

Small Business Guide to the H-2A Visa Program: Herding or Production of Livestock on the Range



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INTRODUCTION

Welcome to the temporary agricultural employment of H-2A foreign workers for herding or production of livestock on the range handbook! This handbook summarizes and explains how a U.S. employer can participate in and comply with the Department of Labor's (Department) standards and procedures for employing temporary H-2A agricultural workers in the herding or production of livestock on the range.

Employers who seek to hire temporary H-2A agricultural workers to perform herding or production of livestock on the range, as described in 20 CFR 655 Subpart B, are subject to certain procedures and standards that are different from the regular H-2A procedures. The Department has established these regulatory variances, also referred to as "herding/livestock production procedures," for employers engaged in the herding or production of sheep, cattle, goats, horses, and other domestic hooved livestock raised on the range because of the unique nature and circumstances of these occupations. Establishing a single set of procedures for these occupations creates administrative efficiencies for both employers and the Department, promotes greater consistency in the review of H-2A applications, provides workers employed in the United States with improved benefits and protections, and provides greater clarity for employers with respect to compliance with program requirements.

The information contained in this guide is not a substitute for reading and complying with the Department's regulations at 20 CFR 655 Subpart B and 29 CFR 501, which provide complete and definitive information regarding program requirements. Additional information on the H-2A Program, including filing tips and frequently asked questions, can be found at the Department's Office of Foreign Labor Certification (OFLC) Web site at <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>.

What is the H-2A Program?

The H-2A Program is authorized under the Immigration and Nationality Act (INA) and allows a U.S. employer to hire foreign workers on a temporary basis to perform agricultural work when there are not sufficient U.S. workers available. Before the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) can approve a visa petition for H-2A workers, the employer must first receive a temporary labor certification from the Department.

The Department's OFLC within the Employment and Training Administration is responsible for receiving and processing employer-filed H-2A applications, and ensuring as a condition of certification that qualified U.S. workers are not available for the job and the employment of temporary foreign workers will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. The Department's Wage and Hour Division is responsible for enforcing the terms and conditions of the agricultural work contract and worker protections under the H-2A Program.

Which Agricultural Jobs are Eligible for the Herder/Livestock Production Procedures?

A U.S. employer, whether an individual, association of agricultural producers, or H-2A Labor Contractor (H-2ALC), may apply to the OFLC for a temporary labor certification to hire H-2A workers to perform herding or production of livestock on the range. The general guidelines below will help you understand whether your job opportunity is eligible to participate in these procedures unique to the employment of H-2A agricultural workers in the herding or production of livestock on the range.

- ④ **You must be an employer** with a place of business physically located in the United States, possess a valid Federal Employer Identification Number (FEIN); and have the ability to hire, pay, fire, supervise, or otherwise control the work of the workers you employ;
- ④ **The work to be performed must involve the herding or production of livestock**, which can include work that is closely and directly related to herding and/or the production of livestock, as defined under 20 CFR 655.201;
- ④ **The work must be performed on the range for the majority of the workdays** in the work contract period (meaning more than 50 percent). Any additional work performed at a place other than the range must constitute the production of livestock, which includes work that is closely and directly related to herding and/or the production of livestock;
- ④ **The work must be full-time**, at least 35 hours (or more) per work week, and **the work activities generally require the workers to be on call 24 hours per day, 7 days a week**; and
- ④ **The need for the work must be seasonal or temporary in nature.** Due to the unique history and experience of sheep and goat herding in the United States, the period of employment for the herding or production of sheep or goats must be no more than 364 calendar days. However, for workers engaged in the herding or production of any other livestock (e.g., cattle, horses) on the range, the period of employment must be for no more than 10 months.

Please refer to Appendix A to help you better understand the permissible work activities covered by these special procedures.

THE H-2A TEMPORARY LABOR CERTIFICATION PROCESS OVERVIEW

For employers who desire to employ H-2A workers in the herding or production of livestock on the range, the process of obtaining a temporary labor certification from the OFLC involves the following three basic steps:

Step 1: Filing a Job Order and an H-2A Application with the Chicago National Processing Center (NPC)

What: The first step describes the requirements for submitting a job order (Form ETA-790) directly to the OFLC's Chicago NPC along with a completed H-2A Application for Temporary Employment Certification (Form ETA-9142A), and an attachment identifying the physical locations where work will be performed. The Chicago NPC will review both your job order and application, notify you of any deficiencies, and provide you with additional instructions for completing the temporary labor certification process.

When: No less than 45 calendar days before the start date of work.

Step 2: Conducting Recruitment for U.S. Workers

What: The second step summarizes the minimum requirements for recruiting U.S. workers on your own and how to prepare your recruitment report.

When: Beginning on the date you receive the Notice of Acceptance from the Chicago NPC until you complete the recruitment steps.

Step 3: Completing the Temporary Labor Certification Process

What: The final step in this process identifies the additional documents you must submit to the Chicago NPC in order to receive a final determination; and should labor certification be granted, moving on to USCIS.

When: No less than 30 calendar days before the start date of work
(unless the Chicago NPC provides you with 5 more days to submit documentation)

STEP 1: FILING A JOB ORDER AND H-2A APPLICATION WITH THE CHICAGO NPC

The Chicago NPC is responsible for receiving and processing all employer-filed H-2A applications and will be your main point-of-contact throughout the labor certification process. You will need to prepare and submit to the Chicago NPC both a job order and an H-2A application requesting temporary labor certification in order to bring nonimmigrant foreign workers into the United States. You will not be able to file an I-129 visa petition for H-2A workers with USCIS until the Chicago NPC grants a temporary labor certification.

The employer whose job opportunity has been determined to qualify for these herder/livestock production procedures, whether individual, association, or H-2ALC, is not required to comply with the job order filing requirements in §§ 655.121(a) through (d) of the H-2A regulations. Unlike the regular H-2A procedures, the employer whose job opportunity qualifies for these herder/livestock production procedures will submit its job order and H-2A application directly to the Chicago NPC, not to the State Workforce Agency (SWA) serving the area of intended employment. Please remember that your job order and H-2A application must be complete (i.e., entries on the form in all required fields) and contain a detailed description of the herding or production of livestock duties to be performed, including any normal experience requirements, number of workers, anticipated period of employment, and all other benefits, wages, and working conditions you will offer to U.S. and H-2A workers.

What to File

- ④ A completed job order, Form ETA-790, *Agricultural and Food Processing Clearance Order*, including all attachments explaining the benefits, wages, and working conditions of the job;
- ④ A completed H-2A application, Form ETA-9142A, *H-2A Application for Temporary Employment Certification*, and *Appendix A* bearing your signature and, if applicable, that of the attorney or agent authorized to represent you; and
- ④ A written attachment identifying, with as much geographic specificity as possible for each farmer/rancher, the names, physical locations and estimated start and end dates of need where work will be performed under the job order.

For H-2A Labor Contractors ONLY: Please include the following additional documents with your submission:

- ④ A copy of your valid Farm Labor Contractor (FLC) and, if applicable, Farm Labor Contractor Employee (FLCE) Certificate of Registration. If your certificate(s) will expire at any time before the end date of need on the Form ETA-9142A, you must submit a written assurance that the certificate(s) will be renewed timely;
- ④ An original surety bond demonstrating your ability to meet payroll and other financial obligations to your workers;

- ④ Copies of fully-executed (signed and dated) work contracts with each fixed-site employer; and
- ④ Where provided by the fixed-site employer, proof that housing and transportation for workers meets all applicable standards and regulations.

Due to the unique nature of the herding or production of livestock on the range, where workers are required to travel with the herd often covering many hundreds of miles, the Chicago NPC will accept job orders and H-2A applications covering multiple areas of intended employment in more than two contiguous States. This procedure continues the historical practice that permits employers of workers engaged in the herding or production of livestock on the range a variance from the geographic scope limitations under the normal H-2A regulations.

In addition, an association of agricultural employers filing as a joint employer with one or more of its members is permitted to file a single “master” job order and H-2A application identifying different dates of need for each of its employer-members. For “master” job orders involving sheep or goat herding or production of livestock workers, the Chicago NPC will retain a copy of the job order on behalf of the agricultural association. As a result, the association is not required to resubmit its master job order during the calendar year, unless a modification is required by the Chicago NPC or requested by the employer.

PLEASE READ BEFORE YOU PROCEED**When preparing your job order and H-2A application, remember to:**

- ✓ Use the most current Forms ETA-790 and ETA-9142A, available on the OFLC Web site at <http://www.foreignlaborcert.doleta.gov/form.cfm>
- ✓ Complete the form legibly, clearly label all attachments, and sign/date the form.
- ✓ Describe in detail the herding or production of livestock work to be performed and include a statement that workers will be on call for up to 24 hours per day, 7 days per week and that workers will spend the majority (meaning more than 50 percent) of the workdays during the period of employment on the range.
- ✓ Duties may include activities performed **off the range only** if such duties constitute the production of livestock, which includes work that is closely and directly related to herding and/or the production of livestock. All such duties must be specified in the job order. Please refer to Appendix A for more details.
- ✓ If experience is required for the job, you may specify that applicants possess **up to 6 months** of experience in similar occupations involving the herding or production of livestock on the range and require reference(s) to verify the applicant's experience.
- ✓ When offering a rate of pay, check the current monthly Adverse Effect Wage Rate on the OFLC Web site at <http://www.foreignlaborcert.doleta.gov/adverse.cfm>, and specify that workers will be paid **at least twice a month**.
- ✓ Specify that range housing will be provided.
- ✓ Identify in the job order all the tools, supplies, and equipment required by the employer, by the law or by the nature of the work to perform the duties safely and effectively. All items must be provided to the worker without charge or deposit charge.
- ✓ Identify the type(s) of electronic communication device(s) workers will be provided, without charge or deposit charge, in case of an emergency during the entire period of employment. If there are periods of time where the electronic communication devices may not operate effectively, you must state in the job order the means and frequency with which you will make contact with the worker to monitor the worker's well-being.
- ✓ Use the current amounts for transportation and food payments to your workers when on travel, available on the OFLC Web site at http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm
- ✓ Specify that you will provide, without charge or deposit charge, three sufficient meals a day, or free and convenient cooking facilities and an adequate provision of food for workers to prepare their own meals. In addition, your job order must state that adequate potable water, or water that can be easily rendered potable and the means to do so, will be provided to workers, without charge or deposit.

When and Where to File

The H-2A application package must be received **at least 45 calendar days** before the first day you need the workers. Employers may submit their H-2A application package either electronically OR via U.S. mail directly to the Chicago NPC. You must choose only one method of submission. Duplicate applications, where the employer or authorized attorney or agent files electronically and submits that same application via U.S. mail, will not be accepted for processing.

Electronic Filing (iCERT System)

To file H-2A applications electronically, please go to <http://icert.doleta.gov>.

The iCERT System is convenient and ready when you are, 24 hours a day and 7 days a week! If you are a first time employer, it is important to read the H-2A iCert Quick Start Guide and H-2A iCERT User Manual before getting started. We have online resources that provide step-by-step instructions for completing and submitting the H-2A application electronically. For more resources and information, please visit the OFLC website at <http://www.foreignlaborcert.doleta.gov/> and look for the “Electronic Filing” links on our main home page.

Mail Filing

U.S. Department of Labor
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604- 2105
Attention: H-2A Program Unit: Range Livestock Application

For Emergency Filings ONLY: You may file your job order and H-2A application directly with the Chicago NPC **less than 45 calendar days** before you need the workers only in circumstances where you either did not use H-2A workers during the prior agricultural season or have a need for workers that could not be foreseen. Please do not forget to include a statement and any other documentation justifying why you need to file an emergency H-2A application. Filing under this provision does not automatically guarantee acceptance of your request for emergency processing.

What Happens After Filing the H-2A Application Package

The Chicago NPC will review your H-2A application package for compliance with all regulatory requirements and notify you in writing of any deficiencies within 7 calendar days. If you included an electronic mail (e-mail) address on the Form ETA-9142A, the Chicago NPC will use that e-mail address to more efficiently correspond with you on courtesy receipt notifications, notices of deficiencies, and any other information concerning the status of your H-2A application. We encourage our employer customers to use e-mail because it is an official form of communication in other visa programs we administer delivering more convenient, faster, and cost-effective service. If you do not have an e-mail address, the Chicago NPC will assure that all correspondence sent to you will be delivered by next-day delivery. You will continue to receive all final determination actions (e.g. denial or certifications) by next-day delivery.

Receiving a Notice of Deficiency

Deficiencies can arise in your H-2A application package due to failure to complete all required fields on the forms, the presence of obvious errors or inaccuracies, or failure to properly disclose an important wage, benefit, or other working condition required by the regulation of your job offer. If the H-2A application contains deficiencies, you will receive a Notice of Deficiency requesting that you respond to each deficiency **within 5 business days** from receipt. The Notice of Deficiency will state the reason(s) why your application cannot be accepted and specify what corrections are needed. In lieu of responding to each deficiency, you will also be provided with an opportunity to request an appeal or a hearing with the Department's Administrative Law Judge (ALJ) **within 5 business days** after receiving notice.



Important Note: If the Chicago NPC does not receive your response within 12 calendar days or you fail to request an appeal or hearing before the ALJ within 5 business days, your H-2A application will be considered abandoned and your temporary labor certification will be denied.

Receiving a Notice of Acceptance

Once the job order and applications are determined to meet regulatory requirements, the Chicago NPC will issue a Notice of Acceptance. This notice will authorize conditional access to the interstate job order clearance system; identify and transmit on your behalf a copy of the approved job order to any one of the SWAs having jurisdiction over the anticipated worksites, and direct the SWA to place the job order promptly in intrastate and interstate clearance (including all states where the work will take place); and commence recruitment of U.S. workers.

Where an association of agricultural employers files as a joint employer and submits a single Form ETA-790 on behalf of its employer-members, the Chicago NPC will transmit a copy of the approved job order to the SWA having jurisdiction over the location of the association, again directing that SWA to place the job order in intrastate and interstate

clearance, including to those other States where the work will take place, and commence recruitment of U.S. workers.



Important Note: If you need to request an amendment to your H-2A application (e.g., increase number of workers, change start date of work), please send us an e-mail at TLC.Chicago@dol.gov or by facsimile to (312) 886-1688 (Attn: H-2A Amendment Request).

You are now ready to move on to Step 2!

STEP 2: CONDUCTING RECRUITMENT FOR U.S. WORKERS

Once you receive a Notice of Acceptance, the Chicago NPC will ask you to conduct recruitment on your own for U.S. workers in addition to the recruitment conducted on your behalf by the SWA. Your recruitment efforts must be conducted between when you receive the Notice of Acceptance until the date on which the H-2A workers depart for the worksite or the 3rd calendar day before the start date of work, whichever is earlier. Please read your Notice of Acceptance carefully as it will contain specific instructions that you will need to follow including when and where to recruit and how to prepare your recruitment report.

Conducting good faith recruitment and determining whether there are insufficient eligible U.S. workers that will meet your need, at least temporarily, are important factors in the decision process of whether the Chicago NPC will grant a temporary labor certification. For an employer whose job opportunity qualifies for these herder/livestock production procedures, your recruitment activities must include the following:

- ④ **Contacting, by mail or other effective means, any former U.S. workers** from the previous year and solicit their return to the job. You do not need to contact former U.S. workers who either were terminated for cause or abandoned the worksite; and
- ④ **Conducting additional positive recruitment** in accordance with specific instructions contained in your Notice of Acceptance, which typically involves recruiting within a region of traditional or expected labor supply where a significant number of qualified U.S. workers would be available for your job opportunity. In the event that your notice contains additional recruitment instructions, the Chicago NPC will specify the nature and location(s) of the recruitment and what documentation you must maintain as proof the additional recruitment requirements were met.

During the time you are conducting recruitment, the Chicago NPC will place a copy of your H-2A job order on its national Public Job Registry located at <http://icert.doleta.gov>. It is important to remember that your job order will remain active with the SWA until 50 percent of your work contract has elapsed and you will be expected to cooperate with the SWA by accepting and fully considering referrals of eligible U.S. workers who apply for the job. For an agricultural association filing a “master” job order as a joint employer on behalf of its employer-members with different start dates of need, the Chicago NPC will keep the job order posted on the OFLC electronic job registry and the SWA will keep the job order active until 50 percent of the period of the work contract has elapsed for all employer-members identified on the job order.



Important Reminders:

- ④ Due to the unique nature of jobs involving the herding and production of livestock on the range, you are **not** required to place local newspaper advertisements on 2 separate days in a newspaper of general circulation serving the area of intended employment; and
- ④ Where a single job order is approved for an association of agricultural employers filing as a joint employer on behalf of its employer-members with different start dates of need, the job order will be posted on the OFLC electronic job registry and active with the SWA until 50 percent of the period of the work contract has elapsed for all employer-members identified on the job order.

How to Prepare the Recruitment Report

During the entire recruitment period, you may receive referrals of eligible U.S. workers for consideration from the SWA as well as “self-referrals” of applicants who find out about your job through other recruitment sources (e.g., Public Job Registry, word-of-mouth) and wish to apply for the job. You must consider for employment all eligible U.S. workers who apply (or on whose behalf an application is made) for your job opportunity.

Where you require interviews with the workers, please remember that you must conduct such interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited at little or no cost to the worker. Any eligible U.S. worker who applies (or on whose behalf an application is made) for the job opportunity and is hired must be placed at the work location nearest to him/her absent a request for a different location by the U.S. worker. You must make reasonable efforts to accommodate such placement requests by the U.S. worker.

Please read your Notice of Acceptance carefully as it will contain instructions on how to prepare your recruitment report and a specific date on which you must sign, date, and submit the recruitment report to the Chicago NPC.

Your recruitment report should, at a minimum, contain the following information:

- ④ The name of each recruitment source;
- ④ The name and contact information of each U.S. worker (including former U.S. workers) who applied or was referred to your job up to the date you prepared the recruitment report;
- ④ If applicable, for each U.S. worker who applied for the position but was not hired, explain the lawful job-related reason(s) for not hiring the U.S. worker; and
- ④ A statement confirming whether former U.S. workers were contacted yet and, if so, by what means.

**Important Notes:**

- ① An association that fulfills the recruitment requirements for its members is required to maintain a written recruitment report (as required by § 655.156) **for each individual employer-member** identified on the application or job order, including any approved modifications; and
- ② You must continue to maintain and update your recruitment report through 50 percent of the work contract period because that is how long your job will be open with the SWA and on the national Public Job Registry. You do not need to submit this “final” recruitment report to the Chicago NPC, but must keep it in your file in the event of an audit or other request by the Department.

You are now ready to move on to Step 3!

STEP 3: COMPLETING THE H-2A LABOR CERTIFICATION PROCESS

In order to grant a temporary labor certification, the Chicago NPC must determine that there are insufficient U.S. workers to meet your need and the employment of H-2A workers will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. This determination is based upon a favorable review of your recruitment report, the terms and conditions of your job order and H-2A application, and other required documentation guaranteeing certain protections to employed workers.

What Documents to Submit to the OFLC Chicago NPC

In order to receive a final determination on your H-2A application, the Notice of Acceptance will request that the following documents be submitted by you and/or the SWA:

- ① **Recruitment Report:** A signed and dated written report of your recruitment efforts up to that date.
- ② **SWA Housing Certification:** The SWA with jurisdiction over the location of your range housing must inspect (no less frequently than once every 3 calendar years) and certify that your housing is sufficient to accommodate the number of certified workers and meets all applicable standards contained in § 655.235. To better understand the standards for housing on the range, please see Appendix B.

You may self-certify that your housing meets regulatory standards only when you submit a copy of a valid SWA housing certification (within the past 36 months) and a written statement, signed and dated, to the SWA and the Chicago NPC assuring that the range housing is available, sufficient to accommodate the number of workers being requested for certification, and continues to meet all applicable housing standards.

- 📌 **Workers' Compensation Coverage:** Provide proof of workers' compensation insurance coverage **in all states** where work will be performed, 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.



Important Notes:

- 📌 If your compensation insurance statement does not include all of the information required under the regulations at 20 CFR 655.122(e), the Chicago NPC will require that you supplement proof of workers' compensation for that state before a final determination is rendered; and
- 📌 If your current coverage will expire before the end of the certified work contract period, the Chicago NPC will require that you 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. You must maintain evidence that your workers' compensation coverage was actually renewed, in the event of a request from the Department.

Receiving a Denial Determination

If the Chicago NPC determines that the H-2A application does not meet the regulatory criteria for certification, you will be denied temporary labor certification. You will receive a Final Determination letter that will include the reason(s) temporary labor certification cannot be granted and offer you an opportunity to request an appeal or a hearing of the decision before the Department's ALJ within 7 calendar days of the date on the Final Determination letter. All records and documents supporting the H-2A application must be retained for a period of 3 years from the date OFLC denies temporary labor certification.

Receiving a Certification Determination

If the Chicago NPC determines that the H-2A application meets the regulatory criteria for certification, you will be granted temporary labor certification. You will receive a Final Determination letter, a certified Form ETA-9142A and Appendix A, and an invoice requiring payment for fees associated with processing your application (\$100) and the number of workers certified (\$10 per worker), the total of which will not exceed \$1,000. Failure to pay this required fee may result in the imposing of sanctions. All records and documents supporting the H-2A application must be retained for a period of 3 years from the date OFLC granted temporary labor certification.

It is important to remember that the Chicago NPC can issue the following types of certification determinations:

- 1. Full Certification** means you were granted labor certification for the entire number of H-2A workers and period of employment you requested; and

2. **Partial Certification** means you were granted labor certification but either the number of H-2A workers or period of employment or both has been reduced. Please read your Final Determination letter carefully as it will contain the reason(s) why you were granted a partial certification and provide you with an opportunity to request an appeal or hearing of the decision before the Department's ALJ within 7 calendar days of the date on the Final Determination letter.



Important Note: Your certification fee must be paid within 30 calendar days of issuance of the Certification by check or money order. Payments must be in U.S. dollars and made payable to U.S. Department of Labor and sent to the following address:

**U.S. Department of Labor
Office of Foreign Labor Certification
Chicago National Processing Center
P.O. Box A3804
Chicago, IL 60690 -A3804**

Congratulations! You are ready to file with USCIS!

Once you receive a labor certification, you are now ready to take your certified Form ETA-9142A and Appendix A and move on to USCIS. You will need to prepare and submit the Form I-129 *Petition for Nonimmigrant Worker* to the USCIS California Service Center requesting approval for the admission of H-2A workers to perform work in the United States. The forms and instructions for filing as well as current processing times for H-2A visas can be obtained from the USCIS Web site at: <http://www.uscis.gov>.

APPENDICES

Appendix A. Definition of Terms

This Appendix will help you understand how the Department interprets certain terms when determining whether your job qualifies under these special procedures. The following terms are not defined under the normal H-2A regulations and are specific to jobs involving the herding or production of livestock on the range. These terms are defined in the Department's regulations at 20 CFR 655.201.

Key Term	Clarifying Definition
Herding	Activities associated with the caring, controlling, feeding, gathering, moving, tending, and sorting of livestock on the range.
Livestock	An animal species or species group such as sheep, cattle, goats, horses, or other domestic hooved animals raised on the range.
Production of livestock	The care or husbandry of livestock throughout one or more seasons during the year, including guarding and protecting livestock from predatory animals and poisonous plants; feeding, fattening, and watering livestock; examining livestock to detect diseases, illnesses, or other injuries; administering medical care to sick or injured livestock; applying vaccinations and spraying insecticides on the range; and assisting with the breeding, birthing, raising, weaning, castration, branding, and general care of livestock. This term also includes duties performed off the range that are closely and directly related to herding and/or the production of livestock.
Ranch work “closely and directly related” to the herding or production of livestock	<p>Non-exclusive examples include the following:</p> <ul style="list-style-type: none"> • Repairing fences used to contain the herd; • Assembling lambing jugs; • Cleaning out lambing jugs; • Feeding and caring for the dogs that the workers use on the range to assist with herding or guarding the flock; • Feeding and caring for the horses workers use on the range to help with herding or to move the sheep camps and supplies; and • Loading animals into trucks for movement to the range or market
Ranch work NOT “closely and directed” related to the herding or production of livestock	<p>Non-exclusive examples include the following:</p> <ul style="list-style-type: none"> • Working at feedlots; • Planting, irrigating and harvesting crops; • Operating or repairing heavy equipment; constructing wells or dams; digging irrigation ditches; • Applying weed control; • Cutting trees or chopping wood; • Constructing or repair bunkhouse or other ranch buildings; and • Delivering supplies from the ranch to the herders on the range

Key Term	Clarifying Definition
Range housing	Range housing is housing located on the range that meets the standards articulated under 20 CFR 655.235.
Range	<p>Any area located away from the ranch headquarters used by the employer. The following factors are indicative of the range:</p> <ul style="list-style-type: none"> • Involves land that is uncultivated; • Involves wide expanses of land, such as thousands of acres; • Located in a remote, isolated area; and • Typically range housing is required so that the herder can be in constant attendance to the herd. <p>It is important to understand that no one factor is controlling and the totality of the circumstances is considered in determining whether the area where work is performed is considered range.</p> <p>What does NOT constitute the range?</p> <ul style="list-style-type: none"> • Ranch headquarters; • Feedlots, corrals, or any area where the stock involved would be near ranch headquarters; and • Any area where a herder is not required to be available constantly to attend to the livestock and to perform tasks, including but not limited to, ensuring the livestock do not stray, protecting them from predators, and monitoring their health.
Ranch Headquarters	A place where the business of the ranch occurs and is often where the owner resides, is limited and does not embrace large acreage. The ranch headquarters only includes the ranchhouse, barns, sheds, pen, bunkhouse, cookhouse, and other buildings in the vicinity.

Appendix B. Range Housing Standards

This Appendix will help you understand the minimum standards for housing workers engaged in the herding or production of livestock on the range. You may use a mobile unit, camper, or other similar mobile housing vehicle, tent(s), and remotely located stationary structures along herding trails. All housing for work performed on the range must meet the minimum standards contained in 20 CFR 655.235 and 655.122(d)(2).

Requirement for SWA Inspection

The SWA with jurisdiction over the location of your housing must inspect and certify that such housing used on the range is sufficient to accommodate the number of certified workers and meets all applicable standards. The SWA must inspect your housing no less frequently than once every three calendar years after the initial inspection and provide you with documentation certifying the housing for a period lasting no more than 36 months. If the SWA determines that your housing cannot be inspected within a 3-year timeframe or, when it is inspected, the housing does not meet all the applicable standards, the Chicago NPC may deny your H-2A application in full or in part or require additional inspections, to be carried out by the SWA, in order to satisfy the regulatory requirement.

Permission to Self-Certify Compliance

It is important to remember that you may self-certify compliance with the standards for housing on the range only when you have received a certification from the SWA for the housing you seek to use within the past 36 months. In this circumstance, you must submit a copy of a valid SWA housing certification (within the past 36 months) and a written statement, signed and dated, to the SWA and the Chicago NPC assuring that the range housing is available, sufficient to accommodate the number of workers being requested for certification, and continues to meet all applicable housing standards.

Use of Range Housing “Off the Range”

The use of range housing at a location other than the range, where fixed site employer-provided housing would otherwise be required, is permissible only when the worker occupying the housing is performing work that constitutes the production of livestock, which includes work that is closely and directly related to herding and/or the production of livestock. In such a situation, workers must be granted access to facilities, including but not limited to toilets and showers with hot and cold water under pressure, as well as cooking and cleaning facilities, that would satisfy the requirements of the normal H-2A program at 20 CFR 655.122(d)(1)(i). When such work does not constitute the production of livestock, workers must be housed in housing that meets all the requirements of the normal H-2A program at 20 CFR 655.122(d).

Range Housing Standards

Standard	Regulatory Citation
<p>Housing Site Range housing sites must be well drained and free from depressions where water may stagnate.</p>	<p>20 CFR 655.235(a)</p>
<p>Water supply (delivered on a regular basis) An adequate and convenient supply of water that meets the standards of the state or local health authority must be provided. Water provided for use by the workers may not be used to water dogs, horses, or the herd. Individual drinking cups must be provided.</p> <ul style="list-style-type: none"> • <u>For Drinking and Cooking</u> - Provide each worker at least 4.5 gallons of potable water per day, so that the workers will have at least this amount available for their use until this supply is next replenished. • <u>For Laundry and Bathing</u> - Provide an additional amount of water sufficient to meet the laundry and bathing needs of each worker. This additional water may be non-potable, and an employer may require a worker to rely on natural sources of water for laundry and bathing needs if these sources are available and contain water that is clean and safe for these purposes. • <u>Water Storage</u> - Containers appropriate for storing and using potable water must be provided and, in locations subject to freezing temperatures, containers must be small enough to allow storage in the housing unit to prevent freezing. <p>Important Note: If an employer relies on alternate water sources to meet any of the workers' needs, it must take precautionary measures to protect the worker's health where these sources are also used to water the herd, dogs, or horses, to prevent contamination of the sources if they collect runoff from areas where these animals excrete.</p>	<p>20 CFR 655.235(b)</p>

Standard	Regulatory Citation
<p>Water supply (locations inaccessible by motorized vehicles)</p> <p>Where workers are located in areas that are not accessible by motorized vehicle, a variance from the requirement to deliver potable water to workers may be requested through the Chicago NPC, provided the following conditions are satisfied:</p> <ul style="list-style-type: none"> • The request for a variance is made to the Chicago NPC at the time of filing the H-2A application; • The employer submits a written statement, signed and dated, attesting to the following: <ol style="list-style-type: none"> 1. Employer has identified natural sources of water that are potable or may be easily rendered potable in the area in which the housing will be located, and that these sources will remain available during the period the worker is at that location; and 2. Employer shall provide each worker an effective means to test whether the water is potable and, if not potable, the means to easily render it potable. • The Chicago NPC approves the variance. 	20 CFR 655.235(b)
<p>Excreta and liquid waste disposal</p> <ul style="list-style-type: none"> • <u>Provision of Facilities</u> - Facilities, including shovels, must be provided and maintained for effective disposal of excreta and liquid waste in accordance with the requirements of the state health authority or involved Federal agency; and • <u>Use of Pits for Disposal</u> - If pits are used for disposal by burying of excreta and liquid waste, they must 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. 	20 CFR 655.235(c)
<p>Housing Structure</p> <ul style="list-style-type: none"> • Housing must be structurally sound, in good repair, in a sanitary condition and must provide shelter against the elements; • Housing, other than tents, must have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering; • Each housing unit must have at least one window that can be opened or skylight opening directly to the outdoors; and • Tents appropriate to weather conditions may be used only where the terrain and/or land use regulations do not permit the use of other more substantial housing. 	20 CFR 655.235(d)

Standard	Regulatory Citation
<p>Heating</p> <ul style="list-style-type: none"> • <u>For Safety and Health of Workers</u> - 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 must have properly installed operable heating equipment that supplies adequate heat. Where the climate in which the housing will be used is mild and the low temperature for any day in which the housing will be used is not reasonably expected to drop below 50 degrees Fahrenheit, no separate heating equipment is required as long as proper protective clothing and bedding are made available, free of charge or deposit charge, to the workers; • <u>Use of Stoves or Other Heating Sources</u> - Any stoves or other sources of heat using combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there must 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; • <u>Heating Sources Close to Walls</u> - Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe must be made of fireproof material. A vented metal collar must be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof; • <u>Heating Sources with Automatic Controls</u> - When a heating system has automatic controls, the controls must be of the type that cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded; and • <u>Heating Sources in Tents</u> - A heater may be used in a tent if the heater is approved by a testing service and if the tent is fireproof. 	<p>20 CFR 655.235(e)</p>
<p>Lighting</p> <ul style="list-style-type: none"> • In areas where it is not feasible to provide electrical service to range housing units, including tents, lanterns must be provided (kerosene wick lights meet the definition of lantern); and • Lanterns, where used, must be provided in a minimum ratio of one per occupant of each unit, including tents. 	<p>20 CFR 655.235(f)</p>

Standard	Regulatory Citation
<p>Bathing, Laundry, and Hand Washing</p> <p>Bathing, laundry and hand washing facilities must be provided when it is not feasible to provide hot and cold water under pressure.</p>	20 CFR 655.235(g)
<p>Food Storage</p> <p>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 dehydrating or salting, are acceptable.</p>	20 CFR 655.235(h)
<p>Cooking and Eating Facilities</p> <ul style="list-style-type: none"> • When workers or their families are permitted or required to cook in their individual unit, a space must be provided with adequate lighting and ventilation; and • Wall surfaces next to all food preparation and cooking areas must be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas must be made of fire-resistant material. 	20 CFR 655.235(i)
<p>Garbage and Other Refuse</p> <ul style="list-style-type: none"> • Durable, fly-tight, clean containers must be provided to each housing unit, including tents, for storing garbage and other refuse; and • Provision must be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary, except where the terrain in which the housing is located cannot be accessed by motor vehicle and the refuse cannot be buried, in which case the employer must provide appropriate receptacles for storing the refuse and for removing the trash when the employer next transports supplies to the location. 	20 CFR 655.235(j)
<p>Insect and Rodent Control</p> <p>Appropriate materials, including sprays, and sealed containers for storing food, must be provided to aid housing occupants in combating insects, rodents and other vermin.</p>	20 CFR 655.235(k)

Standard	Regulatory Citation
<p>Sleeping Facilities</p> <p>A separate comfortable and clean bed, cot, or bunk, with a clean mattress, must be provided for each person, except in a family arrangement, unless a variance is requested from and granted by the CO.</p> <p>Important Note: When filing an application for certification and <u>only</u> where it is demonstrated to the Chicago NPC that it is impractical to provide a comfortable and clean bed, cot, or bunk, with a clean mattress, for each range worker, the employer may request a variance from this requirement to allow for a second worker to join the range operation. Such a variance must be used infrequently, and the period of the variance will be temporary, i.e., the variance shall be for no more than 3 consecutive days. Should the Chicago NPC grant the variance, the employer must supply a sleeping bag or bed roll for the second occupant free of charge or deposit charge.</p>	<p>20 CFR 655.235(l)</p>
<p>Fire, Safety, and First Aid</p> <ul style="list-style-type: none"> • All units in which people sleep or eat must be constructed and maintained according to applicable state or local fire and safety law; • No flammable or volatile liquid or materials may be stored in or next to rooms used for living purposes, except for those needed for current household use; • Housing units for range use must have a second means of escape through which the worker can exit the unit without difficulty; • Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used; and • Adequate, accessible fire extinguishers in good working condition and first aid kits must be provided in the range housing. 	<p>20 CFR 655.235(m)</p>