and 20 CFR Part 654.

1. Job duties, qualifications and requirements.

**Job duties.** Based on the current industry practice, the SWAs may rely on the following standard description of the job duties for a job opportunity in the open range livestock production industry:

Perform any combination of the following tasks to attend to livestock on the open range: feeds and waters livestock; herds livestock to pasture for grazing; examines animals to detect diseases and injuries; assists with the vaccination of livestock by herding into corral and/or stall or manually restraining animal on the range; applies medications to cuts and bruises; sprays livestock with insecticide; assists with castration of livestock; clips identifying notches on or brands animals; may assist with irrigating, planting, cultivating, and harvesting hay. Workers must be able to ride and handle horses in a manner to assure the safety of the worker, co-workers, and livestock. Must be able to find and maintain bearings to grazing areas. Must be willing and able to occasionally live and work independently or in small groups of workers in isolated areas for extended periods of time.

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 herd, 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 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 an open range livestock worker 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 TEGL, 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 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 open range 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 open range 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 regulatory 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 offer 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. 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 range livestock workers (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 began and ended 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.
6. Frequency of pay. Consistent with 20 CFR 655.122(m), 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 range livestock workers, the employer may, upon mutual agreement with the worker, pay the worker once per month as long as the monthly payment arrangement is reflected in the job offer and work contract, if any. Employers must pay wages when due.

## **II. APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FILING PROCEDURES**

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;
- 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.