

## ***Advocacy Recommends that DOL Analyze Alternatives to Minimize Costs of Wage Increase for H-2A Herders on the Open Range***

On May 22, 2015, the Office of Advocacy sent a letter to the U.S. Department of Labor on its proposed rule which amends regulations under the H-2A program to codify procedures for hiring temporary agricultural foreign workers for job opportunities in shepherding, goat herding and production of livestock on the open range. A copy of Advocacy's comment letter may be accessed at [www.sba.gov/advocacy](http://www.sba.gov/advocacy).

- On October 7, 2011, U.S. workers filed a lawsuit in the U.S. District Court for the District of Columbia challenging DOL's special guidance documents that governed sheep and goat herders under the H-2A visa. While the district court dismissed the case, the U.S. Court of Appeals for the D.C. Circuit concluded that DOL's guidance documents were subject to notice and comment under the Administrative Procedure Act (APA). DOL issued this notice and comment rulemaking to remedy this APA violation.
- This proposed rule changes the wage methodology for H-2A workers in these special occupations, which will double to triple the wage rate for these workers; this increase will be phased in over five years. Based on small business feedback, Advocacy is concerned that these wage increases may significantly reduce or eliminate the profitability of these small entities and may result in these entities reducing or closing their operations.
- Advocacy is concerned that DOL's Initial Regulatory Flexibility Analysis may underestimate the cost of this rule for small herding operations because these small employers may hire more H-2A workers than DOL has estimated; there may also be extra costs such as housing units and workers' compensation insurance. DOL also did not include alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize the rule's economic impact on small entities, as required by the Regulatory Flexibility Act.
- Advocacy recommends that DOL publish a Supplemental IRFA for public comment reanalyzing compliance costs. DOL should also consider any recommended small business alternatives that may minimize the economic impact of this rulemaking.

For more information, visit Advocacy's webpage at <http://www.sba.gov/advocacy>, or contact Assistant Chief Counsel Janis Reyes by email at [Janis.Reyes@sba.gov](mailto:Janis.Reyes@sba.gov) or by phone at 202-205-6533.