

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION

2015 H-2A Herder Rule FAQs: *Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States*

Round 2: Job Order and Application Filing, Processing, and Wage Rate

Filing the application (Form ETA-9142A) and job order (Form ETA-790)

1. How do I submit an application for H-2A workers under the H-2A Herder Rule?

No later than 45 days before the date of need, an employer seeking to hire temporary range workers under the Department’s regulations at 20 CFR 655.200-235 (i.e., the H-2A Herder Rule) must file the following documents directly with the Chicago National Processing Center (NPC):

- *H-2A Application for Temporary Employment Certification*, Form ETA-9142A;
- *Agricultural and Food Processing Clearance Order*, Form ETA-790 and attachments;
- Appendix A;
- An attachment which identifies with as much geographic specificity as possible for each farmer or rancher, the names, physical locations and estimated start and end dates of need where work will be performed under the job order; and
- Any other required documentation (e.g., Farm Labor Contractor Certificate)

You may file your application with the Chicago NPC either electronically through the iCERT System at <https://icert.doleta.gov/> or by mail to:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, Illinois 60604

Electronic filing is recommended.

Note: An agricultural association filing a “master” application as a joint-employer with its employer members seeking temporary workers to perform

sheep or goat herding on the range is not required to submit a new Form ETA-790 each time it submits a Form ETA-9142A, unless modifications are required. Otherwise, a “master” application job order must be submitted only once per calendar year.

2. Do I need to obtain a prevailing wage determination through the National Prevailing Wage Center (NPWC) before filing my H-2A application?

No. Employers seeking H-2A labor certifications do not need to obtain a prevailing wage determination from the NPWC.

3. When filing my application for H-2A workers under the H-2A Herder Rule, do I submit my job order to the State Workforce Agency (SWA) in advance of or at the same time as I submit my application to the Chicago National Processing Center (NPC)?

No, an employer seeking to hire temporary range workers under the Department’s regulations at 20 CFR 655.200-235 (i.e., the H-2A Herder Rule) is not required to submit a job order directly to the SWA. Instead, the employer must submit its original Form ETA-790, *Agricultural and Food Processing Clearance Order* directly and only to the Chicago NPC when submitting its Form ETA-9142A, *H-2A Application for Temporary Employment Certification* and supporting documents.

The Chicago NPC Certifying Officer will review the application and job order and will work with the employer to address any deficiencies before transmitting the job order to the SWA for placement into intrastate and interstate clearance for the recruitment of U.S. workers.

Processing

4. What will happen after I submit my H-2A application package?

After the employer submits its H-2A application package, the Certifying Officer (CO) at the Chicago National Processing Center (NPC) will review the application package, including the job order, for compliance with all applicable program requirements. The Chicago NPC will issue a Notice of Acceptance or Notice of Deficiency within 7 calendar days.

If the CO determines that the application meets the regulatory requirements, the CO will issue a Notice of Acceptance and recruitment of U.S. workers will begin. If the CO determines that the application is incomplete or noncompliant with regulatory requirements, a Notice of Deficiency will be issued. The Notice of Deficiency will provide the reason(s) for the deficiency and allow the employer 5 business days to submit a modified application/ job order to the Chicago NPC or 5 business days to request an appeal for an expedited administrative review or a de novo hearing.

5. When and how will my job order be posted?

When the Chicago National Processing Center (NPC) Certifying Officer (CO) determines that the job order meets the regulatory requirements, the CO will issue a Notice of Acceptance. The CO will transmit a copy of the job order, Form ETA-790, to any of the State Workforce Agencies (SWAs) having jurisdiction over the anticipated worksites and direct the SWA to place the job order promptly in intrastate and interstate clearance, which will include all States where the work will take place. The job order will remain active in the SWA's clearance system until 50 percent of the work contract period has elapsed.

Also, the Department will place a copy of the job order on its Electronic Job Registry. The job order will remain posted in the Electronic Job Registry until 50 percent of the work contract period has elapsed.

“Master” application job orders: The Chicago NPC will transmit a “master” application job order to the SWA with jurisdiction over the location of the association filing the H-2A application. Where the employer-members included in the “master” application job order have different dates of need, the job order will be posted in the SWA's clearance system and the Department's Electronic Job Registry until 50 percent of the work contract period for all included employers has elapsed.

6. Will the State Workforce Agency (SWA) wait to receive information from the Chicago National Processing Center (NPC) before clearing the job order?

Yes. Since the job order will be filed directly with the Chicago NPC, not the SWA, the Certifying Officer will issue a Notice of Acceptance authorizing conditional access to the interstate clearance system and will transmit the job order to the SWA directing the SWA to promptly place the job order into intrastate and interstate clearance.

7. Am I required to place local newspaper advertisements under the H-2A Herder Rule?

No. An employer seeking to hire temporary range workers under the Department's regulations at 20 CFR 655.200-235 (i.e., the H-2A Herder Rule) is not required to place local newspaper advertisements.

Wage Rate:

8. What wage rate am I required to offer and pay H-2A and corresponding range workers after the effective date of the H-2A Herder Rule?

An H-2A employer must offer, advertise in recruitment, and pay each worker employed under the Department's regulations at 20 CFR 655.200-235 (i.e., the H-2A Herder Rule) a wage that is at least the highest of: (i) the monthly Adverse Effect Wage Rate (AEWR), (ii) the agreed-upon collective bargaining wage, or (iii) the applicable minimum wage imposed by Federal or State law or judicial action. 20 CFR 655.211(a)(1). The monthly AEWR for work performed on or after November 16, 2015 through 2016, including for work certified under earlier special procedures, is \$1,206.31.

Beginning in 2017, the Department will publish annual adjustments to the monthly AEWR in the Federal Register. When the monthly AEWR is adjusted during a work contract and is higher than both the agreed-upon collective bargaining wage and any applicable minimum wage imposed by Federal or State law or judicial action in effect at the time the work is performed, all H-2A employers engaging workers in range herding or livestock production activities must pay that adjusted monthly AEWR upon publication by the Department in the Federal Register for each month, or portion thereof, of the remaining work contract period. 20 CFR 655.211(a)(2). In addition to publication in the Federal Register, the Department will post the current monthly AEWR on the OFLC Web site at <http://www.foreignlaborcert.doleta.gov/adverse.cfm>.

Similarly, when a new or adjusted collective bargaining wage or minimum wage imposed by Federal or State law or judicial action becomes the highest of the applicable wage sources during a work contract period, the employer must pay that wage rate for each month, or portion thereof, of the remaining work contract period.