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New H-2A guestworker program rule on sheepherders increases wages but problems remain

The U.S. Department of Labor today released new regulations for employment of guestworkers that herd sheep and other livestock on the open range. The regulation, issued under the H-2A temporary foreign worker program will replace outdated guidance which allows employers to pay H-2A sheepherders and goatherders \$750 a month to be on call 24 hours a day, 7 days a week and live in mobile housing on the range.

The low wages allowed under the H-2A program have been criticized for many years, as have the living conditions which the Government has permitted. Many H-2A sheepherders and goatherders live in isolation in tents or dilapidated trailers with no heat, air conditioning, running water or toilets and rely on their employers to deliver food periodically. They often have no contact with other people for weeks. Human trafficking is not uncommon in this industry.

Under the new regulation, ranchers will be required to pay a higher minimum wage except in states where the law had already required higher pay for herders. Generally, the ranchers will be required to pay at least \$7.25 per hour for 48 hours per week, or about \$1,500 per month. This increase will be phased in over three years.

Unfortunately, the new wage is still unfairly low. In fact, the DOL initially proposed a higher wage based on surveys of farm labor by the Department of Agriculture which are used for other workers under the H-2A guestworker program, and which would have been substantially higher. The Final Rule also includes modest requirements that ensure workers access to potable water and a way for workers to make emergency communications.

“Farmworker Justice is pleased that the Department of Labor revised the H-2A herder labor standards, which will improve the wages and living conditions for many livestock workers on the range. For too long, the US government has facilitated the employment of H-2A sheepherders in disgraceful conditions for shamefully low wages,” said Adrienne DerVartanian, Director of Immigration and Labor Rights for Farmworker Justice. “However, the wage formula in the Final Rule is still inadequate to compensate H-2A range livestock workers and to attract domestic workers to these jobs. We are disappointed that the Department of Labor gave in to rancher pressure and lowered the wages from its original proposal.”

We are still reviewing the rule and will provide more analysis once we are finished. The Department of Labor was ordered to promulgate regulations by a federal judge in *Mendoza v Perez*. The lawsuit was brought by US farmworkers who claim that they would like to be sheepherders if they were offered adequate wages and working conditions. Farmworker Justice and numerous other organizations commented on the proposed regulation, urging the agency to reform the H-2A herder labor protections.