

Public Comments

H-2A Shepherd Notice of Proposed Rulemaking

Paperwork Reduction Act Requirements

Comments on exempting the employer from recording hours worked when the worker is on the open range

Comment Number: [ETA-2015-0004-0102](#)

Organization:

Commenter: Kay and David O. Neves

Commenter Type: Individual Employer

Comment Excerpt Text:

Keeping daily records of work performed on the range is unnecessary. The herders note when something out of the ordinary happens, such as sheep deaths or other problems, or anything that is unusual. Daily records beyond this would be an unnecessary burden on the herder.

Comment Number: [ETA-2015-0004-0221](#)

Organization:

Commenter: Calvin Roberts

Commenter Type: Individual Employer

Comment Excerpt Text:

Is it reasonable to keep daily records of work performed on the range? Also this is totally unnecessary. How could such records be maintained and submitted?

Comment Number: [ETA-2015-0004-0383](#)

Organization:

Commenter: John & Carolyn Espil

Commenter Type: Individual Employer

Comment Excerpt Text:

Obligations to keep daily records for operations that are open-range with far-flung locations are an unnecessary imposition that serves little purpose other “compliance” monitoring. The Department, only acquainted with compartmentalized work environments, proposes an added burden that is nonsensical. Compliance is established through contractual agreement when the worker arrives in this country to perform work as a livestock range specialist.

Comment Number: [ETA-2015-0004-0416](#)

Organization: Utah Farm Bureau Federation

Commenter: Randy Parker

Commenter Type: Advocacy Organization

Comment Excerpt Text:

In the proposed rulemaking, DOL has included two recordkeeping requirements. First, that the livestock producer keep hourly records based on tasks performed on the range and tasks performed at the ranch and

maintain records of compensable time based on these activities. UFBF believes these new reporting burdens, if imposed, are not only not necessary and onerous, but impossible to comply with from a ranching operation standpoint.

UFBF argues that daily recordkeeping requirements are unduly burdensome to small farm and ranching businesses who do not have many, if any, other workers. Most labor on these Utah and western livestock ranching operations is performed by family members. On many livestock ranching operations, the H2A worker is their only employed worker. These family businesses do not have a human resources department that handles work records. They are neither familiar with nor are they subject to the regular H2A worker processes, the Migrant and Seasonal Worker Act, or the Fair Labor Standards Act. For the limited time the herders are on the ranch and away from the open range, keeping track of hourly work records clearly would be considered an unnecessary burden.

This proposed recordkeeping burden would outweigh the needs of DOL to enforce the H2A herder program recognizing DOL has presented no evidence that livestock operations have been using herding workers on the ranch more than the allowed 20 percent of the time.

Comment Number: [ETA-2015-0004-0437](#)

Organization: Siddoway Sheep Company, Inc.

Commenter: Billie Siddoway

Commenter Type: Individual Employer

Comment Excerpt Text:

The proposed imposition of daily record keeping for ranch employees is overly burdensome and unlikely to provide useful information. It would not be unreasonable to track the days each employee works on the range or the ranch. However, it is onerous to require daily records for hours of work and duties performed when workers are on the ranch. As described above, Siddoway Sheep Company employees work at the ranch site during the winter lambing season. Each employee will typically have one position (e.g., shed monitor), and will continue in that position throughout the lambing season working regular hours.

Employers may not know if any employee takes a break during the day or assists another worker with a job. So long as the ranch work falls directly under the definition of herding, it should be sufficient for the employer to identify each employee's position, the job duties for that position, and the regular hours of work for that position. In the event that the employer assigns the employee to undertake minor, sporadic or incidental work outside of the definition of herding, then the employer could track those hours and job duties only. This will allow the Department to determine whether an employer is compliant with the 50% range requirement and 20% incidental work requirement, without creating an unnecessary burden on employers. On our ranch, for example, we occasionally task one or two employees with erecting temporary pens and corrals in anticipation of the winter lambing season. It would not be unreasonable to track the hours and duties associated with these tasks. The incidental work report could be compared to the duties and hours of that employee's regular lambing position to determine compliance with the 20% requirement. Daily reporting is not something that the employers or employees are equipped to handle, and I expect that employers and employees will tend to submit standard rather than accurate information if daily reporting is required. Limiting the reporting requirement to only incidental work is more likely to lead to accurate reporting.

Comment Number: [ETA-2015-0004-0442](#)

Organization: Michigan Farm Bureau

Commenter: John Kran

Commenter Type: Individual Employer

Comment Excerpt Text:

DOL requests comment on two proposed recordkeeping requirements. First, the requirement to keep hourly records for work performed at the ranch and daily records of the work performed on the range and second, records of compensable time worked in these occupations that will balance any new burdens imposed on the employer against the DOL's need to monitor and enforce the H-2A program. We believe that recognizing daily or hourly monitoring of time on the open range is not only not necessary, but impossible. However, MFB is also convinced that the daily recordkeeping requirements on the ranch can be unduly burdensome to small farmers and ranchers who do not have many, if any, other employees. On the majority of these farms, the H-2A worker is their only worker. They do not have a human resources department handling the work records and are neither familiar with nor subject to the processes under regular H-2A, the Migrant and Seasonal Worker Protection Act (MSPA), or the Fair Labor Standards Act. Therefore, keeping track of hour work records, even for the limited time workers are on the ranch, may be considerably burdensome. This burden will outweigh the need for DOL to enforce the H-2A program, given that DOL has presented no evidence that farmers have been using herding workers on the ranch more than the allowed 20 percent time.

Comment Number: [ETA-2015-0004-0471](#)

Organization:

Commenter: Cindy Siddoway

Commenter Type: Individual Employer

Comment Excerpt Text:

Is it reasonable to keep daily records of work performed on the range? This would not be practical. The worker could keep a daily log but his duties on the range are almost exclusive to herding. This would also increase the workload of the employer.

Comment Number: [ETA-2015-0004-0460](#)

Organization: Farmworker Justice

Commenter: Adrienne DeVartanian

Commenter Type: Advocacy Organization

Comment Excerpt Text:

These comments respond to the Department's invitation to comment on recordkeeping requirements by employers. We support the extension of all of the work records requirements contained for field and livestock H-2A workers in Subpart B, 20 C.F.R. § 655.122(j) and (k), to herding and open range production activities. As currently drafted, employers are exempt from maintaining records of in and out times, daily hours worked, and duties performed by workers on days that they are "performing duties on the open range" but must otherwise comply with subsections 655.122(j) and (k). While the proposed rule is a significant and critical improvement, we recommend that the requirements of subsections 655.122(j) and (k) be extended to all herding and range production work, irrespective of where it is performed.

i. The Record Keeping Exemption for Open Range Duties Should Be Eliminated

The Department should require that employers maintain accurate records of hours worked on the range so that it can more accurately calculate the AEWR. The proposed regulation exempting employers from recording daily hours spent working on open range duties will perpetuate the problem faced by the Department when attempting to determine an appropriate monthly AEWR. As the Department recognizes, the 44 hour work week is, at best, a compromise that in the experience of farmworker

advocates, grossly underestimates the daily, weekly and monthly hours of work performed over the course of the contract. (See Section III, *infra*.) 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.

Additionally, record keeping of open range work is necessary for enforcement of the Department's proposed rule. Extending daily record keeping of hours, start and stop times and duties performed while engaged in "open range" activities is the only way to ensure compliance with the requirements that workers be paid an hourly rate for work outside of the open range definition. What actually constitutes "on the open range" has been evolving in the sheep industry, particularly in areas such as California and Oregon, where the range activities might take place within a few miles of or even adjacent to cultivated fields where herders are expected to fill out their days by repairing permanent fences, shoring up irrigation ditches or even harvesting hay. The proposed rule provides much needed clarification that these activities are not encompassed in open range activities [41. See 20 C.F.R. §§ 655.200(b) and 655.201.]. However, exempting employers from maintaining records reflecting daily hours and job duties for open range work incentivizes misclassification. Monitoring compliance and enforcement of the wage provisions in the proposed rule will continue to be thwarted by the lack of records corroborating worker testimony [42. In *Saenz v. Allred*, Case No. 2:11-cv-00200, 2014 WL 869248 (D. Utah), the court actually used the lack of a record keeping 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 that this decision misconstrues both the legal and factual realities of Mr. Saenz' case, this case demonstrates the need for record keeping for all aspects of herding.].

The burden imposed on extending this requirement to open 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, such over reporting is a risk of the business model. 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.

ii. The Record Keeping Exemption, as Proposed, Should Be Clarified

We agree with the Department that record keeping requirements are necessary to ensure compliance with the requirement that workers are properly compensated when engaged in mixed activities over the course of the contract period. As currently drafted, the extension of the record keeping requirements imposes minimal additional costs on employers.

For workers employed exclusively in open range activities every day of the contract period, the Department proposes that employers merely record each day worked and the work site. While we believe that this should be expanded, this limited information will make it possible to determine how many work days the worker has spent on the open range to be in compliance with Subpart C. If the Department chooses to maintain this exemption, the regulation language needs to be clarified to ensure that the exemption is applicable only when the herder works the entire workday on the open range. Specifically, we propose that 20 C.F.R. § 655.210(f)(1) be modified by adding the underlined text below:

Hours and earnings statements. (1) The employer must keep accurate and adequate records with respect to the worker's earnings and furnish to the worker on or before each payday a statement of earnings. The

employer is exempt from recording the hours actually worked each day as well as the time the worker begins and ends each workday on any full workday when the worker is performing duties solely on the open range, but all other regulatory requirements in § 655.122(j) and (k) apply.

This language clarifies the intent of the regulation and will eliminate any confusion about whether records need to be maintained on days when a worker is assigned both open range and ranch duties. Additionally, it will also ensure an accurate tally of hours worked. The current procedures allow workers to be paid a set monthly wage to work an unlimited number of hours. 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

These record keeping requirements represent an insignificant financial and clerical burden on employers, at best, as these records are already maintained, in some form, by ranchers in California and other states [43. California employers of sheepherders must maintain such records, including a record on non-shepherding work pursuant to 8 Cal. Code Regs. § 11140(7).]. The regulations recognize that ranchers want the flexibility to offset the monthly wage by the number of personal days off. This practice is expressly allowed by 20 C.F.R. §655.210(g)(2), and if employers are allowed to make such deductions, they must be required to maintain records that support them. These record keeping requirements would be reasonable and comparable to those imposed on other employers by operation of FLSA or state law coverage.

Comment Number: [ETA-2015-0004-0383](#)

Organization:

Commenter: John & Carolyn Espil

Commenter Type: Individual Employer

Comment Excerpt Text:

Department refers to a “Human Resource Manager”, as if ranches have such an individual on staff, or even have a staff for that matter. We feel that the added record keeping duties regarding the hours, locations, specific duties of sheepherders and livestock workers are excessive and inconsequential. The purported point, as stated in the proposal, is to secure and confirm compliance. But if compliance is made impossible or unrealistic or oppressive, then no amount of paperwork will render it less so. Department should identify the situations or actions deemed non-compliant and remedy those. Perhaps, some of the rules and regulations are failure-prone due to bureaucratic lack of understanding of the situations involved, due to ambiguity or simply due to bad policy. Hopefully, the goal of this proposal isn’t to render compliance impossible.

Comment Number: [ETA-2015-0004-0101](#)

Organization: Ron and Jodi Hansen Ranch

Commenter: Ron Hansen

Commenter Type: Individual Employer

Comment Excerpt Text:

At first when looking into hiring H-2A help it looked like an extensive amount of paperwork and time with all the inspections and paperwork needed but it proved worthwhile with the excellent help we have received. I have no issue with common sense approach to regulation to make sure all workers are treated fairly and safely but to try and regulate hours and document what the workers do every day is not practical on a ranch. There is no such thing as a set schedule like there is in my Engineering job. Animals can become sick all of a sudden and the next 2 days is spent setting up corrals, treating animals along with

all the normal daily chores. (I welcome anyone wanting to add this regulation to come spend a month at my ranch and see how this regulation makes no sense as 20 different unexpected events can happen in one day!)

Comment Number: [ETA-2015-0004-0196](#)

Organization:

Commenter: Gary Visintainer

Commenter Type: Individual Employer

Comment Excerpt Text:

Lastly clocking employees in and out is very impractical where the employee lives on site in provided housing. There is no way to be sure that employees clock in and out as they should. Most ranchers do not have a hired supervisor to oversee it.

Comment Number: [ETA-2015-0004-0221](#)

Organization:

Commenter: Calvin Roberts

Commenter Type: Individual Employer

Comment Excerpt Text:

Is it reasonable to keep hourly records for work performed at the ranch? Not only is it difficult to do it is totally unnecessary and ludicrous. How could such records be maintained and submitted?

Comment Number: [ETA-2015-0004-0297](#)

Organization: American Farm Bureau Federation

Commenter: Dale Moore

Commenter Type: Professional Association

Comment Excerpt Text:

DOL requests comment on two proposed recordkeeping requirements. First, the requirement to keep hourly records for work performed at the ranch and daily records of the work performed on the range and second, records of compensable time worked in these occupations that will balance any new burdens imposed on the employer against the DOL's need to monitor and enforce the H-2A program. We believe that recognizing daily or hourly monitoring of time on the open range is not only not necessary, but impossible. However, AFBF is also convinced that the daily recordkeeping requirements on the ranch can be unduly burdensome to small farmers and ranchers who do not have many, if any, other employees. On the majority of these farms, the H-2A worker is their only worker. They do not have a human resources department handling the work records and are neither familiar with nor subject to the processes under regular H-2A, the *Migrant and Seasonal Worker Protection Act (MSPA)*, or the *Fair Labor Standards Act*. Therefore, keeping track of hourly work records, even for the limited time workers are on the ranch, may be considerably burdensome. This burden will outweigh the need for DOL to enforce the H-2A program, given that DOL has presented no evidence that farmers have been using herding workers on the ranch more than the allowed 20 percent time.

Comment Number: [ETA-2015-0004-0383](#)

Organization:

Commenter: John & Carolyn Espil

Commenter Type: Individual Employer

Comment Excerpt Text:

Department refers to a “Human Resource Manager”, as if ranches have such an individual on staff, or even have a staff for that matter. We feel that the added record keeping duties regarding the hours, locations, specific duties of shepherders and livestock workers are excessive and inconsequential. The purported point, as stated in the proposal, is to secure and confirm compliance. But if compliance is made impossible or unrealistic or oppressive, then no amount of paperwork will render it less so. Department should identify the situations or actions deemed non-compliant and remedy those. Perhaps, some of the rules and regulations are failure-prone due to bureaucratic lack of understanding of the situations involved, due to ambiguity or simply due to bad policy. Hopefully, the goal of this proposal isn’t to render compliance impossible.

Comment Number: [ETA-2015-0004-0383](#)

Organization:

Commenter: John & Carolyn Espil

Commenter Type: Individual Employer

Comment Excerpt Text:

This entire section serves as evidence of the dismal lack of understanding of ranching held by the Department. Workers under the open range livestock production designation are paid a minimum monthly salary not based on hourly work. Under this system some days are longer than others and some shorter, but each day counts toward the monthly salary. How then is a requirement of daily records for these employees compatible with a monthly stipend? The distorted view regarding the dynamics of livestock husbandry and the jobs associated with that profession is very apparent on page 20306 in the statement that, “Department believes that keeping records for the herders or open range production workers who are performing work on the ranch or farm does not create a significant new burden on employers.” For in its wisdom, the Department believes that, “Employers should already be keeping and maintaining hourly work records for other ranch or farm employees...”. What if all “other” employees are salaried or are family or are non-existent?

Comment Number: [ETA-2015-0004-0416](#)

Organization: Utah Farm Bureau Federation

Commenter: Randy Parker

Commenter Type: Advocacy Organization

Comment Excerpt Text:

In the proposed rulemaking, DOL has included two recordkeeping requirements. First, that the livestock producer keep hourly records based on tasks performed on the range and tasks performed at the ranch and maintain records of compensable time based on these activities. UFBF believes these new reporting burdens, if imposed, are not only not necessary and onerous, but impossible to comply with from a ranching operation standpoint.

UFBF argues that daily recordkeeping requirements are unduly burdensome to small farm and ranching businesses who do not have many, if any, other workers. Most labor on these Utah and western livestock ranching operations is performed by family members. On many livestock ranching operations, the H2A worker is their only employed worker. These family businesses do not have a human resources department that handles work records. They are neither familiar with nor are they subject to the regular H2A worker processes, the Migrant and Seasonal Worker Act, or the Fair Labor Standards Act. For the limited time the herders are on the ranch and away from the open range, keeping track of hourly work records clearly would be considered an unnecessary burden.

This proposed recordkeeping burden would outweigh the needs of DOL to enforce the H2A herder program recognizing DOL has presented no evidence that livestock operations have been using herding workers on the ranch more than the allowed 20 percent of the time.

Comment Number: [ETA-2015-0004-0436](#)

Organization: Mountain Plains Agricultural Services & Western Range Association

Commenter: Christopher Schulte

Commenter Type: Professional Association

Comment Excerpt Text:

As quoted above, the WHD regulation regarding work “on the range” explicitly includes range work spent herding, tending to, and caring for grazing livestock, even where the “employee generally returns to his place of residence at the end of each day.” Section 780.329(a). The NPRM requires, instead, that workers must use mobile housing “for at least 50 percent of the workdays in the work contract period because the worker is not reasonably able to return to his or her place of residence or to employer-provided fixed site housing within the same day.” 20 C.F.R. § 655.200(b)(2) (proposed); 80 Fed. Reg. 20339. Under this proposed Rule, a sheepherder spending 182 days each year in a camp but the remaining time in a bunkhouse during lambing, docking, or castrating season would not be eligible under the Rule but would not be eligible under the regular H-2A provisions, either, since even 1 day is spent away from fixed-site employment and housing. This would be an absurd outcome.

The better approach would be to follow the existing DOL regulations in the WHD context, which look to the “primary duty” of the employee (Section 780.329(a)) or whether the employee is “principally engaged” in the range production of livestock, including all of the duties associated with that work (Section 780.325(a)). As the WHD regulations state:

To determine whether an employee is “principally engaged” in the range production of livestock, one must consider the nature of his duties and responsibilities. To qualify for this exemption the primary duty and responsibility of a range employee must be to take care of the animals actively or to stand by in readiness for that purpose. A determination of whether an employee has range production of livestock as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the range production duties is a useful guide in determining whether this is the primary duty of the employee. In the ordinary case it will be considered that the primary duty means the major part, or over 50 percent, of the employee’s time.

Section 780.325(a). Moreover, an employee spending more than 50% of his or her time during the year on the range in the production of livestock would be exempt “even though the employee may perform some activities not directly related to the range production of livestock, such as putting up hay or constructing dams or digging irrigation ditches.” Section 780.325(b). That definition includes a more holistic and flexible approach to the definition – maintaining the general rule that the worker is “principally engaged” or has a “primary duty” or spends the majority of his or her time out on the range, but recognizing that other work has historically been connected to that work and must be included in the definition of the job.

The arbitrary and artificial 50% and 20% limits proposed in the NPRM are unworkable and treat work in the production of grazing livestock as a series of discrete tasks rather than the collection of work performed in service to the livestock and their needs. The NPRM makes no attempt to explain how the 20% “incidental activity” test would help U.S. workers. [Footnote 11: Of all the complaints raised by the Mendoza plaintiffs, none of them related to the amount of “incidental activity” that was included in the

job. The job of a herder includes all of the duties related to caring for and herding the grazing animals, and there is no black-and-white distinction between what is primary and what is “incidental” work.] Nor does the NPRM offer any explanation of how H-2A foreign workers are being harmed by not having this 20% limit in place. What is the policy goal that this rule achieves? Without any effort to articulate a benefit to U.S. or foreign workers, the NPRM simply imposes this limit that will: (1) make it impossible for many current H-2A program users to utilize the H-2A program at all; and (2) impose tremendous recordkeeping and “HR” burdens on family farms to follow their workers and record every activity in which they engage. The work performed by these employees is often performed far from the ranch and to expect workers or ranchers to track their activities like a lawyer billing for his or her time would be impossible. Moreover, what possible benefit could result from attempting to do so? These “bright-line” limits on how and when this work should be performed demonstrate how little the Department understands this work and would be absolutely unworkable in reality.

Comment Number: [ETA-2015-0004-0436](#)

Organization: Mountain Plains Agricultural Services & Western Range Association

Commenter: Christopher Schulte

Commenter Type: Professional Association

Comment Excerpt Text:

As discussed above with respect to the definitions of the job from Section 655.201, the focus in Section 655.210 (b) on whether the work performed by herders is “closely and directly related to herding or the production of livestock” and the 20% hard cap on performing such work do not address any concerns with such work identified in the NPRM and would lead to confusion and substantial inefficiency. First, the 20% limit is worded such that “[w]ork that is closely and directly related to herding or the production of livestock must be performed on no more than 20 percent of the workdays spent at the ranch in a work contract period.” Section 655.210(b). The limit is not on the total workdays in the work contract period spent doing this work, but only on how the days spent at the ranch are used. Is the goal to have one day out of five spent at the ranch spent working and the other four resting, since work that is not “closely and directly” related to livestock production almost certainly falls outside the scope of the job order? Is some other purpose intended by this provision? This wording is confusing.

Second, the grazing production of livestock definition that already exists in the WHD regulations discussed above offers a less confusing and more workable approach to defining the job. Instead of arbitrary percentages and percentages within those percentages directing how the worker may spend a particular day, focusing on the larger picture of the “primary duties” or whether the worker is “principally engaged” in the grazing production of livestock makes more sense and would be better understood (and complied with) by employers.

The NPRM asks five related questions regarding keeping hourly records for work performed at the ranch and on the range: (1) is it reasonable to keep such records; (2) how could such records be maintained and submitted; (3) is it reasonable to keep daily records of work performed on the range; (4) how could those records be maintained and submitted; and (5) is there another recordkeeping method by which employers could assure DOL that employees are meeting the 50% and 20% requirements in the Rule? Mountain Plains and Western Range would respond to all five questions by referring to the two proposed alternative wage methodologies already discussed above, as well as their comments regarding the use of the WHD regulations’ model for describing the job rather than the 50%/20% requirements proposed in the NPRM. By making those two changes, it would be an unnecessary waste of time to track the workers’ hourly or daily activities. If such a recordkeeping requirement were imposed, the Commenters would contend that many of their members do not currently possess the human resources capacity to create or maintain such records and doing so would place an enormous and unreasonable burden on them. As these associations’

members are already the subject of frequent and exhaustive audits by the Department of Labor, the reference to “submitting” the records is also confusing. If the employer is required to attest in the job order that certain arbitrary percentage targets must be met, why would records be “submitted” and to whom?

Comment Number: [ETA-2015-0004-0437](#)

Organization: Siddoway Sheep Company, Inc.

Commenter: Billie Siddoway

Commenter Type: Individual Employer

Comment Excerpt Text:

The proposed imposition of daily record keeping for ranch employees is overly burdensome and unlikely to provide useful information. It would not be unreasonable to track the days each employee works on the range or the ranch. However, it is onerous to require daily records for hours of work and duties performed when workers are on the ranch. As described above, Siddoway Sheep Company employees work at the ranch site during the winter lambing season. Each employee will typically have one position (e.g., shed monitor), and will continue in that position throughout the lambing season working regular hours. Employers may not know if any employee takes a break during the day or assists another worker with a job. So long as the ranch work falls directly under the definition of herding, it should be sufficient for the employer to identify each employee’s position, the job duties for that position, and the regular hours of work for that position. In the event that the employer assigns the employee to undertake minor, sporadic or incidental work outside of the definition of herding, then the employer could track those hours and job duties only. This will allow the Department to determine whether an employer is compliant with the 50% range requirement and 20% incidental work requirement, without creating an unnecessary burden on employers. On our ranch, for example, we occasionally task one or two employees with erecting temporary pens and corrals in anticipation of the winter lambing season. It would not be unreasonable to track the hours and duties associated with these tasks. The incidental work report could be compared to the duties and hours of that employee’s regular lambing position to determine compliance with the 20% requirement. Daily reporting is not something that the employers or employees are equipped to handle, and I expect that employers and employees will tend to submit standard rather than accurate information if daily reporting is required. Limiting the reporting requirement to only incidental work is more likely to lead to accurate reporting.

Comment Number: [ETA-2015-0004-0443](#)

Organization: Hilger Hereford Ranch

Commenter: Catherine Campbell

Commenter Type: Individual Employer

Comment Excerpt Text:

Length of time employees are at ranch. Again, it varies, but herders will be at or nearer the ranch from a couple of weeks before shearing, through shearing, into and through lambing. Maybe 2 -3 months.
Length of time employees are on open range. See above. Probably 9-10 months.

Allowance for minor incidental work for range occupations. Yes.

Hourly records. NO., unless a rancher or herder wants to keep them, but don’t require them.

Daily records. NO. See above.

I can't imagine a herder spending much time doing non-herding or non-livestock work. With all of the difficulties involved with immigration in order to bring H-2A workers in, I would not think anyone would want to go through it if they didn't have to. If a domestic worker wants a herding job, regardless of the amount of incidental work involved, they get priority in the hiring, don't they? So what is the problem? Please, no more paper work or stopwatches.

Comment Number: [ETA-2015-0004-0460](#)

Organization: Farmworker Justice et al.

Commenter: Adrienne DerVartanian

Commenter Type: Advocacy Organization

Comment Excerpt Text:

We support most of the proposed definitions. However, DOL should clarify what is considered "open range" land by requiring that "open range" land be a certain distance from ranches or associated buildings. Where the worksite is close to the ranch, there is no need for a special rule regarding wages and the computation of hours.

Comment Number: [ETA-2015-0004-0471](#)

Organization:

Commenter: Cindy Siddoway

Commenter Type: Individual Employer

Comment Excerpt Text:

Is it reasonable to keep hourly records for work performed at the ranch and how could such records be maintained and submitted? There is no practical way to keep such records for the majority of sheepherders. Most ranches are in rural areas and may include multiple locations so the owners may not reside at the ranch where the work is performed. This would add one more duty for the worker to write down the daily record and to submit it to the owner in a timely manner. There would be no way to verify the worker's records. This would be a huge increase in the record keeping requirements for the employer.

Comment Number: [ETA-2015-0004-0460](#)

Organization: Farmworker Justice

Commenter: Adrienne DerVartanian

Commenter Type: Advocacy Organization

Comment Excerpt Text:

The proposed rule provides important new record keeping requirements for employers who assign work duties to herders that fall outside of the "open range" exception. In recent years various claims have been made by herders regarding the fact that they were assigned work beyond that encompassed in normal sheepherding activities and outside of what was disclosed in recruitment, but were, nonetheless, paid the sub-minimum wage allowed under the TEGL AEWB [44. See, e.g., Ruiz et al v. Fernandez, et al., 949 F. Supp. 2d 1055 (E. D. Wash. 2013) (denying defendants' motion for summary judgment in case where defendants were claiming exemption from FLSA when plaintiff alleged majority of work was non-range work); Zosimo Rojas v. R. Lason Sheep Company, L.C., et al., Case No. 12-cv-00712-BCW (D. Utah filed July 20, 2012) (alleging that despite the fact that plaintiff traveled from Peru on H-2A visa to work as a sheepherder, the majority of his time was spent at the headquarters ranch performing non-range production of livestock work such as maintaining ranch vehicles and irrigating and harvesting alfalfa); Espejo Camayo v. John Peroulis & Sons Sheep, Inc. et al, No. 10-cv-00772-MSK-MJW, 2012 U.S. Dist.

LEXIS 136100, at *18 (D. Colo. Sept. 24, 2012), consolidated with Fernandez v. John Peroulis & Sons Sheep, Inc., et al., Case No. 11-cv-01132-REB-CBS (D. Colo. Filed April 28, 2011) (denying motion to dismiss and rejecting Defendants' argument that FLSA exemption applied when the complaint alleged one of the four plaintiffs did not perform range production of livestock and instead worked "cutting weeds," "watering fields," and "clearing a ditch"); Velasquez Catalan et al v. Vermillion Ranch Limited Partnership et al, Case No. 06-cv-01043-WYD-MJW (D. Colo. Filed June 1, 2006) (alleging that the plaintiffs spent a majority of their time performing construction and landscaping projects, as well as working in a mechanic's shop and other non-herding work on fixed hourly schedule), App'x A at 757-832; Vilcapoma v. Western Range Association, et al., Case No. ECU0726 (Imperial County Super. Ct. of Cal. Filed August 31, 2012) (alleging H-2A workers hired as herders spent six months of the year performing ranch activities when no sheep were present and the other six months in non-range sheep work).; Saenz v. Allred, supra;]. Without record keeping requirements, the Department cannot monitor compliance with those requirements. Workers seeking to prove a claim for wages at higher applicable AEW 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. Record keeping requirements are a significant labor protection for workers. In fact, employers must bear the burden of ensuring compliance with such requirements or face a concomitant burden shifting if the requirements are not met. Such recordkeeping requirements are particularly necessary, therefore, when an employer is invoking a labor standard that allows for a significantly lower rate of pay.

Comment Number: [ETA-2015-0004-0107](#)

Organization:

Commenter: Carol Martinez

Commenter Type: Individual Employer

Comment Excerpt Text:

The job order says may perform other farm and ranch chores related to the production and husbandry of sheep on an incidental basis. For the employer to try to individually itemize each of the minor jobs and time spent, will in itself be time consuming. Allowing any man to only spend 10% of the contract time on the ranch could be very limiting. Drought conditions, forest fires and predation issues cause work schedules to be disrupted. The employer needs the flexibility to place the workers as needed for a successful sheep operation.

Comment Number: [ETA-2015-0004-0109](#)

Organization: Mountain States Lamb Cooperative

Commenter: Rebecca Gitthens

Commenter Type: Advocacy Organization

Comment Excerpt Text:

Special procedures have proven critical to the success of the H-2A program and should be retained. We are asking that you carefully review and consider input by both individual sheep producers and industry organizations such as ours regarding the proposed changes. Very frankly, our producers who have no other option but to utilize herders, are insisting that the wage requirements, definitions and job descriptions, mobile housing, and record keeping requirements of the rule, will make it impossible to comply and if implemented will force them to liquidate their operations. Also, the DOL's insistence that livestock grazing only takes place away from fences is unrealistic and not even practical for grazing operations.

Comment Number: [ETA-2015-0004-0135](#)

Organization:

Commenter: Henry Etcheverry
Commenter Type: Individual Employer

Comment Excerpt Text:

The proposed Rule requires that to maintain the status of a herder, an H-2A worker must be out on the open-range as defined in the Rule in mobile housing 50% of the time and is subject to losing that status if the worker performs certain types of work at the ranch headquarters more than 20% of the time. The record keeping with this requirement would be impossible. The range sheep industry varies greatly from region to region, requiring different times in mobile housing and different times at the ranch.

Comment Number: [ETA-2015-0004-0138](#)

Organization:

Commenter: Frank Moore
Commenter Type: Individual Employer

Comment Excerpt Text:

Special procedures have proven critical to the success of the H-2A program and should be retained. We are asking that you carefully review and consider input by both individual sheep producers and industry organizations such as ours regarding the proposed changes. Very frankly, our producers who have no other option but to utilize herders, are insisting that the wage requirements, definitions and job descriptions, mobile housing, and record keeping requirements of the rule, will make it impossible to comply and if implemented will force them to liquidate their operations. Also, the DOL's insistence that livestock grazing only takes place away from fences is unrealistic and not even practical for grazing operations.

Comment Number: [ETA-2015-0004-0218](#)

Organization:

Commenter: Kelly Sewell
Commenter Type: Individual Employer

Comment Excerpt Text:

Our ranch has employed H2A workers from Peru for more than a decade. They are a valuable work force for us. The proposed rule changes will create a hardship the way they are currently listed. The H2A worker who herds sheep do totally different work than those who work at the ranch running cattle. The job description as the proposal suggests is not workable. The pay scale increases proposed in the new H2A plan is outrageous. No other employment is mandated by the government to make such steep wage increases. Ranching/farming is not an 8 to 5 job, nor is it a 40 hour week. Our workers are treated fairly and paid well. They are like family and we treat them like our sons. By the time we pay for the Visa expenses, the airline tickets, transportation from the airport to the ranch, utilities, housing, all food, all clothing for the job, employment services to help with the mountains of paperwork, the costs are already mounting besides the good wages we pay. Our workers are grateful for the jobs in the United States. They send money home monthly for their families as well. There are days they work with the cattle on the range, maintaining fences to keep the cattle contained on the ranch, riding checking cattle or putting out mineral but they also preform jobs at the ranch base. Realistically, do you expect us to clock the time they work at each job. Few ranches would fit the open range laws stated in the proposal. A basic agriculture worker classification is needed, not just one pertaining to goats and sheep. These valuable employees irrigate crops, fix fences, and many other jobs necessary to run a ranch.

Comment Number: [ETA-2015-0004-0221](#)

Organization:

Commenter: Calvin Roberts

Commenter Type: Individual Employer

Comment Excerpt Text:

Is there another recordkeeping method for employers to provide assurance to the DOL that employees are spending no more than 50% of their time on the ranch and 20% of their time on incidental work that does not directly involve livestock production (i.e. inspecting and repairing a corral)? As long as the workers are working on the ranch (Which incidentally includes all land owned and leased "open range" or not, not just some fenced area with a corral) there should not be such a thing as a 50-20 rule. This is a totally arbitrary thing and has nothing to do with the production of livestock in a primarily grazing situation!!!

Comment Number: [ETA-2015-0004-0221](#)

Organization:

Commenter: Calvin Roberts

Commenter Type: Individual Employer

Comment Excerpt Text:

Likewise

keeping track of every task and every hour and day is a ludicrous idea which has no merit.

Comment Number: [ETA-2015-0004-0221](#)

Organization:

Commenter: Calvin Roberts

Commenter Type: Individual Employer

Comment Excerpt Text:

Keeping track of time an employee works in a particular situation or site makes no sense! If the worker is involved in the grazing production of livestock as per your definition it is integral to the sheep or livestock production and THE TIME OR LOCATION OF PERFORMING A PARTICULAR TASK SHOULD NOT MATTER!

Comment Number: [ETA-2015-0004-0226](#)

Organization: Oregon Shepherd LLC

Commenter: Margaret Magruder

Commenter Type: Private Business

Comment Excerpt Text:

Oregon Shepherd is a small business, located in Rainier, Oregon. We manufacture all-natural wool building insulation. We depend on the American sheep industry to provide the raw material for our production. We utilize the wool off-sorts that are not of the quality for use in the textile industry for clothing, blankets or other higher end wool products.

We have been in active production and marketing for over 5 years, having spent considerable time and money in developing our product. Although we are a small company, we directly employ three employees in our manufacturing process in a rural county in Oregon that has a higher than average unemployment rate. Our nationwide shipping and sales contribute to employment of others in shipping, manufacture of shipping supplies and insulation distribution and installation. Small business is the backbone of the U.S.

economy and each one of us adds to local and national economic success.

Without a sustainable sheep industry in the U.S. we will be unable to source the raw material needed to continue our business and to provide an alternative choice to consumers in the U.S. and Canada of an all-natural non-toxic insulation product.

We request the Department withdraw the proposed wage methodology and replace it with an equitable version. The proposed wage requirements, definitions, job descriptions, mobile housing, and record keeping requirements of the rule, will make it impossible for producers to comply and if implemented will force many producers to liquidate their operations. The DOL's insistence that livestock grazing take place only away from fences is unrealistic and impractical for grazing operations.

We urge you to work with the U.S. sheep industry to develop a workable solution that will provide a livelihood for H-2A workers, sustain the American sheep industry and guarantee the availability of U.S. wool for Oregon Shepherd and all other U.S. employers that require wool for their manufacturing needs.

Comment Number: [ETA-2015-0004-0259](#)

Organization: Colorado Wool Growers Association

Commenter: Bonnie Brown

Commenter Type: Trade Association

Comment Excerpt Text:

The regulations need a more comprehensive job description. In addition to herding, shepherds work with the sheep while shearing, lambing, docking, and shipping, which are integral parts of any sheep operation. While herding the livestock takes up the majority of the herders' time, there are many chores to be done directly associated with maintaining the herd. These responsibilities should not create a need for fixed housing; require the ranch to keep an onerous set of records, parsing out every single activity; or generate a different pay scale for the herder. For example, fixing a sheep pasture fence or irrigating a field that is grazed by sheep is in direct support of maintaining a healthy flock of sheep. The associated activities that are directly tied to managing the livestock do not necessitate creating a separate job or pay rate, which would be impractical and wouldn't accomplish anything meaningful. Therefore we recommend expanding the definition of the job description to include all chores that are in direct support of maintaining livestock managed in a grazing livestock production system.

Comment Number: [ETA-2015-0004-0266](#)

Organization:

Commenter: Sharon O'Toole

Commenter Type: Individual Employer

Comment Excerpt Text:

The request by the DOL to quantify hours spent on actual livestock tending, and the need for extensive record-keeping by producers, with a differentiation in wages, is not practical or productive. H2A workers should not be diverted to work such as construction, but the need for related livestock tending duties, such as the building of lambing jugs, should not be considered as work that could be contracted to domestic employees.

The requirement for this additional record-keeping has not been "monetized" in the DOL proposals, yet it represents a very real and expensive requirement for the employers. On our operation, in the summer we typically employ 15 H2A workers in the summer months to tend our 7,000 sheep on public, private and state lands. Since the typical employee works for us for three years, we try to have one-third of our workers, or five, return to Peru each winter. Most of them choose to return, although sometimes they opt not to return, usually for family reasons.

My daughter and I are the “Human Resource Managers” which the DOL envisions as an employee on each ranch at \$75 per hour. The DOL estimates that such record-keeping would take six (or five—depending on which part of the proposal you read) minutes per week. The record-keeping for these 15 employees (or .4 minutes each per week) would fall on our shoulders. My daughter does enjoy some of the “benefits” referred to in the proposals, since her husband works as a Deputy Sheriff, but I do not. I have what I call “Car Wreck” health insurance, since it is all I can afford as a rancher. The cost of such record-keeping would be very real, since we both already work 12-hour-days (in addition to caring for young children). However, it would be difficult to “monetize”. Such a division in labor is both unreasonable and unworkable. In our rural area, we can find neither domestic carpenters nor “human resource managers”.

Comment Number: [ETA-2015-0004-0268](#)

Organization:

Commenter: Michael & Eva Hollenbeck

Commenter Type: Individual Employer

Comment Excerpt Text:

Currently we keep accurate bookkeeping records to protect ourselves and our workers, it is not necessary to increase our paperwork load as it will only make our business inefficient spending time documenting hours when we could be working on growing our business.

Comment Number: [ETA-2015-0004-0296](#)

Organization: JRB, LLC

Commenter: David Darley

Commenter Type: Individual Employer

Comment Excerpt Text:

The additional proposed record keeping, division of work between range and ranch, etc. all have a further economic impact on our operation. While we have large areas of land as well as which might be considered a large sheep herd, we are still a simple ranch operation. One would think from these additional proposals that we were some kind of sophisticated corporation or business entity. These would require additional personnel in order to implement as well as track and would add further to the loss that the wage increases would force upon us.

Comment Number: [ETA-2015-0004-0297](#)

Organization: American Farm Bureau Federation

Commenter: Dale Moore

Commenter Type: Professional Association

Comment Excerpt Text:

DOL requests comment on two proposed recordkeeping requirements. First, the requirement to keep hourly records for work performed at the ranch and daily records of the work performed on the range and second, records of compensable time worked in these occupations that will balance any new burdens imposed on the employer against the DOL’s need to monitor and enforce the H-2A program. We believe that recognizing daily or hourly monitoring of time on the open range is not only not necessary, but impossible. However, AFBF is also convinced that the daily recordkeeping requirements on the ranch can be unduly burdensome to small farmers and ranchers who do not have many, if any, other employees. On

the majority of these farms, the H-2A worker is their only worker. They do not have a human resources department handling the work records and are neither familiar with nor subject to the processes under regular H-2A, the *Migrant and Seasonal Worker Protection Act* (MSPA), or the *Fair Labor Standards Act*. Therefore, keeping track of hourly work records, even for the limited time workers are on the ranch, may be considerably burdensome. This burden will outweigh the need for DOL to enforce the H-2A program, given that DOL has presented no evidence that farmers have been using herding workers on the ranch more than the allowed 20 percent time.

Comment Number: [ETA-2015-0004-0309](#)

Organization: Garfield County Farm Bureau

Commenter: Charles Ryden

Commenter Type: Advocacy Organization

Comment Excerpt Text:

The Garfield County Farm Bureau board of directors submits the following comments in regards to temporary agricultural employment of H-2A foreign workers in the herding or production of livestock on the open range in the United States, RIN 1205-AB70.

As an organization representing many livestock producers in Garfield County, Colorado, we have reached the consensus that the proposed rules will have a detrimental affect on both cattle and sheep producers in our county and the United States as a whole. As the proposed rules are currently written, many of our producers would not even qualify to apply for H-2A foreign workers. Those who would qualify would not be able to use the program due to the increased financial burden from wages, cost of record keeping, etc. In short our producers have evaluated that the implementation of these rules as currently written would put many of them out of the ranching business.

Here are a few of their specific concerns:

1. The definition of Open Range :

The words open range should not even be in the rules. Livestock herders are needed in all types of grazing situations, whether there are fences present or not and whether there are 20 or 20,000 acres. Predators, disease and poisonous plants are constant problems and the livestock must be looked after at all times using a variety of methods. Fences are used as a tool to help the livestock tender. In a county such as ours, land development has resulted in many small fenced acreage parcels which are utilized by and are vital to producers.

2. The idea that a livestock worker must be on open range for 50% of their Contract simply does not work for many of our members. Many livestock producers run on private fenced and unfenced parcels during the fall, winter, and spring months, and are only on large acre non-fenced permits in the late spring and summer, thus not meeting the 50% requirement.

3. The limitation of 20% of the remaining 50% of the time being used for incidental work as well as the definition of incidental are of serious concern to our producers. What is defined as incidental work is vital to the day to day operations of their ranches. Without the upkeep of fences, pasture irrigation, mitigation of noxious weeds and production of livestock feed, their operations cannot exist. As ranchers, they must be able to perform whatever job needs done at any given time and would expect their employees to do the same. They do not have the financial resources to hire 1 employee for each unique job that must be done. The extra record keeping required to keep track of incidental work and the need for more work orders only leads to complication, confusion and further financial burden. In short, there is no such thing as incidental work on a livestock ranch.

4. The restructuring of wages as proposed is also of great concern. Whether implemented immediately, over 3 years, or 5 years, an increase in wages as proposed is economically unviable. A wage increase may be merited, but such a dramatic increase would be detrimental to producers and the communities they operate in. Producers have no way to pass this increase on to consumers due to the price-taking not price-setting nature of the industry. In many cases, on years with lower commodity prices, the employee will

make more than the employer.

5. Our producers are also interested and concerned with the proposed mobile housing requirements. However, those concerns pale in comparison with those listed in 1-4.

In closing, our members in the sheep industry have stated that if these rules pass as proposed they will be put out of business. The commercial sheep industry is particularly volatile due to the number of producers already being low. If the implementation of these rules results in the loss of even 25% of the commercial sheep production in the western U.S., the result will be a total collapse of the sheep wool industry. There would be inadequate numbers of sheep to support industry infrastructure such as truckers, shearers, feed lots, slaughter and packing facilities, wool buyers, etc. This does not even include the loss of manufacturing jobs associated with the use of products obtained from U.S. sheep but also the loss of U.S. made products sourced from U.S. sheep.

We hope that your final rules will take into account our producers concerns because the decisions that Department of Labor makes in Washington D.C. have real and direct impacts on our producers, the communities in which they live, and the United States of America as a whole.

Comment Number: [ETA-2015-0004-0315](#)

Organization:

Commenter: Carl Larson

Commenter Type: Individual Employer

Comment Excerpt Text:

With regard to keeping daily records of work performed on the range, we ask “What is the purpose?” The historical method of paying a sheep herder a monthly wage, plus board and room, has worked well for both the employer and the employee.

Comment Number: [ETA-2015-0004-0318](#)

Organization:

Commenter: Brent Espil

Commenter Type: Individual Employer

Comment Excerpt Text:

It would be extremely difficult or impossible to keep hourly or even daily records for men either at the ranch or on the range.

Most every day is different. Some work days require more work than others. Many of these men do not wear a watch or know or care what day of the week it is or what day of the month it is.

It must be noted, while some of these men are excellent in working with animals. There are some men who have not had the opportunity for an education to learn to read or write very well and may not even have basic arithmetic skills.

I cannot be at the ranch every day, all day, to keep track of the hours or days the men are working at the ranch. I give them directions on what needs to be done, and it is left up to them to get it done at their own pace.

Comment Number: [ETA-2015-0004-0321](#)

Organization: Texas Sheep & Goat Raisers Association

Commenter: Bob Buchholz

Commenter Type: Professional Association

Comment Excerpt Text:

The H-2A workers that are contracted with us value their employment here. We treat our herders with dignity and respect and are interested in their daily needs. As a result, our herders are happy to return to work for us after the required visit to their home country for a few months. While employed here, most of the herders send their money back home, which allows their families to live more comfortably and educate their children. Some of our employees have returned to their country of origin after many years of working in the United States and have retired there.

Volume is critical to our meat business and continued existence. We are deeply concerned that the DOL proposal on the H-2A Herder program would have a far reaching and devastating impact on family sheep ranches throughout the United States including Texas, the economies of the rural areas in which they operate and severely jeopardizes the future of our entire organization.

Special procedures have proven critical to the success of the H-2A program and should be retained. We are asking that you carefully review and consider input by both individual sheep producers and industry organizations such as ours regarding the proposed changes. Very frankly, our producers who have no other option but to utilize herders, are insisting that the wage requirements, definitions and job descriptions, mobile housing, and record keeping requirements of the rule, will make it impossible to comply and if implemented will force them to liquidate their operations. Also, the DOL's insistence that livestock grazing only takes place away from fences is unrealistic and not even practical for grazing operations.

These are hardy third and fourth generation families who have withstood a multitude of weather and economic hardships through the years, hardships which have forced thousands of their peers out of business. Please carefully consider stakeholder input and the potential economic impact and do not let the proposed rule be the final nail in the coffin of a great American industry.

Each H-2A open-range herder position creates 8 U.S. full-time jobs. The loss of each H-2A position will mean the loss of those 8 full-time jobs, mostly in small western towns. The NPRM has no calculation of the cost to family farms forced to liquidate their herds and end a generations-old tradition.

Comment Number: [ETA-2015-0004-0321](#)

Organization: Texas Sheep & Goat Raisers Association

Commenter: Bob Buchholz

Commenter Type: Professional Association

Comment Excerpt Text:

For decades, the sheep industry has successfully maintained a legal labor force through the use of the H-2A program and is dedicated to its continued use. The court ruling did not require DOL to change the rule, simply to conduct notice-and-comment rulemaking. The only issue was a procedural one. Instead, DOL has taken this opportunity to impose tens of millions of dollars of additional liability on employers each year.

We assume there may be a few extreme and isolated cases where employers have taken advantage of or mistreated employees and if so, these employers should be dealt with in a strong manner individually rather than punishing an entire industry. The sheep industry is likely the most legal workforce in American agriculture. The special procedures of the H-2A sheepherder regulations as developed over decades are the reason why the program is successful.

To reiterate, we feel that the special procedures for the H-2A shepherders program should remain as is with no changes. Before changes are made, please insure that changes are necessary. If so, please insure that the proposed changes are practical and without unintended consequences. Specifically, the wage rate changes and proposed language changes regarding open range and fencing should be abandoned or the viability of the entire program will be lost.

Thank you for the opportunity to submit public comments. The Texas Sheep and Goat Raisers Association is against the proposed changes as currently written and believe it will cause irreparable damage to our industry.

Comment Number: [ETA-2015-0004-0382](#)

Organization:

Commenter: Michael Bardsley

Commenter Type: Private Citizen

Comment Excerpt Text:

Due to the nature of ranching and farm activities the requested mode of time keeping for open range and herd employees is impractical.

Comment Number: [ETA-2015-0004-0389](#)

Organization:

Commenter: Tom Thompson

Commenter Type: Individual independent herder

Comment Excerpt Text:

We have had no response to herder ads in the past. Basically gave up looking for locals years ago. Raising wages has not historically attracted more local people. Sheep herding seems to be beneath them. Farmers and ranchers are at the mercy of markets for prices for produce and meats, we cannot raise prices at our own discretion. Therefore, raising wages only cuts into our meager profits. Profits that are more often than not put right back into the business operating needs. It also makes it more difficult to put some aside for drought years. Requiring more paper work for tracking hours doing each job also puts more stress on the business. We already have trouble keeping up with what we required for tax purposes as well as crop insurance and banking (i.e. loans to keep the business going).

Our understanding of open range is that if you want to keep other people's livestock off your property you have to put up fences, making fencing required in areas where there are other ranchers.

We respectfully request that special procedures be kept in place.

Comment Number: [ETA-2015-0004-0408](#)

Organization:

Commenter: Carl and Katie Day

Commenter Type: Individual Employer

Comment Excerpt Text:

Secondly, the limitations being proposed regarding job descriptions and time allotment is unreasonable and represents a misunderstanding of livestock operations. No work is incidental because no two days are the same. Due to the nature of our sheep operation, diverse skills are needed. On our ranch we irrigate

pastures and harvest livestock feeds to endure Colorado fall, winter and spring weather. We must mitigate harmful plants to the sheep or their wool and control predators. We maintain fences aiding in responsible grazing on both small and large acreages. Cleaning corrals, doctoring, and feeding sheep are also necessary while caring for the welfare of livestock. To try and distinguish who, what, when, and for how long a job can be performed is absurd. On a livestock operation the job just needs to get done, and done right. We would not expect any of our employees to do a job we would not do ourselves!!! The above jobs are all vital and necessary to the proper herding of livestock. The costs of trying to track/document so called incidental work and work orders etc. would be economically unfeasible and create unnecessary paper work.

Comment Number: [ETA-2015-0004-0423](#)

Organization:

Commenter: Ken Hamilton

Commenter Type: Trade Association

Comment Excerpt Text:

On page 24 of the Notice DOL begins the discussion about record keeping requirements. We believe that this requirement would add considerable cost to the current process. The economic analysis beginning on page 102 concludes that this change represents a possible minor cost. We believe the DOL made a couple of flawed assumptions regarding these costs. The first is that they base the additional time requirements on a human resource manager's additional cost. However, in many instances the other employees for an operation are family members so the requirement would require significant investment in a family member's time to become familiar with the rules, develop the process and maintain these records. The other deals with the practicality of tracking various tasks outside of a central facility such as an office or manufacturing facility. These operations take place away from a convenient location for such record keeping. For example, an individual may start out to feed some animals but discovers a sick animal which must be doctor'd. Sometime can be spent trying to catch the animal and administer proper medication and then the feeding would resume. The feed vehicle can become stuck which may require an extended time period to obtain the necessary equipment to get unstuck. The feeding could then resume only to have a mechanical failure of some sort which would then require time spent on mechanical repair. None of this will occur close to an area where a time clock is available to accurately track the time spent doing each task. This example is not an unrealistic scenario for many livestock operations. Requiring an employee to keep track of this type of a work action would require someone more skilled in being a clerk than being a herder. The same requirement would then be transferred to the employer in order to accurately record the employee's records to a time sheet for DOL records.

Given this significant increase in record keeping over and above the current requirement, we do not believe the benefits outweigh the costs.

Comment Number: [ETA-2015-0004-0453](#)

Organization: Washington Farm Bureau

Commenter: Scott Dilley

Commenter Type: Advocacy Organization

Comment Excerpt Text:

We are concerned that the additional recordkeeping requirements of these proposed rules are an unreasonable regulatory burden on growers. The proposed standards require too much specificity and detail for small growers, who tend not to have full human resource departments, to handle. There is no evidence that the current standards are not working; therefore, the current regulations should remain in

place.

Comment Number: [ETA-2015-0004-0460](#)

Organization: Farmworker Justice et al.

Commenter: Adrienne DerVartanian

Commenter Type: Advocacy Organization

Comment Excerpt Text:

Employer recordkeeping is necessary to ensure compliance with the requirement that workers are properly compensated. We support the extension of all of the same recordkeeping requirements imposed on other H-2A employers to herding and open range production activities. As currently proposed, the regulations would exempt employers from maintaining records for workers when they are on the open range. While the proposed rule is a significant and critical improvement, we recommend that the recordkeeping requirements be extended to include herding and range production work on the range as well. The burden of this change will fall on the worker, not the employer – herders can be provided with calendars and time sheets to fill out which can be collected monthly by employers.

Comment Number: [ETA-2015-0004-0471](#)

Organization:

Commenter: Cindy Siddoway

Commenter Type: Individual Employer

Comment Excerpt Text:

Is there another recordkeeping method for employers to provide assurance to the DOL that employees are spending no more than 50% of their time on the ranch and 20% of their time on incidental work that does not directly involve livestock production? For ranches like ours, engaged solely in livestock production, there should be no such record keeping requirement.

Comment Number: [ETA-2015-0004-0476](#)

Organization: Western Watersheds Project

Commenter: Kenneth Cole

Commenter Type: Other

Comment Excerpt Text:

The employer should be required to record the hours actually worked each day as well as the time the worker begins and ends each workday. This should be required to ensure that the workweek is properly calculated. In the alternative, employers should be required that workers not work more than 44 hours per week. In the event that workers are required to work more than 44 hours per week, wages would be increased to proportionally compensate for the extra work performed.

We support maintaining the requirement to maintain hourly work records where applicable for other ranch or farm employees as required under the regular H-2A regulations, the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and the FLSA.

Comment Number: [ETA-2015-0004-0492](#)

Organization:

Commenter: Henry Etcheverry

Commenter Type: Individual Employer

Comment Excerpt Text:

The proposed Rule requires that to maintain the status of a herder, an H-2A worker must be out on the open-range as defined in the Rule, in mobile housing 50% of the time, and is subject to losing that status if the worker performs certain types of work at the ranch headquarters more than 20% of the time. The record keeping with this requirement will be impossible. The range sheep industry varies greatly from region to region; requiring different times in mobile housing and different times at the ranch.

Comment Number: [ETA-2015-0004-0499](#)

Organization: Texas Sheep & Goat Raisers' Association

Commenter: Bob Buchholz

Commenter Type: Professional Association

Comment Excerpt Text:

Special procedures have proven critical to the success of the H-2A program and should be retained. We are asking that you carefully review and consider input by both individual sheep producers and industry organizations such as ours regarding the proposed changes. Very frankly, our producers who have no other option but to utilize herders, are insisting that the wage requirements, definitions and job descriptions, mobile housing, and record keeping requirements of the rule, will make it impossible to comply and if implemented will force them to liquidate their operations. Also, the DOL's insistence that livestock grazing only takes place away from fences is unrealistic and not even practical for grazing operations.

Comment Number: [ETA-2015-0004-0501](#)

Organization: Club 20

Commenter: Chrisitan Reece

Commenter Type: Advocacy Organization

Comment Excerpt Text:

Finally, the regulations need a more comprehensive job description. In addition to herding, shepherds work with livestock in many capacities that are directly associated with maintaining the herd. These responsibilities should not create the need for fixed housing; should not require the ranch to keep an onerous set of records, parsing out every single activity; or generate a different pay scale for the herder. We therefore recommend expanding the definition of the job description to include all chores that are in direct support of maintaining livestock managed in a grazing livestock production system.