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TRANSMITTED VIA FEDERAL E-RULEMAKING PORTAL

Mr. Thomas Dowd
Administrator
Office of Policy Development and Research, Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5641
Washington, DC 20210

Re: Comments of Mountain Plains Agricultural Service and Vermillion Ranch Limited Partnership on Proposed Suspension of H-2A Final Rule [RIN 1205-AB55]

Dear Mr. Dowd:

Mountain Plains Agricultural Services ("MPAS") and Vermillion Ranch Limited Partnership ("VRLP"), an association of individual ranchers engaged in the range production of livestock, and sheepshearing contractors who are essential to the range production of sheep, support the suspension of the U.S. Department of Labor's newly enacted "H-2A Final Rule".

MPAS and VRLP requests that the Department of Homeland Security (DHS) also suspend its final H-2A regulations, including the list of designated countries, since DHS's regulations were simultaneously enacted and are reliant upon DOL's "H-2A Final Rule". These employers successfully obtained H-2A labor certifications and legally employed foreign workers for over twenty years under the DOL and DHS regulations previously in effect.

DOL's H-2A Final Rule must be suspended because the pre-filing recruitment and the attestation processes of the H-2A Final Rule are contrary to the statutory mandate. The statute mandates that DOL notify the employer within 7 days of filing the application for H-2A labor certification as to whether the application, which must include all required terms and conditions of employment, meets the statutory standards for approval. The intent of the statute is that such a determination be made within 7 days of the employer's submission of the proposed terms and conditions of employment, and prior to employer recruitment, in order for this statutory provision of section 218 of the Immigration and Nationality Act to have any real meaning for employers.

Such terms and conditions of employment include longstanding special procedures[1] established by DOL for those employed in occupations necessary for the range production of

[1] Field Memorandum No. 24-01, Special Procedures: Labor Certification for Sheepherders and Goatherders Under the H-2A Program and TEGL No. 15-06, Special Procedures for

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livestock. These special procedures are critical to the range production of livestock, which is an essential food source for the United States. Thus, it is in the interest of the United States that DOL suspend any new regulations that in any way put in jeopardy the application of these special procedures which have been vital to the use of the H-2A program over the past 20-30 years by ranchers and shearing contractors.

The clear effect of both DOL's and DHS's "Final H-2A Rules" has been to make the H-2A program more burdensome for employers. The new rules discourage its use to provide a source of legal foreign agricultural workers when qualified U.S. workers are not available.

The H-2A program must be implemented in a manner that retains employers' ability to adequately compete in the marketplace so as to ensure the survival of the hundreds of family-owned farms and ranches. The enforcement of regulations that penalize employers for hiring legal foreign workers when qualified workers cannot be found destroys these many small businesses. This jeopardizes the security of the U.S.'s self-sufficient domestic food supply. Furthermore, where there are qualified U.S. workers, the H-2A program's contribution to the survival of the small farms and ranches provides a source of employment available to U.S. workers as well. In today's economic downturn and high unemployment rates, the focus of any regulation must be on the continued viability of the employer, as well as the continued fair and just treatment of employees.

In summary, MPAS and VRLP support the suspension of the new DOL H-2A rule, point out that the corresponding new DHS H-2A rule must be suspended as well, and believe that there is no reason to change the prior DOL and DHS H-2A rules in effect before January 17, 2009. At the very least, the DHS list of H-2A ineligible countries, beyond the five mentioned in the proposal rule, must be rescinded, as the dramatic expansion of the banned countries in the final rule is not a "logical outgrowth" of the initial proposal and therefore violative of the Administrative Procedure Act (5 U.S.C. 553(b) and (c)).

Thank you for your consideration of these views.

Processing H-2A Applications for Occupations Involved in the Open Range Production of Livestock; and TEGL No. 17-06 Special Procedures for Employers in the Itinerant Animal Shearing Industry Under the H-2A Program.

Sincerely,

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