

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL OFLC
	DATE June 14, 2011

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 33-10

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

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: Special Procedures: Labor Certification Process for Itinerant Commercial Beekeeping Employers in the H-2A Program

- Purpose.** To establish special procedures for itinerant commercial beekeeper employers who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers to perform work in the United States.
- References.** 20 CFR Part 655, Subpart B; 20 CFR Part 653, Subparts B and F; and 20 CFR Part 654, Subpart E.
- Background.** In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq. 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. Additionally, the 1987 regulations also 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 the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

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 policy objectives of the H-2A Program, 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). Section 20 CFR 655.102 provides the

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

Administrator of the Office of Foreign Labor Certification (OFLC) with authority to establish, continue, revise or revoke special procedures for processing certain H-2A applications, as long as those procedures do not deviate from statutory requirements under the INA.

After receiving a request from the American Beekeeping Federation and in consideration of the unique characteristics of itinerant commercial beekeeping operations, the Department is exercising its authority to establish certain special procedures for processing H-2A applications for itinerant commercial beekeeping occupations. The Department recognizes that an industry-wide standard exists among commercial beekeeping employers to transport honey bee colonies to farms and orchards throughout the U.S. Itinerant commercial beekeepers typically transport their honey bee colonies north in the summer and south in the winter, stopping as needed to pollinate crops in bloom. For both commercial beekeepers and farmers, the need to move bees from one state to another throughout the growing season has intensified as the number of bees and beekeepers decline and agricultural methods evolve.

Large farms and orchards require a large concentration of healthy, active pollinators during specific periods when crops are in flower. In addition, beekeepers have determined that they can maintain stronger, healthier honey bee colonies by transporting their colonies to warmer, southern states during the cold months. Providing flexibility in the H-2A Program for itinerant commercial beekeepers to move honey bee colonies to various parts of the U.S. will enable this industry to maintain strong, healthy honey bee colonies and provide the pollination services which are vital to successful crop production. Accordingly, the Department is establishing special procedures enabling itinerant commercial beekeeper employers to use the H-2A Program while moving their beekeeping activities among farms and orchards located in multiple areas of intended employment throughout the U.S.

4. **Special Procedures.** Attachment A outlines special procedures for applications submitted by itinerant commercial beekeeping employers under the H-2A Program. Unless otherwise specified in Attachment A, applications submitted by itinerant commercial beekeeper employers must comply with the requirements for 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 State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved in processing H-2A applications from itinerant commercial beekeeping employers. The 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 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 Itinerant Commercial Beekeeping Employers under the H-2A Program

ATTACHMENT A
Special Procedures: Labor Certification Process for Applications in the
Itinerant Commercial Beekeeping Industry under the H-2A Program

This document outlines special procedures for applications submitted by employers in the itinerant commercial beekeeping industry under the H-2A Program. Unless otherwise specified in this attachment, applications submitted for itinerant commercial beekeeping 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 itinerant commercial beekeeping occupations must comply with the requirements of 20 CFR Parts 655 Subpart B, 653 subparts B and F, and 654.

I. PREFILING PROCEDURES

- A. Job Orders and SWA Review (20 CFR 655.121). An employer engaged in commercial beekeeping activities 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 Part 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 in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

- B. 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 itinerant beekeeping activities must comply with all of the requirements of 20 CFR Part 655, Subpart B, 653 Subparts B and F and 654.

1. Job qualifications and requirements.

Experience. Due to the unique nature of the work to be performed, the job offer may specify that applicants possess up to 3 months of experience as a beekeeper and may require reference(s) to verify the applicant's experience performing such activities. Applicants must provide the name, address, and telephone number of any previous employer used as a reference. The appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Completion of Itinerary. An itinerant beekeeping employer may require in its job offer that an applicant for the job must be available to work for the entire itinerary. An applicant referred to the employer after the labor certification has been granted, but before 50 percent of the work contract period for the entire itinerary has elapsed, must be available and willing to join the employer at whatever place the employer is located at the time and remain with the employer for the duration of the beekeeping itinerary. An employer's rejection of an applicant who is unable or unwilling to accept such a requirement is considered a lawful job-related rejection.

Other Requirements. Due to the unique nature of the work to be performed, the job offer may specify that applicants may not have bee-, pollen- or honey-related allergies and must have or be able to obtain within 30 days of employment, a valid U.S. driver's license. Any other requirements must be normal and accepted for the occupation, and the SWA and the Chicago NPC have the authority to request supporting documentation substantiating the appropriateness of the duties prior to accepting the job order.

2. Workers' compensation. The employer must provide workers' compensation insurance coverage, as described in 20 CFR 655.122(e), in all states where commercial migratory beekeeping 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 commercial migratory beekeeping 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 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.

3. Housing. The employer must state in its job offer 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. All employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. For each anticipated worksite covering the itinerary, the job offer must disclose the type, location, and capacity of all housing that will be provided to the workers. Prior to the issuance of the Temporary Labor Certification, the CO must receive evidence that all housing complies with the applicable local, state, or Federal housing standards.
4. Rates of pay. For each state listed in an approved itinerary, the employer must state in its job offer and agree to pay a wage that is at least the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage, the agreed-upon collective bargaining wage, or the Federal or state minimum wage, in effect at the time the work is performed.

II. APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FILING PROCEDURES

- A. 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.
- B. H-2A Labor Contractor (H-2ALC) Filing Requirements (20 CFR 655.132). The Department is granting a special variance to the application filing procedures for H-2ALCs contained at 20 CFR 655.132(a). Specifically, an employer engaged in commercial beekeeping activities is authorized to file an Application for Temporary Employment Certification covering one or more areas of intended employment based on a planned itinerary. An itinerant beekeeping employer who desires to employ one or more nonimmigrant workers on an itinerary to provide beekeeping services to fixed-site farmers/ranchers is, by definition, an H-2ALC. Therefore, the itinerant beekeeping labor contractor must identify itself as the employer of record on the ETA Form 9142 by completing Section C and marking item C.17 as "H-2A Labor Contractor," and submitting, in addition to the documentation required under 20 CFR 655.130, all other required documentation supporting an H-2ALC application.