U.S. Department of Labor, Employment and Training Administration,
Office of Foreign Labor Certification, Room 12–200,
200 Constitution Avenue NW, Washington, DC 20210

Submitted via email: ETA.OFLC.Forms@dol.gov

October 22, 2018

Re: H–2A Recordkeeping Requirement

To Whom It May Concern:

These comments respond to the U.S. Department of Labor's (the Department) request for comments on the H-2A herder recordkeeping requirement, 83 Fed. Reg. 42,697 (Aug. 23, 2018). The organizations submitting these comments (Worker Advocates) are advocacy organizations that represent herder clients who have suffered severe and systematic wage theft. Worker Advocates urge the Department to strengthen the recordkeeping requirement to provide meaningful protections for herders and a basis of evidence for the Department's investigations. Specifically, just as Worker Advocates urged the Department to do when the Department was considering the 2015 final rule, we urge the Department to remove the exemption from the recordkeeping requirements and require employers of H-2A herders and range workers to adhere to the same recordkeeping requirements as other H-2A employers set forth at 20 C.F.R. § 655.122(j) and (k) to address the concerns discussed herein. At a minimum, Worker Advocates urge the Department to impose recordkeeping requirements for work performed on the ranch similar to the original proposal by the Department, i.e. that the employer must keep a record of hours worked and daily tasks assigned. And regardless, the Department should enforce the requirements as they now exist.[1]

I. HISTORY OF THE CURRENT RECORDKEEPING RULE

On April 15, 2015, the Department published a request for comments on its proposed rule governing the employment of H-2A workers in herding and production of livestock on the open range. 80 Fed. Reg. 20,300 (Apr. 15, 2015). At that time, it was the intent of the Department to issue regulations that would establish standards and procedures for employers seeking to hire foreign temporary agricultural workers for job opportunities in herding and production of livestock on the range. By Final Rule published on October 16, 2015, the Department issued the governing regulations. 80 Fed. Reg. 62,958 (Oct. 16, 2015). The section of those regulations relevant to the Department's 2018 Request for Comments is the recordkeeping requirements codified at 20 C.F.R. § 655.210(f)(2).

[1] Worker Advocates also incorporate by reference the June 1, 2015 Comments Submitted by a similar group of worker advocates, attached as Ex. 1 and *available at* https://www.regulations.gov/document?D=ETA-2015-0004-0514.

At the beginning of the rulemaking process in 2015, the Department proposed to remove the exemption from the recordkeeping requirements set forth at 20 C.F.R. § 655.122(j) and (k), for employers of H-2A herders and range workers as to the work those workers were performing on the ranch but not on the range. *See* Proposed Rule, 80 Fed. Reg. 20,300, 20,305 (Apr. 15, 2015) (discussion of § 655.201(f)). The reasoning behind this proposed change in recordkeeping was for the Department to ensure that the work conducted by any herder at the ranch that was not production of livestock did not exceed 20 percent of the herder's time. In other words, the Department's proposed rule would have allowed for herders to perform work that was directly and closely related to the production of livestock (but not within the definition of production of livestock) as long as it was listed on the job order and did not go beyond 20 percent of the days spent at the ranch. The recordkeeping requirement for duties performed at the ranch would have permitted the Department to "distinguish herder or livestock production related ranch work from unrelated ranch work to determine whether the work performed at the ranch is in compliance with the job order and the applicable wage rate." 80 Fed. Reg. 20,300, 20,306 (Apr. 15, 2015).

However, in the Final Rule, the Department decided to eliminate the 20 percent cap of minor, sporadic and incidental work performed at the ranch and instead only required that a *majority* of the worker's time be spent on the range. Thus, the Department concluded, there was no longer a need to maintain records of hours worked and duties performed while on the ranch. In addition, the Department justified its decision based on its finding that the burden on the employers to maintain the records of work performed on the ranch outweighed the benefit of monitoring whether the ranch work assigned to the worker actually constitutes the production of livestock or is otherwise consistent with the duties described in the job order.

It is worth noting, however, the Department's regulations continue to require that all other work performed off the range must constitute the production of livestock, including those duties closely and directly related to the production of livestock. *See* 20 C.F.R. § 655.200. In fact, in its discussion of the implementation of this provision, the Department states that the reason the exact language from the FLSA open range exemption was not adopted was because it did not want to give the impression that these workers (H-2A herders and range workers) could perform duties at the ranch or farm beyond those duties constituting the production of livestock. 80 Fed. Reg. 62,958, 62,965 (Oct. 16, 2015). The Department even provided a lengthy list of examples of what does and does not constitute "duties closely and directly related to the production of livestock." *See* 20 C.F.R. § 655.201. Moreover, the Department kept the requirement that all job duties be described in the job order that are off the range but that meet either the definition of production of livestock or closely and directly related to the production of livestock. 20 C.F.R. § 655.210(b).

In any event, the Department ultimately determined that employers of H-2A herders and range workers must keep accurate and adequate records with respect to worker's earnings and furnish workers with a statement of earnings on or before each payday as required in 20 C.F.R. § 655.122(j) and (k) but are exempt from recording the actual hours worked each day, the time the worker begins and ends work each day, and the nature and amount of work performed. The Department required these employers to keep daily records indicating whether the site of the employee's work was on or off the range. And in the event the employer prorates a worker's wage pursuant to (g)(2) of the same section because of the worker's voluntary absence for

personal reasons, it must also keep a record of the reason for the worker's absence. 20 C.F.R. § 655.210(f).

II. CURRENT CONTEXT AND OVERVIEW OF SUGGESTED CHANGES

The Department has now commenced this Information Collection Request (ICR) related to the recordkeeping requirements imposed on employers of H-2A herders and range workers. 83 Fed. Reg. 42,697 (2018). The Department requested comments evaluating the practical utility and the validity of methodology and assumptions used, as well as suggestions that would enhance the quality, utility and clarity of the information to be collected, keeping in mind the need to minimize the burden on employers.

Worker Advocates submit that the information the Department seeks to collect is inadequate as a means of fulfilling the Department's responsibility to determine whether employers have met their obligations under federal law. As discussed below, Worker Advocates have many examples of employers who have failed to maintain the required records, a problem that appears to be pervasive. Moreover, the current recordkeeping requirement—even in the best-case scenario of employer compliance—does not provide enough information to determine whether the work performed involves the production of livestock, including work that is closely and directly related to herding and/or the production of livestock as defined under 20 C.F.R. § 655.201.

Many H-2A herders and range workers are still spending a substantial portion of their time performing duties that do not involve the production of livestock or that are not even closely or directly related to the production of livestock, which of course can occur on the range or on the ranch. The current recordkeeping requirements only require a showing as to whether those workers hired under this category as herders or range workers spent a majority of their time on the range or on the ranch. It does not, however, get to the underlying issue of whether the work performed constituted the production of livestock. In many instances, therefore, it would be impossible to tell except through testimony whether the employer complied with the requirements set forth by the Department. For the Department to actually enforce compliance, especially given the changes to the definition of what constitutes "range" in the 2015 regulations, additional records are necessary to protect the workers from being misclassified, underpaid and mistreated. After all, the extreme disparity in wages between herders and ranch hands creates a substantial incentive for ranch hands to continue to be misclassified as herders and range workers.

Take for example a ranch that has work for five full-time ranch hand positions and four full-time herder positions. In that hypothetical scenario, there would be a substantial financial incentive for the employer to hire nine H-2A herders and have them split their time between herding and ranch work; while clearly not all the workers could be correctly classified as herders. Without good records from the employer it would be very difficult to prove the misclassification. And there is no good reason that by virtue of the designation of all the workers as herders, there should be fewer records maintained –the very records that would be needed to prove misclassification. Just as Worker Advocates urged the Department to do when implementing the 2015 Final Rule, we urge the Department to remove the exemption from the recordkeeping

requirements and require employers of H-2A herders and range workers to adhere to the same recordkeeping requirements as other H-2A employers set forth at 20 C.F.R. § 655.122(j) and (k). At minimum, Worker Advocates urge the Department to mandate the recordkeeping requirement for work performed on the ranch similar to the original proposal by the Department, i.e. that the employer must keep a record of hours worked and daily tasks assigned.

Should the Department choose not to change the current recordkeeping requirements of H-2A herder employers, Worker Advocates include suggestions of ways in which the Department may be able to enforce compliance with the recordkeeping requirements.

III. COMMENTS AND SUGGESTED REVISIONS

A. Employer Noncompliance with Current Recordkeeping and Other Requirements of the 2015 Regulations is Pervasive.

While there has been some improvement within the industry in the form of an increase in wages paid to herders and range workers, as required by regulation; many employers remain out of compliance with several of the key changes implemented by the 2015 regulations. Most relevant to the Departments' ICR is that in many, if not all instances of which Worker Advocates are aware, employers have not maintained the records that are required by 20 C.F.R. § 655.210(f)(2). Not only have Worker Advocates in many states reported employers' failure to turn over such records during recent wage disputes, the requisite language is entirely absent in most, if not all, the job orders seeking to employ H-2A herders and range livestock workers.

1. The required records have not been produced by employers during wage disputes, and there is good reason to believe employers are not maintaining even those minimal records.

Many of the Worker Advocates continue to report employer ranches' failures to provide any pay records whatsoever to their employees, let alone records indicating which days were worked on the range or the ranch. For example, in one dispute in Utah, the pay records provided in response to a discovery request as part of the court proceeding consisted of some pages out of a diary with handwritten notes that had an amount and a name written on them, such as "$300, Felipe"[2] but nothing else. *See Zevallos v. Stamatakis*, Case No. 17-cv- 00253 (D. Utah filed April 4, 2017) (alleging employers did not pay sheepherders the monthly wage rate that was contractually promised or the minimum wage owed for non-range work). Similarly, in Colorado, worker advocates report having requested and received timekeeping and pay records kept by employers of six different H-2A herders, yet none of the records provided included any of the information employers are required to maintain under 20 C.F.R. § 655.210(f)(2). Other employers simply did not respond to the request for records at all. The Colorado Worker Advocates are not aware of any instance in which the employers have kept the required data about which days workers were on the range versus on the ranch.

[2] All worker names in these comments have been modified to preserve worker anonymity in this process.

Regardless of whether the employers' failure to maintain these records is willful or unintentional, the point is that these records do not appear to exist, or at the very least, are seldom kept. In addition, as discussed below, the recordkeeping requirement is not included in the content of the job orders of herders and range livestock workers. The employers' regular failure to maintain such records of course negatively affects the Department's ability to enforce its regulations and diminishes workers' ability to recuperate their unpaid wages.

2. *Greater oversight of herders and range livestock employers is needed: many job orders of herders and range livestock workers fail to comply with the 2015 regulations.*

At 20 C.F.R. § 655.210, the Department sets forth the language employers are required to include in the job for herders and range livestock workers. Included in the requisite language is specification of the employers' obligations to keep daily records indicating whether the site of the employee's work was on the range or the ranch and in the event an employee's pay was prorated for taking a voluntary day of absence for personal reasons, it must also keep a record of the reason for the worker's absence. *See* 20 C.F.R. § 655.210(f)(2).

As illustrated by the attached 2018 job orders filed by Western Range Association (WRA) and Mountain Plains Agricultural Service (MPAS)—organizations responsible for a large number of clearance orders filed on behalf of ranchers—this language is often not included.[3] It is problematic, to say the least, that the two biggest herder contracting organizations do not include this required information in their H-2A orders.

It would be beneficial for workers to have this information disclosed in the job orders. Workers need to know the recordkeeping requirements of their employers, especially if there is a dispute about the time spent on the range and the ranch. Additionally, if there is a dispute about deductions made for voluntary days of absence or the reasons for such absence, records would provide a means of resolving the dispute.

B. The Department Should Apply All Recordkeeping Requirements set forth in 20 C.F.R. § 655.122(j)&(k) to Employers of H-2A Herders and Range Workers.

The minimal recordkeeping required under the regulations and at issue in this ICR is inadequate to allow the Department to determine whether employers engaging in sheep herding and goat herding, and those working in range production of livestock, have met their obligations under federal law. Worker Advocates urge the Department to require additional information in the records kept by employers. Specifically, Worker Advocates recommend the Department remove the current exemption set forth in 20 C.F.R. § 655.210(f) and instead require employers of herders and range workers to maintain records of all work performed as required under 20 C.F.R. § 655.122(j) and (k). A robust recordkeeping requirement, like the one we propose, is necessary for enforcement of the Department's regulations governing the proper use of H-2A herder and range workers.

[3] These are attached as Ex. 2 and Ex. 3.

1. The current recordkeeping requirements do not provide the Department with the information it needs to make misclassification determinations.

The misclassification of herders and range workers as ranch hands is an ongoing problem that was not eliminated by the 2015 regulations. Compliance with the regulations governing employment of H-2A herders and range workers means that all work activities—on and off the range—must still involve herding or production of livestock. 20 C.F.R. § 655.200. The current recordkeeping requirements simply do not provide the Department with the information it needs to make a determination about misclassification of ranch hands as herders. The Department needs substantially more detailed information about the type of work performed on the ranch and on the range to appropriately monitor and enforce compliance. That information is best obtained by simply applying the same recordkeeping requirements already imposed on all other H-2A employers.

In the Spring of 2018, for example, Worker Advocates assisted two H-2A workers in Colorado who had been improperly classified as range livestock workers during a portion of their employment even though they had a fixed hourly work schedule and spent nearly every day working on the employer's ranch. Similarly, a complaint was made to the Wage and Hour Division of the Department about J&A Phillips Ranch in Idaho using a worker hired as a herder to perform solely irrigation work starting in 2016. Worker Advocates in Oregon assisted workers who alleged misclassification as herders and inadequate recordkeeping by the employers. *Condezo-Martin v. Wentz Ranch*, 17cv48986 (Umatilla County Cir. Court. 2017).

Exempting employers from maintaining records reflecting daily hours and job duties for herders and range workers incentivizes misclassification and makes investigation substantially more difficult. Recordkeeping of all work performed is necessary for enforcement of the regulations governing the proper use of H-2A herder and range workers. To ensure compliance with the requirements that all work performed by these workers constitutes the production of livestock, daily recordkeeping must include: hours, start and stop times, duties performed on and off the range while engaged in the production of livestock, and duties closely and directly related to the production of livestock on the ranch.

Without the complete suite of information such recordkeeping would provide, monitoring compliance and enforcement of wage provisions will continue to be thwarted by the lack of records corroborating worker testimony.[4] Likewise, workers seeking to prove a claim for wages at higher applicable Adverse Effect Wage Rate (AEWR) or other minimum wage rates face the daunting task of having to reconstruct covered and uncovered work hours and of having to convince a judge or jury that they are telling the truth. Greater accountability through recordkeeping would also serve the purpose of the H-2A regulations, by decreasing the

[4] In *Saenz v. Allred,* Case No. 2:11–cv–00200, 2014 WL 869248 (D. Utah), the court actually used the lack of a recordkeeping requirement to shield the employer from liability for non-herding work a herder claimed to have performed, reasoning that the employer had no way of knowing the nature or amount of the work performed. While we believe this decision misconstrues both the legal and factual realities of Mr. Saenz' and even though it predates the 2015 regulations, it demonstrates the need for recordkeeping for all aspects of herding.

likelihood that U.S. workers who would be interested in non-sheepherding ranch jobs would be displaced as the result of the employers' assigning this work to H-2A sheepherders.

a. The New Definition of "Range."

In the 2015 Final Rule, the Department created a more nuanced definition of "range" than had existed in previous rules, stating that no one factor is controlling and the totality of the circumstances is considered in determining what should be considered "range." *See* 20 C.F.R. § 655.201. Given that the new definition requires an assessment of the totality of the circumstances to determine whether the worker is in fact working on the range, requiring additional records of the work performed in that particular area would assist in the ultimate determination. Additional records would be far preferable as compared to the current requirements that allow the employer to make a conclusory determination as to whether the worker is on the range, without any description of the work itself. As the recordkeeping requirements exist now, the Department is not privy to any of the information the employer considers when determining what constitutes range or ranch work.

It is also worth noting that the 2015 regulations as implemented fail to address the issues raised by Worker Advocates in some states where the range activities take place within a few miles of or even adjacent to cultivated fields where herders are expected to fill their days repairing permanent fences, shoring up irrigation ditches or even harvesting hay.

b. Future Determination of Wages Based on Actual Hours Worked

Requiring employers to record the hours and duties worked by the H-2A herders and range workers is the only reliable method for determining average hours worked for purposes of establishing the appropriate wage rate. The Department faults the lack of records and responses to surveys as the basis for its inability to come up with more than an estimate of hours worked in its determination of the monthly AEWR. After much debate, the Department ended up using a 48-hour workweek estimate as a compromise. Although the AEWR for herders and range workers increased because of the Department's 2015 regulations, the manner in which the Department derived the estimated number of hours grossly underestimates the daily, weekly, and monthly hours of work performed over the course of the contract.

Requiring the daily recording of regular start and stop times over the course of the season, as well as the time in and out when responding to the frequent emergencies faced by herders, is the only reliable method for determining average hours worked. As mentioned in the Worker Advocate comments in 2015, imposing the same recordkeeping requirements as the Department imposes on other H-2A employers would significantly ease the burden when the Department is once again tasked with reviewing wage rates to avoid wage stagnation in the future and beyond. It also would eliminate the inconsistency in which the Department claims insufficient evidence to determine average hours worked even though generating the necessary evidence is within the Department's authority to require. This would result in a much more accurate and fair wage based on a more accurate computation of hours-worked.

2. *Requiring employers to comply with 20 C.F.R. § 655.122(j)&(k) provides a significant protection to workers and results in only a minimal burden on employers.*

a. Significant Protection for Workers

As discussed above, recordkeeping requirements are a significant labor protection for workers and are particularly necessary when an employer is invoking a labor categorization that allows for a significantly lower rate of pay. It is not unreasonable for employers to bear the burden of ensuring compliance with recordkeeping requirements that will allow a determination about whether the lower rate of pay should apply. If employers do not maintain the required records, they should face a concomitant burden shifting and/or presumption that the worker was not doing herding work, as described below.

The recordkeeping requirements we recommend would also provide a significant protection for employers because in theory there would be less room for allegations that the worker had fabricated testimony of the work completed. This set monthly salary for unlimited work hours only encourages exploitation when the workers are living at the ranch, where there are an endless number of tasks to be done.

Requiring employers to keep track of work performed on the range, as well as on the ranch, would also be beneficial to worker health. Requiring the employer to be aware of what is occurring on the range, would ideally make the employer more cognizant if the employees on the range are out of potable water or food, or are in great need of medical care. As reported in the previous comments submitted by Worker Advocates, many workers have complained about employers who do not check in on the workers except to drop off food and water every 15 days, and even then, do not talk to workers but simply drop the supplies are run while the workers are out of their trailers with the sheep. Any requirement that would lead to more contact and communication between workers and employers would clearly promote worker health and safety by making it more likely that their needs would be met while on the range.

b. The Responsibility Will Be Borne by the Worker

The burden imposed on extending the recordkeeping requirement to include range activities will, in effect, be on the worker, not the employer. Workers can be provided with daily calendars or timesheets to be filled out by the worker. These can then be collected by the employer on a monthly basis in conjunction with other tasks such as water or food delivery. While employers complain that they cannot effectively monitor whether the reported hours and activities actually took place, that is a risk of their business model. The risk of inaccuracy should fall on the employer who has the power to correct it, rather than the worker; not keeping any records does not address this concern but instead simply gives the employer the benefit of the doubt. Just as the ranchers must trust their employees to properly care for the sheep, they must trust them to accurately report their hours and duties. If, upon review, the rancher doubts the accuracy of the hours or tasks described, the issue may be raised with the herder and corrective action may then be taken if the allegation is substantiated.

c. Insignificant Financial and Clerical Burden on Employers

The recordkeeping requirements now proposed by Worker Advocates represent an insignificant financial and clerical burden on employers, at most. These records are already maintained, in some form, by ranchers in California and other states.[5] These recordkeeping requirements would be reasonable and comparable to those imposed on other employers by operation of FLSA or state law coverage.

Operations that employ workers not covered by the current herder exemptions must already have payroll systems that meet FLSA requirements[6] equivalent to 20 C.F.R. § 655.122(j) and (k). And, of course, the operations employing other non-herder H-2A workers must comply with the FLSA requirements. Incorporating herder information into those systems would require little personnel time. In fact, the Department mentioned comments received by Billie Siddoway, of Siddoway Sheep Company, in 2015, that provided a detailed description of the specific activities performed during various months of the year. According to the Department, Ms. Siddoway acknowledged that it would not be overly burdensome to comply with the recordkeeping requirement if in fact, the herder undertook minor, sporadic or incidental work outside the definition of herding such as by performing tasks as erecting temporary pens and corrals in anticipation of the lambing season, the employer could track those hours and job duties to allow the Department to evaluate compliance. 80 Fed. Reg. 62,958, 62,968 (Oct. 16, 2015). Indeed, the addition of keeping daily records of start and stop times, work site, and duties can be accomplished with a single reporting form with only a few fields. The minor cost of compliance is more than outweighed by the critical importance of these records to monitoring and enforcement in a program for which the employers are the primary beneficiary.

C. At Minimum, the Department Should Mandate Additional, Easily-Implemented Safeguards along with the Current Recordkeeping Requirements.

1. The recordkeeping requirements set forth in § 655.122(j)&(k) should <u>at minimum</u> apply to work conducted on the Ranch/Farm.

For the reasons set forth above and in the previous Worker Advocate comments, the Department should impose all recordkeeping requirements for all work performed on the ranch. The Department should apply all recordkeeping requirements to all types of work done by herders, but even if it does not do so, it should at a minimum require better records of the work done on the ranch, since that is the most likely site of work that does not comply with herder or range livestock worker status. Rather than the Department having to untangle the type and hours of work after the fact—using things like shearing contracts, veterinary bills, etc., *see* 80 Fed. Reg. 62,958, 62,985 (Oct. 16, 2015)—the Department should simply require recordkeeping that can tell the whole story. It of course goes without saying that the burdensome project of trying to determine where a worker worked and when based on a smattering of the employer's receipts would be highly inaccurate at best and fully irrelevant at worst. Regulatory agencies and the U.S.

[5] California employers of sheepherders must maintain such records, including a record on non-sheepherding work pursuant to 8 Cal. Code Regs. § 11140(7).
[6] 29 C.F.R. §516.2.

Congress, *see, e.g.*, 29 U.S.C. § 211, have long recognized that the best way to show a worker's hours and nature of work is simply to require the employer to keep contemporaneous records.

2. *Employers should be required to provide the Department with their 20 C.F.R. § 655.210(f)(2) records as part of the renewal process for herder/range worker applications.*

As discussed above, there is little if any evidence that employers are maintaining even the minimal records required today. The Department should develop a method to ensure that employers are actually complying with the recordkeeping requirements, whether the current less-effective version or some future, more robust version of the requirements. Worker Advocates suggest that the Department make submission of the records a requirement as part of the renewal process for H-2A job orders. If an employer has failed to maintain the required records, their application should be rejected and the employer should be penalized. Once again, employers are the beneficiaries of this system that allows them to pay a wage well below minimum wage, and their strict compliance—for the sake of the rights of both foreign and U.S. workers—is vital. Requiring employers to submit evidence of their maintenance of records would add no additional burden on the employer and would be the easiest way to ensure compliance.

3. *When an employer does not maintain the required records, the worker should have a presumption in his or her favor.*

In the context of the FLSA recordkeeping requirements, there is a robust body of case law that governs when an employer does not maintain records as required by FLSA. When an employer fails to maintain records, the worker's reasonable estimate of the hours worked will satisfy the worker's initial burden of proof, which then shifts the burden to the employer to show the precise amount of work. *See, e.g.*, *Anderson v. Mount Clemens Pottery Co.*, 328 U.S. 680 (1946). The worker's evidence may be anecdotal and imprecise. *Osias v. Marc*, 700 F.Supp. 842 (D. Md. 1988). The evidence may even be inaccurate, especially where it is the employer's failure that results in the inaccuracy. *Marshall v. Mammas Fried Chicken, Inc.*, 590 F.2d 598 (5th Cir. 1979). Summary testimony by the worker as to the hours worked is acceptable. *Beliz v. W.H. McLeod & Sons*, 765 F.2d 1317 (5th Cir. 1985).

The Department should apply that same principle to the context where an employer does not maintain the minimal records already required. If an employer fails to maintain records of when the herder is working on the range vs. the ranch, the herder's evidence (including testimony) should be given a presumption of adequacy and accuracy and the burden can then shift to the employer to rebut with evidence of its own. Likewise, if the Department improves the recordkeeping requirement, by following the recommendations above or otherwise, the same presumption should apply if the employer does not maintain those records as required. Such a presumption in favor of the worker will give the employer a legal incentive to comply with the recordkeeping requirements and will prevent an employer's negligence in recordkeeping from penalizing the worker if a dispute arises.

IV. CONCLUSION

For all the reasons stated above and in the 2015 comments, Worker Advocates urge the Department to improve the recordkeeping requirements. Requiring the same recordkeeping from herder employers as for other H-2A employers would allow the Department and advocates for misclassified herders to ensure compliance with the statutory and regulatory protections for both U.S. and foreign workers. H-2A herder employers are substantial beneficiaries of the H-2A herder regulatory system, paying far less than other employers for far more hours of work. Their entitlement to benefit from this system should be tied closely to their compliance with the minimal recordkeeping requirements as they exist now. In any case, the Department should strengthen the requirements to assure adequate protection for vulnerable herder and range livestock workers.

Sincerely,

California Rural Legal Assistance Foundation
California Rural Legal Assistance, Inc.
Colorado Legal Services
Farmworker Justice
Immigrant and Migrant Rights Project of Florida Legal Services, Inc.
Justice in Motion
Legal Aid Services of Oregon
Legal Aid Society of MFS Chicago
Migrant Legal Aid
Northwest Forest Worker Center
Texas RioGrande Legal Aid, Inc.
Worker Justice Center of New York