

Congress of the United States

Washington, DC 20515

September 18, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Mr. Secretary:

The House Committee on Oversight and Government Reform recently held a field briefing in Evanston, Wyoming on regulatory threats to livestock operations in Wyoming and throughout the West. Stakeholders expressed concerns that the Department of Labor's proposed regulation regarding H-2A "special procedures" program for shepherding, goat herding, and open range livestock would reduce the number of employers who can use the H-2A program, reduce the number of H-2A workers, and leave producers without a labor force. We write to make you aware of those concerns so they can be considered before the rule is finalized on November 1, 2015.

Since the 1950s, domestic livestock operations in the West have depended on the H-2A "special procedures" worker program. Herds are grazed on large tracts of rangeland and in common allotments with other ranches. In the spring, the herders move the sheep from the winter ranges to spring lambing grounds where the ewes give birth and herders care for them. In early summer, the herds are moved along stock driveways and trails to summer pastures and U.S. Forest Service allotments. In the fall, the sheep return from the forest and higher elevation pastures to the deserts to complete the yearly transhumance migration of herders and flocks. This rotational grazing program properly utilizes the range and cares for the sheep. It is necessary for herders to stay with the animals to protect them from predators and keep them from straying. Without herders, ranchers would have no alternative to control their herds. Some would be challenged to continue operating.

Under the Department's proposed rule, the definition of "open range" will have a limiting impact on who can qualify for the H-2A program in the future. The proposed rule defines "open range" as "Unenclosed public or private land outside of cities and towns in which sheep, cattle, goats, horses or other domestic hooved animals, by ownership, custom, license, lease, or permit, are allowed to graze and roam." This definition does not take into account that herding and grazing processes often use fences.

Sheep need to be herded constantly, whether behind a fence or on an open range, to monitor the health and well-being of the animals and to guard against predators and other threats at all times. Sheep are herded around pastures to graze, and they move to new pastures when the forage is depleted. Moving the sheep from pasture to pasture is often done via fenced county "right of ways" or federally designated trails. The Department should acknowledge the fact that fences are used in the herding process and in conservation practices. We request the Department recognize that fences are a tool often used in the proper care and management of sheep and must not be used as a reason to disqualify an employer from participating in the H-2A program.

We are also concerned the Department does not reference practices employed by federal land management agencies, such as the Forest Service, the Bureau of Land Management, and other agencies that require permittees to maintain fences dividing allotments and pastures, as part of their annual operating plans. These pastures can be as small as a few acres, or up to hundreds of thousands of acres. The requirement that these agencies have both fences and herders contradicts the Department's proposed definition of "open range."

Furthermore, the one-size-fits-all wage rate was discussed during the field briefing. The Department admitted that creating a nationwide uniform wage standard will increase wages and costs by greater than 100 percent for family farm operations. This wage increase is coupled with costs of housing, food, transportation, and documentation fees. A substantial increase to input costs should not be implemented without serious consideration of the negative consequences for some employers and employees. The change will force many H-2A employers into a negative cash flow scenario that will leave them with no other choice but to discontinue their sheep ranching operations.

The proposed rule as written will reduce the number of employers who can use the H-2A program, reduce the number of H-2A workers, and leave producers without a labor force. In turn, this will force producers to sell their flocks, eliminate a domestic industry, and increase costs for consumers. We strongly encourage you to take into consideration these concerns and suggestions from our field briefing.

Thank you for your immediate attention and assistance with this request. Please contact the Committee staff at (202) 225-5074 with any questions.

Sincerely,



Jason Chaffetz
Chairman
Committee on Oversight
and Government Reform



Rob Bishop
Chairman
Committee on Natural Resources



Cynthia M. Lummis
Chairman
Subcommittee on the Interior

The Honorable Thomas E. Perez

September 18, 2015

Page 3

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform

The Honorable Raúl M. Grijalva, Ranking Member
Committee on Natural Resources

The Honorable Brenda L. Lawrence, Ranking Member
Subcommittee on the Interior

The Honorable Harold Rogers, Chairman
Committee on Appropriations

The Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture

The Honorable Howard Shelanski, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget