

U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION H-2A/ Shepherders
	CORRESPONDENCE SYMBOL OWS
	DATE March 28, 2001

DIRECTIVE: GENERAL ADMINISTRATION LETTER NO. 3-01

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: for
LENITA JACOBS-SIMMONS *Andy McConnell*
Deputy Assistant Secretary

SUBJECT: The Use of Shepherders for Vegetation Management.



1. Purpose. To provide policy clarification and procedural guidance for the processing of nonagricultural sheep and goat herder applications as H-2A .
2. References. 20 CFR part 655, Subpart B 20 CFR 655.103.
3. Background. In the past few years, employers in some States have utilized the provisions of the Immigration and Nationality Act to recruit nonimmigrant foreign workers to work as shepherders in conjunction with their operations, specifically, the use of sheep and goats to graze the land under power lines. The employers are contracting this service to electrical utilities who have electrical power transmission lines. The unique occupational characteristics of such operations have caused many employers to petition for foreign workers under the H-2B nonagricultural temporary program. They have argued that this is not agricultural labor because the employer is not producing an agricultural commodity but only providing a service (clearing vegetation from power line areas) that is not agricultural in nature.
4. Policy Clarification/Procedural Guidance. There are provisions in the H-2A regulations which recognize that certain activities incidental to agriculture and, thus, not themselves agricultural activities, are still services of an agricultural nature, e.g., cooks in labor camps. The activity in this instance, is a service and not a commodity. While the sheep that consume vegetation are engaged in a commercial activity, i.e., vegetation control, consuming vegetation also happens to be necessary to raising the sheep.

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The characteristics of sheep and goat herding for vegetation control purposes are similar to, and often indistinguishable from, the practice of open range and fenced production of sheep and goats. So too are the housing requirements, working hours, working conditions, travel requirements and other characteristics extremely similar to the activities covered under the H-2A sheep herding program.

5. Action Required. SESAs are instructed to adhere to H-2A Temporary Agricultural regulations when reviewing any applications filed for a sheep/goat herder for the purpose of vegetation management.

6. Inquiries. Questions should be directed to Charlene Giles at (202) 693-3010 (x2950).