

**THE FUTURE OF THE FAMILY FARM: THE EFFECT
OF PROPOSED DOL REGULATIONS ON SMALL
BUSINESS PRODUCERS**

HEARING

BEFORE THE

**COMMITTEE ON SMALL BUSINESS
UNITED STATES**

HOUSE OF REPRESENTATIVES

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CONTENTS

OPENING STATEMENTS

	Page
Tipton, Hon. Scott	1
Critz, Hon. Mark	2

WITNESSES

Nancy J. Leppink, Deputy Administrator Wage and Hour Division, U.S. Department of Labor Washington, DC	3
Ms. Chris Chinn, Owner, Chinn Hog Farm, Clarence, MO	25
Mr. Kent Schescke, Director of Strategic Partnerships, National Future Farmers of America, Alexandria, VA	27
Mr. Bob Tabb, Deputy Commissioner, West Virginia State Department of Agriculture, Charleston, WV	29
Mr. Rick Ebert, Vice President, Pennsylvania Farm Bureau, Blairsville, PA ...	31

APPENDIX

Prepared Statements:	
Nancy J. Leppink, Deputy Administrator Wage and Hour Division, U.S. Department of Labor Washington, DC	4
Ms. Chris Chinn, Owner, Chinn Hog Farm, Clarence, MO	26
Mr. Kent Schescke, Director of Strategic Partnerships, National Future Farmers of America, Alexandria, VA	28
Mr. Bob Tabb, Deputy Commissioner, West Virginia State Department of Agriculture, Charleston, WV	30
Mr. Rick Ebert, Vice President, Pennsylvania Farm Bureau, Blairsville, PA	31
Additional Materials for the Record:	
U.S. Department of Labor Wage and Hour Division Fact Sheet	81
National Children's Center 2011 Fact Sheet	90
The National Association of State Departments of Agriculture Letter for the Record	92
Letter to Rep. Tipton and Rep. Critz from Rep. Cleaver	94
U.S. Department of Labor Wage and Hour Division Letter for the Record "Pricey Tractors Not Earning Keep on Small, Local Farms," Heather Scofield, Durango Herald	123
Statement of the Child Labor Coalition on Proposed Hazardous Occupations Orders	126
Testimony Submitted by the Association of Farmworker Opportunity Programs	137
Letter to Secretary Solis	140
American Farm Bureau Federation Comments on DOL Regulations Governing Agricultural Employment of Youth	142

THE FUTURE OF THE FAMILY FARM: THE EFFECT OF PROPOSED DOL REGULATIONS ON SMALL BUSINESS PRODUCERS

THURSDAY, FEBRUARY 2, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS, SUBCOMMITTEE
ON AGRICULTURE, ENERGY AND TRADE,
Washington, DC.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Scott Tipton [chairman of the subcommittee] presiding.

Present: Representatives Tipton, Bartlett, King, Schilling, Rehberg, Critz, Chu.

Chairman TIPTON. The hearing is called to order.

I would like to thank our witness for appearing today. The purpose of today's hearing is to examine proposed regulations by the U.S. Department of Labor pertaining to the employment of youth on farms and ranches. Like other sectors of the economy, farming and ranching have experienced profound changes over the years. The combination of mechanization, biotechnology, and the use of more specialized fertilizers has allowed farmers to grow more food using less land than at any time in history. While these new technologies and methods have brought significant change to agriculture, the need to educate and train the next generation of farmers remains as important today as it was nearly 100 years ago. It has often been said but needs repeating here, farming is a profession learned by doing. And while school-based instruction is important, it can teach you a great deal but there is no substitute for actual on-farm ranch experience.

While I am pleased by DOL's announcement yesterday that it was going to resubmit the parental exemption portion of the NPRM, other provisions of this rule will still make it difficult if not impossible for youths interested in careers in agriculture to access comprehensive on-farm education and employment opportunities. I think we can all agree that hazards are present in agriculture and ensuring the safety of youth is a common goal. At the same time, through proper safety training and supervision those hazards can be eliminated or at least minimized.

We are fortunate to have with us today stakeholders involved in that process. They and their families have been involved in agriculture for generations and I think they will bring an important perspective to the Committee's discussions.

Before I yield to Ranking Member Critz for his opening statement I would like to welcome our colleague, Representative Dennis Rehberg from the state of Montana. While he does not serve on the Small Business Committee, Denny is a fifth generation rancher and he has asked to be here today because this issue is so important to his constituents back home, just as it is to many of my own constituents.

I now yield to Ranking Member Critz for his opening statement.

Mr. CRITZ. Thank you, Mr. Chairman.

Across America, farming is not just a source of food but a way of life. In my home state of Pennsylvania there are more than 63,000 farms and more than 90 percent are family-owned and operated. This means that while they bring food to the nation's table, they are also an essential ingredient to rural economies driving employment, innovation, and the quality of life.

Making sure that this remains so is a top priority of mine. Central to family farming is the notion that children and local youths can participate in the agricultural way of life. For many this may mean milking cows, cultivating a field or repairing a barn. The skills and the responsibility these adolescents receive at such a young age help them become trustworthy and hardworking adults. Instilling such values is just as much a part of the family farm as is harvesting crops.

In this regard, farmers have always prioritized health and safety in their fields and silos. Doing so not only safeguards their very own families but is also unnecessary if they want to be successful. With this in mind it is unfortunate that the Department of Labor's proposed regulation on child labor and agriculture could undermine much of what makes family farms so special. If enacted the rule would equate agricultural labor with non-agricultural labor, something that makes no sense to anyone that has ever stepped foot in a rural community. Until yesterday the most concerning part of the regulation was the narrowness in how DOL defines family farm.

While it is promising that the Agency has decided to repropose this portion of the rule, work still needs to be done. The matter at hand concerns the parental exemption from the regulation. Current law provides an exclusion for farms owned by a parent. This has generally been interpreted to include arrangements where the parent has an ownership interest, such as a partnership or a corporation. Such instances are fairly common among family farms as multi-generational families, including grandparents, uncles, and aunts, may operate one entity instead of several. This is no trivial matter as Pennsylvania alone has nearly 5,000 family-held corporations and partnerships. Reproposing this aspect of the rule is a step in the right direction, and if done properly, will ensure that children can continue to work on the very family-owned farms as the generations before them have done.

In rural communities, farms are also centers of learning. In many areas of agriculture, hands-on experience is critical. No longer will 14- and 15-year-old children be able to readily participate in many aspects of farming operations, potentially short-changing their careers. This change is ironic because during a period of high unemployment, particularly in rural communities, we

should be expanding vocational education opportunities, not restricting them.

At the center of the rule are changes to DOL's hazardous occupation orders. These orders provide the limits on what tasks adolescents can perform on a farm. While unchanged since 1970, a review is reasonable. However, in several instances the Department of Labor has gone too far. Prohibiting children under 16 from using power-driven machinery, whether self-propelled or not, could restrict their access to nearly all aspects of farming such as harvesting crops, repair work, or raising animals. Such a ban would be a real burden on farmers, who often rely on local youth to fill many jobs. Similarly, broad terminology is used to prohibit work in storage facilities and on construction projects. This would mean silos but could also mean barns, which are used to store hay or animals.

While the intent may be appropriate, in practice it will end up limiting youth employment in historically non-hazardous and educational fields. Together the DOL's rules are a step back for family farmers and the communities they support. The reality is that farms are unique operations, and with this comes a wide range of tasks that you would not see in retail, restaurant or office.

We have to be mindful of these differences and not simply regulate it as we would any other industry. Breaking the intergenerational bond among family farmers and increasing red tape on them is a risky proposition. In the end it could ultimately result in lower employment in rural areas and even higher food prices across the country. Family-owned farms are a critical part of America, putting dinner on the table, but also serving as a lynchpin for so many of our communities. As a key provider of jobs in education, they are central to our economy and we need to give them the tools and resources they need to succeed rather than burden them with more red tape.

I want to thank all the witnesses for traveling here today, and I look forward to their testimony. Thank you and I yield back.

Chairman TIPTON. Thank you, Congressman Critz.

If Committee members have an opening statement prepared I would ask that they submit it for the record.

**STATEMENT OF NANCY LEPPINK, DEPUTY ADMINISTRATOR,
WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR**

Chairman TIPTON. I would like to take a moment to explain our timing lights for Ms. Leppink. You will have five minutes to be able to deliver your testimony. The light will start out as green. When you have one minute remaining the light will turn yellow, and finally it will turn red at the end of your five minutes. And I will ask that you try and limit your time but I will be lenient, of course, to be able to allow you to finish.

Our first witness today is Ms. Nancy Leppink. She currently serves as deputy administrator of DOL's Wage and Hour Division. Am I pronouncing your name correctly?

Ms. LEPPINK. Close enough.

Chairman TIPTON. Close enough. Okay.

Prior to joining the Department of Labor in 2009 she worked for 24 years for the state of Minnesota, working for both the state attorney general and the State Department of Labor and Industry.

Ms. Leppink, you may deliver your testimony. And thank you for being here.

STATEMENT OF NANCY LEPPINK

Ms. LEPPINK. Good morning, Chairman Tipton, Ranking Member Critz, and members of the Subcommittee. Thank you for the invitation to testify at this hearing.

Mr. Chairman, the Department of Labor recognizes the importance of youth employment and the value of agricultural work and respects the role of parents in raising their children. We welcome the dialogue with this Committee and want to ensure that the views of the agriculture community as a whole are fully considered. This is evidenced by the fact that after receiving a number of comments from stakeholders on the need to provide the Department with further input on the parental exemption, the Department announced yesterday that it would repropose the parental exemption portion of its recent Notice of Proposed Rulemaking on children in agriculture.

Since it was passed in 1938, the Fair Labor Standards Act has included child labor protections because Congress recognized that when children are employed they should be employed under conditions that do not put them in harm's way. The agricultural child labor provisions of the FLSA only apply to youth under the age of 16. Moreover, the statutes of child labor provisions include a parental exemption that applies to children who are employed by their parents on a family farm that is owned or operated by those parents.

One of the highest priorities of the Secretary of Labor has been and continues to be the prevention of the death and injury of children as a result of their employment in hazardous occupations. Children serving as employees in agriculture businesses are among the most vulnerable of our nation's workers. The fatality rate for young agriculture employees is four times greater than that of their peers employed in nonagricultural workplaces. The injuries suffered by children employed in agriculture also tend to be more severe.

Unfortunately, even with the current laws on the books there are employers who continue to illegally hire and employ children to work in hazardous jobs in agriculture businesses. Child farm employees are still killed or injured on the job and one child injured or killed is one too many. It is also not uncommon for the Wage and Hour Division to find young children working illegally in the fields exposed to numerous hazards including pesticides and dangerous equipment.

In an effort to ensure we protect and keep working children safe while not limiting their opportunities to be employed in positive work experiences, the Department of Labor has for a number of years been reviewing the Federal Child Labor Regulations. The current Federal Agricultural Child Labor Rules were issued over 40 years ago and have never been updated or revised. The hazardous occupation orders that are in the proposed rule only apply to chil-

dren who are age 15 and younger and serving as employees on a farm not owned or operated by their parent or person standing in the place of the parent, and only limits them from performing the most hazardous jobs. The Department's proposed rule also only applies to situations where there is an employment relationship. In other words, a child of any age could, for example, assist a neighbor in need to round up loose cattle that have broken out of their fencing because that would not establish an employment relationship. And even if an employment relationship is established, a child could still help a neighbor with work, such as hand harvesting crops, detasseling corn, and many other tasks. Nor would the regulations apply to situations where a child is raising a pig as part of a 4-H project or taking that pig that she has raised to sell at a county fair or market.

Most of the proposed rules in the NPRM update update the hazardous occupation orders that limit the agriculture employment of youth under the age of 16 unless the parental exemption applies. The NPRM proposes to mend those orders. Among other things, prohibit child farm employees who are 15 years old and younger from operating most power-driven equipment, including tractors and other hazardous farm implements. However, a bona fide student learner who is 14 and 15 would still be permitted to operate these types of equipment when they are enrolled in a vocational education program such as those offered by a state or local educational authority. The proposed rule would not eliminate safety programs that are provided by organizations such as 4-H and the FFA. We fully support the important contributions these organizations make.

The proposed rule would also create a new nonagricultural hazardous occupational order that would prohibit employing children under the age of 18 from all work performed in conjunction with storing, marketing, and transporting farm product materials. In the last two years the Department has investigated the deaths or serious injury of six young workers in this industry. Under the proposed rule children 17 years old and younger would be prohibited in nonagricultural employment from working in such establishments as grain elevators, silos, stockyards, and livestock exchanges.

The notice and comment for this proposed rule has allowed for significant and robust comments from all of our stakeholders, including many members of Congress. The Department will carefully consider those comments as it develops a final rule. I thank you for the opportunity to testify today and I am happy to take your questions.

Chairman TIPTON. Thank you, Ms. Leppink. I appreciate your testimony and for appearing here today. And I think it certainly goes without saying, I know from my part of the world—I come from a rural area, ag communities—that we all want to make sure that our children are safe. However, I think that there are some concerns that recognize, and now that there seems to be a repositioning here by DOL in terms of submitting the ruling, you said it was going to be resubmitted for the parental exemption and input from agricultural producers played a significant part in this decision.

I may have a couple of points to this but what sort of outreach did you do before the proposed rule was coming out? I think one of the great amounts of frustration which many of us who are not career politicians have is we see rules and regulations coming out without outreach and then we feel the impacts. What outreach was done before? And now what has changed so dramatically that now we are listening to the input?

Ms. LEPPINK. Well, first of all, the whole purpose of a proposed rule and the opportunity for comment, which we extended for an additional 30 days, is, in fact, to get that input when the actual regulation is out in the public and people know exactly what it is that we are proposing. The whole idea of a notice and comment period is for us to—and we received 10,000 comments on this rule—is for us to be able to take in those comments and consider them and make sure that the rule takes them into consideration when it has become final. So therefore, the whole comment period—when we propose a rule it is by no means final. The rule is proposed for the very purpose of engaging the public in what that final rule will be.

However, what we did prior to noticing the rule was actually this rule has been under consideration for a very long period of time. A GAO report was issued in the late '90s criticizing the Department for not having looked at these hazardous orders for a very long period of time. So we commissioned a study by the National Institute of Occupational Safety and Health to help us evaluate how things had changed in agriculture and what potential changes needed to be made in the hazardous orders. They issued their report in 2002. After that report was issued we engaged with the farm community, farm employers, advocacy groups and other academicians and medical experts regarding what was put out in that report. And then basically nothing happened for several years. When this administration began, we began to look at that report because one of the objectives of the administration was to update and to look carefully at those hazardous orders to be certain that they were responsive to what was going on for children when they were working. We updated the non-ag rules and completed that rulemaking in May of 2010. So then when we completed that rulemaking we began the process of looking at the agricultural hazardous occupations. In that process we also brought in members of the community, including the National Council of Agricultural Employers and the American Farm Bureau to engage in a conversation about basically what was in that NIOSH report and the other subsequent feedback that we had received on those recommendations. And so it was with that input and the input of others that we then put out the proposed rule. We extended the Notice of Comment period an additional 30 days because we heard from Congress and others that additional time was important to ensure that all voices were heard.

Chairman TIPTON. Okay. Thank you.

You know, I would like to point out this article I had from yesterday's Durango Herald, which is in my district. It is one of my local newspapers. In the article it states that for most farmers tractors no longer earn their keep. Basically, that over the lifespan of the tractor the food the tractor nets no longer nets enough money to

be able to pay for the tractor before it needs to be replaced. Additionally, several other factors force farmers to have another full-time job. Given these circumstances folks are becoming more and more reluctant to take up farming as a career. I am fearful that the provisions in the original proposed rule only exacerbate this situation. Can you provide us with any certainty or a sense of hope that these farmers who are becoming more and more discouraged are going to be able to do something that I noted in my opening comments? Family farming is literally family farming.

Ms. LEPPINK. I understand that. I grew up in a rural community in Minnesota. My father was a family doc. We moved to that community because of the values that community had. So I understand what it means to grow up in a small town.

So what I want to make clear is that what we are not doing today, what we are not talking about today so that we can make sure that we are focused on what we really are talking about, we are not talking about kids who are 16 years and older who are employed on any farm, whether a family farm or a big corporate farm. We are not talking about farm kids who are working for their parents or a person standing in the place of the parent on a farm operated by that parent but maybe not owned or a farm owned by that parent. And now, as of the announcement yesterday, a farm substantially owned by that parent, so no longer requiring that it be wholly-owned by that parent.

We are not talking about neighbors helping neighbors in need. We are not talking about kids participating in 4-H or FFA. We strongly support those programs.

Chairman TIPTON. If I could interrupt you just a little bit. When you are talking about in need, in my area we have grandparents, great grandparents, and the family farm. They may not be adjacent. We have neighbors and you say in need. I am not sure what in need actually means. And given the nature you said you grew up in a rural community. I was bucking bales when I was 12 years old, not effectively because they were 80-pound bales.

Ms. LEPPINK. For your parents?

Chairman TIPTON. Huh?

Ms. LEPPINK. For your parents?

Chairman TIPTON. No. No, it was actually for another farm.

Ms. LEPPINK. Okay.

Chairman TIPTON. I was out and working. And great experience not only to be able to earn wages but to be able to learn a work ethic. My father felt that that was important for me.

Ms. LEPPINK. Well, first of all, I do not think that the rule we are proposing would have precluded you from bucking hay.

Chairman TIPTON. I was earning a wage.

Ms. LEPPINK. I know, but this regulation only focuses on the most hazardous occupations. So even if you are under 16 there are many, many things that you can do on a farm. This does not outright prohibit kids from 15, 14, 13, 12, and younger, from working on a farm. It only focuses on those jobs that based on data, based on our enforcement experience, we have found results in the serious injury or the fatality of children. So bucking hay, I mean, to be honest with you I have not ever bucked hay but maybe you can

describe it for me. But if what I understand it, that would not be prohibited by this rule.

Chairman TIPTON. Yeah. I did. Yeah. Actually, Congressman Critz pointed out we had a moving hay wagon in front. And I actually got to drive the tractor at 12.

Ms. LEPPINK. Okay.

Chairman TIPTON. As well. And so part of the experience, I guess my point is that understanding, you know, you said you had reached out to the Farm Bureau. My Farm Bureau has talked to me. They want their children to be able to learn this value. And under the proposed rule of government is here to help and you have got to be involved in a voc-tech program if you are under 15 to be able to participate and be able to work with some of the mechanized equipment, is this not a heavy hand of government? We want to be able—I would submit that our parents and grandparents loved those kids. They wanted to be able to protect them. Do we need the federal government? Do we need OSHA stepping in to the workplace of the family farm to be able to deal with that?

Ms. LEPPINK. Chairman, we have received significant comments on the very things that you are stating. That is one of the reasons why we made the decision to repropose the parental exemption because really what you are talking about, the opportunity to work for grandparents and aunts and uncles is exactly what the parental exemption is—what the conversation we are having about the parental exemption is about. And so consequently, one of the reasons that the Agency repropose the parental exemption is so that we would be in a position to address the very issues and concerns that you are raising.

Chairman TIPTON. I guess I would like to move on. I want to make sure we get to our other panel members here as well. But can you explain the discrepancy for me between what the DOL states in its initial rule and what it has currently made publicly available?

Ms. LEPPINK. Okay. The proposed rule set out what was the current enforcement practice of the Agency which our enforcement records indicate dates back to approximately 2002. The FOH that is on the website is out-of-date. When this rule was published we were in a comprehensive revision of that chapter in part because of outdated provisions like the parental exemption. But also because of the recent amendments to the Child Labor Regulation that went into effect in 2010.

Chairman TIPTON. When was that language changed?

Ms. LEPPINK. When was the language changed?

Chairman TIPTON. Mm-hmm.

Ms. LEPPINK. The language in the FOH is out-of-date. So it has not been changed. But the enforcement practice of requiring that the farm be wholly-owned began in 2002.

Chairman TIPTON. Okay.

Ms. LEPPINK. At the latest.

Chairman TIPTON. Has this been enforced?

Ms. LEPPINK. Yes.

Chairman TIPTON. Okay.

Ms. LEPPINK. Yes. We have, I mean, we do not have regular bases, you know, in terms of family farms but we have—our en-

enforcement data indicates that as early as 2002 the issue of whether the farm was wholly-owned or not for purposes of a citation was an issue.

Chairman TIPTON. Would it be possible to get that enforcement data from you?

Ms. LEPPINK. Yes.

Chairman TIPTON. Okay. We would appreciate that.

I will tell you what. I think what I would like to do is I am going to follow up, if you do not mind.

Ms. LEPPINK. Sure.

Chairman TIPTON. I have got a number of questions and I do want to be able to get to some of our other members here so I will yield now to Ranking Member Critz for his questions.

Mr. CRITZ. Thanks, Mr. Chairman.

And for the record, so how do you say your last name?

Ms. LEPPINK. Leppink.

Mr. CRITZ. Leppink. Okay. See, mine is Critz and nobody can say it, so I figured we would get that out there.

Yesterday the DOL decided to reopen the parental exemption to the rule. What prompted that?

Ms. LEPPINK. What prompted it is the abundance of comments that we received and also, of course, the input from Congress, their concerns about what was being proposed. We felt that the rule would benefit from being repropose and revised based on, the input that we had had. Plus, repropose it allows for us now to engage further with interested parties. Of course, then, it will be published and put out for another round of notice and comments.

Mr. CRITZ. Right.

Ms. LEPPINK. So we want to get this right. And so consequently we felt that that was the best way for us to get it right.

Mr. CRITZ. Well, I guess that leads to my next question, which is the current parental exemption standard must apparently be deficient. So what prompted this to be revisited?

Ms. LEPPINK. Actually, it was not revisited. What the, I mean—

Mr. CRITZ. It is being changed, so there must be something wrong with the way it is structured?

Ms. LEPPINK. Actually, it was not being changed. What we were doing was we were putting out for comment how we had been enforcing the law. What this has allowed for then is for us to get the very input that we have gotten. You know, the farm community thinks that that definition is no longer in step with how family farms are currently structured. If we had not put it out there, there would have been no opportunity for the family farm to weigh in on how we were applying that exemption in our enforcement activity.

So what this has allowed, you know, 10,000 comments later, what that has allowed is for us to do exactly what I think we as an agency should be doing, which is giving it our best shot, based on what we believe is the proper interpretation. We have given now the opportunity for the public to comment.

Mr. CRITZ. Proper interpretation of?

Ms. LEPPINK. The statute.

Mr. CRITZ. Okay.

Ms. LEPPINK. I mean, I have an obligation as the enforcement agency to apply the laws that are enacted by Congress.

Mr. CRITZ. Right.

Ms. LEPPINK. The parental exemption is a statutory provision. And so I have then the responsibility of going out and applying it in the real world. And so what that requires is often, you know, we have to interpret what Congress meant by wholly-owned and what Congress meant by operated. And so consequently, we indicated in the proposed rulemaking what we believed Congress meant. And as a result of the Notice of Proposed Rulemaking, we are hearing that agriculture has changed in the last 10 years and that there is a lot of different corporate structures. There is, you know, the family farm is not owned by the operator. There are all sorts of reasons including tax reasons that family farms have now entered into a variety of business structures.

So the opportunity of this rulemaking now has allowed us to then, you know, the rulemaking process as is would have allowed us, if we had just simply gone forward, because we have gotten an incredible amount of comments and great comments. But what we are doing now is reproposing it so we will, you know, sort of yet have people have yet another chance for us to engage stakeholders and another round of comments based on what I imagine will be a revised proposal when we republish it.

Mr. CRITZ. So it is possible that the outcome would be that the parental exemption will not change at all based on comments?

Ms. LEPPINK. I mean, it is possible. I mean, anything is possible.

Mr. CRITZ. Right.

Ms. LEPPINK. But, the purpose of reproposing it is because we feel that we have gotten comments that we need to seriously consider. And consequently, the intent is to put out a revised proposal as quickly as we can.

Mr. CRITZ. Okay. Just a couple more detailed questions. The rule applies to new prohibitions beginning at age 14, which are traditionally the first two years or the beginning of the first two years of an agricultural instruction program. A recent study showed, however, that 36 percent of first- and second-year agricultural education students, 36 percent, were involved in some type of hands-on agricultural placement. So would this new rule prevent that, these types of placements for these 14- and 15-year-olds?

Ms. LEPPINK. I know actually what the proposed rule does is it actually wants to tightly join both the education and training, in the classroom with the on-the-job training that kids would receive. And so the rule is not prohibiting kids from getting the training in addition to working on the job. You know, getting additional training or reinforcing the training that they are receiving in actual work.

Mr. CRITZ. All right. So that is what I am trying to get my hands around. As the chairman asked about the voc-tech programs, are you changing the definition of the different types of ag programs that young people could work through and be eligible for? When you say tightening, I am trying to figure out what tightening means. Are there multiple programs now out there that would not be eligible for this type of—

Ms. LEPPINK. There are certain programs that would not—that may not meet the requirements that we are proposing. You are correct.

Mr. CRITZ. Yeah.

Ms. LEPPINK. So consequently—

Mr. CRITZ. By not being eligible, does that mean that they would have an opportunity to adjust to meet new requirements?

Ms. LEPPINK. Sure. In fact, we are already in conversations with the Department of Agriculture about how we can work on those educational programs together.

Mr. CRITZ. Yes. I guess one of the things that is driving my concern about some of the things we are talking about is have child- or farm-related injuries among children seen an increase holding steady, or are we seeing a decline? As we are talking about child labor, and as the chairman was talking about—what did you call it? Not baling hay?

Ms. LEPPINK. Bucking.

Mr. CRITZ. Bucking hay. Bucking bales. At the age of 12—he was not on a family farm, but it was part of the culture of where he grew up that this was something that they did. So I am curious that revisiting, refining I guess you could say, or tightening of regulations. I am curious as to what we have seen in industry. Is this a problem that has been growing?

Ms. LEPPINK. It is a problem that has been remaining steady.

Mr. CRITZ. Steady? Okay. I think we have statistics that show that there has been a sharp decline in farm aid over the last 10 years. So I would disagree with that.

Ms. LEPPINK. Okay. Mr. Critz, I would be curious to see what your statistics—what you are showing because ours are, according to the National Children's Center for Rural Agricultural Health and Safety, the rate of injuries per thousand household youth that are living on farms declined by 48 percent from 1998 to 2009. Of the over 11 years from '98 to '09, the rate of childhood agriculture per thousand farms includes youth who live on, visit, and are hard workers declined by 59 percent from 16.6 to 6.8.

Ms. LEPPINK. Okay.

Mr. CRITZ. So that is why I am of the mindset if it is not broke, do not fix it. Obviously as time goes on we sometimes get smarter or we realize that what we are doing could be done better, and certainly I support that.

Ms. LEPPINK. I have spoken in error. We can provide the Committee with the studies that we were looking at when we promulgated the rule.

Mr. CRITZ. Okay.

Ms. LEPPINK. And so sometimes we are talking percent and sometimes we are talking numbers and I would probably feel more comfortable if we provided you with the data that we were relying on and the data that we have in the Agency.

Mr. CRITZ. Okay. I lost it now but, you made a comment that I am probably going to revisit in a second round, but one last question. In most cases the Labor Department cites NIOSH as the reason a particular hazardous occupational rule is expanded. However, in the case of working with animals, the Department of Labor de-

cided to ignore NIOSH's recommendation. Can you expand on why that is?

Ms. LEPPINK. Well, we did not only rely on the recommendation of the NIOSH. We also relied on data that was provided by other entities, including medical experts and we also relied on our own enforcement experience in the proposal for this rule. And so consequently, that is in part—that NIOSH report then has been supplemented by the other additional information that we have acquired and have been provided since the NIOSH report came out in 2002.

Mr. CRITZ. Okay. I was told that from all the investigations we have done, this is the only time that the NIOSH has not been used as the sole supplier of information. So if you have other examples that DOL has used something other than NIOSH's recommendation, we would certainly love to see it. Or, that they disagreed with NIOSH. This is something we need to look at if this is going to be the Department of Labor's standard operating procedure going forward; certainly something that we want to weigh in on and have a role in how it plays out.

I know we have other members who want to ask questions, so I will yield back, Mr. Chairman.

Chairman TIPTON. Thank you, Congressman Critz.

I would now like to recognize Congressman Rehberg for questioning. Thank you again for being here.

Mr. REHBERG. Thank you, Mr. Chairman. And thank you Ranking Member Critz for the opportunity to sit at the dais.

I am a fifth generation Montana rancher. Actually, my grand-grandfather was born in Montana in 1873, left home at nine and started breaking horses at For Assinibione at 11 in a paid capacity and lived to be 91. So you can, in fact, work as a young man, even back in the 1880s and survive.

I have come to the conclusion in my 11 years in Congress that it is not necessarily a difference in philosophy between republicans and democrats. There is a difference in philosophy between urban and rural. And this is one of those situations where I think the Department of Labor is overstepping its boundaries, its knowledge base, and frankly, I think you are sitting around watching reruns of Blazing Saddles and that is your interpretation of what goes on in the West. And it is not anymore.

Now, I have taken all the glamour out of my ranching operation because I do not rope and I do not tie and I do not brand with a hot iron. I use a self-catching head gate, I use a squeeze that is hydraulic, and I have a calf table. You cannot get hurt. It is impossible. You could have a 5-year-old out there running it. I have got kids that are working for me, my son's friends, who come out and help with self-starting generators that are run by propane which under your rule looks like will no longer be able to be used. We have a feed operation where we take the kids in the feedlot from the neighboring places and we pay them to move silage around or shovel manure. If it is a hard and fast rule that they cannot work in a feedlot or they cannot man a vaccination in a self-catching head gate, that lacks common sense. I do not get it.

Mr. Chairman, I can assure you as chairman of the Appropriations Subcommittee on Labor that you have not seen the last of

this. I will have a rider on my appropriations bill that I write for the House of Representatives that will keep you from implementing this rule. It makes no sense. We want a safe work environment for our children and our neighbors' children.

Let me ask you a question about herding. I had when I was elected to Congress 600 head of cashmere goats. My neighbor, who was the publisher of the largest newspaper in the state of Montana, wanted me to put his 10-year-old son to work. So I put him on a youth motorcycle, a little Kawasaki 60, and he herded goats for me on a daily basis. Now, would that be exempt under this rule or would he not be able to work for me as a 10-year-old riding a youth motorcycle? As I understand it, herding is not allowed. It does not say anything about how the herding occurs. And with goats or sheep it is a constant. I mean, I also have.

Ms. LEPPINK. The regulation does not say that herding is allowed.

Mr. REHBERG. It says it is not allowed.

Ms. LEPPINK. No, the regulation does not say that herding is not allowed.

Mr. REHBERG. As I read the material it looked as if jumping on a horse and going out and herding cattle was not going to be allowed for those under 16.

Ms. LEPPINK. You just added an element that could result, I mean—

Mr. REHBERG. See, this is the problem because the Department of Labor does not know agriculture. It is a way of life. It is a lifestyle. Just because a 4-H student or FFA may have a show animal, but it is also how they learn. They might climb under a tractor with their neighbor just to learn the mechanics. And you do not learn this from a book. You do not need to go to a class. You learn it from your neighbors and your friends and your relatives. And I am just appalled. It really bugs me to read something like this and expect this one size fits all knowledge from Washington, D.C., to try and determine what is appropriate for agriculture within a state like Montana. It just baffles me.

So as I had suggested before, Mr. Chairman, we are not done with this. I do get to put the writers on. I know it will pass the House. I have no idea whether it will pass the Senate. I will do everything I possibly can to keep this regulation from ever being implemented as it is written unless you go back and just spend a lot more time with Farm Union, Farm Bureau, Grange, you name it—I do not care who it is in the Department of Agriculture—to try and come up with some kind of a sensible, reasonable regulation that truly keeps our children safe while at the same time allows the next generation to take over their family farm or ranch. Thank you.

Chairman TIPTON. Congressman Chu.

Ms. CHU. Thank you, Mr. Chair.

I know that there is some opposition to this rule, but I am interested in what I consider to be an important issue, the lives of children.

I read with horror about Wyatt Whitebread, the 14-year-old boy in Illinois that suffocated in a grain silo in July 2010. I read with horror the cases of Oklahoma teens, Tyler Zander and Bryce Gan-

non, both 17, who each lost a leg in a grain auger accident this past August. I read about the 100 preventable deaths of youth per year, the estimated 907 youth who died on American farms, and I am not one to minimize a single preventable death of a young person.

So I would like to ask you how many youth farm workers are killed, injured, and how does agriculture compare to other industries in terms of young people's deaths?

Ms. LEPPINK. Thank you, Congresswoman.

The data that children are significantly more likely to be seriously injured or killed while performing agriculture work than children working in all other industries combined. Studies show that children are significantly more likely to die while performing agricultural work than while performing work in any other industry. These studies also show that the prevalence of children working in agriculture suffer more serious injuries.

From 2003 to 2010, 74 percent of the children under the age of 15—so we are not talking about the kids who are 16 and older who died—but children who are under the age of 15 who died on a job were employed in agriculture. Children ages 15 to 17 working on farms were four times more likely to die on the job than those in any other industry. So consequently, agriculture is the most hazardous industry that either adults or children work in. And this regulation is only targeting the very youngest. And we are only targeting those jobs that are the most hazardous. And we are not precluding family farms from hiring their kids to work on their farms. We are not prohibiting parents from employing their child. We are not prohibiting children from doing their chores. We are not prohibiting children from participating in 4-H. What we are talking about is 15, 14, 13, 12, and younger kids working as hired farm workers, often alongside their parents. We are talking about the most hazardous jobs that most frequently injure and kill children. We are talking about one of the most hazardous workplaces that anyone can work, which is a grain elevator or a grain bin. We are talking about Tyler Zander, and we are talking about Bryce Gannon, who lost their legs in a grain bin when they were caught in an auger. That is what we are talking about with this regulation. The youngest of the young, the most hazardous of the hazards.

Ms. CHU. And could those injuries and deaths have been prevented?

Ms. LEPPINK. The kids in terms of the regulation related to grain bins that that would not have allowed those children to be in that workplace, so consequently yes, it would have prevented those injuries.

Ms. CHU. Some people think that the Department of Labor does not have the authority or precedence to issue rulemakings for farm workers. But I believe the Fair Labor Standards Act governs youth workers. How does the Department define their authority in that area?

Ms. LEPPINK. When the Fair Labor Standards Act was amended in 1966, when the Congress expanded the protections for children in agriculture, Congress required the secretary to find and declare those jobs that were particularly hazardous for children to perform

under the age of 16. So consequently, our authority and our responsibility to promulgate these regulations was in the act.

Ms. CHU. And once again, about the vocational programs for certification, how do these rules impact the vocational agricultural programs?

Ms. LEPPINK. What these rules do is in an effort to—because what the bona fide child student-learner provisions of the rules allow is that for children who are participating in those vocational programs at ages 15 and 14 to engage in activities that they would otherwise be prohibited or jobs that they would otherwise be prohibited from being employed to do. So consequently, what the regs do is that when early on in the first iteration of these regulations there was not a lot of information about these vocational training programs. So what this proposed rule is intending to do is to articulate standards for training programs whereby there is more assurance that children are receiving the kind of training, both in the classroom and on the job that they need to be able to operate particularly this equipment, hazardous implements safely.

Ms. CHU. But it sounds like those programs can continue.

Ms. LEPPINK. Oh, yes. Yes. In fact, you know, there is nothing that eliminates any program. All it does is establishes criteria for when the training received in those programs can result in an employer taking advantage of that student learner exemption.

Ms. CHU. Mr. Chair, I have to go to another appointment but I would like to have unanimous consent to have materials inserted into the hearing record. I have a written statement from the Association of Farm Worker Opportunity Programs and a written statement by the Child Labor Coalition.

Chairman TIPTON. Without objection.

Ms. CHU. Thank you.

Chairman TIPTON. Representative Bartlett, do you have some questions?

Mr. BARTLETT. I was born in 1926, and I grew up during The Depression. I always lived on a farm. As a child we had only horses on the farm and then we moved to tractors. I worked as a kid on a farm. My kids worked on the farm. My grandkids work on the farm. I will tell you there is nobody more concerned about the health and safety of these kids than their parents.

There are two basic philosophies as to why we need regulations. One of them is that every provider, every manufacturer, every employer, and in this case I guess you would include parents, are some combination of evil or greedy or stupid. And if you do not watch them and control them they are going to take advantage of employees or consumers or children.

And then there is a second premise for regulations and that is that every consumer is incredibly stupid. And they are going to hurt themselves if we do not have a whole lot of regulations to prevent them from doing that. If you think about all the regulations that we have, they are formulated in response to one or both of those fundamental philosophies which I reject and I think the average American rejects those philosophies. If you want to be useful, please educate.

I had a fire on my farm and some bureaucrat came and put a big thing on the door. It is unsafe; you cannot go in. Do not tell

me I cannot go in my building. Tell me you do not think it is safe for me to go in my building. I am not an idiot. I will be happy to have your education but do not tell me what I can do in my building. I just have a fundamental problem with most of our regulations.

You know, I do not want you to modify this regulation; I want you to withdraw the regulation. If you cannot find useful things to do in educating our parents, then find something else to do because I think what you are doing now is not a useful pursuit at all.

Two of our kids, one of them now is a Ph.D.; the other one is a very successful builder. When they were little kids and Carroll Burton wanted somebody to pick his corn, he could not find any city kids to do that because they were watching television and doing drugs and smoking and whatever else. Our kids were out there in the morning at sunup going through these fields picking corn with long sleeves on because you get—the blades will cut your arms. They came in soaking wet from that.

Long before your age, at 14 they were lifting—well, our bales are not 80 pounds so they could lift them. They are 40 or 50 pounds, the bales that we make with the kicker balers and so forth. And they were proud that some of the city kids that came to do this could not do it.

Ms. LEPPINK. Sure.

Mr. BARTLETT. In the heat of the summer. You know, farming is a whole different thing. I have lived on a farm all my life. I do not know why you are meddling here. You know, there is not a problem. You can find some anecdotal things. The old farmers, the juice ought to be worth the squeezing. What you are doing here, the juice sure is not going to be worth the squeezing. You know, can you not find something more productive to do than hassle our farmers?

Ms. LEPPINK. I would like to think that I am protecting children.

Mr. BARTLETT. I will tell you that the parents are more interested in protecting children than you are. Why do you not just use your time educating so that they know the proper procedures and so forth?

Ms. LEPPINK. Congressman, we do spend a significant amount of time providing educational assistance. Also, many of the things that you describe, this regulation would not prohibit. Certainly will not prohibit any work that you did on your parents' farm. It would not prohibit the kids from picking the corn. It would not prohibit the kids from bucking the hay. Like I said earlier, it only limits the most hazardous work that kids can do.

Mr. BARTLETT. You do not think parents want to do that same thing?

Ms. LEPPINK. Well, this regulation has no impact on parents parenting their children.

Mr. BARTLETT. How old does the child have to be before they can drive a tractor?

Ms. LEPPINK. On their parents' farm?

Mr. BARTLETT. Yeah.

Ms. LEPPINK. Zero.

Mr. BARTLETT. Okay.

Ms. LEPPINK. They can drive the tractor on their parents' farm at any age.

Mr. BARTLETT. My time is running out. I just have a real problem with our regulations, you know. We are struggling. Every six hours another billion dollar debt and we are struggling with huge problems and you are doing this? I just do not get it.

Thank you very much, Mr. Chairman.

Chairman TIPTON. Mr. King.

Mr. KING. Thank you, Mr. Chairman. I want to thank the witness for coming here to testify. I do not think I would want to do that.

But we all think about this from a perspective of our backgrounds and there is a strong culture in American and agriculture. I grew up in a rural community and rural areas, excuse me, out in the country. And we only had 25 acres and that was all timber so I could go out and either cut trees and do that and fix fence, which we did, or I could work for the neighbors. It was a good thing for me to go out when I was very young and I was very proud to be able to go next door and pick up a five dollar bill for a day's work. And I learned how to work. And I remember that the first time I was put on machinery was for 75 cents an hour. And I probably was not worth that. But I learned something about machinery and today we have a second generation construction company that is heavy equipment that runs in multiple states that grew out of that training that I received when the only opportunity I had was to go to work for the neighbors.

And now I see that we have—and some of this is going to be non-specific to the rules you are proposing here but the anomalies that come from the expansion of the nanny state, this aggressive expansion of the nanny state, which is what I think Mr. Bartlett has addressed. And I think in terms of this, this was during the previous administration when the Department of Labor came into my district to examine some youth that were working in a convenience store. And they went and interviewed them in their households and they said, "Have you ever worked after 7 o'clock on a school night?" "Well, two of them said yes, one night. Well, that is two violations. "Have you ever operated the pizza dough maker?" "Well, no, but I washed it once." Well, there is another violation because the rule says "operate or otherwise use." And the interpretation of the Department of Labor was that washing the tool in the pizza dough maker was otherwise using it.

And so I look at this and I think what are we teaching our youth? Where do they learn their work ethic if we are going to ban them from working on a school night past 7 o'clock, ban them from washing the pizza dough maker, ban them from running the lawnmower up until they are the age of 18, but give them a driver's license so they have the ability to go 120 miles an hour and turn the radio up full blast. I mean, there is not—and I know that is not your role to address this but—

Ms. LEPPINK. Well, no, but the 120 miles per hour.

Mr. KING. They have the ability to.

Ms. LEPPINK. Well, yeah, but it is not—

Mr. KING. Yeah, no, there is a rule. But you do not really come here to propose to us that the rules are always followed so I think

you would recognize that people sometimes violate them. But I just bring you back to this, which is part of the rules that are in front of us. And that is when I look at prohibits them from hurting livestock in a confinement, that means that a 9-, 10-, 11-, 12-, 13-, 14-, 15-year-old waiting for their 16th birthday cannot step into a hog confinement and help sort pigs that are older than six months old, even with an adult there to supervise them who has been presumably authorized by the parents who are those who have the most vested in the protection of their children. Cannot do so on horseback. Can they ride a horse? And if there is another horse next to them, is that herding? Will that be the interpretation that comes, kind of like washing a pizza dough maker is operator or otherwise use? I just think this is completely outrageous to move down this path.

But the real question I originally came as I listened to you talk is this. You said that agriculture is the most dangerous and the injuries to youth are significantly greater there than any other occupation. So what is the second greatest danger for youth in an occupation? If agriculture is first, what is the second?

Ms. LEPPINK. Congressman, I do not know. I can get you the answer to that.

Mr. KING. I would just find that very curious that if you looked at the data—

Ms. LEPPINK. I would speculate maybe construction but I do not know for sure.

Mr. KING. But if we are looking at data and we are driven by data—hopefully we are not driven just by anecdotes.

Ms. LEPPINK. No.

Mr. KING. But driven by data.

Ms. LEPPINK. Very much so.

Mr. KING. If the data says agriculture and we do not know what is the second most dangerous, let me pose this other piece.

Ms. LEPPINK. Well, I mean, people know. I just do not happen to have—

Mr. KING. Yeah, I understand. But you are our expert witness. And I do not mean that to mean it derogatorily. I just think that a professional curiosity would want to look at the full list of that and have an understanding of what that data means. And if you only know and you are ready to prepare to testify about one component of all that data, then probably the proportionality of it has not been internalized professionally. And that is curious to me that that could be the case. I am not saying would be the case.

But I just want to pose this then. We have banned kids from working in every other profession that I can think of except agriculture. So the only place that is really left for them to work that I know of is agriculture because of the exemptions that are there. So would it not be that if the only place kids were really working in reasonable numbers is agriculture if that is where the injuries are, yeah, that is kind of a no-brainer to figure that out. And if we ban kids from working in agriculture, yes, injuries will go down. But what we are doing is we are shutting down the ability of generations to learn a work ethic, to learn a skill, and to learn safety.

And I think about my kids. I brought them into our construction business at age nine. And their first job was take the corn knife

and cut the weeds growing around the grade stakes so the operators could see them from the machine. I quickly learned that the safest place for them was on the machine, not on the ground, and we made safety adjustments along the way as I got older and got skills. But the neighbor kids did not have that opportunity. They did not have a dad that had a business. They did not have a neighbor that had a farm. And these opportunities are being taken away.

Many things about America's work ethic are being diminished by the nanny state and this is one of them. And I just feel badly that you are charged with coming here today to make a case that I just believe is not very strong. And I appreciate you doing that but I wanted to express myself and give you an opportunity to say whatever you might.

Ms. LEPPINK. Congressman, we have received many comments with some of the substantive parts of the issues that you have raised, particularly with regard to herding cattle, herding animals. And so that is part of the rulemaking process for folks like yourself to weigh in on that maybe we got it wrong. And so consequently, that is why we put these rules out for the very people like you to be able to express your concerns and also for you to give us your perspective so when the final rules comes out—and there are many, many examples of rules being changed as a result of this very process. And so therefore, I want you to know that I know that we have received similar comments and we are taking very seriously those comments. And they will be reflected in the final rule.

Mr. KING. Thank you very much.

Ms. LEPPINK. Yes.

Mr. KING. Thank you, Mr. Chairman.

Chairman TIPTON. Yes, sir. Mr. Schilling.

Mr. SCHILLING. Thank you, Chairman.

Just quickly, and sorry, I apologize for being late today. You know, I have to agree with what I heard on the tail end of this with Mr. King. I also am a small business owner and, you know, one of the things I did is I was fortunate enough to where I could bring my kids in at 8 years old, 9 years old, and teach them some good, solid work ethic. And I think one of the things we have got to—number one is we have got to keep our kids safe. We totally understand that and we want that to happen. And I think the farmers want to keep their kids safe also.

But one of the things that I am concerned of is so many times the government comes in to—as Mr. King quoted, it is like a nanny state. And I think overall the intentions are good but the effects that it has long-term for our work ethic as a nation and how it is going to adversely affect our small businesses, farms, and other businesses outside the ma and pa shops that are out there, the ones that are pretty much the backbone of the United States of America I think is something that we need to really make sure that as you are having people write in that we are really careful and we read through and really look at both sides rather than just being reactionary. We understand that you want to be on the offense on this also but a lot of times we do reactionary things quickly and have some very bad consequences that come that hurt our economy which as everybody in this room would understand with a 15, 16 percent unemployment rate when you count everybody

that has quit looking for work, now is not the time to do that. But at the same time keeping our kids safe. So that is the comment that I would like to make.

But thank you very much for coming.

Ms. LEPPINK. Thank you, Congressman.

Mr. SCHILLING. I yield back.

Chairman TIPTON. I just have a few more questions and I think Congressman Critz does as well.

Ms. LEPPINK. Sure.

Chairman TIPTON. I would like to follow up a little bit on some of your earlier comments in regards to the field operating manual when you stated that it was wrong. When did DOL update it? And when was the record of those updates?

Ms. LEPPINK. Well, the Department has been in the process of doing a comprehensive update of the Child Labor chapter that was driven by a variety of both regulatory and statutory changes and interpretations. One was the passage of the GINA law that increased the penalties that the Wage and Hour Division is to issue in certain kinds of situations where children are killed and injured. We were also updating them for purposes of the 2010 amendments to the non-agriculture child labor regulations. But that chapter had not been updated in many years.

And so consequently, it is very difficult to keep up to date. The FOH, first of all, is an internal Field Operations Handbook. Its primary purpose is to guide my field in their enforcement of the law. So consequently, however, every time the law changes, every time a court decision comes down, every time a regulation changes there is a need to update those FOH chapters. There are many of them. My agency enforces seven major statutes. So as a consequence, we are continuously updating or in need to update the FOH, the Field Operations Handbook. So as a consequence sometimes those updates are delayed. However, the FOH is primarily on the website because we get frequent FOIA requests for the public portions of that document. And so in order to expedite the public's access to that frequently requested information, we simply put it up on the website so that we can simply direct people to the website as opposed to having them go through a FOIA process to get that information.

So consequently, we are always in a balancing game of do we make the information available even though all of it might not be up-to-date. So, for example, the FOH that is up on the website now does not have any reference to the May 2010 amendments to the Child Labor Regulations because we were in the process of updating the entire chapter in addition to add those in addition to many other changes. So consequently this is a continuous process that we are engaged in.

Chairman TIPTON. So we have almost got a situation where the people are hearing one thing, the enforcement is doing something else, and there is not great coordination going on.

Ms. LEPPINK. Well, the Agency has significant guidance that is actually the guidance that we direct the public to in the form of fact sheets and field assistant bulletins and interpretations and opinion letters that are the formal interpretations of the Agency. The regulations and, of course, the statute, are the prime sources

for people to know what the law requires. As I said, the Field Operations Handbook is primarily written to guide my field. But policies change, laws change, regulations change, and I have done my best since I have started to proactively get those chapters that are out-of-date that languished prior to 2009 and were not updated. I have been working as hard as I can to get those chapters updated because I know the importance of that information, you know, being current to the extent that the public would look to that document for guidance.

Chairman TIPTON. I am curious, and it actually comes from some of the comments that have been made here. Does your agency—do you think congressional intent is important?

Ms. LEPPINK. Absolutely.

Chairman TIPTON. In terms of doing that? Given that, the NPRM states that one of DOL's goals is to promote parity between agriculture and nonagricultural exemptions. Can you tell me where in the originating statute or any subsequent amendments that had been made where Congress indicated that it wanted such parity?

Ms. LEPPINK. I think the conversation about parity comes from the idea that agricultural farm worker employees should have similar protections as children who are employed in any other industry. So consequently, when the Congress made clear that we were not going to give similar protections based on age to children who were employed in agriculture because for kids who are employed in agriculture any kid over the age of 16 can be employed to do anything.

But Congress, in the amendments in 1966, made clear that it was its expectation that the secretary of labor would identify that work that was particularly hazardous for children in agriculture to perform; therefore, it is not a mandate of parity but the idea being that when we are updating these regulations we should be looking at the hazard as a hazard. And if it is too dangerous for a child to perform, it does not really matter whether it is in agriculture or in another industry if it results in the same risk to that child of serious injury or death.

Chairman TIPTON. You know, that begs the question why were not the enforcement actions and actions on enforcement disclosed in the rule? What is going to be the fine? Who is going to enforce it? How much is it going to cost?

Ms. LEPPINK. Well, actually, we have a portion of the chapter that does discuss the imposition of civil penalties. And again, that was an effort to make transparent and to allow for comment on how the Agency would be issuing civil penalties. And so, you know, regulations are really there to implement and interpret the law. And so consequently, that is what is put in a proposed rule. So I guess I am not understanding. Maybe you could repeat your question.

Chairman TIPTON. Well, I guess what I—because I want to be able to move on and be respectful of your time and our other panel as well—I guess one thing that greatly concerns me is you keep talking about the family farm.

Ms. LEPPINK. Right.

Chairman TIPTON. But you ignored in my opening statement we have got great grandma and grandpas farm, grandparents' farm, our best friend's farm down the road, to be able to get them in-

volved and for those children to actually to be able to get to work. So is this government trying to micromanage what has been a traditional method of neighbors working with neighbors, family members working with family members, and you are going to define what a family unit is and limit it to that?

Ms. LEPPINK. There is a lot of legislative history that talks about how this new regulation or this new statute was going to protect children, and taking into consideration as expressed in the congressional history, the family farm. The way it is articulated in the legislative history, the purpose of the parental exemption, which is the language—this is not regulatory language; this is statutory language, which is that a child employed by their parent on a farm owned or operated by their parent, was based on the legislative history the effort of Congress to acknowledge the family farm and the opportunity for children to work on their family's farm.

So what the Department of Labor is doing its best is to apply that statute and, of course, the intent as we understand it of Congress that parents were perceived—which I would absolutely agree; I am a parent—are naturally in a position to look after the welfare of their children. And therefore, the law should not go there to impinge on the ability of that parent to make good decisions on the path of their child. So now the task for the Department of Labor is to discern how best to implement the intent of Congress.

Chairman TIPTON. Okay. Just kind of an opinion. I think that we ought to empower those parents as well to say they can go and pick corn.

Ms. LEPPINK. Okay. And I, you know, Congressman, this is another area, as you know, because we are repropounding the rule where the Agency has received significant comments. The idea of repropounding the rule was to be able to be certain that we can take full consideration of just the concerns that you just raised.

Chairman TIPTON. Congressman King, thank you.

Mr. KING. I thank the Chairman for recognizing me. I just want to—a brief question I would like to ask. And as I understand it you do speak for the Secretary of Labor.

But has the Department of Labor consulted with the Department of Agriculture? And does the secretary of agriculture advocate also for these rule changes?

Ms. LEPPINK. I cannot speak for the secretary of agriculture. I mean, his statement is in the press release regarding his concern about ensuring the safety of children who are employed as hired farm workers in agriculture. He has also made the commitment and so has my secretary that the two agencies will work together when this part of the rule is repropounded. And, of course, in the part of the rule that is going forward with comments considered. And so consequently we have been working for probably over a year with the Department of Agriculture on the policy discussions related to this.

Mr. KING. And so he has been weighing in. And judging from the public statements that he has made, the secretary of agriculture is working in cooperation with the secretary of labor in advocacy for these rules?

Ms. LEPPINK. What I can say is that the Department of Labor is working with the Department of Agriculture on these rules. We

will be working with them on the repropoed parental exemption also. And so both agencies are fully engaged and we are working together.

Mr. KING. I will not press you further. Thank you very much.

Thank you, Mr. Chairman.

Chairman TIPTON. Well, you are about off the hook here. I do want to yield to the congressmen for the last series of questions on this.

Ms. LEPPINK. Okay.

Mr. CRITZ. And just in case you did not see, Punxsutawney Phil did see his shadow so there are six more weeks of winter. So just—

Ms. LEPPINK. Winter has not been so bad so far so I guess we cannot complain.

Mr. CRITZ. No. No. So just as a point of clarity, when you said repropoing the rule, is it only the parental exemption rule?

Ms. LEPPINK. Right.

Mr. CRITZ. It is nothing else?

Ms. LEPPINK. The repropoal is the parental exemption.

Mr. CRITZ. Just the parental exemption?

Ms. LEPPINK. Right.

Mr. CRITZ. Okay, just one final question. To give you some background, I used to work in my District for a Member. So part of my job was trying to figure out what was going on in Washington and what it was going to mean to our constituents.

Ms. LEPPINK. Sure.

Mr. CRITZ. And one place where I have concerns—because it is all based on interpretation—is that in the Federal Register, in the proposed rule it says “Department’s broad proposal to prohibit hired farm workers under the age of 16 from operating or tending any power-driven machinery, power-driven equipment operated by any source of energy, such as wind, electricity, fossil fuels, batteries, animals, or water, would all be considered power driven under this Ag Hazardous Occupation Order, as would any farm implement powered or pulled by an animal, a tractor, or any other power-driven equipment.” That is pretty broad.

Ms. LEPPINK. Right.

Mr. CRITZ. Does it include a wheelbarrow?

Ms. LEPPINK. No.

Mr. CRITZ. Are we sure?

Ms. LEPPINK. We will make that clear.

Mr. CRITZ. See, because interpretation can be very broad; it can be very narrow. And your interpretation could be extremely different from what someone else’s interpretation is of this.

Ms. LEPPINK. We have received many comments on just that part of the rule. We recognize, you know, it is always good to have 10,000 hypotheticals to help you sort of make sure that what you are doing is clear. So consequently, and I have heard about the flashlights and the battery operated screwdrivers. So believe me, we will be addressing those issues that have been raised in the comments so that there will not be that confusion.

Mr. CRITZ. Good. Just two more things.

In Pennsylvania, there are a lot of Amish.

Ms. LEPPINK. Yes.

Mr. CRITZ. And the farming is done on communal land where the parents may not actually own the farm. While there is a religious exception in federal law for the Amish, it only pertains to the schooling hours requirement. Given the critical role that farming plays in these communities, did the Labor Department consider any further exemptions?

Ms. LEPPINK. The proposed rule does not include any further exemptions for the Amish. I have to say that I do not know whether we got any comments on that. So that would be then an issue as to whether if we did, you know, whether that would be in the scope of the rulemaking. So I can be happy to have my staff let you know whether we received any comments. All the comments are public and posted on the website but there are 10,000 of them so I would be happy to make sure that my staff provides you with any information that we got related to application to Amish.

Mr. CRITZ. Okay. We actually have representation in the audience from the Pennsylvania Farm Bureau.

Ms. LEPPINK. Okay. So then maybe they can help you.

Mr. CRITZ. Yes, we can make sure that if they have not had an opportunity or did not even know what was going on, that they are made aware.

The final, closing comment is that, I think we have heard it from here and we are probably going to hear it from the panel as well, that family farming is a different animal than how traditional businesses are run. The interesting part about farming is the statistics I cited that safety has been increasing exponentially over the last 10, 12 years. One other thing that I think is interesting is that the education level of family farmers and farmers that I know across Pennsylvania has increased dramatically. What we know is that these are their children. Obviously there is going to be negligence at some point, and my hope is that we are not creating a rule or defining a rule because of one or two bad actors and imposing it on everyone else who is following the rules. That would be my closing comments.

I really appreciate your coming in. Thank you, Mr. Chairman. I yield back.

Chairman TIPTON. Thank you. And I interpret what I am allowed to do to extend it actually just a little bit.

Ms. LEPPINK. Oh, okay.

Chairman TIPTON. Okay. Congressman Schilling had another question.

Mr. SCHILLING. Thank you, Chairman. And Mark brought up a pretty good point. My cousin had a 2,000 acre farm that as kids we used to go there all the time. Would this also include recreational vehicles of the farm family? Like, for example, snowmobiles or minibikes? Are they not going to be able to allow kids, the farm kids to ride those? Those are motorized vehicles. Is that something that is going to have—to me this is very frustrating because it is more of the unintended consequences that the government puts forth. Is this something that is going to be clarified also, ma'am?

Ms. LEPPINK. Yes. This is a proposed rule. First of all, again, kids can do any work for their parents. So, you know, at any age, any job, any time they can work for their parents. Yes. We have

received comments on that. I am cognizant of that. I can assure you as the head of the agency that we will fully consider all of the things that have been brought up today regarding concerns, confusions, the issues that have been raised regarding the scope of the parental exemption. Every single one of them will have my personal attention to ensure that we are thinking through the issues that this Committee has raised.

Mr. SCHILLING. Awesome. Thank you very much. I yield back.

Ms. LEPPINK. Thanks.

Chairman TIPTON. Thank you, Congressman Schilling. And I think the last thing I would like to encourage you to do, you keep focusing on the family farm.

Ms. LEPPINK. Yes.

Chairman TIPTON. You have got to understand the ag community is a different world than downtown Washington, D.C. When we talk about, again, the grandparents, the neighbors that are there. And I think we are all going to be monitoring this and we will certainly appreciate any updates from you.

The Committee may have some additional questions regarding this matter so we may reach out to you with those and we would appreciate your response. And again, I would like to thank you for taking your time, Ms. Leppink, to be here with us today.

Ms. LEPPINK. It has been my pleasure.

Chairman TIPTON. This portion of the hearing is now closed.

[Recess.]

Chairman TIPTON. I will now continue with our second panel.

STATEMENTS OF CHRIS CHINN, OWNER, CHINN HOG FARM, TESTIFYING ON BEHALF OF THE AMERICA FARM BUREAU; KENT SCHESCKE, DIRECTOR OF STRATEGIC PARTNERSHIPS, TESTIFYING ON BEHALF OF FUTURE FARMERS OF AMERICA; BOB TABB, DEPUTY COMMISSIONER, WEST VIRGINIA STATE DEPARTMENT OF AGRICULTURE; RICK EBERT, VICE PRESIDENT, PENNSYLVANIA FARM BUREAU

Chairman TIPTON. And I would like to take a moment for our panelists to be able to explain the timing lights. Each witness will have five minutes to be able to deliver your testimony. The light will start out as green. When you have one minute remaining the light will turn yellow. And finally, it will turn red at the end of your five minutes. And I would ask that you try and keep it in that time limit but I will certainly be respectful of you in terms of letting you wrap up a comment.

I would like to introduce our first panelist here on our second panel, Chris Chinn of Chinn Hog Farm in Clarence, Missouri. She and her husband operate Chinn Hog Farm located in Clarence, Missouri. Chris and her husband are fifth generation agricultural producers and they currently operate a diversified operation that includes raising crops and livestock. She is testifying today on behalf of the American Farm Bureau Federation and will be able to provide an agricultural producer's perspective on the effect of these rules on family-owned small business farms. Ms. Chinn, thank you for appearing today and you may now deliver your testimony.

STATEMENT OF CHRIS CHINN

Ms. CHINN. Thank you, Chairman and members of the Subcommittee. I appreciate the opportunity to share my comments on the Department of Labor's proposed regulation and how it will affect farm families.

As you said, I am also here today on behalf of the American Farm Bureau Federation, the nation's largest general farm organization.

Last December, Farm Bureau and over 70 other agricultural organizations filed extensive comments in opposition to the Labor Department proposal. I would like to ask that those comments be included in the hearing record.

My husband Kevin and I are fifth generation farmers and we are the proud parents of two terrific kids, Rachelle, who is 14, and Connor, who is 10. Both of our children work on our family farm on a daily basis, just like Kevin and I did when we were growing up. It is a way of life in rural America but it is more than that. It is a way for us to instill important values in our children. Having the right work ethic, earning your keep, recognizing that if you set your mind to something you can accomplish almost anything. That effort and reward are related. And above all, to be careful when the job that you are doing entails risk.

In addition to the chores that our kids do on our farm, both our kids help their grandma and grandpa on their farm. Connor collects eggs from the hens for which grandma pays him for, and he also helps her clean out the chicken house. Rachelle helps grandma in the breeding barn with our sows and she helps breed those animals. She also uses the power washer in the hallways to help clean the hog barn.

Their childhood is a lot like mine was, except I did not get to grow up on a family farm. I spent lots of weekends in the summertime and days through the summer helping my grandparents on their family farm. I started driving a tractor when I was 12 years old. I milked the cows, I collected the eggs, I fed the livestock. I even cut weeds out of the bean field. And I also bucked hay bales. That was part of growing up on the farm and I can honestly tell you that I would not trade it for anything in the world.

But nearly every one of the tasks that I did as a teenager would be prohibited by the new proposed hazardous occupation order. Driving tractors is forbidden by HO No. 1. Milking a cow is prohibited by HO No. 4. Cutting weeds would be banned by HO No. 3. And building or repairing a fence would be banned by HO No. 6. I know that some people are saying that these regulations will not affect farm families, but I urge the members of this Committee to read the actual proposal.

Yesterday, the Department said they would repropose the parental exemption part of the rule. That is positive. But until we know exactly what they intend to do I think farmers and ranchers in agriculture are going to continue to be worried. To know why you just need to look at that original proposal. The Department said that once ownership of a farm is shared with persons other than or in addition to the parent the exemption does not apply. The proposed regulation also said that a child had to actually live with a relative for possibly three months to be exempt and that a period of less

than one month would not be sufficient for the parental exemption to apply. It also stated that a child who is exempt from the AG HOs when employed on his or her parents' farm would generally lose that exempt status when employed on a farm owned or operated by a neighbor or a nonparental relative such as a grandparent, aunt, or uncle.

When farm and ranch families tell you they feel threatened by these regulations, I hope you can understand why. I do not know how anyone can say that the Department of Labor is not fundamentally changing how they are going to enforce the law. The parental exemption is a critical part of this debate but it is not the only part. For instance, the Department wants to say that no youth under the age of 16 can work with any equipment that is operated by any power source other than human hand or foot power. That would eliminate a lot of equipment, including flashlights and garden hoses, which is not particularly hazardous. I do not think for one minute that Congress gave them that authority, and I certainly hope that you will not now.

People like Kevin and I, we do not need people in Washington, D.C., telling us what our children can and cannot do on our family farm. We are pretty good at doing that ourselves. Our children are never allowed to go near our bulls or the grain augers. They are not allowed to be around a tractor that is mowing hay unless they are inside that tractor in a buddy seat with a seatbelt on. They are not allowed to go near our feed mill mixer. They are not allowed to mow grass on hills or near buildings. And they are not allowed to power wash inside of a furrowing room yet.

I would also like to mention that my 14-year-old daughter Rachelle has been to the emergency room three times this year. Not one of these injuries was a result of something that happened on our family farm. Instead, they were school-related sports injuries. Never have my children been hurt on our family farm and never have they had a need to have to go to the emergency room because of something that happened on our farm. But my daughter Rachelle has went to the E.R. three times this year because of something that happened at school.

There is an overwhelming feeling in the agriculture community that the whole proposal is fundamentally flawed. While we are pleased about yesterday's decision to repropose the parental exemption, I think most of us in agriculture feel that it would have been much better had the Department withdrawn the entire rule.

I would like to thank Congressman Rehberg for his leadership in this issue and to each of you on this Committee who signed onto his letter last year. Thank you for allowing me the time to testify today and for allowing me to share my story with you. I would be happy to answer any questions that you might have.

Chairman TIPTON. Thank you, Ms. Chinn.

Our next witness is Kent Schescke. He is director of Strategic Partnerships for the Future Farmers of America. Kent has worked with the National FFA organization since 1991 and has served in his current position since 2009. As a youth, he participated in FFA programs and is here to testify regarding the effect of DOL rules on youth agricultural education vocational training programs.

Kent, if you would like to go ahead and deliver your testimony.

STATEMENT OF KENT SCHESCKE

Mr. SCHESCKE. Thank you, Chairman Tipton and members of the Subcommittee for allowing me to be here to speak.

As you shared in my introduction, I am a product of FFA. I have worked for 14 years in Missouri as an agriculture instructor, and I have had the privilege for the last 20-plus years to work for the National FFA.

We are here really today to talk about the impact of this, and it has been alluded to in some of the comments that were made in opening as well as the impact of this on agricultural education programs that are school-based programs. And we think that there are some issues that need to be addressed.

And to give you a little bit of background today, we have about 7,500 agricultural education programs across the United States. These programs are run by about 11,000 professionally trained teachers, meaning these are teachers that have degrees in agriculture or certification to teach, hired by their local school district to be agriculture education instructors. We have enrollment today of about nearly 800,000 students, high school students in these programs across the country. We have an FFA membership today of 540,000, which really represents an all-time high membership for our organization.

Agriculture education in public schools has been around for almost 100 years. The Smith-Hughes Act in 1917 really created these programs and today while the focus of agriculture has changed, our programs today really focus on the science and the business of technology of agriculture and helping young people prepare for careers in agriculture.

When it started the primary focus was, again, this dates it but young boys involved in agriculture. It was not until 1969 that we actually recognized young women and brought them into it. But really preparing young people for careers in agriculture.

The other interesting statistic is that two-thirds of the students we serve today come from non-farm backgrounds. These are students who live in rural America who are interested in agriculture or students who live in urban and suburban communities. And we feel this is important that we give them the experiential learning experiences that go along with agriculture as alluded to over in the comments.

Our program has got really three components. And in my testimony I presented a diagram that kind of illustrates that. For students to be members of FFA they have to be enrolled in an agriculture education program. That is somewhat unique. It is not just a club that they walk off the street and join; it is tied to this instructional program. In these programs this is where they learn the science business technology and there is also a heavy emphasis on safety and safety education because of the career preparation part. Helping people understand the hazards that are in agriculture and how by expanding their knowledge and understanding of it and the practices that they can work safely.

The second part of the program is what we call experiential learning or supervised agricultural experience. And again, it is an opportunity for students to take what they learned in the classroom and put it to application in a workplace setting. And that was

alluded to in the earlier discussion. That experience is very important for young people as they prepare for agriculture because they are able to learn the science, the business, the theory, but the contextual hands-on learning is a part of our motto. Actually, the FFA motto is Learning to do, doing to learn, earning to live, and living to serve. And that learning to do and doing to learn is an important part of what we believe and what is core to our program.

The third circle is really the FFA organization. And we provide a lot of rewards, recognition, motivation for those young people to take not only what they have learned in the classroom but also to the experiential learning programs and help them see how they can utilize that in their career aspirations, whether that is to continue in the production of agriculture or to work in many of the related areas. And for even students who are going into non-farm agricultural-related careers, that agricultural knowledge that they gained through the firsthand experience of working in production agriculture is a very important experience for them.

Probably some of our concerns about the proposed rule is really the role of the student learner exemption. And I would call your attention. The side by side comparisons exists on the Department of Labor's site. It looks at the current and the proposed. And in there it states that in the existing current role the student learner exemption kind of runs across all of the defined hazardous occupation areas. In the proposed rule it is limited to only the first two. And at the same time they have taken it from what was six areas and expanded it to 14.

So in our opinion, at least our definition of the rule is that they have severely limited the opportunities for students who are enrolled in these agricultural education programs to benefit from this experience by drawing it down to just two areas from now what is in the proposed rules 14 different hazardous occupation areas. And that is an area that we have concern with. We hope that is an area that the Department of Labor continues to work on this, continues to look at. In fact, we would have liked to have seen that one as well opened up in this parental exemption piece because we think there is as much work that maybe needs to be defined in that process as well.

And I want us to stop here and say that our teachers, their responsibility in this is to provide the supervision, to work with the employers, to work with the parents, and to come up with training programs that reflect the scope of the work that the students are to do, as well as make sure that it is done safely. Our teachers care about the safety of their students. They are very committed to making sure that they maintain that safe-working, and make sure that our students benefit from the experience.

Thank you and I entertain any questions.

Chairman TIPTON. Thank you so much.

Our next witness is Bob Tabb. He is deputy commissioner of the West Virginia State Department of Agriculture. Bob grew up on a dairy farm and has been involved in production agriculture his whole life. He is testifying today on behalf of his boss, the electric commissioner for the West Virginia Department of Agriculture, Gus Douglas. Mr. Tabb, you may now deliver your testimony and thank you for being here.

STATEMENT OF BOB TABB

Mr. TABB. Thank you, Chairman Tipton, Ranking Member Critz, and other members of the Subcommittee for inviting us to participate in one of the most important situations to affect agriculture for the future of this country. And it is about agriculture and young people.

I am Bob Tabb, and I am deputy commissioner of agriculture for the longest serving commissioner in the country. Gus Douglas is on his 44th year as the commissioner of agriculture for the State of West Virginia. And in West Virginia, the commissioner of agriculture is a constitutional officer. So he is elected by the officer and to represent the people. And that is why I am here today because we are representing the people of West Virginia along with NASDA, which is an organization we belong to of all 50 states and four territories.

I grew up on a dairy farm in Jefferson County, West Virginia, which is about 60 miles west of here. And having been from a dairy background the one thing I will share with the members today, this year dairy farmers get to do one thing they do not normally get to do. It is a leap year so they get to milk the cows two extra times this year. And the point of that is agriculture is commitment. It is not just an occupation; it is a way of life. And that is the part that I think some people do not seem to understand the affect that these type of rule changes can have on an industry so critical to this country.

West Virginia has over 23,000 small farms, and statistically a little bit higher ownership than the state of Pennsylvania. West Virginia actually has the highest percent in the country of owner-operated farms. A lot of small operations. In West Virginia and across this country—and this is a quote from Secretary Vilsack last month at a briefing I was at here in D.C.—but he said the average age of the American farmer is nearing 60 years old. And a lot of this focus is on the family farm and the children. But for me to do the math, when the average farmer is approaching 60 years old, that tells me there is getting to be less and less children under 16 that their parents are actually farming. So that increases the need not only to allow nieces and nephews and grandchildren and grandnieces and nephews but of other youth in the community.

As this population ages, they need help. And they care about their operations. The one thing that has not been brought out here today is liability. If these children are negligently injured or killed on a farm there is a price to pay. And there is no price to put on a child's life. But if they do serious violations, they have got penalties to pay. And the farmers that I know are not prone to go out there and just shamelessly put people in harm's way. I do not care whether it is their child. In fact, I am a grandparent. And I let my kids do things on the farm that I will not let my grandkids do. So I think if you want the next level of child protection, if you put the grandparents in charge of them there are a few things they might not get to do.

The National Institute for Occupational Safety and Health has made 14 recommendations. And although the Department of Agriculture is in agreement with some issues about instances of when you can and cannot use a cell phone, you know, working with anhy-

drous ammonia, some of these confined spaces with limitations, there are some things that can be done. But they need to be done in a reasonable manner.

The proposed change to—this is a quote from the Proposed Rule Change to Employment in Agriculture under Adverse Conditions states in part, The Department is asking for comments on whether it should create a new Ag HO addressing use exposure to extreme temperatures. Such an Ag HO could provide the youth under the age of 16 would not be permitted to work in agriculture occupations where the temperatures at which they are working exceed or drop below a certain temperature, factor in such things as humidity, wind velocity, and the degree of duration of physical exertion required by the work. It might also require that hours in direct sunlight be limited if the temperature reaches certain thresholds for long periods of time.”

Anyone who has ever farmed understands weather is the most unpredictable part of farming. To comply with this proposed rule change would most likely require one of two options. Hire a full-time meteorologist to document all the requirements and advise when youth under 16 could work. Or secondly, just simply limit farming if you rely on youth under 16 to stack hay, pick fruits or vegetables, feed or work with livestock, or just pull weeds because it does get hot and it does get cold on a farm.

Studies over the 11-year period from 1998 to 2009. I know I am about to run out of time but I appreciate your involvement of the 2011 fact sheet on childhood agriculture injuries and I would certainly be glad to answer any questions you may have relating to that.

Thank you, Mr. Chairman, and members of the Committee.

Chairman TIPTON. Thank you, Mr. Tabb. And I would now like to yield to Ranking Member Critz so that he may introduce the minority’s witness.

Mr. CRITZ. Rick Ebert is the Pennsylvania Farm Bureau’s vice president, a position he has held since 2004. Mr. Ebert, in partnership with his brother, operates a dairy farm where he milks 80 Holsteins and farms corn, alfalfa hay, barley, soy beans, and wheat on 450 acres. He was the 1983 recipient of the Westmoreland County Conservation award, and won the Charles E. Cohen Memorial Award, presented to the dairyman who has demonstrated superior management capabilities and provided outstanding leadership qualities within the industry. Rick, welcome, and please go ahead.

STATEMENT OF RICK EBERT

Mr. EBERT. Thank you. Chairman Tipton, Ranking Member Critz, and members of the Committee, I want to thank you for allowing me to speak at this hearing.

I appear before you today not only as a farmer but also as a parent. And I want to recognize my wife who is here with me today with the same concerns as parents who have kids on the farm. We have raised four wonderful children on a farm that are highly productive, respectable kids out in the community right now.

I must admit yesterday’s announcement by DOL regarding parental exemption was good news to the farming community, but the decision does not help American farmers. It only makes their cur-

rent proposed rule hurt a little bit less. And I would be remiss if I did not say that farmers are still concerned with what DOL might repropose. DOL must take great care in considering any changes to the parental exemption.

My farm is a partnership. DOL should not reserve the right to tell operators of a farm like mine that they cannot hire their children, nieces, nephews, or grandchildren to help during the summer months. My children help all feed cows. This involves direct contact with an animal. There is little or any risk at all in helping feed cows. Anybody here that has children, calves to my children are the same as anybody else's children getting a new puppy or a new kitten. It is the same idea for them. They enjoy doing it. It is a pleasure. There is hardly any risk involved.

Whether jobs involve animals or not, I am constantly mindful of each of the child's abilities and the task at hand. I match the child's ability to the task that they can complete. DOL's rules seek to limit the ability of kids to milk cows or feed calves. I also fear this rule will restrict the ability of youth to work with any livestock for the purpose of ag education. My school district is the only district in the county that still funds an ag education program, but in a current budget year for Derry Area School District, ag ed was cut by 50 percent. Last year we had two ag teachers instructing over 120 students in 14 classes. This year we are left with one ag teacher reaching 80 students in six classes. DOL's rule would have our remaining ag teacher rebuild his curriculum to achieve safety requirements and then try to squeeze in all the other aspects of farming and ag business.

The rule restricts 14- and 15-year-olds from farm activities unless they are enrolled in ag education and complete 90 hours of safety training. If you think about 90 hours of safety training and with a high school class of between 45 and 60 minutes, you are talking over 18 weeks or at least half of the school year that they are devoted to safety training only. And that only leaves that portion of the rest of the year for any type of career development. In my area there are several students who enjoy working on a neighbor's farm during the summer months for various reasons but they cannot be enrolled in the ag education program because their school does not offer it and because they are really not planning on a career in agriculture. But the work performed by these students is still valuable and needed and it allows them to earn a wage that they can put away for college.

As my boys were growing up they would help me put hay away. Working on the hay wagon and in a barn's hayloft occurs at elevations over six feet on my farm. DOL's height restrictions may be intended for 30-foot ladders, but unfortunately it would disallow the process of placing hay in storage on many farms.

Mindful of safety, I provided opportunities to my children to learn in the hands-on environment, whether it was an impact wrench, screw gun, power washer, or electric feed cart. My children were safely operating powered equipment on a farm with appropriate levels of adult supervision and safety precautions. If taken literally, DOL's standards would prohibit most activities around my farm. Without being harshly critical of DOL's position on power equipment, the days of hand and foot powered equipment has

passed. Technology has offered much safer and more efficient means to accomplish farm tasks. On my farm, no one operates equipment unless I am comfortable with their ability and the level of risk associated with their job.

Thank you for this opportunity and I entertain any questions at this time.

Chairman TIPTON. Thank you, Mr. Ebert. I appreciate your time and being here today.

I will go ahead and begin our questioning. And I would like to start with Mr. Tabb, if I may. I understand that Commissioner Douglas could not be here today because he is appearing before the Legislature's Budget Committee.

In a time of declining and tightening state budgets, will state education agencies and local school districts be in a position to provide more safety training? Or should DOL continue to allow federal extension services to provide those programs?

Mr. TABB. Thank you, Mr. Chairman.

We definitely believe that the programs that are in place are working. And the study that I will cite is the Childhood Agriculture Injury Study that was actually sanctioned by NIOSH, was done at WVU in Morgantown, and actually is one of the most current studies on childhood injuries that is out there. A lot of the data in this rule was old data.

But to show a 59 percent decrease in the amount of injuries over the last 11 years truly shows that education and technology have both helped to move this forward. So with the cutting budgets, what is available through Extension, through 4-H, through the current programs, if the numbers had gone the other way on this study I think there would be a different mindset because none of us want children to get injured.

Chairman TIPTON. Certainly. You know, in your testimony you addressed the Ag HO that is talking about extreme temperatures and you joked that in order to comply with the ever-changing weather it would probably be necessary to hire a full-time meteorologist. You have been around this. Do you not think most parents who supervise their children know when it is time to come in from the outside?

Mr. TABB. That. And not only the children but the employer, the farmer who has got them there, if he does not keep his help, whether it is his own children over 16, over 18, 14 to 16, if he does not keep them hydrated and in reasonable accommodations you are not going to get any work. You do not get productivity.

You know, I priced the Gatorade and that type thing to them but I just cannot understand. It is making the assumption that every farmer is some evil person who their goal is to have children harmed on their operation. I do not think the statistics show that of reporting and, like I said in my statements about the liability, you know, if you are negligent and you let somebody, whether they are 14 or 16 or 25, is negligently hurt on your farm operation, you have got something to deal with both with penalties and liabilities on lawsuits.

Chairman TIPTON. Thank you. I appreciate that.

Ms. Chinn, we probably have some other people in here that know what bucking bales means. I appreciated that.

Everyone has testified today that they are not only farmers but also a parent. In your experience, do other blood relatives, such as grandparents, aunts, uncles, all share that same level of concern for the well-being of our children?

Ms. CHINN. They do. You know, I love my children more than anything in this world and I would never do anything to put them in harm's way.

Chairman TIPTON. The government does not have to tell you to care about your children?

Ms. CHINN. No. They do not.

Chairman TIPTON. Okay.

Ms. CHINN. But my mother-in-law, she is more possessive of my children's safety than I could ever think about being. Someone made that comment earlier about being a grandparent and not letting your grandchildren do what your children do. My mother-in-law is a perfect example of that. My husband started going out in the hog lot out in dirt lots at the age of five behind his mom and dad. Luckily because of science and technology we have been able to move our hogs indoors now at a climate-controlled computer system that keeps it like air conditioning in the summertime and it is heated in the winter. So it is year round 70 degrees inside our hog barns. That is a very safe environment for our children to be in. But my husband as a child did not have that luxury. And my mother-in-law every day thinks about what she is doing with her grandchildren and how she wants to teach them how to care for the livestock and care for our environment so that someday they are teaching their grandchildren the same thing that she is doing. She would never, ever put our children in harm's way.

Chairman TIPTON. She would never tell them to run in front of a tractor?

Ms. CHINN. It is interesting you brought that up. My children learned at a very young age to get out of the way of a tractor, yet we had a state department worker who was there doing an inspection on our family farm that we had to ask to get out of the way so he did not get run over by a tractor.

Chairman TIPTON. The government expert. Okay.

You know, you mentioned that your 14-year-old daughter Rachelle visited the emergency room three times, never got injured on the family farm, injured at school. So do you believe there is a need for the Department of Labor and this administration to try and regulate so many facets of everyday life?

Ms. CHINN. No. I think the Department of Labor may be well intentioned but I do not think they fully understand what we do on our farms and our ranchers today. My children have never once been injured on our farm but I send them to school and I get phone calls that I need to take them to the emergency room because they have a concussion as a result of a basketball injury or their hip gets pulled out of place doing a layup. These are the types of phone calls that I get, and I have been there. And I have watched it happen. But I have never put my child in harm's way out on our family farm. If something is not safe for her to do I am not going to let her do it. Because when you get that phone call that your child has been hurt, there is nothing worse in the world. It breaks your heart and you want to take care of your child. And I do not need

the government coming out here telling me how to love my daughter because that is something that the day I gave birth to her was automatic. It was even before I gave birth to her that I loved that little girl.

Chairman TIPTON. Absolutely. Thanks. And you are leading the charge on basketball regulation I understand?

Ms. CHINN. No, no, no.

Chairman TIPTON. Mr. Schescke, I have here a letter from some of my local county commissioners in my district out of Delta County. In the second sentence of the letter it states skills learned by youths working on farms and in livestock production programs such as FFA and 4-H and teens on farm programs instill a lifelong ethic towards safety that is unparalleled by other education efforts." Would you agree with that statement?

Mr. SCHESCKE. I would. And I think the idea that students learn best in context. You can teach students about safety but when they see the real life application of that, I think that is where the opportunity to not only combine what we do in a classroom but then follow that right up with the ability for students to work in that environment and see the application. So many of the problems we have in our education system today is that kids learn something but they do not immediately see the connection or the context to it. And I think that the ability for our students to have this experiential learning and to work in agriculture, it brings into that context of yes, there are safety issues and things that they have to be aware of but the more they are educated on them, a lot of concerns I have heard come from one of our teachers is that if these rules were to go forward and our students really would not have the opportunity to be involved in experiential learning, then why would the unintended consequences may be actually a decreased amount of time in the instruction program on safety. As was noted, you know, to completely comply with what is proposed you would eat up over half of the year just teaching safety. There has to be a reasonable part of that. Safety is important and it should be not necessarily half a year but it really needs to be infused all the way through the instructional program so students are learning about livestock, they learn about safety. If they are learning about equipment, they are learning about safety. If they are learning about crops, they are learning about the safety aspects of that at the same time.

Chairman TIPTON. You know I am a country boy so when you are saying experiential learning, learning by doing is essentially what you are really talking about. Are you as concerned as I am about the provisions and the proposed rule that would prevent future generations from learning important skills—how to handle the hogs, techniques critical to farming as a result of DOL's hands-off approach?

Mr. SCHESCKE. I am. And part of it is that, you know, the comments made does not affect it but it does because of the limiting of the student exemption to only the first two HOs. Imagine how difficult it would be to emplace a student in a work situation, employment situation working on a farm where the list of things that they could not do was longer than the list they could do. And so that is where I think we would like to see if they do go forward

with this many HOs that that student learner cover as many of them that are it really makes sense to because, you know, how many employers are going to hire those student learners when they know that technically by the DOL standard 12 of the things are on the list they cannot do. Only two are allowed and that is a pretty narrow scope in terms of the opportunities for the students to learn experientially.

Chairman TIPTON. Thank you.

Mr. Ebert, a common comment we hear from stakeholders is typically a lack of a neutral outreach by federal agencies. What should DOL do that will better inform or better yet make you a partner in this rulemaking process?

Mr. EBERT. It is my understanding in the state we actually have a rule safety board and agency but it has not been funded. So how is an agency that has not been funded able to reach out to the community and help them with safety? I think it would be in DOL's best interest to work along those lines instead of imposing more rules on our farming community.

Chairman TIPTON. Okay, thanks. You know, if you were prohibited from working on your family's farm as a youth do you think that you would be as involved or involved at all in production today?

Mr. EBERT. No, not at all. I just would not have the experience and develop the love of the farm aspect and the animals and the industry.

Chairman TIPTON. Learn by doing.

Mr. EBERT. Right.

Chairman TIPTON. Great. Thanks so much. I would like to yield to Ranking Member Critz.

Mr. CRITZ. Thank you, Mr. Chairman.

I think my most important question is for Ms. Chin. So your daughter had her hip pulled out doing a layup?

Ms. CHINN. Yeah, she did.

Mr. CRITZ. What kind of basketball do they play in your neighborhood?

Ms. CHINN. Middle school basketball is very rough for girls I can tell you.

Mr. CRITZ. I was not allowed to play basketball because I played it like football, but it sounds like that would work well.

Ms. CHINN. We need helmets and pads.

Mr. CRITZ. Mr. Schescke, I think you mentioned that two-thirds of the FFA students are non-farming community students?

Mr. SCHESCKE. Roughly two-thirds of the students we serve today come from non-farm backgrounds. Meaning only a third of our students today fall in this category of having grown up on a family farm. This two-thirds is roughly divided between the students that we would consider rural non-farm, meaning students who live in those rural areas and those are the students that are probably most affected by some of this because their opportunity for that experiential learning is often working for farmers in that community in some kind of wage earning place that is part of this SAE, supervised agriculture experience program.

But also we have today roughly a third of our students who come from suburban and urban neighborhoods because the idea of agri-

culture in its broadest sense is not limited to just rural areas. Finding young people today, even in a suburban area, our largest programs in the country are actually in places like Chicago and Philadelphia. And it actually provides a lot of growth opportunity for our programs.

Mr. CRITZ. Thanks. I think we would all probably agree that working on a farm is hard work. When you have hard work, sometimes accidents will happen; I think that is just a natural progression. I was thinking about this—about defining where young people can work, whether it is a family farm or not a family farm and defining, of course, what a family farm is—obviously over time the procedures that you use in your operations and the equipment that you use changes. It seems to me that you would have training to make sure that the folks on your farm understand the new dangers, so to speak. It seems like DOL's purpose might be served better at the front end, not at the back end. I would open up to everyone for comment, if you just want to go from my right to left, because I would be curious what you do when you get that new piece of equipment or the new technique that you have to adjust; not only do your children have to know what the new processes are, but everyone up the chain as well. So, please.

Ms. CHINN. Right. Any time we get a new piece of equipment on our farm there is a training period. Nobody is allowed to use it until they have gone through the training period with it, they understand it, they are fully comfortable with the rules and the safety procedures that go along with that. The same holds true for our children. Any time that we feel like they are ready to move on to the next step they do not get to do it without hearing the proper safety guidelines to using that piece of equipment or to being around that older animal. We would never turn somebody loose without that proper training. It is not common sense. We do not want somebody to get hurt. We do not have time for somebody to get hurt.

Mr. SCHESCKE. I would like to comment. This is an important issue because from our standpoint the classroom instruction, our teachers are always in need of and looking for resources to better teach safety. And the idea of how do you have appropriate safety assessments. And we do pretty well for all the equipment. They are contained in a school and that is pretty much a given. When we go out into the workplace situations, that is where the teacher has to work with that farmer or the person who is employing that student and make sure that the student in that training agreement covers that.

It was mentioned in the earlier panel that this is something DOL is interested in. In fact, we would welcome that from an educational standpoint. I mean, sure, if there are resources that at DOL and maybe resources at USDA to make sure that for students who are in these situations that we are providing the best education and that we have the assessments in place to make sure that those students are qualified. Our teachers are striving to do the best they can with the resources that they have. And what the gentleman at the end of the table described is happening at a lot of our schools. You know, programs are under a lot of financial constraints and they are having to do more with less. So any assist-

ance rather versus regulation that could be given would be probably well received and appreciated.

Mr. TABB. Thank you. And the one thing in my context is a farm is actually an outdoor classroom and laboratory. And that is where they can get the hands-on experience through the vocational programs at the schools. But I will go back to these statistics again. You know, for the injury, per 1,000 farms, in 1998 on the farms were 16.6 per thousand. And in 2009, it was down to 16.8. That drop of 59 percent, if playing high school sports was an occupation then for every 1,000 players that you would have less than 1 percent injured during a year, I think not. Just because they are being compensated for something to do and a lot of kids love to do sports. In fact, they are encouraged to do sports. Physical activity is actually supposed to be good for you. And being on a farm in that environment, doing the physical activity, you do sometimes get hurt. I think if you look at it statistically it is a lot safer than playing organized sports.

Like I say, I was an EMT. I was a volunteer EMT in my community for 18 years, a lifetime member of the fire department, and I have been thinking about this for a couple weeks. In the 18 years that I was a certified EMT—I was not just the driver but I was a certified EMT for the back of that ambulance—I cannot still think of one instance, and I am glad, of either a fatality or a serious injury involving a farm youth worker. On a regular basis on Friday nights I went on the ambulance to the high school football team games on standby and very seldom we ever left there without transporting somebody to the hospital. You know, people get hurt, but I think this just has gone totally overboard and I think if they do a little bit of compared to what—if farming is the only thing you can compare it to, yes, it is going to be the most dangerous but it will also be the safest. But I think just looking at organized sports.

And with that they are making improvements. They are doing new head protection. And agriculture is doing the same thing. As a kid growing up, for me probably the biggest single improvement in agriculture that I have seen in my lifetime was slip shafts on power takeoffs. That was probably the most dangerous thing on a farm. When that thing started spinning, you know, all it took was a thread to get into that and you could just be wrapped up in that thing in a heartbeat. But all the technology that has come along, you know, over the last years, it is phenomenal.

And I am proud to be a farmer. I am not ashamed to be a farmer. So thank you.

Mr. CRITZ. Rick.

Mr. EBERT. I will sort of add on to his. You know, I can remember when I started working with my dad. The older machinery they had. The power takeoffs were open, you know, nothing was covered, belts and everything did not have shields on where today's modern machinery does. A lot of stuff has quick shutoffs, all that. And I have always taught my kids. I always matched my kid to the ability of what he could do and the task at hand. And I always stressed and they always learned if you are working with a piece of equipment and something goes wrong, the first thing you do is shut the whole thing down. Do not risk losing an arm, a finger, even life. And I think that is what farmers do today. They realize that farm-

ing is highly mechanized and highly computerized but there is still a lot of danger out there and there are things that we teach them for their safety and our safety for our children.

Mr. CRITZ. Well, and that is really the point we are talking about is that as Mr. Bartlett said earlier, many times regulations and the government comes in because the person or the constituent or the consumer does not have the mental wherewithal without our help. And many times, because things can be inherently dangerous, I mean, there is danger involved with farming and, there is obviously health and welfare, health and safety that have to be taken into account. But the point I was trying to make is that the farmer is doing exactly what the government wants, what anybody would want. And when it comes down to your own family, I think sometimes we push our own families a little harder than we might other families. But still, the safety of that individual is paramount.

One of the things that struck me regarding farming, as I delve more and more into the subject, is the current education level of farmers; I mean, the number of people in the farming community now with bachelor's degrees from college. The government saying maybe they are not educated, maybe they do not know so we have to help, is even further from the truth.

I really appreciate your testimony. Obviously the point is that we do a very good job of one size fits all. This is one place where maybe the previous size fit well, and if it is not broken, let us not fix it. So with that, Mr. Chairman, I yield back.

Chairman TIPTON. Thank you. Mr. King.

Mr. KING. Thanks, Mr. Chairman.

I want to thank all the witnesses. I do not know when I have listened to a whole panel of witnesses and agreed with very one of you. I appreciate the background experience you bring to this and the comments.

First, I think, Mr. Tabb, your comment about put the grandparents in charge, that really hits home. For some reason the reproduction part is out of our control and we realize how precious these kids are, especially when they are grandchildren. And not to diminish being a parent; I am both.

I appreciate your comments also, Ms. Chinn, and I wanted to say to you that your oral testimony was even better than your written testimony and I would suggest the congressional record of your testimony be very useful to put in a farm magazine and I would like to see that read in the urban areas if there is a way that we can advocate that through FFA or anywhere else because that picks up the flavor of this and the sense of what the way of life is like.

And I also, the comments about the inspector does not know to get out of the way but the kids do, yes, that is simple common sense. It transcends species. And if you have ever tried to herd confinement hogs on dirt you know that. If you have ever taken a kennel raised, field trial champion birddog out to the actual field and realized that that dog does not know how to get across the creek or through the fence, kids are the same way. If they grow up on the farm they learn these things incrementally. The best safety you can have is you watch those kids and you see what they know. You know where their weakness are. You know where the dangers are and you are constantly there to make sure they avoid the dangers,

including none of our little kids got near the limited-fed sows during gestation. That would be the most dangerous thing I can actually think of and horrifying included.

The statement that you testified, Mr. Tabb, I just looked it up here because the language struck home with me. Where the temperature is at which they are working exceed or drop below a certain temperature, factoring in such things as humidity, wind velocity, and the degree and duration of the physical exertion required by the work, da-da, in direct sun be limited, the temperature reaches certain thresholds for prolonged periods of time.

I just have to tell you that Marilyn and I raised three sons and they are grown now in their 30s. The oldest one sat down with me a couple of years ago and he said, "Dad, do you remember when you had us all working when it was 126 degrees heat index?" I said, "Yeah, I do actually. That was an unusual day but we had the forms set and we had to pour concrete and we made money." He said, "That is what you said, Dad. You said 'We made money.' But do you remember two days in a row when we were out driving sheet piling across the swamp when it was 60 below wind chill?" I said, "Yeah, I do remember that, too, because we did not have to mat the dragline and we made money." He said, "That is what you said, Dad. But what I wanted to tell you is that, you know, that is 186 degrees temperature range between 60 below and 126 above and no species other than your sons would survive such an ordeal."

But, you know, all three of those sons, they are grown up and they all work. They enjoy work. And work is an honorable thing. And the life that we have in rural America is among the most honorable that we have. And when it is threatened I am concerned about it and it comes to me in a lot the same way it does Danny Rehberg and many others that have had the benefits of living in this way.

I just think that it is a mistake for us to even think about—I guess they would say raising the standards; I would say lowering the standards—for youth to work because the work ethic and the way of life is so valuable. And I trust that we should have and the people that are the parents, the grandparents, the neighbors, the relation, and the mentors for these children should be adequate. I trust them and I trust the parents to make the judgment as to who they will trust their children's safety to.

And I would pose this question. Should we instead of adding regulation to agriculture, should we instead lift some of the regulations for nonfarm work for our youth so that they could learn a work ethic in the neighboring business. And should we allow parents to sign a waiver so that they could allow their children to go to work in a neighboring business with somebody that they trust rather than having more regulation tying this down and eventually choke off our work ethic, it would be better to allow that opportunity for many other children, aside and in addition to agriculture. And I start with Ms. Chinn.

Ms. CHINN. I think that would be a great idea. Our local newspaper in our town would love to be training young kids to just stuff papers. But he cannot because of the labor rules. He cannot hire a 13-year-old kid to come in and stuff inserts into his newspaper. But what a great thing for a child to learn, the value of hard work,

that when I work hard at something I am going to get paid for it. And then I can have that pride of ownership in that newspaper when it gets delivered into mom and dad's mailbox the next day.

These are things that our kids are not being allowed to do today. They are not learning this at a young age. But they all know how to play a video game real good. How does that benefit everybody in life? What these kid learn in a job, they are going to take with them as they grow older. And we are going to have a great workforce and we are going to have kids that know responsibility and the value of hard work. And that it does not matter how big that obstacle is, if you set your mind to it you can achieve anything.

Thank you.

Mr. KING. Thank you. Mr. Schescke.

Mr. SCHESCKE. Agriculture education is one of the few career and technical education programs that allows students to really get involved and engaged as early as middle school and junior high. In fact, most of the current technical education programs remaining outside of agriculture are really only limited to students in their junior and senior year in high school. And the advantage is that it is much easier under current regulations to make sure those students have that experiential learning. In fact, I would say that a lot of those—the part of the whole career technical education model that they struggled with the most is providing students the relevant experiential learning, learning by doing. Often they are creating that within the classroom.

But in our case, you know, the farm as it was alluded to by Mr. Tabb and others, is an opportunity to extend that learning environment out into the community and kids to get real life learning experience so they can actually save money. It helps them go on to college or do other things. It helps advance her career. And I think that is another part of this whole financial literacy piece.

Back to your comment about one of the inherited advantages young people in the rural America have is that because they have the opportunity to work in those situations and earn money, they become probably more financially literate and responsible with their funds than do their counterparts who have never had that experience.

Mr. KING. Thank you. Mr. Tabb.

Mr. TABB. Absolutely. You know, urban youth should be afforded the same opportunities that rural youth have. And since we do not have many urban farms, a little bit of container growing here and there. But growing upon a farm and working, I had five siblings. There were six of us kids. And one Sunday morning a lady came up to my dad and said, "Mr. Tabb," said, "your children are so well behaved in church I would like my son to sit with you one Sunday." And he said, "That is fine." And he said, "I would like to have him by Friday but Saturday morning at the very latest."

We did not have time to get in trouble. We were taught that work ethic at a young age. In fact, if you want to do something mandatory, put a work ethics requirement in anybody that graduates from high school. I think you would find that would be a real good part to a well rounded education. But allowing young people, whether they are in the country or in an urban area, to actually be able to learn something, learn a trade, learn how to change oil

in a vehicle or how to properly measure something, even put it together. Because I have been a tremendous proponent of vocational education. A lot of kids who are at risk, cannot see a reason to stay in school, if they can see practical application they will stay in school. If they can learn how to read calipers to be an auto mechanic or to figure how many cubic yards of concrete it is going to take for that footer of foundation, it is amazing how you can keep these kids involved. But if you have got to make them wait until they are beyond that threshold to have the curiosity to want to learn, you are starting to lose a lot of them.

Mr. KING. Thank you. Mr. Ebert.

Mr. EBERT. I think we need to back off on some of those regulations because I think kids today have so much opportunity to get involved in work-related activities and opportunities. Why do we want to stifle them? Let them start early. They are going to grow so much more and make America greater than what it is now by giving them that opportunity.

Mr. KING. And just briefly in closing to support a statement, I just added up the times that we have been to the emergency room. We have had two knee surgeries and a broke femur and none of them had to do with any of the work that those young men did. It all had to do with sports or recreational.

Thank you very much all of you witnesses. And I appreciate especially the statements made in conclusion here. And I yield back to the chairman. Thank you.

Chairman TIPTON. Thank you, Congressman King.

I appreciate the panel taking the time to be here. Mr. Ebert, I think you had a nice summation about the greatness of America. And we find it in the traditions of our agricultural community. And I certainly appreciate Ms. Chinn also, your notification. I think government maybe needs to hear that moms and dads, grandmas and grandpas, do not need government to tell them how to love their children and how to be able to protect them, that we see that caring here.

So I would like to thank all the witnesses for taking time out of their busy schedules for appearing today. You have all provided us with some great insights on how decisions made in Washington are affecting small businesses across our country, most in particular our ag community. I would also like to remind the Department of Labor as they make these decisions that 98 percent of the domestic farms are defined as family farms and that 96.7 percent of these are defined as small businesses. Small businesses are the greatest job creator and are responsible for on average 7 out of every 10 new jobs in our country.

It is my hope today that the Department of Labor will consider all the comments made here today when deciding whether or not to move forward with the NPRM or certain provisions within that NPRM . I think we can all agree that the safety of our youth should be of foremost concern and the initial purpose behind the proposed rule may have well been well intentioned, I would like to reiterate that I believe that as the majority of American farmers do, that this rule all together should have never been proposed. The rule as offered would change longstanding and proven programs that provide training to young people who are interested in

pursuing careers in agriculture. This is bad for agricultural small businesses and it is bad for the future of our nation's farming needs. I would like to recommend to the DOL to reconsider that rule in its entirety.

I ask unanimous consent that members have five legislative days to be able to submit statements and supporting materials for the record. Without objection so ordered. And this hearing is now adjourned. Again, thank you.

[Whereupon, at 12:22 p.m., the Subcommittee hearing was adjourned.]

TESTIMONY OF
NANCY J. LEPPINK, DEPUTY WAGE AND HOUR ADMINISTRATOR
WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON AGRICULTURE, ENERGY, AND TRADE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

February 2, 2012

Good morning Chairman Tipton, Ranking Member Critz, and Members of the Subcommittee. Thank you for the invitation to testify at this hearing on the child labor provisions of the Fair Labor Standards Act as they apply to agricultural employment, statutory provisions that were intended to protect the welfare of our nation's children and to ensure that they are not put in harm's way when they are hired and employed in agriculture businesses.

Mr. Chairman, the Department of Labor recognizes the importance of youth employment in instilling in young people a sense of responsibility, and the valuable role of agricultural work in promoting a sense of stewardship for the nation's land and animals. Furthermore, the Department appreciates and respects the role of parents in raising their children and assigning tasks and chores to those children on farms. As this testimony will show, policy proposals currently under consideration and recently reviewed by the public are intended to promote the viability of agriculture, while respecting and upholding the values and culture of our Nation's rural communities. We welcome the dialogue with this Committee and want to ensure that the views of the agriculture community as a whole are fully considered. After receiving a number of comments from the agriculture community on the need to provide the Department with further

input on the parental exemption, the Department announced on February 1, 2012, that it would re-propose the parental exemption portion of its recent Notice of Proposed Rule Making on child labor in agriculture.

The Department recognizes the unique attributes of farm families and rural communities. The re-proposal process will seek comments and input as to how the Department can comply with statutory requirements to protect children, while respecting rural traditions. The Department will continue to review the comments received regarding the remaining portions of the proposed rule for inclusion in a final rule.

Until the rule on the parental exemption is final, the Wage and Hour Division will apply the parental exemption to employment situations where the parent or person standing in place of the parent owns or operates a farm. This will include situations in which the parent or person standing in place of the parent is part owner of the farm as a partner in a partnership or as an officer of a corporation which owns the farm if the ownership interest in the partnership or corporation is substantial. This approach is consistent with guidance the Wage and Hour Division had provided to the public on its web site for the past several years.

Introduction

Since it was passed in 1938, the Fair Labor Standards Act (FLSA) has established minimum wage, overtime compensation, recordkeeping, and child labor standards. Congress recognized the need for minimum wage and overtime requirements to ensure that workers are fairly compensated for their labor, especially when working long hours for their employer. Congress

also knew that the overtime requirements would create the incentive for employers to spread available employment opportunities by encouraging them to hire more employees instead of working a few employees long hours.

In addition to wage protections, the child labor provisions were a cornerstone of the FLSA. At the time the FLSA was enacted into law, many States had passed child labor protections and Congress was building on these many decades of state laws to protect all children in the workplace. Congress recognized that, when children work, they should do so under conditions that do not put them in harm's way -- conditions that do not put at risk their health, well-being, or educational opportunities. One of the highest priorities of the Secretary of Labor has been and continues to be the prevention of the death and injury of children as a result of their employment in hazardous occupations.

Children serving as employees in agriculture businesses are among the most vulnerable of our nation's workers.¹ The fatality rate for young agricultural employees is four times greater than that of their peers employed in nonagricultural work places.² Between 2003 and 2010, 130 children 15 years of age and younger died on the job. Seventy-three percent of these were

¹ The National Safety Council ranks agriculture as our nation's most dangerous industry with 28.6 deaths per 100,000 adult workers (Injury Facts 2009 Edition, available at www.nsc.org). For youth 15 to 24, the rate is 21.3 deaths per 100,000 full time workers.

² See the Bureau of Labor Statistics' Report on the Youth Labor Force (Rev. 2000), Table 6.9, found at <http://www.bls.gov/opub/rylf/pdf/chapter6.pdf>.

employed in agriculture.³ The most common cause of agricultural deaths among child employees is farm machinery, with tractors involved in about a third of the fatalities.⁴

The injuries suffered by children employed in agriculture tend to be more severe than those suffered by children employed in industries other than agriculture. For example, in recent years the WHD investigated the death of a 15-year-old employee who was killed when he was thrown from the bucket of a front-end loader tractor attachment in which he was riding. Many tragic and unnecessary accidents involving children employed in agriculture never make the national news, but result in significant harm to the lives of those children and their families.

The Department of Labor has worked to enhance its enforcement, update its regulations, and expand its education and outreach to better ensure that children employed in agriculture businesses have positive work experiences that do not put them in harm's way. Through enhanced enforcement, using new strategies and all available enforcement tools, the WHD obtains employers' compliance with child labor laws by engaging in effective investigations; maintains their compliance with the assessment of civil money penalties; and, sustains that compliance through education and outreach to employers, employees and communities, often leveraging resources outside of the WHD. In addition to an effective enforcement and compliance strategy, we need up-to-date regulations that are responsive to changes in industries and are based on the Department's enforcement experience, the best available data, the

³ See the Census of Fatal Occupational Injuries at <http://www.bls.gov/iif/oshcfoi1.htm>."

⁴ *Id.*

recommendations of safety and health experts, and input from employers, employees and the public.

Statutory History

The enactment of the FLSA in 1938 provided Federal restrictions on the employment of children in private employment, including agriculture. The nonagricultural child labor provisions of the FLSA apply to youth under the age of 18. Children 17 and younger are prohibited from working in any occupation that the Secretary has designated as hazardous, and fourteen- and 15-year-olds are only allowed to work during periods and under conditions that will not interfere with their schooling or health and well-being. The agricultural provisions of the FLSA only apply to youth under the age of 16. Once a child reaches the age of 16, he or she may be employed in agriculture to do any work at any time.

When first enacted, the FLSA permitted the employment of children in agriculture as long as they were “not legally required to attend school.” Exemptions in State compulsory school attendance laws for young migrant agricultural workers, however, who were not subject to mandatory school attendance requirements, confounded this initial effort to protect children working in agriculture and allowed very young children to be lawfully employed in any agricultural employment at any hour of the day. Congress subsequently amended the FLSA in 1949 to provide additional protections to children employed in agriculture; specifically, the amendments prohibited children from working during school hours in the school district where they lived while employed. This change made it illegal for children 15 years old and younger to

be employed in agricultural work during school hours. Again, in 1966, Congress further strengthened the FLSA's child labor protections by prohibiting the employment of children under the age of 16 in agricultural occupations that the Secretary of Labor finds and declares to be particularly hazardous for children 15 years of age and younger. In 1974, Congress further restricted the agricultural work of youth under the age of 14 -- 12- and 13-year-olds can work in nonhazardous occupations outside of school hours if they have the consent of their parent or work on the same farm as their parent, and the employment of youth under the age of 12 is largely prohibited. *It is important to note, however, that these expanding protections have always allowed for the children of farmers to be employed on their parent's farm without restriction.*

When Congress enacted the FLSA in 1938, it included a parental exemption from the child labor provisions. This parental exemption makes sense, since parents have a unique, natural concern for the best interests of their children – including their safety and health. That exemption, as amended, allows a parent to employ his or her child in nonagricultural employment *except* in mining, manufacturing, or an occupation found by the Secretary of Labor to be particularly hazardous. When it amended the FLSA in 1966 to prohibit children under the age of 16 from performing agricultural work that is "particularly hazardous," Congress exempted *from this prohibition* a child who is "employed by his or her parent or by a person standing in place of his parent on a farm owned or operated by such parent or person."⁵ The parental exemption in agriculture applies not only to children who are employed by their parents on a farm that is

⁵ The FLSA's "parental exemption" to the child labor provisions applies both to parents and persons standing in the place of parents. In the interest of clarity, this testimony will refer to both as "parents".

owned by their parents, but to children who are employed by their parents on a farm that is *operated by their parents*, provided that children working on farms operated by their parents are working outside of school hours. Of course, the parental exemption is not needed in agricultural employment once a child reaches the age of 16; at that age, children may perform any agricultural work at any time, whether or not they are employed by their parents.

In summary, under the statute, children aged 16 and older may be employed to work on any farm, in any farm job, at any time. Children aged 14-15 may be employed in non-hazardous agricultural jobs outside of school hours. Children aged 12-13 may be employed outside of school hours in nonhazardous agricultural jobs on farms where their parents are also employed or if the children have written parental consent. Children under the age of 12 may be employed on small farms not subject to the FLSA minimum wage if the work is performed outside of school hours, in non-hazardous agricultural jobs, and if they have parental consent⁶.

Wage and Hour Efforts

Unfortunately, even with current laws on the books, there are employers who continue to illegally hire and employ children to work in hazardous jobs in agriculture businesses. Child farm employees are still killed or injured on the job, and one child injured or killed on the job is one too many. It is also not uncommon for WHD to find very young children working illegally in the fields exposed to numerous hazards including pesticides, dangerous machinery, and other

⁶ "Small" farm means any farm that did not use more than 500 "man-days" of agricultural labor in any calendar quarter (3-month period) during the preceding calendar year. "Man-day" means any day during which an employee works at least one hour.

hazards. The Phoenix WHD District Office found children as young as 10 and 11 years old who had been illegally hired by farm labor contractors to work in the fields during the fall chili pepper harvest. Our WHD McAllen District Office found children as young as 9 and 10 harvesting onions – and a separate investigation found a child, 6-years old, also illegally employed to harvest onions. Enforcement experiences like these make increasing compliance with federal child labor protections one of my agency's most critical priorities.

WHD has over the last three years systematically enhanced its enforcement activities, including increasing the number of enforcement personnel, establishing a directed enforcement strategy, and utilizing all the enforcement tools provided by the FLSA, in an effort to more effectively and broadly obtain compliance with the laws applicable to the agricultural industry. Unlike the FLSA minimum wage and overtime provisions, the statute does not provide for a private right of action to address illegal child labor, thus making the agency's role in safeguarding young workers all the more important. Furthermore, a robust enforcement presence that ensures all agricultural workers are paid the wages to which they are legally entitled reduces parents' need to bring their underage children to work to supplement the family income.

Rulemaking

In an effort to ensure that we protect and keep working children safe while not limiting their opportunity to be employed in positive work experiences, the Department of Labor has for a number of years been reviewing the Federal child labor regulations. In May 2010, the Department issued final regulations that updated the child labor protections in nonagricultural

employment. These new rules reflected the most substantial changes to the nonagricultural child labor provisions in over 30 years. The modernized rules not only identified additional jobs that are too hazardous for children to perform but also added to the jobs young workers can safely perform.

Once the revisions to the child labor regulations in nonagricultural employment were completed, the Department then turned to modernizing the regulations governing employment in agriculture, targeting the work that is most likely to result in a child's death or serious injury. The current federal agricultural child labor rules were issued over forty years ago and have never been updated or revised. In 2010, WHD held two listening sessions prior to publishing the proposed rule, one for worker advocates and one for the USDA and its stakeholders.⁷ On September 2, 2011, the Department published a Notice of Proposed Rulemaking (NPRM), suggesting changes to the child labor regulations to better protect young workers employed in agriculture from hazards by updating and enhancing the agricultural hazardous occupation orders. Essentially, the Department's NPRM is proposing to update the agricultural child labor regulations to bring them into the 21st century based upon the WHD's own enforcement experience, recommendations made by the National Institute for Occupational Safety and Health, and a commitment to bringing these rules in line, where allowed by the statutory provisions, with the more protective rules that apply to children employed in nonagricultural occupations. We have received over 10,000 comments on the proposed rule, and will carefully consider them as we draft a final rule.

⁷ This is in addition to three separate meetings the Department held in March 2003 (one each with the researchers, advocates, and employers) after the National Institute of Occupational Safety and Health ("NIOSH") report was released.

The proposed rule only limits children who are age 15 and younger and serving as employees on a farm not owned or operated by their parent (or person standing in the place of the parent) from performing the most hazardous jobs. The Department's proposed rule also only applies to situations where there is an employment relationship. In other words, a child of any age could, for example, assist a neighbor to round up loose cattle that have broken out of their fencing because that would not establish an employer/employee relationship. Nor would the regulation apply to situations where a child is raising a pig as part of her 4-H project, or taking the pig she has raised to sell at a county fair or market on her own behalf. And, even if an employment relationship is established a child could still help a neighbor with chores such as hand harvesting crops, detasseling corn, bucking hay onto a trailer, mending fences, and performing many other tasks.

Many of the proposals in the NPRM relate to updating the hazardous occupation orders that limit the agricultural employment of youth under the age of 16 unless the parental exemption applies. These hazardous occupation orders have not been updated for 40 years. The NPRM proposes to amend those orders to, among other things:

- Prohibit child farm employees who are 15-years old and younger from operating most power-driven equipment, including tractors and other hazardous farm implements. A similar prohibition against the operation of power-driven equipment has existed for 14- and 15-year-olds in the nonagricultural child labor provisions for over fifty years. However, "bona fide" student learners – those enrolled in agricultural vocational education programs recognized by state or local authority – age 14 and 15 would still be permitted to operate certain tractors (when equipped with proper rollover protection

structures and seat belts) and many hazardous farm implements, provided that they meet certain requirements.

- Limit the “student learner” exemption to the prohibition against 14- and 15-year olds operating tractors and other heavy machinery to only those children who are enrolled in vocational education programs offered by a state or local educational authority, or a substantially similar program conducted by a private school, and have completed 90 hours of instruction in agricultural education. This would scale back the current exemption, which is also available to children who have taken tractor and farm machine certification programs. The proposed rule would not eliminate safety programs that are provided by organizations such as 4-H and the FFA. The Department of Labor fully supports the important contributions of these organizations and recognizes the critical role they play in teaching and training children about best practices in agricultural work, which have a greater purpose than issuing the certifications required by the current federal child labor regulations.
- Strengthen the current child labor prohibitions for agricultural work with animals; in timber operations; in manure pits; in fruit, forage, or grain storage silos or bins; and in pesticide handling. New agricultural hazardous occupation orders, similar to those applicable to children employed in nonagricultural workplaces, would as proposed prohibit hiring farm workers under the age of 16 years for such tasks as construction, wrecking, demolition, excavation, roofing, and working at heights greater than six feet. Under the proposed rule, children who are 15 years of age and younger could generally

still be employed to perform many nonhazardous jobs on farms such as gathering eggs, detasseling corn, weeding gardens, mucking out stalls, mending or painting fences, hand harvesting, and feeding and watering farm animals. Much of the work performed on farms would still be available to children hired to work. Only the most hazardous jobs would be off limits.

- Prevent children from being hired in the cultivation, harvesting, and curing of tobacco to reduce the risk of green tobacco sickness.
- Create new agricultural and nonagricultural hazardous occupations orders that prohibit child employees from using electronic devices, including communication devices, while operating power-driven equipment, including motor vehicles and tractors. Injuries and deaths to workers of all ages caused by the distractions presented by such electronic devices have increased over the last few years with the advent of new technologies. The proposed rule does not, however, prohibit child employees from using two-way radios to communicate on tractors, trucks or combines when the vehicle is parked, or to listen to one-way radios or other music devices – as long as the device is operated “hands free” without headphones or ear buds. The proposed rule also would not prohibit a child from glancing at or listening to a navigational device, provided that the destination and route are programmed while the vehicle is not in motion.
- Create a new nonagricultural hazardous occupation order that would prohibit employing children under the age of 18 in all work performed in conjunction with storing,

marketing, and transporting farm-product raw materials. Both the WHD and Occupational Safety and Health Administration (OSHA) are conducting initiatives within the grain storage industry to reduce injuries and deaths. Occupational injury and fatality rates are very high in the farm-product raw material wholesale trade industry.⁸ In the last two years, the Department has investigated cases involving: (1) the deaths of three young workers employed in two different grain storage facilities; (2) the serious injuries of two youth who each lost a leg to a power-driven auger while working in a grain elevator; and (3) the serious injury of a 14-year-old girl who was stampeded by a calf at a livestock auction. Under the proposed rule, children under the age of 18 would be prohibited in nonagricultural employment from working in such establishments as country grain elevators, grain elevators, grain bins, silos, feed lots, feed yards, stockyards, livestock exchanges, and livestock auctions. The existing agricultural hazardous occupation orders already prohibit much of this type of work when it is performed by children under the age of 16.

The NPRM also proposes to:

- Increase transparency with respect to the current assessment of civil money penalties for child labor violations. The Department proposed to incorporate the civil money penalty guidance set forth in the Wage and Hour Division Field Assistance Bulletin No. 2010-01, Assessment of Child Labor Civil Money Penalties⁹ that was issued in January 2010 to address the 2008 amendments to the FLSA that increased the amount of CMPs that can

⁸ National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders (July 2002) at 112.

⁹ Available at http://www.dol.gov/whd/FieldBulletins/fab2010_1.htm.

be assessed for a child labor violation that causes the death or serious injury of an employee under the age of 18. The Department believes that the complete transparency of the child labor civil money penalty process will facilitate the administrative assessment and collection of the penalties, increase compliance with the child labor provisions, and reduce occupational injuries and deaths of child workers.

The notice and comment period on this proposed rule, which was extended for an additional 30 days beyond the typical 60-day period, has allowed for significant and robust comment from all of our stakeholders, including many members of Congress. The Department will carefully consider those comments as it develops a final rule. The Department recognizes the unique attributes of farming communities and rural culture and notes that young people often assist neighbors, grandparents, and other relatives on specific tasks. As such, comments and input will be viewed in that light.

Compliance Assistance

WHD does not just rely on enforcement and updating its regulations to achieve and sustain compliance with the nation's child labor laws. WHD has always considered that providing information to employers and employees, including those in the agricultural industry, about their responsibilities and their rights is a critical part of an effective strategy for achieving compliance with the laws we enforce. The Division's staff is available to provide assistance to agricultural employers, whether it is in person, over the phone, by e-mail, to determine whether they are in compliance and what steps they should take to achieve compliance. In the past year, WHD has

conducted nearly 900 outreach seminars, conferences, speeches, symposiums, panel discussions, and presentations where the target audience was employers, employer representatives, human resource professionals, and/or employer associations. The WHD also makes extensive and comprehensive guidance in many forms available to all employers and employees on our website (www.dol.gov/whd). This guidance includes fact sheets, field assistance bulletins, e-laws, and opinion letters. In whatever form the guidance takes, the WHD endeavors to find ways to assist employers and employees and to help them understand how the laws the Division enforces apply to their situations.

Results

In recent years, WHD's multi-faceted approach to compliance with child labor laws has made a real difference. In 2009, WHD embarked on an enforcement initiative in the blueberry fields of North Carolina, New Jersey, and Michigan. When the harvest began, WHD investigators—equipped with the necessary language skills—were in the fields. As blueberry crews moved from one state to the next, WHD offices in those states shared information and investigators so that they followed the harvest to ensure the violations found and mitigated in one area did not resurface in another. Additionally, WHD investigators visited the farms at different times of the day, including in the early morning hours and on weekends, to monitor and ensure compliance with the wage and child labor provisions of the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act.

As a result of these investigations, WHD found significant child labor and other labor-related violations. In addition to assessing penalties, however, WHD took a comprehensive approach to ending the dangerous practices it had uncovered. Our staff met with employer associations, farm groups, community organizations, and state and local agencies to be sure that employers understood their obligations and workers understood their rights. When WHD went back into the blueberry fields in 2010, there were no children working unlawfully in those fields.

In conclusion, one of the Department of Labor's highest priorities is to ensure that children are protected from illegal employment in prohibited hazardous occupations, and that those who are eligible to work have safe and appropriate work experiences. Children working in agriculture are permitted to do more work at younger ages than children working in other industries, they suffer more fatalities than they do in nonagricultural industries, and their work-related injuries tend to be more severe than injuries to children working in nonagricultural industries.¹⁰ For these reasons, through enforcement, regulation, and outreach, the WHD is committed to obtaining, maintaining, and sustaining compliance with our nation's agricultural child labor laws.

¹⁰ See *Child Labor in Agriculture: Changes Needed to Better Protect Health and Educational Opportunities*, GAO Report, August 1998.



**Statement of the
American Farm Bureau Federation**

**TO THE
HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON AGRICULTURE, ENERGY AND TRADE
REGARDING: THE FUTURE OF THE FAMILY FARM: THE EFFECT OF
PROPOSED DOL REGULATIONS ON SMALL BUSINESS PRODUCERS**

February 2, 2012

Presented by Chris Chinn

Owner, Chinn Hog Farm

Testifying on Behalf of the American Farm Bureau Federation

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify this morning. My name is Chris Chinn. My husband, Kevin, and I are fifth generation farmers. We are blessed to be the parents of two wonderful children, Rachelle, 14, and Connor, 10. Both of our children do chores around the farm and they are compensated for their work; they also work on their grandparents' farm. The income they earn helps to pay for their 4-H livestock and the feed expenses associated with their livestock. Both of them have shown hogs and heifers at the county fair since they were 9 years old. I am grateful for the chance to provide the committee with a farmer's first-hand reaction to regulations proposed by the U.S. Department of Labor (DOL) – how these regulations could affect farm families, the ability of youth to work in agriculture, and the desire and goal of parents like Kevin and me to pass on to our children the traditions and values we hold.

The DOL proposal was only unveiled last September, yet, it has created a firestorm among farmers and ranchers around the country, and for good reason. Despite assertions by the department that it would not affect farm families like mine or would not change how DOL administers the law, there is virtual unanimity within the agricultural community that these regulations would have an enormous impact on farm families.

To buttress that claim, let me underscore that today I am testifying not only on my own behalf but on behalf of the American Farm Bureau Federation (Farm Bureau), the nation's largest general farm organization with more than 6 million member families. Farm Bureau represents farmers in virtually every commodity, in every state. Farm Bureau has registered strong opposition to DOL's proposed regulations. On Dec. 1, Farm Bureau led a coalition of more than 70 agricultural organizations in filing comments to the department. Those comments outline in detail the concerns raised by the DOL proposal. I have included a copy of these comments as an attachment to my testimony and would like to request that they be included in the hearing record.

For the record, let me share with the subcommittee my background and experience and that of my family.

My husband Kevin and I are co-owners of Chinn Hog Farm, a 160-acre farm that includes a 60 head cow-calf operation as well as hogs. We rent 300 acres of row crop land. From time to time, my husband will help care for his parents' cattle, and we are part owners with my in-laws of the family feed mill, which is a limited liability corporation (LLC). My parents-in-law own a hog farm, which is a Subchapter S corporation.

I did not grow up on a farm – at least not literally. But as a child, I was a frequent visitor at my grandparents' farm, on weekends throughout the year and through much of the summer. While there, I pitched in like everyone else. I drove tractors in the hay field starting at the age of 12. I helped milk cows, gathered eggs from the chickens, cut weeds out of the soybean fields, helped build fencing, fed the hogs and cattle, and helped buck hay bales – and when I was in the hay loft, I can pretty much guarantee it was more than 6 feet off the ground. If the proposal you are examining today were in effect then, my upbringing and childhood would have been far different and much less fulfilling. I think I can honestly say I would be a different person. I wouldn't give up what I learned for anything in the world. And my husband and I very much want to pass on that kind of upbringing to our own children.

When I look back on my childhood, it distresses me to have DOL – or anyone else – think that my parents and grandparents did not have my best interests at heart. For DOL to suggest – as they do in their proposed regulations – that my grandparents were violating the law almost takes my breath away. But based on the proposal they intend to make final, they are saying that our family farm was violating federal law. I could not disagree more – and I'll bet most members of Congress feel the same way. If I could, I would like to walk you through the DOL proposal to show you what an enormous impact this rule would have had on my childhood and how it might affect my own children.

Nearly every one of the tasks I just mentioned would be proscribed by DOL. Just to mention the most obvious:

1. Driving tractors is forbidden by proposed Hazardous Occupation Order (HO) #1.
2. Milking cows would most likely be prohibited by proposed HO #4.
3. Cutting weeds would be proscribed by proposed HO #3.
4. Building or repairing fencing would be prevented by proposed HO #6.

Today, I am passing on to my own children the lessons I learned as a child. I believe it is important for them to have the right work ethic. To learn what it is to earn your keep. To recognize that when you put your mind to do something, you can accomplish a lot. That effort and reward are related. And above all – to be careful when the job you are doing entails risks.

These are important life lessons. I can't think of a better place to learn them than on a farm. Let me give you an idea of some of the typical kinds of work our children do:

- Conner, my 10-year-old, will collect eggs from hens owned by his grandparents. Grandma pays him for this chore four days a week. The other three days are just normal chore days for him. He also helps clean out the chicken house.
- Rachelle helps her grandma breed sows inside the hog barns, for which she is compensated. She uses the power washer in the barns to wash alley ways. She also feeds the sows. She fills vaccination syringes for her Grandma. She isn't comfortable giving vaccinations yet so we don't allow her to do that. When she is ready, we will train her to do this the correct way.
- Rachelle and Conner both mow for their grandparents in the summer time.
- Rachelle paints around the hog farm in the summertime and is paid for it.
- Rachelle and Conner both help move sows around in the hog farms.
- Both kids help in the summer on weaning days moving weaned pigs onto a trailer.

These are just a few examples of the kinds of work we have our children do. In addition to these tasks, both children help Kevin and me on our own farm and at the feed mill.

It's pretty clear what DOL doesn't want youth to do. They don't want them working with livestock. Working at heights greater than 6 feet. Working on tractors. Working with power-driven equipment. Working on occupations related to construction. So the key question for us then becomes: Are we covered by the parental exemption or not?

My children work on their grandparents' farm but they do not live with them. My grandparents' farm is a Subchapter S corporation and the feed mill is a limited liability corporation (LLC). As I and thousands of farmers around the country read the proposed DOL regulations, my children would not be allowed to work as they do now. And I can assure members of the subcommittee, my experience is typical of farm families across the country.

Our concern is that, in a number of places in its regulations, DOL is clearly seeking to limit the parental exemption. The proposed regulation states:

“Only the sole owner or operator of a farm is in a position to regulate the duties of his or her child and provide guidance. Where the ownership or operation of the farm is vested in persons other than, or in addition to, the parent or person standing in place of the parent, such as a business entity, corporation, or partnership (unless wholly owned by the parent(s)), the child worker is responsible to persons other than his or her parent, and his or her duties would be regulated by the corporation or partnership.”

[Proposed 29 CFR 570.123 (1), *Federal Register* page 54880]

Later in the proposed regulation, DOL states that a relative, including a grandparent or aunt or uncle, might be covered by the exemption but the regulation makes it contingent on the youth actually residing with the relative for more than one month. DOL states explicitly: “Generally, a period of less than one month would not be sufficient for the parental exemption to apply in such situations.” [Proposed 29 CFR 570.123(2), *Federal Register* page 54880]. Elsewhere in the regulation, DOL states: “It is important to note that a child who is exempt from the Ag H.O.s when employed on his or her parent’s farm would generally lose that exempt status (not be exempt) when employed on a farm owned or operated by a neighbor or non-parental relative.” [*Federal Register* page 54841]

What DOL says in the regulation seems pretty evident – regulators want to narrow the parental exemption as much as they can. But at the same time, they claim that they are not changing anything. But I know from my own experience growing up and from that of my friends, neighbors and fellow farmers, what DOL is proposing represents a wholesale change in how they interpret the law.

It is also concerning that DOL and others in the government claim that farmers are merely misinterpreting the regulation and that it is all a matter of confusion. For instance, in December, on the secretary’s blog at the U.S. Department of Agriculture (USDA), the Secretary of USDA states that:

“There is nothing in the proposed rule that affects the ability of parents and families to assign chores and tasks to their children. Further, the proposed rule respects the various ways that farms are structured in rural America, including partnerships and LLC’s.”

This seems to directly contradict the DOL proposal itself, wherein DOL says that the parental exemption does not apply to “an institution or facility, such as a corporation, business, partnership” or other establishments. The rule also appears to be contradicted by DOL’s own Field Operations Handbook, which states that “‘Owned by’ the parent or the person standing in place of the parent includes part ownership as a partner in a partnership or as an officer of a corporation which owns the farm if the ownership interest in the partnership or corporation is substantial.” At a minimum, if there is confusion over what DOL is trying to do, that confusion has been caused by DOL. But if you look at the proposed regulation in its entirety, it is pretty clear why farmers feel DOL will take the strictest reading and prevent youth from working on farms wherever they can.

For instance, DOL has the authority to designate occupations that are “particularly hazardous.” But it appears they have gone well beyond that authority in the proposal. In HO #2, for instance, they have outlawed youths under 16 from operating any equipment that is “operated by any power source other than human hand or foot power.” That would appear to include battery powered tools like screwdrivers or flashlights. It also appears to mean that a garden hose, which is powered by water pressure, would be off limits as well. It is simply nonsense for DOL to think Congress gave them the authority to outlaw 15 year olds from watering a lawn.

DOL and others may want to tell you that that they are just trying to protect children – as if we are not! Please don’t be misled by such claims, and I’ll start with my own farm. As my husband and I teach our children about working on the farm, we supervise them and their activities. They are taught what to do and what not to do. We also teach them that there are certain things they absolutely may not do:

- They are never allowed to be near bulls.
- They are never allowed around grain augers.
- They are never allowed to be around a tractor that is mowing hay unless they are inside the cab of the tractor in a buddy seat with a seat belt on.
- They are not allowed to go near the feed mill mixer, which is in the basement of the mill.
- They are not allowed to mow grass on hills or near buildings.
- They are not allowed to power wash farrowing rooms yet, only alley ways where you only wash the ground.

I also might mention to the subcommittee out that my 14-year-old daughter, Rachelle, has visited the emergency room three times this year. Not one of those visits was due to working on the farm. They were all due to school sports injuries. My children have never been injured on our farm working, and they have never gone to the emergency room from working on our farm. Rachelle has been hurt more at school than on our farm.

Farmers and ranchers have been greatly encouraged by efforts in the House of Representatives and in the Senate to prevent DOL from proceeding with this rulemaking. Congressman Denny Rehberg sent a letter to DOL in December signed by a bipartisan group of more than 150 members of the House. Many of you signed that letter, and I want to thank you for your help. In the Senate, Senator Jerry Moran also sent a letter with more than two dozen senators’ signatures.

It is clear to all of us in the agricultural community that merely "tweaking" the rule will not fix something that we believe is fundamentally flawed. DOL clearly does not understand the farming community, does not understand how farms are organized, how farm families help one another, does not appreciate or grasp what it is like to live in rural America, nor does the department seem to have much respect for the ability of farmers and ranchers to look out for the well-being of their children.

In my view, and that of nearly the entire agriculture community, the DOL proposal is far too broad and would have a negative impact on farm families like my own. I hope the members of the subcommittee will work with us in getting the rule withdrawn so that we can preserve our traditions and our way of life.

Thank you again for this opportunity to testify. I will be pleased to answer questions.



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

Testimony of Robert Tabb

On Behalf of The West Virginia Department of Agriculture

Before the Committee on Small Business

Subcommittee on Agriculture, Energy and Trade

**"The Future of the Family Farm: The Effect of Proposed DOL Regulations on
Small Business Producers"**

Thursday, February 2, 2012, 10:00 a.m.

2360 Rayburn House Office Building

Washington, DC

Good Morning. Thank you Chairman Tipton, Ranking member Critz and members of the Subcommittee on Agriculture, Energy and Trade for allowing me to speak.

I am Bob Tabb, Deputy Commissioner for the West Virginia Department of Agriculture. I am a fourth generation farmer from Jefferson County in West Virginia. I grew up on a dairy farm there and have been involved in Agriculture my whole life.

I am honored to testify on behalf of Commissioner Gus Douglass, the longest serving Agriculture Commissioner in the United States.

West Virginia has over 23,000 farms, many of which are small operations who rely on part-time help. In West Virginia and across the country the average age of our farmers is approaching 60 years. If the Department of Labor's proposed rule changes on Child Labor Law are

Robert Tabb Testimony
February 2, 2012

enacted, we believe the effect will be detrimental to an industry that takes great pride in producing the safest, most plentiful and most economical food in the world.

The National Institute for Occupational Safety and Health (NIOSH) makes fourteen (14) recommendations concerning the existing agricultural hazardous occupations orders (Ag H.O.s). While we agree with some of the recommendations, such as related to the use of cell phones (in certain instances), safe handling of pesticides, blasting agents, and anhydrous ammonia, we strongly disagree with limiting the working height on a ladder to six (6) ft. This will prohibit youth from picking tree fruit above six (6) ft., or even putting up hay in hay lofts, as well as doing routine farm chores such as painting and repairing barns. The limitations in the rule for operating tractors will stop the pulling of a hay wagon, or transporting hay to cattle, and other farm tractor related activities.

The proposed rule change to prohibit youth under sixteen (16) years of age from working with any male equine, porcine or bovine older than six (6) months will further limit the opportunities for youth to participate in the normal activities of raising livestock. This proposed rule would even prohibit youth under sixteen (16) from showing these male animals at fairs and festivals.

The proposed rule change to "Employment in Agriculture Under Adverse Conditions" states in part "the Department is asking for comments on whether it should create a new Ag H.O. addressing youths' exposure to extreme temperatures. Such an Ag H.O. could provide that youth under the age of sixteen (16) would not be permitted to work in agricultural occupations where the temperatures at which they are working exceed or drop below a certain temperature, factoring in such things as humidity, wind velocity, and the degree and duration of the physical exertion required by the work. It might also require that hours in direct sun be limited, if the temperature reaches certain thresholds for prolonged periods of time..."

Anyone who has ever farmed understands weather is the most unpredictable part of farming. To comply with this proposed rule would most likely require one of two options: (1) Hire a full-time meteorologist to document all of the requirements and advise when youth under sixteen (16) could work. (2) Limit farming if you rely on youth under sixteen (16) to stack hay, pick fruits or vegetables, feed or work with livestock or just pull weeds.

Robert Tabb Testimony
February 2, 2012

The proposed rule change to limit Ag H.O.s only to children of farm operators will eliminate opportunities in agriculture for anyone not "born to farm parents". Many "family" farms today are operated as a LLC or some form of a corporation. In this case being "born to farm parents" is not enough to have Ag H.O.'s exemption.

Studies show that in an eleven year period from 1998 to 2009, the rate of childhood agricultural injuries per 1,000 farms, including youth who live on, visit, and are hired to work on farms, declined by 59%. The rate of injuries per 1,000 household youth (those living on farms) declined by 48% during that same period. NIOSH.2010. *Trends in childhood agricultural nonfatal injury rates, 1998-2009. Internal analysis of the Childhood Agricultural Injury Survey (CAIS) surveillance system. Morgantown, WV: National Institute for Occupational Safety and Health.*

This study by NIOSH confirms our belief that continued education, training and improved technology have and will continue to reduce the number of youth farm injuries and deaths. Our youth actively engaged in 4-H, FFA and other agriculture-related programs are the future of agriculture.

Attached are the National Children's Center for Rural and Agricultural Health and Safety 2011 Fact Sheet (Childhood Agricultural Industries), comments by the West Virginia Department of Agriculture to Secretary Solis on the proposed rule changes, and also the National Association of State Departments of Agriculture (NASDA) comments to the proposed rule changes.

Commissioner Gus Douglass and the West Virginia Department of Agriculture have been and continue to work closely with the member states of NASDA on issues affecting agriculture throughout the United States of America. In closing, I respectfully request that you further examine the true impact that these proposed rules will have on agriculture now, and in the future.

Robert "Bob" Tabb

Introduction

Good morning and thank you for allowing me to speak before this committee today. My name is Kent Schescke and I serve the National FFA Organization as the Director of Strategic Partnerships. I have been a part of the National FFA Organization for over 20 years in a variety of roles and functions. Prior to joining the National FFA staff I worked as an agricultural education instructor and FFA Advisor in three different high schools in Missouri. I am here today not only representing the National FFA Organization and over 540,000 young people who are members, I am also here to speak on behalf of school-based agricultural education programs in nearly 7,500 public schools and nearly 800,000 high school students being served through those programs. For students to be members of FFA they must be enrolled in an agricultural education program. FFA is an integral part of the agricultural education instructional model.

Background on School-based Agricultural Education

Today I am here to speak on the impact of these proposed roles to school-based agricultural education and how it impacts the experiential learning experiences of our students. School-based agricultural education programs began nearly a century ago as a way to better prepare young people to enter into careers in agriculture. In 2012 we are still focused on that goal-however our programs have grown and evolved to encompass the business, science and technology of modern agriculture. Today there are nearly a million students (including program at the middle school and Junior High and 2 year post-secondary) enrolled in school-based agricultural programs across the United States. There are over 7,500 in public middle and high schools with over 11,000 trained agricultural instructors working with students on a daily basis.

The model of school-based agricultural education combines three integrated components. First is the classroom where students receive formal instruction related to agricultural sciences. These courses are sequential and offer students the opportunity to explore many potential career options as well as learn science, technology, engineering, and mathematics (STEM) in the applied context of agriculture, food, and natural resources. Safety education has always been, and continues to be, an important part of the classroom and laboratory instruction we provide.

The second component is experiential learning which we refer to as Supervised Agricultural Experience or SAE. This part of the program occurs predominately outside of the classroom and outside of the school but is supervised by the agricultural instructor. Supervised agricultural experience programs come in many forms including entrepreneurship, placement, research and service learning. While historically many of our students come from farms, today a large number, roughly two-thirds, do not have that opportunity. These students are very interested in learning about agriculture and the experiential learning programs, especially placement, provide a great way for the students to learn the application of what is taught in the classroom.

The third component is leadership, citizenship and personal growth we teach through the FFA. FFA not only helps students grow as leaders and productive citizens it also provides students the ability to maximize the learning opportunities from both the classroom and supervised agricultural experience program. Many people view FFA as a separate organization but in reality it is an engagement tool our teacher use to make sure that students are maximizing their learning experiences through agricultural education.

As agricultural educators we go above and beyond to help our students succeed. We care very much about our students and we care especially about their safety. That is why we put a strong emphasis in our programs on teaching safety and making sure students understand how to apply these lessons in the real world.

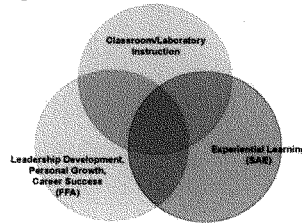
Our biggest concern with the proposed changes to the child labor regulations is that these changes will limit, if not eliminate, our opportunities to TEACH students to be safe when working in agriculture. Please allow us to continue to TEACH students to be safe while working in agriculture.

Specific Comments

Our major concern with the DOL NPRM is the Student Learner Exemption. The existing provisions of the Fair Labor Standards Act (FLSA) provide an exemption for students enrolled in vocational training in agriculture. Today, those programs are referred to as school-based

agricultural education and are a part of career and technical education. Counting our middle school through 2 year post-secondary students there are nearly a million students are enrolled in these programs across the United States and its territories. Some 7,500 such programs are available through primarily public high schools, and instruction is provided by 11,000 highly qualified teachers certified to teach agriculture. These programs play a critical role in educating young people and introducing them to careers in agriculture and agricultural science.

Agricultural Education Model



Since its inception nearly a century ago, the model of delivering high-quality, effective instruction in agriculture has been centered around three critical integral components. First is the *classroom/laboratory* setting in which students receive formal academic, hands-on instruction related to agricultural sciences. These courses are organized sequentially and offer students opportunities to explore myriad career options as they learn science, technology, engineering and mathematics (STEM) through the applied context of agriculture, food and natural resources. Safety education has always been, and continues to be, an important part of the classroom and laboratory instruction.

The second component is *experiential learning*, also referred to as supervised agricultural experience, or SAE. This part of the program takes place predominately outside of the classroom and school, but it is supervised by the agricultural instructor. Supervised agricultural experience programs come in many forms, including entrepreneurship, placement (at a job site), research and service-learning. While historically many of our students come from farms, today a large number, roughly two-thirds, do not have that opportunity. These students are very interested in learning about agriculture. The experiential learning programs, especially in

placement job settings, provide invaluable opportunities for students to learn the application of what is taught in the classroom/laboratory environment. A recent review of supervised agricultural experiences showed that one in three students received their experiential learning through placement experience.

The third component is *leadership, citizenship and personal growth* that is taught through the National FFA Organization. FFA, a student organization formerly known as the Future Farmers of America, not only helps students grow as leaders and productive citizens, it also provides students opportunities to maximize learning from both the classroom/laboratory and supervised agricultural experience environments.

Agricultural educators go above and beyond to help students succeed. They care deeply about their students, regarding their safety. That is why agricultural education programs place strong emphasis on teaching safety and ensuring students understand how to apply these lessons in the real world.

A major concern with the proposed changes to the child labor regulations is that these changes will limit, if not eliminate, our opportunities to TEACH students to be safe when working in agriculture. If the proposed rules go into place unchallenged, most of these learning opportunities, especially those that take place in the first two years of the instructional program, would be lost or seriously compromised. A recent sample of Supervised Agricultural Experience data across several states indicated that 36% of first and second year agricultural education students were involved in agricultural placement type supervised agricultural experiences. Please allow us to continue to TEACH students to be safe while receiving relevant work experience in agriculture.

The school-based agricultural education community (students, teachers, parents, state supervisory staff and other industry stakeholders) and the supporting agricultural community have serious concerns about many of the proposed rules. Because the majority of the students we serve begin their involvement in agricultural education at age 14, the proposed rules would

severely limit or eliminate opportunities to participate in the experiential learning aspects of our program.

We appreciate the recognition of the education and training our programs provide students. The current regulations make this central to the application of the law; however, the proposed regulations and expanded Hazardous Occupation areas (H.O.'s) either do not include the student learner exemption, or they limit severely the opportunities for students enrolled in agricultural education programs to be involved. We believe it is more responsible to teach students to be safe, rather than to tell them, "Oh don't do that, you might get hurt."

Ultimately, we are concerned about the limits these rules provide on the ability and opportunities for our students to *learn by doing*. "Learning by doing" is a critical part of the preparation and education through which we prepare students for careers in agriculture and related occupations. In addition, if these rules go into place, what reason or incentives do our teachers have to continue to place such a heavy emphasis on safety?

Agricultural education teachers realize they have a responsibility to work with their students, provide supervision, deliver safety instruction and work with employers of students so that the supervised agricultural experience is educational, meaningful and safe. They also recognize the role they must play in working with the students' parents, employers and student themselves to have well-documented training agreements that clearly identify appropriate Ag H.O. and safety requirements.

We reiterate the commitment and concern we share for the safety of our students. We believe that through education, safety instruction and supervision, we provide safe learning environments for students that help them succeed in the industry of agriculture. This is important to our communities, our states and the nation. Continue to allow us to continue to TEACH students to be safe while learning and working in agriculture.

Testimony of
Richard R. Ebert
Will-Mar-Re Farms, Blairsville, PA

before the
U.S. House of Representatives Committee on Small Business
Subcommittee on Agriculture, Energy and Trade

regarding
The Future of the Family Farm:
The Effect of Proposed DOL Regulations on Small Business Producers

Thursday, February 2, 2012

Chairman Tipton, Ranking Member Critz, Members of the Committee, thank you for the invitation to today's hearing. It is an honor to testify before this panel on the proposed regulations limiting the ability of youth to work on a family farm. I am Rick Ebert, a third generation dairy farmer from Blairsville, Westmoreland County, Pennsylvania where I operate Will-Mar-Re Farms in partnership with my brother, Bill. We milk 80 Holstein cows, feed approximately 60 heifers, and grow corn, soybeans and hay on 450 acres – most of which is used in the feed ration for our cows. As today's dairy operations go, we are indeed a small business.

My brother and I take great pride in caring for our dairy cattle, and in providing quality milk which we ship to Turner Dairy, another small family business. Though most of our milk is consumed in the Pittsburgh metropolitan area as fluid milk, some of it is also used for other products such as ice cream and local cheeses.

I appear before you not only as a farmer, but also as a parent. My wife Diane, who is here with me today, and I raised four wonderful children, the youngest of whom turned eighteen last Friday. Though I am proud of our family farming operation, I am more proud of the children Diane and I have raised, and the valuable lessons they learned while working on the farm. These life lessons of hard work, perseverance, stewardship, resourcefulness, teamwork and responsibility are rarely replicated anywhere in the lives of children outside the farm atmosphere.

I am very concerned over the proposed regulation put forth by the U.S. Department of Labor (DOL). Let me briefly identify my greatest concerns with DOL's proposed rule on child labor restrictions, as I understand them.

Parental Exemption

I challenge DOL's claim that the exemption for children working for their parents farms is unchanged. Clearly, DOL states in the proposed rule that "the 'parent or person standing the place of the parent' shall be a human being and not an institution or facility, such as a corporation, business, partnership, orphanage, school, church or a farm dedicated to the rehabilitation of delinquent children." As discussed in my introduction, my farm is a partnership with my brother. Such an approach by DOL would have made the employment of his children or mine unacceptable by DOL's standards. DOL appears to be reserving the right to tell operators of a farm like mine that they cannot hire their own children, nieces, nephews or grandchildren to help part-time in the summer. The new language significantly changes the scope and meaning of

the exemption. My farm is a prime example of how that specific change would limit the ability of our own children, were they still less than 16 years of age, to help in the family business.

Limitations of Working with Livestock

My children all worked in various capacities in our family's operation, as did my brother's three kids. Throughout their pre-teen and teen years, my four children helped feed the baby calves and care for the younger stock around the farm. This chore involves feeding the calves from a bottle and transitioning them to a solid feed ration over time. While it does require direct contact with the animal, there is little, if any, risk involved. If you've ever fed a baby calf, surely you will know the most dangerous part of that chore is smiling so much that it hurts. In all seriousness though, I was constantly mindful of each child's abilities and matched those abilities with the task at hand. After displaying responsibility and the capacity to care for the cows, my children would learn how to milk in the tie stall area, feed the cows, and learn to monitor them for signs of stress or sickness.

As I understand the proposed rule, DOL would limit the ability of youth to milk cows, which my children have often done. The rule would also likely restrict the ability of children to work with calves, which is a very rewarding experience and an appropriate life lesson for today's youth. I fear that this rule will also restrict the ability of youth to be engaged with any livestock for the purposes of ag education (particularly FFA and 4-H).

Student Learners

I have several concerns with areas covered under the topic of student learners. First, DOL increased the requirement for safety courses from 15 to 90 hours. This change, in practical application, will limit the ability of farm youth in operating even the smallest of tractors performing the safest of tasks. In my area, there are two main delivery methods of farm safety training for youth: agriculture education programs at the high school (in conjunction with the FFA program) and cooperative extension programs (in conjunction with 4-H). Like this federal government, school districts are forced to make difficult choices regarding spending and programming. Derry Area School District, the only remaining district in Westmoreland County, Pennsylvania with an agriculture education program, was forced to cut its ag ed budget by fifty percent due to fiscal constraints. Last year, we had two ag teachers, instructing 120 students in

14 class offerings (many of which spanned two periods). This year, we are left with one ag teacher, reaching only 80 students in 6 (single period) class offerings. Similarly, state legislators slashed the Penn State Cooperative Extension budget by nearly 20% for the current program year. My local Extension office has two staff persons who work with the 4-H and safety programs. Since one is slated to retire within the next few years, we fear – because of the pattern of funding cuts seen by Pennsylvania’s Land Grant University for Extension – that we will be reduced to one agent in this program area. If that trend plays out in Westmoreland County, both the high school-delivered program and Land Grant delivered program will meet only half of the demand for ag education and safety courses. Now, our school’s remaining ag teacher must still offer instruction on ag risk management, sound business strategies, agronomy, animal science, horticulture and farm marketing, and if this rule passes find time to teach another 75 classroom hours on farm safety.

Limiting the ability of non-farm youth to gain practical experience while working on a farm is another challenge with the proposed rule. As written now, 14 and 15 year old youth would be restricted from engaging in various on-farm activities unless the student is enrolled in ag education curriculum and completed the 90 hours of safety training. In my area, there are several students who enjoy working on a neighbor’s farm during the summer for various reasons, but they are not enrolled in an ag education program; either because their school does not offer ag education, or because they have no desire to pursue a career in agriculture. However, the work performed by these students is still valuable and the lessons learned on the farm can apply to many different careers, including public service. In many of the rural parts of this country, non-farm summer jobs are scarce. Limiting the ability of non-farm youth (who are not enrolled in agricultural education programming, or where an ag program is not available) may very well limit the ability of those students to obtain a job to earn and save money for college.

One more note regarding the learner exemptions. You may not know it, but the city of Philadelphia has one of the largest agricultural high schools in the nation. W.B. Saul, in the Philadelphia School District, gives non-farm students a unique educational experience by weaving academic requirements, including agricultural education, with intra-curricular activities thorough the FFA program. A major component of the agriculture education program is the Supervised Agricultural Experience (SAE), which creates real hands-on learning opportunities that benefit the student. These SAEs enhance W.B. Saul’s education offerings beyond what is

traditionally provided by general education curricula. I fear that DOL's proposed restriction to youth under the age of 16 years will prevent opportunities for non-farm students, like those at W.B. Saul, to develop valuable and much needed skills, preparing them for careers in agriculture, food science, food safety and beyond.

Height Restrictions

As my boys were growing up, they would help me unload hay from the hay wagon for storage in the barn. The platforms of my hay wagons stand approximately four feet off the ground. My children would roll and/or toss me the hay bales so I could place them on the mechanical elevator that lifts the bales to their storage location, in the hay loft. Any kid who has worked on a farm understands the pecking order of "putting hay away." Those just starting and who are still developing muscle assist an adult on the wagon where little lifting is required. As muscle tone develops and farm kids grow in age, they have, historically, graduated to placing the bales on the elevator, under the watchful eye of the responsible adult. This involves more lifting, dexterity, and skill of placement. When I was growing up, and it was my children's experience as well, the pinnacle of the job is realized when you got to stack the bales (almost in the fashion of the computer game *Tetris*) in the hay loft. Working on the hay wagon (when climbing on top of bales) and in the barn's hay loft occurs at elevations over six feet on my farm. DOL's height restrictions may be intended for 30 foot ladders, but unfortunately it would disallow the process of placing hay in storage on many farms.

Restrictions of Powered Equipment

As my children grew older and I observed improved hand-eye coordination, I would start my children around ages 13 or 14 on the smallest of tractors on the farm, working on flat ground, performing tasks involving virtually no risk, such as raking hay. Again, I must reiterate, that I matched every child's capabilities with the task at hand. Not every kid was comfortable on the tractor, so I used their interest and abilities elsewhere on the family farm where their efforts were best suited.

Just like an automobile, farm machinery and farm buildings require maintenance. Throughout the year, I would change the oil in the farms' tractors and trucks, and replace necessary parts on all sorts of equipment. Again, mindful of safety, I would take any opportunity

to teach that skill to my children, allowing them to learn in a hands-on environment. Whether it was an impact wrench to loosen tractor tires, a screw-gun to repair the barn door, a power-washer to clean the tractors and implements when finished for the season, or running the electric feed cart to provide sustenance to the cattle, my children were safely operating powered equipment all around the farm with the appropriate level of adult supervision and safety precautions.

As proposed, DOL's rule is far too broad, restricting the operation of "all machines, equipment, implements, vehicles, and/or devices operated by any other power source other than human hand or foot power." DOL further defines the term "operating" to include "cleaning, oiling and repairing" of the equipment; "connecting or disconnecting an implement or any of its parts to or from such equipment;" or "any other activity involving physical contact associated with the operation or maintenance of the equipment."

If taken literally, DOL's standards would prohibit most activities around the farm. The jobs I have just described as normal activities on my farm, would be off limits for youth. Without being too harshly critical of DOL's definition of powered equipment, there is but only one device my children used on the farm that would pass muster with DOL – a bicycle – and that offers little utility when trying to carry bottles of milk or bales of hay to feed calves. Fortunately, the days of hand- and foot-powered farm equipment have passed as technology has aided the development and use of much safer and more efficient technology to accomplish farm tasks.

Like any parent, I was always concerned for my children's safety. In fact, I still am today. There are certain tasks on the farm that I know exceed the capabilities of each of my *adult* children. There are also pieces of equipment that some of my children have not developed efficiency in operating. On my farm, no one operates equipment unless I am comfortable with their ability and the level of risk associated with the task. I would never allow my child to perform a chore I myself would not do, nor would I allow them to carry out a job that was beyond their ability to accomplish safely.

Impact on Future Careers

Today, I've spent a lot of time discussing my concerns with the DOL rule as it relates to my family farm operation. The real takeaway however, is that working on the farm directly shaped the chosen career path of my children. My daughter, who spent a lot of time in the 4-H and the state dairy princess program, grew up working directly with our milk cows. She is now

employed in the agricultural lending industry. Josh, my oldest son, was competent around equipment, but demonstrated great ability while working with the cows. Today, he is an animal nutritionist. My middle son, Jonathan, was the equipment-minded child. He is away at college studying automotive mechanics, with the intention of involving himself with heavy construction equipment or farm machinery upon graduation. Jake, my youngest, is still in his career search, but he is exploring the fields of ag policy and agriculture engineering. It is clear that my children, through their farm experiences, have found much needed and rewarding career paths because of their work on the farm, not in spite of it.

I would hope that DOL's proposed rule does not result in a vacuum of qualified or interested employees in the agriculture industry or anywhere along the food chain a generation from now, for lack of involvement and exposure to today's farming activities.

Concluding Thoughts

Thank you for the opportunity to express concerns over the proposed DOL youth restrictions, particularly the impacts on small farms like mine. I thank the committee and its leadership for your attention to this matter. However, the one item I did not cover is: what happens to my farm now that my children are all grown? Unfortunately, that answer may lay in what DOL does, or fails to do in withdrawing, or in the very least – revising – its proposed rule.

As a farmer I know I need to use the right tool for the job. It's a lesson I shared with my children. If there was a problem that DOL needed to fix, I would argue the wrong tool was used, and it was used in excess.



U.S. Department Of Labor
Wage and Hour Division



FACT SHEET ON NOTICE OF PROPOSED RULEMAKING TO REVISE FEDERAL CHILD LABOR PROVISIONS

The Fair Labor Standards Act (FLSA) establishes federal child labor standards for both agricultural and nonagricultural employment. The agricultural child labor provisions have not been revised since they were first promulgated in the 1970s. After publishing a Final Rule addressing the nonagricultural provisions, in May 2010, the Secretary of Labor announced her intention to undertake a similar regulatory initiative for hired farm worker children.

The FLSA charges the Secretary of Labor with prohibiting employment of youth in occupations which she finds and declares to be *particularly hazardous* for the employment of young workers. The Act establishes a minimum age of 18 for hazardous work in nonagricultural employment and 16 in agricultural employment. The Act also provides a complete exemption from these rules for a youth who is employed on a farm owned by his or her parent.

On September 2, 2011 DOL published a Notice of Proposed Rulemaking to update the agricultural child labor regulations to bring them into the 21st century based upon recommendations made by the National Institute for Occupational Safety and Health, its own enforcement experience, and a commitment to bring these rules in line with the more stringent rules that apply to employing children in nonagricultural workplaces.

The proposal was drafted in accordance with the following principles:

- Ensure that the child labor provisions comport with the Secretary's charge to prohibit hired farm worker youth from performing work that is particularly hazardous to their health and welfare.
 - Bring as much parity as possible to the nonagricultural and agricultural child labor standards.
 - Consider adoption of the recommendations made by the National Institute for Occupational Safety and Health (NIOSH) in its 2002 report *National Institute for Occupational Safety and Health Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders*.
 - Propose needed changes to the child labor provisions as identified by the Wage and Hour Division's enforcement experience.
- The major revisions proposed by the NPRM would:
 - Require that all tractors operated by 14- and 15-year-old student-learners be equipped with proper rollover protection structures (ROPS) and seat belts, and that the student-learners use the seat belts.

- Remove the two certification programs that allow 14- and 15-year-olds, after receiving very little training, to operate most tractors and farm implements without supervision.
 - Revise the type of farm implements 14- and 15-year-old student-learners may operate after successfully completing the academic units addressing each type of implement.
 - Revise and expand the current prohibitions against working with animals.
 - Bring parity to the agricultural and nonagricultural child labor provisions by, for the first time, limiting farm work involving occupations in construction, communications, roofing, at elevations greater than 6 feet, wrecking, demolition, and the operation of most power-driven equipment and manually operated hoists.
 - Prohibit all tasks that fall within the job of “pesticide handler” as determined by the Environmental Protection Agency’s Worker Protection Standard.
 - Prohibit the use of most electronic devices, including communication devices, while operating power-driven machinery, including automobiles, tractors, farm implements and woodworking machines.
 - Prohibit all work in tobacco production and curing in order to reduce the incidence of green tobacco sickness among young workers.
- DOL is also proposing to create two new Hazardous Occupations Orders involving the nonagricultural employment of children under the age of 18 years.
 - Youth would be prohibited from working in occupations in farm-product raw materials wholesale trade industries such as country grain elevators, grain bins, silos, feed lots, feed yards, stockyards, livestock exchanges and livestock auctions.
 - Youth in nonagricultural occupations would be prohibited from using most electronic devices, including communication devices, while operating power-driven machinery, including automobiles and woodworking machines.
- DOL is also proposing to amend 29 CFR Part 579 to incorporate the major provisions of Field Assistance Bulletin 2010-1, *Assessment of Child Labor Civil Money Penalties*, issued by the Wage and Hour Division (WHD) on January 20, 2010. This proposal will bring clarity and transparency to the child labor civil money penalty assessment process by detailing the process WHD follows when making such assessments.

The public is invited to provide comments to DOL on these important proposals. Comments must be received by November 1, 2011.



U.S. Department of Labor
Wage and Hour Division
Washington, D.C. 20210



How the Proposals of the September 2, 2011 Notice of Proposed Rulemaking (NPRM) Would Impact the Current Federal Agricultural Child Labor Provisions	
Current Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16	Proposed Revisions to the Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16
<p>The Parental Exemption</p> <p>Recognizes the statutory parental exemptions that allows the child of a farmer to perform any task, even hazardous tasks, at any age on a farm owned or operated by the parent.</p>	<p>The Parental Exemption</p> <p>The parental exemption is statutory and DOL does not have the authority to change it through regulations. It is unchanged in this NPRM.</p>
<p>Current exemptions from certain of the Ag H.O.s</p> <p>The current regulations allow certain 14- and 15-year-olds who meet the criteria of one of the following exemptions to perform certain otherwise prohibited work, including the operation of tractors and certain named power-driven farm implements:</p> <ol style="list-style-type: none"> 1. <u>Student-Learner</u>. A student-learner is one who is enrolled in a vocational education program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school. The current student-learner exemption applies to current Ag H.O.s 1 through 6. 2. Youth who have received <u>certification</u> that they have completed certain required training modules and demonstrated certain knowledge by successfully completing written and practical examinations under the auspices of the Federal Extension Service. This applies to Ag H.O.s 1 and 2. 3. Youth who have received <u>certification</u> that they have completed certain required training modules and demonstrated certain knowledge by successfully completing written and practical examinations under the auspices of a vocational agricultural training program. This applies to Ag H.O.s 1 and 2. 	<p>The NPRM proposes to revise the exemptions from certain of the Ag H.O.s in the following manner:</p> <p>Eliminate the two current certification programs (listed as 2. and 3. in the column to the left) and strengthen the existing agricultural student-learner exemption so that it more closely resembles the student-learner exemption for certain 16- and 17-year-old student-learners employed in nonagricultural occupations.</p> <p>Student-learner exemption would only be applicable to the first two Ag. H.O.s in the NPRM.</p>

This document is intended to provide a general overview summarizing the major proposed changes raised by the Notice of Proposed Rulemaking in Child Labor in Agriculture published at 76 FR 54836 (Sept. 2, 2011).

Current Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16	Proposed Revisions to the Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16
<p>Ag H.O. 1 Current Ag H.O. 1 prohibits a hired farm worker under the age of 16 from operating a tractor of over 20 power take-off (PTO) horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor. The student learner and certification exemptions detailed on page 1 apply.</p>	<p>The NPRM proposes to retain and expand Ag H.O. 1</p> <p>Remove the 20 PTO horsepower threshold. Small garden-tractors would not be covered under this Ag H.O. (they would be covered under proposed Ag H.O. 2).</p> <p>Move the prohibition regarding youth riding on tractors as passengers from current Ag H.O. 7 to this proposed Ag H.O.</p> <p>Require that every tractor operated by a 14- or 15-year-old student-learner be equipped with a proper roll-over protection structure (ROPS) and a seatbelt. Use of the seatbelt by the student-learner would be mandatory.</p> <p>Student-learners operating tractors on public roads must have a valid state driver's license to operate such equipment.</p> <p>Prohibit the use of most of electronic devices, including communication devices, while operating a tractor to eliminate distractions while operating hazardous machinery.</p>

This document is intended to provide a general overview summarizing the major proposed changes raised by the Notice of Proposed Rulemaking in Child Labor in Agriculture published at 76 FR 54836 (Sept. 2, 2011). 2

Current Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16	Proposed Revisions to the Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16
<p>Ag H.O. 2 Current Ag H.O. 2 prohibits a hired farm worker under the age of 16 from operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, the unloading mechanism of a non-gravity-type self-unloading wagon or trailer, power post-hole digger, power post driver, or non-walking type rotary tiller. The student-learner and certification exemptions discussed on page 1 are allowed.</p> <p>Ag H.O. 3 Current Ag H.O. 3 prohibits hired farm workers under the age of 16 from operating or assisting to operate, as defined above, any of the following machines: trencher or earthmoving equipment, fork lift, potato combine, or power-driven circular, band, or chain saw. The student-learner exemption applies to this Ag H.O. but the certification exemptions discussed on page 1 do not apply to this Ag. H.O.</p>	<p>The NPRM proposes to combine Ag H.O. 2 and 3 into a new Ag. H.O. 2 Expand the Ag H.O. to prohibit hired farm workers under the age of 16 from operating all power-driven machines just as the nonagricultural child labor rules for 14- and 15-year-olds have for over forty years.</p> <p>Revise and strengthen the exemption for student-learners and limit the types of equipment that student-learners may operate.</p> <p>Require a student-learner who is moving a named piece of equipment on or across a public road hold a valid state driver's license for such operations.</p> <p>Prohibit hired farm workers under 16 from riding as passengers on all farm machines when being moved on public roads.</p> <p>Student-learners riding as passengers on named equipment must have their own approved seat that is equipped with a seatbelt, and the use of the seatbelt is mandated.</p> <p>Allow youth to ride as passengers inside cars, trucks, and buses if certain requirements are met, including the mandatory use of seatbelts.</p> <p>Same limitations on operating electronic devices, including electronic communications devices, as in proposed Ag H.O. 1.</p>
	<p>The NPRM proposes creation of a new Ag H.O. 3 that would prohibit hired farm workers under the age of 16 from employment in Occupations Involving the Operation of Non-Power Driven Hoisting Apparatus and Conveyors.</p> <p>It is proposed that none of the student-learner or certification exemptions listed on page 1 would apply to the proposed Ag H.O. 3.</p>

This document is intended to provide a general overview summarizing the major proposed changes raised by the Notice of Proposed Rulemaking in Child Labor in Agriculture published at 76 FR 54836 (Sept. 2, 2011). 3

Current Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16	Proposed Revisions to the Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16
<p>Ag H.O. 4</p> <p>Current Ag H.O. 4 prohibits a hired farm worker under the age of 16 from working on a farm in a yard, pen, or stall occupied by a bull, boar, stud horse maintained for breeding purposes, sow with suckling pigs, or cow with newborn calf (with umbilical cord present). The student-learner exemption discussed on page 1 is allowed.</p>	<p>The NPRM proposes to retain and expand Ag H.O. 4</p> <p>Prohibit hired farm workers under the age of 16 from performing certain tasks involving working with or around animals. The proposed Ag H.O. 4 would prohibit:</p> <ul style="list-style-type: none"> • working on a farm in a yard, pen, or stall occupied by an intact (not castrated) male equine, porcine, bovine, or bison older than six months, a sow with suckling pigs, or cow with new born calf (with umbilical cord present); • engaging or assisting in animal husbandry practices that inflict pain upon the animal and/or are likely to result in unpredictable animal behavior such as, but not limited to, branding, breeding, dehorning, vaccinating, castrating, and treating sick or injured animals; • handling animals with known dangerous behaviors; • poultry catching or cooping in preparation for slaughter or market; and • herding animals in confined spaces such as feed lots or corrals, or on horseback, or using motorized vehicles such as trucks or all terrain vehicles. <p>The student-learner exemption would not be applicable to the revised Ag H.O.4.</p>
<p>Ag H.O. 5</p> <p>Current Ag H.O. 5 prohibits hired farm workers under the age of 16 from felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches. The student-learner exemption discussed on page 1 is allowed.</p>	<p>The NPRM proposes to retain and expand Ag H.O. 5</p> <p>Remove the 6 inch diameter threshold and to specifically prohibit the removal of stumps by other than manual means.</p> <p>No student-learner exemption is proposed for the revised Ag H.O. 5.</p>

This document is intended to provide a general overview summarizing the major proposed changes raised by the Notice of Proposed Rulemaking in Child Labor in Agriculture published at 76 FR 54836 (Sept. 2, 2011). 4

Current Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16	Proposed Revisions to the Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16
	<p>The NPRM proposes to create a new Ag H.O. 6 that would prohibit the employment of hired farm workers under the age of 16 in the following tasks:</p> <ul style="list-style-type: none"> • construction • communications • wrecking and demolition • excavation. <p>This new Ag H.O. brings many of the protections already applicable to the employment of 14- and 15-year-olds in non-agricultural workplaces to the employment of hired farm workers.</p> <p>No student-learner exemption is proposed for the proposed Ag H.O. 6</p>
<p>Ag H.O. 6 Current Ag H.O. 6 prohibits hired farm workers under the age of 16 from working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet. The student-learner exemption discussed on page 1 is allowed.</p>	<p>The NPRM proposes to revise the current Ag H.O. 6 and renumber it as Ag H.O. 7. For the new Ag H.O. 7, the NPRM proposed to:</p> <p>Prohibit working on or about a roof, on a scaffold, and at elevations greater than 6 feet above another elevation.</p> <p>Expand the Ag H.O. to prohibit work on elevated farm structures including silos, grain bins, windmills, and towers; and vehicles, machines, and implements.</p> <p>Reduce the maximum height at which hired farm workers under age 16 may work at elevation from 20 feet to 6 feet, including work on ladders.</p> <p>The student-learner exemption discussed on page 1 is allowed, but only for bona-fide student learners when they are operating tractors and farm implements permitted in the proposed Ag H.O.s 1 and 2.</p>
<p>Ag H.O. 7 Current Ag H.O. 7 prohibits hired farm workers under the age of 16 from driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.</p> <p>The exemptions discussed on the page 1 do not apply to current Ag H.O. 7.</p>	<p>The NPRM proposes to retain the prohibitions of the current Ag H.O. 7 but incorporate them into the proposed Ag H.O.s 1 and 2.</p>

This document is intended to provide a general overview summarizing the major proposed changes raised by the Notice of Proposed Rulemaking in Child Labor in Agriculture published at 76 FR 54836 (Sept. 2, 2011). 5

Current Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16	Proposed Revisions to the Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16
<p>Ag H.O. 8</p> <p>Current Ag H.O. 8 prohibits hired farm workers under the age of 16 from working inside a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere; an upright silo within two weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes.</p> <p>The exemptions discussed on page 1 do not apply to Ag H.O. 8.</p>	<p>The NPRM proposes to both expand and bifurcate the existing Ag H.O. 8 as follows:</p> <p>Proposed Ag H.O. 8: Prohibit a hired farm worker under the age of 16 from performing all work inside a fruit, forage, or grain storage (such as a silo or bin). The student-learner exemption discussed on page 1 would not apply to the proposed Ag H.O. 8.</p> <p>Proposed Ag H.O. 9: Prohibit the employment of a hired farm worker under the age of 16 in any occupation involving working inside a manure pit. The student-learner exemption discussed on page 1 would not apply to the proposed Ag H.O. 9.</p>
<p>Ag H.O. 9</p> <p>Current Ag H.O. 9 prohibits young farm workers under the age of 16 from handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the work “poison” and the “skull and crossbones” on the label; or Category II of toxicity, identified by the word “warning” on the label.</p> <p>The student-learner exemption discussed on page 1 does not apply to Ag H.O. 9.</p>	<p>The NPRM would revise Ag H.O. 9 and renumber it as Ag H.O. 10. For the new Ag H.O. 10, the NPRM:</p> <p>Revise the current provisions to be consistent with the EPA Worker Protection Standard for pesticides</p> <p>Prohibit hired farm workers under the age of 16 from performing any work that falls within the EPA classification of pesticide handler. The proposal would adopt the definition of pesticides contained in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).</p> <p>No student-learner exemption (as discussed on page 1) is proposed for Ag. H.O. 10.</p>
<p>Ag H.O. 10</p> <p>Current Ag H.O. 10 prohibits young hired farm workers under the age of 16 from handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.</p> <p>The exemptions discussed on page 1 do not apply to Ag H.O. 10.</p>	<p>The NPRM proposes to retain Ag H.O. 10 as currently written and renumber it as Ag H.O. 11.</p>

This document is intended to provide a general overview summarizing the major proposed changes raised by the Notice of Proposed Rulemaking in Child Labor in Agriculture published at 76 FR 54836 (Sept. 2, 2011). 6

Current Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16	Proposed Revisions to the Agricultural Hazardous Occupations (Ag H.O.s) for Hired Farm Workers under the Age of 16
<p>Ag H.O. 11 Current Ag H.O. 11 prohibits hired farm workers under the age of 16 from transporting, transferring, or applying anhydrous ammonia</p> <p>The exemptions discussed on page 1 do not apply to Ag H.O. 11.</p>	<p>The NPRM proposes to retain Ag H.O. 11 as currently written and renumber it as Ag H.O. 12.</p>
	<p>The NPRM proposes to create a new Ag H.O. 13 that would prohibit the employment of hired farm workers under the age of 16 in Occupations Involving the Production and Curing of Tobacco.</p> <p>Prohibit such work as, but not limited to, planting, cultivating, topping, harvesting, baling, barning, and curing of tobacco.</p> <p>The exemptions discussed on page 1 would not apply to proposed Ag H.O. 13.</p>

The NPRM Also Proposes the Following Three Revisions to the Department's Regulations:
<ol style="list-style-type: none"> 1. The NPRM would create a nonagricultural hazardous order to prohibit the employment of young workers under the age of 18 in occupations in the farm-product raw materials wholesale trade industries. The agricultural child labor provisions have included prohibitions against young hired farm workers being employed in grain storage for many years, but these establishments do not generally fall under "agriculture" as defined by the Fair Labor Standards Act so the Act's nonagricultural child labor provisions normally apply when they employ youth. Prohibited establishments would include, but not be limited to, country grain elevators, grain elevators, grain bins, silos, feed lots, feed yards, stockyards, livestock exchanges, and livestock auctions. No student-learner exemption is proposed for this nonagricultural hazardous occupations order. 2. The NPRM would create a nonagricultural hazardous order to prohibit young workers under the age of 18 from using electronic devices, including communication devices, while operating power-driven equipment, including—but not limited to—motor vehicles, forklifts, woodworking equipment, and lawn mowers. No student-learner exemption is proposed for this nonagricultural hazardous occupations order. A similar proposal is being made to protect young hired farm workers under the age of 16 (<i>see</i> proposed Ag H.O.s 1 and 2). <p>The Department is also proposing to incorporate into the regulations at 29 CFR part 579 the guidelines it uses to determine whether to assess civil money penalties in response to child labor violations and how much that penalty should be.</p>

This document is intended to provide a general overview summarizing the major proposed changes raised by the Notice of Proposed Rulemaking in Child Labor in Agriculture published at 76 FR 54836 (Sept. 2, 2011). 7



2011 Fact Sheet

Childhood Agricultural Injuries

Population at Risk

- Farms**
 - In 2010, there were approximately 2.2 million farms in the United States.¹
- Children**
 - Over 1.04 million youth lived on farms in 2009.²
 - More than half of all household youth performed work on the farm in 2006, with the highest group being 10-15 year olds.³
 - An additional 307,000 youth (youth not living on farms) were hired to do work on US farms in 2006.³
 - Only 30% of farm households with children younger than eight years reported having an enclosed, fenced off play area in 2006.⁴
- Industry**
 - The National Safety Council's 2009 edition of *Injury Facts* ranks agriculture as our nation's most dangerous industry with 28.6 deaths per 100,000 adult workers.⁵

Toll of Childhood Agricultural Injuries

- Deaths**
 - Agriculture has the second highest fatality rate among youth workers at 21.3 per 100,000 full-time equivalents compared to 3.6 per 100,000 across all industries.⁶
 - Between 1995 and 2000, there were 695 total farm-related youth fatalities on US farms (55.8 fatalities per 100,000 youth).⁷
 - Of the leading sources of fatal injuries to youth on U.S. farms, 25% percent involved machinery (includes tractors), 17% involved motor vehicles (includes ATVs), and 16% were due to drowning.⁷
- Nonfatal Injuries**
 - In 2006, an estimated 3,601 household youth were injured while performing farm work.²
 - According to data from 2006, approximately 3,026 injuries (26%) occurred to children under 10 years of age living on farms.³
 - Nearly 75% of injured children were not actively working when the injury occurred.³
 - Falls (40%) were the most common injuring event among household youth.
- Injury Rate**
 - In 2006, youth living on livestock operations had a significantly higher rate of injury (11.9 injuries/1,000 youth) compared to their counterparts in crop operations (8.4 injuries/1,000 youth).³
- Injury Trend**
 - Over the eleven years from 1998 to 2009, the rate of childhood agricultural injuries per 1,000 farms (includes youth who live on, visit, and are hired to work on farms) declined by 59% (from 16.6 to 6.8). The rate of injuries per 1,000 household youth (those living on farms) declined by 48% (from 18.8 to 9.8) during that same period.²

Childhood Agricultural Injury Estimates of Youth Farm Injuries²

Year	Farm Injuries Youth < 20	Injuries/1000 Farms	Farm Household		Injuries/1000 Household Youth
			Household Youth < 20	Farm Household Youth Injuries	
1998	37,774	16.6	1,460,000	27,321	18.8
2001	29,277	14.0	1,350,000	22,144	16.4
2004	27,590	13.1	1,260,000	18,800	15.0
2006	22,900	10.4	1,120,000	11,700	10.4
2009	15,012	6.8	1,040,221	10,251	9.8



The National Children's Center for Rural and Agricultural Health and Safety (a program of the National Farm Medicine Center, Marshfield Clinic Research Foundation, Marshfield, Wisconsin) is funded by the National Institute for Occupational Safety and Health (NIOSH Award No. 5 U54 OH009568-03)



Minority Operated Farms

- Population at Risk
- In 2003, an estimated 27,400 youth were living on 57,000 racial minority (excluding Hispanic) operated farms and an additional 34,500 youth were living on 47,200 Hispanic operated farms.^{8,9}
- Injuries/Fatalities
- During 2003, there were 630 agricultural injuries to youth under 20 years of age on a racial minority (excluding Hispanic) operated farm. An additional 540 agricultural-related injuries occurred to youth on Hispanic operated farms.^{7,10}
 - Between 1995 and 2002, there were 81 minority youth fatalities and 77 Hispanic youth fatalities.^{8,9}

Roadmap for Preventing Childhood Agricultural Injuries

- National Committee for Childhood Agricultural Injury Prevention. Children and Agriculture: Opportunities for Safety and Health: A National Action Plan (1996). http://www.marshfieldclinic.org/nfmc/pages/default.aspx?page=nfmc_reports_action_plan
- Migrant and Seasonal Hired Adolescent Farmworkers: A Plan to Improve Working Conditions (2001). http://www.marshfieldclinic.org/proxy/MCRF-Centers-NFMC-NCCRAHS_migrant_seasonal_workers.1.pdf
- Childhood Agricultural Injury Prevention: Progress Report and Updated National Action Plan from the 2001 Summit (2002). <http://www.marshfieldclinic.org/nfmc/Pages/Proxy.aspx?Content=MCRF-Centers-NFMC-nccrahs-reports-summitreport.1.pdf>

Childhood Agricultural Fatality Investigation Reports

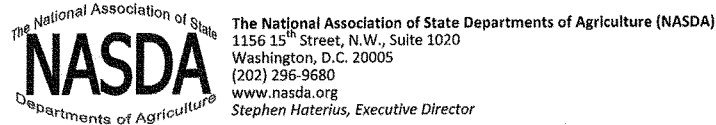
- NIOSH Childhood Agricultural Injury Prevention Initiative. *Childhood Agricultural Fatality Investigation Reports*. <http://www.cdc.gov/niosh/topics/childag/ChildAgFACErpts.html>.

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2. NIOSH. 2010. Trends in childhood agricultural nonfatal injury rates, 1998-2009. Internal analysis of the Childhood Agricultural Injury Survey (CAIS) surveillance system. Morgantown, WV: National Institute for Occupational Safety and Health.
3. Hendricks, KJ and Goldcamp, EM. Injury Surveillance for Youth on Farms in the U.S., 2006. *Journal of Agricultural Safety and Health*. 16 (4): 279-291.
4. NIOSH. Internal analysis of the CAIS database. Morgantown, WV: National Institute for Occupational Safety and Health, 2007.
5. National Safety Council (2010). Injury Facts 2009 Edition. Available by contacting National Safety Council at 1-800-621-7619 or www.nsc.org.
6. Occupational Injuries and Deaths Among Younger Workers-United States, 1998-2007. *Journal of the American Medical Association*, 304 (1). 33-35 (2010).
7. Goldcamp, M., Hendricks, KJ., Meyers, JR. Farm Fatalities to youth 1995-2000: A comparison by age groups. *Journal of Safety Research*. 35 (2004). 151-157.
8. National Institute for Occupational Health and Safety (2007) *Injuries to Youth on Hispanic Operated Farms - 2003*. Available at: <http://www.cdc.gov/niosh/docs/2007-162/>.
9. National Institute for Occupational Health and Safety (2007) *Injuries to Youth on Racial Minority Operated Farms - 2003*. Available at: <http://www.cdc.gov/niosh/docs/2007-163/>.
10. USDA-National Agricultural Statistics Service (2004). *2001 Childhood Agricultural-Related Injuries*. Available at <http://usda.mannlib.cornell.edu/usda/nass/ChildInju/2000s/2004/ChildInju-01-08-2004.pdf>.

For more information, contact the National Children's Center for Rural and Agricultural Health and Safety
 Ph: 800-662-6900 • Fax: 715-389-4996 • Email: nccrahs@mcrf.mfldclin.edu •
 Website: <http://marshfieldclinic.org/nccrahs/>

Updated: July 2011



December 1, 2011

Wage and Hour Division
 U.S. Department of Labor
 Room S-3502
 200 Constitution Avenue, N.W.
 Washington, D.C. 20210

RE: RIN 1235-AA06 Child Labor Regulations, Order and Statements of Interpretation; Child Labor Violations – Civil Monetary Penalties; Notice of Proposed Rulemaking and Request for Comments

The National Association of State Departments of Agriculture (NASDA), which represents the commissioners, secretaries and directors of agriculture in the fifty states and four territories, is writing in response to the request for comments on a proposed rulemaking on youth labor in agriculture. We are also a signatory organization to comments submitted by a number of agriculture organizations and wish to supplement those comments with some of our own.

The state agriculture departments have many concerns about the Department of Labor's proposed rules changes. Our members have been and remain advocates for farm safety and health for children--and adults, for that matter. However, our members see little connection between the changes proposed in the above referenced docket and the data that has been thoroughly analyzed over the last decade and more. Our members support addressing safety concerns that pertain to confined space/gravity-flow grain storage and transport. We also agree with maintaining the current Danger/Poison or Warning for registered agricultural pesticides that are used in accordance with the Agricultural Use Requirements as required by the EPA Worker Protection Standard.¹ However, with regard to the majority of the remaining proposed rule, the DOL appears to be restricting teens from fairly low-risk activities--certainly in comparison to plenty of popular youth recreational and athletic activities, let alone driving or riding in motor vehicles (non farm-related).

We would also like to reiterate our opposition to the DOL limiting the exemption for youth working on a farm owned by their parents. The rule bases the limitation on the parents' choice of legal business organization (sole proprietor vs. family corporation or LLC), or whether the parents are partners with other family members (i.e., grandparents). We view this as arbitrary and discriminatory. As proposed, the regulations threaten to change the way of life and learning on family farms across America, and reduce opportunities for 4-H and FFA members/vocational agriculture students to learn about and practice in the field of agriculture. Eliminating 4-H or Land-Grant University Cooperative Extension programs from providing education programs such as tractor safety programs is unbelievably short-sighted and will only put more individuals in danger.

¹ 40 CFR Part 170 – The Worker Protection Standard

The proposed rules are very comprehensive and complex in nature. They do not appear to have been particularly well thought out. We respectfully urge the Department to reconsider its proposal, preferably by withdrawing it and then taking an opportunity to meet with agriculture communities throughout the country to determine what risks truly need to be addressed and the best manner in which to address them.

We appreciate the opportunity to submit these comments to DOL and happy to work with you in any appropriate way to assure that youth seeking employment in agriculture are both protected from particularly hazardous occupations without losing access to the employment opportunities they need and depend on.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Haterius".

Stephen Haterius
Executive Director

SH/awh

5TH DISTRICT, MISSOURI
 FINANCIAL SERVICES COMMITTEE
 HOMELAND SECURITY COMMITTEE
 SELECT COMMITTEE ON
 ENERGY INDEPENDENCE AND
 GLOBAL WARMING
 1ST VICE CHAIR
 CONGRESSIONAL BLACK CAUCUS
 REGIONAL WHIP (Region 4)



Congress of the United States
House of Representatives

Emanuel Cleaver, II
 Thursday, February 2, 2012

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The Honorable Scott Tipton
 Chairman
 House Small Business Subcommittee on
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 2361 Rayburn House Office Building
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The Honorable Mark Critz
 Ranking Member
 House Small Business Subcommittee on
 Agriculture, Energy, and Trade
 B-343 Rayburn House Office Building
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Dear Chairman Tipton and Ranking Member Critz:

The Department of Labor's proposed revisions to the regulations governing the employment of youth on farms and ranches have created confusion, controversy, and concern these last few months. I appreciate the opportunity to share my concerns with these regulations with your committee, as well as the comments I have received from my constituents and other Missourians.

Some of my best memories come from time on our family farms. In fact, both of my great-grandfathers were farmers. I remember, quite vividly, picking corn as a youngster. There is no comparison to the discipline and work ethic I learned during those long, hot days in the field. The farm was also a connection between all of the families in the community. We helped our neighbors and they helped us. It was a small farm, but a very large connection to the community.

At the heart of these proposals, I believe, is the desire to protect children. But many have asked me if the proposed regulations would actually do that or simply result in harming farmers, ranchers, rural communities and a basic way of life treasured by so many. It is those with 'boots on the ground' who do the hard work of farming and ranching each day who should be heard on this issue. Those who are raising families and have their children's health, safety and wholesome upbringing at the very forefront of all they do.

From the comments and questions I have heard from my constituents and other concerned Missourians, there seems to be confusion and concern about the proposed rules, including but not limited to: the parental exemption, the application of the rules only to children under the age of 16, and changes to the student-learner exemption. Some of the examples are included here below:

Dr. Lewis Bybee has a veterinary practice in Sweet Springs and works primarily with large animals. "I am a strong believer that children develop a solid work ethic while getting their

hands dirty doing day to day chores. They develop caring attitudes towards animals and love the farm way of living.”

John Morgan is a high school vocational agriculture teacher. He says, “I do believe that rules and regulations need to be in place, but they need to be reasonable and flexible. Farmers don’t want their employees, child or adult, to get hurt.” John also adds that family exemptions are very important and should be extended to nephews, nieces, grandchildren, etc.

Judy Briggs tells me she grew up on a farm, a family business. “We, my brothers and sisters, all helped to make it run. And we probably knew more about the safety and operation of it than the hired hand who, in later years, worked for my father,” she wrote. Let’s not hamstring the small farmer any further, she says. This rule may be a great way to push the younger generation away from the small farm.

Connie Latimer, the City Administrator of Marshall, tells me that she believes some of these proposed regulation changes would place undue hardship on the parents who are working harder and harder to hang on to their heritage. “I believe doing chores, feeding cattle, raising calves to show for 4-H, and working in the field and garden helped to mold me into the person I am now.”

Dr. Elizabeth Evans from the Biology Department at Rockhurst University points out that we have seen over the years what happens when children do not grow up on farms. “They lose a valuable set of experiences that may then prohibit them from considering agriculture and its related entities as possible future careers.”

I am a strong believer that our core development begins at home with the family. I do not want to see family taken out of the family farm. Farm and ranch families are the poster children for ‘Made in America’ and it should stay that way. Mr. Chairman and Ranking Member Critz, I applaud you for holding this hearing to examine the draft rules and their possible effects on small business farms and families. Please keep the family in family farms. I ask that my letter and the attached comments from concerned Missourians be made part of the record for this hearing.

Sincerely,



Emanuel Cleaver, II
Member of Congress

December 1, 2011

Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue, N.W.
Washington, D.C. 20210

**RE: RIN 1235-AA06 Child Labor Regulations, Order and Statements of Interpretation;
Child Labor Violations – Civil Monetary Penalties; Notice of Proposed Rulemaking and
Request for Comments**

Dear Sir or Madam:

These comments are filed in response to the above-captioned rulemaking. We appreciate this opportunity to comment on the department's proposal and to register with the department the harmful impact this proposal, if promulgated, would have on the agricultural sector, rural communities at large and farm and ranching families specifically. As a preliminary matter, we want to provide a general overview of our perspective on the subject, and in particular what we take to be the background of the department's proposal, following which we will provide comments on specific proposed hazardous occupation orders (HOs) and other aspects of the proposed rule.

Generally

The undersigned organizations, and the farmers and ranchers we represent, have no interest or desire in placing youth at risk on the farm. The undersigned organizations support existing provisions in the Fair Labor Standards Act (FLSA) that permit the department to establish appropriate standards for youth employment on the farm, restricting jobs in which youth may engage to those that are not "particularly hazardous." This point of view fundamentally differs from that in a report issued last year by Human Rights Watch¹ (HRW), a report specifically cited by Secretary of Labor Hilda Solis² last year when she announced the Department of Labor would embark on this rulemaking. The press statement issued by the department reads in part:

The Human Rights Watch report released today documents the many dangerous jobs that U.S. farm worker children perform. It details the long hours many of them work and the negative impacts on their health, education and well-being. I commend Human Rights Watch for focusing on this issue of critical importance. We simply cannot – and this administration will not – stand by while youngsters working on farms are robbed of their childhood.

¹ See <http://www.hrw.org/node/90125/section/1>

² <http://www.dol.gov/opa/media/press/ilab/ILAB20100616.htm>

The position of DOL, adopted even before proposing regulations, is disturbing because it reflects a bias at the outset against youth employment in agriculture. There is a distinct lack of balance in the HRW report as to the merits of working in agriculture – merits that have long been recognized in our country and that continue to enjoy the support of Congress and many states. Clearly, there are certain occupations in agriculture – as in other sectors of the economy – that are not appropriate for youth at a certain age. But a blanket prohibition on youth employment in agriculture has never been approved by Congress and the FLSA has drawn a distinction for more than 70 years between employment in agricultural and non-agricultural jobs. Our organizations individually and collectively acknowledge and support appropriate restrictions for some youth at given ages working on farms.³ Unlike HRW, however, we recognize that youth employment on farms and ranches in certain occupations can be positive, enriching and rewarding. This perspective is shared by educators, organizations involved in developing future agricultural leaders, rural communities, agricultural leaders in Congress and many others.

That is why we are concerned that DOL, by placing an implicit imprimatur on the HRW report, appears to have adopted the perspective of those who wish to ban youth employment in agriculture altogether.⁴ We do not agree with DOL's contention that the report "documents the many dangerous jobs that U.S. farm worker children perform." HRW states that its report is based on interviews with 59 children under age 18, a review of secondary sources, discussions with individuals in various public and private positions, some telephone interviews, and discussions or interviews with more than 140 people total.⁵ Those interviewed are either anonymous or pseudonymous. HRW does not state whether identical survey questions were used or asked, provide the qualifications of those conducting the interviews, whether the samples were representative, or, in instances in which translators were required, how it ensured the questions were accurately posed and replies accurately recorded. DOL is obviously relying on this report. Yet, the department fails to meet its obligations under the Administrative Procedure Act (APA) to provide the public with this required information. Further, the HRW report makes broad charges that appear to be without foundation or documentation, as also required by the APA. For instance, the report says: "Children working in agricultur[e] typically make less than the minimum wage. Their pay is often further cut because employers underreport hours, and they are forced to spend their own money on tools, gloves, and drinking water that their employers should provide by law."⁶ Our organizations do not condone unlawful conduct. We emphatically believe, moreover, that DOL should not summarily accept as documentation broad, general charges that illegal activities are typical in the industry. In our experience, most agricultural employers obey the law. They do not "typically" pay less than the minimum wage, either to children or to other workers. These charges are simply not true. We find it disappointing that DOL would accept such characterizations without challenge, would endorse such a report, and would base a sweeping regulatory effort on such spurious charges. For DOL

³ For example, the American Farm Bureau Federation, one of the signers of these comments, has policy which states: "We support enforcement of federal child labor laws designed to prevent underage children from working in all industries. We support existing FLSA provisions, which specify and provide opportunities for young people of the proper age to perform certain agriculture jobs."

⁴ In its report, for instance, Human Rights Watch says that it "calls on the U.S. Congress to amend the Fair Labor Standards Act to apply the same protections for children working in agriculture as already apply to all other working children."

⁵ *Fields of Peril*, page 14

⁶ *Ibid.*, page 6

to rely upon a work of advocacy as a basis to regulate is wholly inconsistent with its obligations under the APA and gives short shrift to the limits of its authority as outlined in the Fair Labor Standards Act.

Furthermore, the issues raised in the HRW report are not new. Indeed, HRW published a similar report⁷ in 2000 and at that time noted that Rep. Tom Lantos “for the past twelve years” (i.e., presumably since 1988) had sponsored legislation to amend the FLSA and to address perceived weaknesses in the treatment of youth employment in agriculture. A specific bill advocated by HRW (the CARE Act) appears to have been introduced in the House of Representatives initially in 2005 and has been reintroduced in each of the last three Congresses.⁸ The legislation would amend the FLSA to prohibit children under age 18 working in agriculture unless permitted by the secretary (the current secretary co-sponsored the legislation in the 109th and 110th Congresses). It is noteworthy that, although this legislation has been introduced and reintroduced in four successive Congresses, it has never been brought up for a vote or even been the subject of a legislative hearing; moreover, this has occurred in a period when the House of Representatives was controlled by Republicans and Democrats – signaling that neither political party has given the matter a priority. Additionally, the legislative proposal lacks bipartisan or even regional support,⁹ and the only fair inferences to draw from its legislative history are that Congress has declined to move on the legislation because it does not endorse the policy changes it would effect and that Congress continues to support the provisions in existing law, which permit youth employment in agriculture.

The legislative history is important to note because DOL’s authority to regulate in this area is derived strictly from what it has been granted by Congress, and Congress has not changed these provisions of the FLSA. In fact, Congress has had proposals before it to make changes and, yet, declined to take those up – even while the National Institute for Occupation Safety and Health (NIOSH) report, on which DOL purportedly bases much of its proposal, has been publicly available to Congress for nearly a decade. If DOL wishes to amend its regulations in this area, it must provide a firm justification as to why it is doing so and in a manner consistent with its existing authority under the FLSA. Given those facts, we believe the only appropriate position for DOL to take is to reaffirm existing HOs and not attempt to assert itself into a policymaking role where it has no authority merely because it disagrees with congressional judgment on this issue.

It is regrettable that DOL singles out the HRW report in its statement of May 2010 (and appears to take the same perspective in this regulatory proceeding) because this advocacy piece is not a balanced representation of what occurs in the agriculture sector. We acknowledge HRW’s right to advocate for its own point of view, but the department should not tout such an advocacy piece as an objective view of the agricultural sector or an accurate depiction of all youth employment in agriculture. In no sense does the report provide a basis for the department embarking on more restrictive regulations in this area. For DOL to do so renders the process an arbitrary and

⁷ *Fingers to the Bone: United States Failure to Protect Child Farmworkers*, © 2000 Human Rights Watch

⁸ H.R. 3482 (109th Congress); H.R. 2674 (110th Congress); H.R. 3564 (111th Congress); H.R. 2234 (112th Congress)

⁹ In the 111th Congress, H.R. 3564 had 107 cosponsors, none of them Republicans. Of those sponsoring it, nearly half (48) came from only 3 states – California (30), Texas (10) and New York (8).

capricious rulemaking. We earlier alluded to some assertions in the report. Following, taken nearly at random, are just a few other statements that are typical of the document:

- *Hundreds of thousands of children under age 18 are working in agriculture in the United States.¹⁰ ...conservative estimates make clear that hundreds of thousands of children are working as hired laborers in agriculture, making up a significant proportion of the country's estimated 2.3 million employed workers who are below age 18.¹¹*

It is difficult, if not impossible, to reconcile HRW's assertion of "hundreds of thousands of children under age 18 working in agriculture" with publicly accepted data. DOL, in its notice of public rulemaking (NPRM), specifically states: "Although articles and studies concerning young hired farm workers have been issued by many diverse groups¹²...there is consensus that estimating the number of young hired farm workers is difficult because of the gaps in available data. Adequate data concerning younger hired farm workers does not exist."¹³ Later in the NPRM, the department states that the "number of farm workers affected by this proposal is quite small – there are only approximately 56,000 hired farm workers under the age of 16..."¹⁴ The National Agricultural Statistics Service (NASS), an agency within the Department of Agriculture (USDA), publishes quarterly data on hired workers. While it does not break down the data by age, it provides a far different perspective from the HRW report. The latest chart available [Chart 1 below], issued earlier this year, shows that the total number of hired workers in agriculture is less than 1 million.

- *The long hours and demands of farmwork result in high drop-out rates from school.¹⁵*

HRW cites no studies to substantiate this claim. In the absence of documentation, it is impossible to accept the accuracy of this statement.

- *While many child farmworkers are U.S. citizens, the entire family may fear deportation if the parents are undocumented or hold short-term agricultural visas.¹⁶*

¹⁰ *Fields of Peril*, page 5

¹¹ *Ibid.*, page 16

¹² The department here cites HRW as one such group.

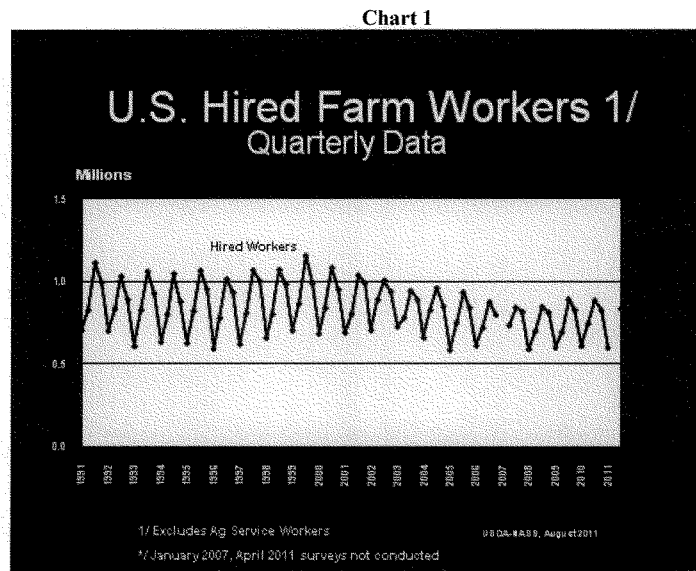
¹³ *Federal Register*, page 54842

¹⁴ *Federal Register*, page 54870

¹⁵ *Ibid.*, page 5

¹⁶ *Ibid.*, page 10

The only short-term agricultural visa program authorized and operated by the U.S. government is the H-2A program. H-2A workers are generally not permitted to bring dependent children with them to the U.S. It is nearly impossible to envision a scenario in which an H-2A worker (who is in the country legally with the proviso that he has no intention of immigrating) would be accompanied by his child, who is a U.S. citizen and also engaged in farm work, and the “entire family,” including the visa holder (viz., the parent, who is a legal nonresident), would “fear deportation.”



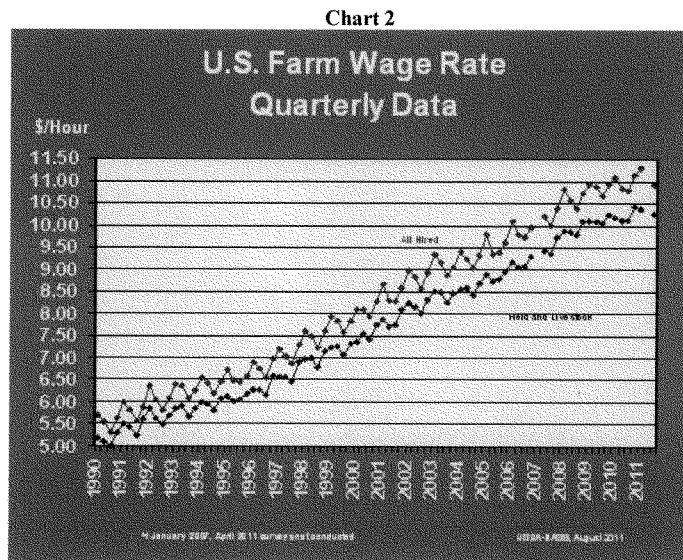
Source: National Agricultural Statistics Service, available at http://www.nass.usda.gov/Charts_and_Maps/Farm_Labor/fl_qtrwk.asp

- *Like adults, many children in farmwork earn less than federal minimum wage¹⁷ ...Although government data suggest that crop workers on average make slightly above minimum wage, these figures are likely inflated.¹⁸*

¹⁷ Ibid., page 26

¹⁸ Ibid., page 28

HRW does not cite a basis by which such figures “are likely inflated.” However, NASS does publish data on wage rates for hired farm workers. Chart 2 below shows that wages for hired farm workers continue to rise and, in the latest quarter available, averaged nearly \$11 per hour, approximately 50 percent above the minimum wage. While the figure for field and livestock workers is somewhat less, it is still above \$10 per hour – not “slightly above” the minimum wage.



Source: National Agricultural Statistics Service, available at: http://www.nass.usda.gov/Charts_and_Maps/Farm_Labor/fl_qtrwg.asp

- *This number [i.e., physician-diagnosed pesticide poisonings among U.S. agricultural workers] represents only a small fraction of actual pesticide poisonings as many cases are never reported.*¹⁹

HRW provides no basis for this claim, yet it is instructive to examine the assertion. The report alleges that a number is (a) “only a small fraction” of a (b) number that is unknown. Curiously, HRW footnotes the assertion by stating that “Officials in EPA’s Office of Pesticide Programs told Human Rights Watch that they were unable to estimate

¹⁹ Ibid., page 49

farmworkers' overall pesticide exposure." Who in HRW made such an estimate, of which the number is only a small fraction and how that fraction was determined, are not disclosed in the report.

As stated earlier, we do not begrudge HRW or any group for lobbying for the positions it espouses. But DOL, by its own statement, appears to have adopted this viewpoint from the outset. That bias, we believe, has tainted the department's thinking and resulted in a legally flawed proposal that violates the APA. For example, in published materials (included as Attachment A to these comments), DOL has enunciated principles it has used in drafting this proposed rule. One principle is to "bring as much parity as possible to the non-agricultural and agricultural child labor standards." No such "principle" exists in the FLSA, nor has Congress directed the department to pursue implementation of such a principle in its regulations. DOL cannot act in a manner contrary to the FLSA without violating the FLSA itself and the APA. In fact, just the opposite is the case: the FLSA makes a clear, distinct difference between youth employment in agricultural and non-agricultural settings. The FLSA does not contain, nor has Congress ever approved, a directive to DOL to establish "as much parity as possible" between the two sectors. Congress has approved youth employment in agriculture excepting those jobs the nature of which the secretary finds "particularly hazardous." As a result of its initial bias, the department, in this proposal, has gone beyond its authority and sought to eliminate as much as possible – based on the "parity" principle it is pursuing – the ability of youth to work in agriculture. If – as suggested by the press release issued in May 2010 – the department has made up its mind in advance that youth working in agriculture are "robbed of their childhood," then it is bound to come to a conclusion that is at odds with the law and its statutory authority. Such an effort is misguided; is inconsistent with the statute and APA; would be harmful to the education and character formation of youth and to farming and rural communities; and we firmly believe it is fundamentally in conflict with congressional intent.

As stated earlier, we believe the most appropriate course for DOL to follow is to withdraw the rule and to re-visit its analysis of the agriculture HOs so that it truly focuses on those that are particularly hazardous. In our comments below, we outline our views on specific issues raised by the proposed rule.

Treatment and Interpretation of Parental Exemption

We have strong concerns about DOL's enunciation of how it intends to interpret the exemption for children working for their parents or persons standing in place of their parents on farms owned or operated by their parents or persons standing in place of their parents. The department claims that "None of the revisions proposed in this NPRM in any way change or diminish the statutory child labor parental exemption in agricultural employment contained in FLSA section 13(c)(1)."²⁰ A similar allusion is contained in materials disseminated by the department²¹ wherein the department states, "The parental exemption is statutory and DOL does not have the authority to change it through regulations. It is unchanged in this NPRM."

²⁰ *Federal Register*, page 54841

²¹ See Attachment A

The department states an indisputable fact (viz., that it cannot by regulation change a statutory provision), but in so doing, obscures that, in fact it, is attempting to alter how it interprets the law in a significant way. It cites discussion on the floor of the House of Representatives from 1937, contending that this debate demonstrated that “Congress...intended that the parental exemption be applied quite narrowly, limiting their application to parents and those standing in place of a parent.”

The discussion referenced by the department dealt with the term “custody” in the underlying legislation and the amendment adopted to replace it with the phrase “one who stands in the place of a parent.” Clearly, the House of Representatives made a conscious decision not to employ the term “custody” because, in the words of Rep. Lanzetta, “Using the word ‘custody’ broadens the limits to the point where children may be ‘farmed’ out for the sole purpose of employment.” The debate continued, however:

Mrs. Rogers of Massachusetts: I believe if the phrase ‘in loco parentis’ were put in there it would take care of the situation.

Mr. Sirovich: And would include guardians, too?

Mrs. Rogers of Massachusetts: And guardians, yes, in loco parentis; otherwise I fear there might be very grave abuses in the employment of children. But the gentleman from Wisconsin meant that only parents or guardians in loco parentis should be exempted; and I know that is the will of Congress.

There is nothing in this colloquy that justifies DOL’s assertion that nieces, nephews or other family members fall outside the protections Congress envisioned for family farms. Farming occurs almost exclusively in rural communities, where it has traditionally been a way of life for extended family to participate in operating the farm. This is truer today, when family and estate planning have operated in such a way as to alter the ownership patterns and operational plans of farms. Often, in order to keep the farm in the family, relatives will enter into joint operating agreements, partnerships, limited liability corporations or other entities in order to assure the continued operation of the farm and the involvement of siblings and their heirs. This aspect of family farm life has never adhered to a regulatory framework that diagrams tasks and jobs into daily or weekly timeframes or that schedules visits from family members for periods of more than a month in order to validate some bureaucratic interpretation of the law.

Indeed, DOL’s perspective as enunciated in the NPRM is inconsistent with its own history of enforcing the law.

The NPRM states that, “Where the ownership or operation of the farm is vested in persons other than the parent, such as a business entity, corporation or partnership (unless wholly owned by the parent(s)), the child worker is responsible to persons other than, or in addition to, his or her parent, and his or her duties would be regulated by the corporation or partnership, which might not always have the child’s best interests at heart.”²² The NPRM goes on to state:

²² *Federal Register*, page 54841

The Department has, for many years, considered that a relative, such as a grandparent or aunt or uncle, who assumes the duties and responsibilities of the parent to a child regarding all matters relating to the child's safety, rearing, support, health, and well-being, is a 'person standing in the place of' the child's parent.... It does not matter if the assumption of the parental duties is permanent or temporary, such as a period of three months during the summer school vacation during which the youth resides with the relative. This enforcement position does not apply, however, in situations where the youth commutes to his or her relative's farm on a daily or weekend basis, or visits the farm for such short periods of time (usually less than one month) that the parental duties are not truly assumed by that relative."

There is no evidence that DOL has interpreted or enforced the exemption in this manner and we find no statutory basis that it should start this now. The history of young relatives working in agriculture across the country has been well established for decades and for the department at this date to reinterpret the law in a manner of its own choosing is wholly inconsistent with congressional intent.

DOL's own written policy on this issue clearly shows that the NPRM is a new policy that contradicts decades of practice.

In the *Field Operations Handbook* dated May 16, 2002, DOL explicitly spells out how it interprets these provisions of law, and that documentation contradicts the department's statement in the NPRM. Specifically, the manual reads:²³

(d) "Owned by" the parent or person standing in place of the parent includes part ownership as a partner in a partnership or as an officer of a corporation which owns the farm if the ownership interest in the partnership or corporation is substantial.

(e) "Operated by" the parent or person standing in the place of the parent means that they exert active and direct control over the operation of the farm or ranch by making day-to-day decisions affecting basic income, work assignments, hiring and firing of employees and exercising direct supervision of the farm or ranch work. Ranch managers, therefore, who meets [*sic*] these criteria could employ their own children under 16 on the ranch they operate without regard to the provisions of the HO/A.

Thus, the *Field Operations Handbook* explicitly contradicts DOL's statement in the NPRM wherein the department "interprets the term 'parent or person standing in the place of the parent' to mean a human being and not an institution or facility, such as a corporation, business, partnership, orphanage, school, church or a farm dedicated to the rehabilitation of delinquent children." DOL has lumped together a disparate group of entities: siblings who establish an LLC (i.e., a business partnership) to operate a farm inherited from their parents would enjoy the exemption, and we believe all children of those with a partnership interest would fall under the exemption. We believe such a normal, customary business arrangement, as happens in agriculture all across the country, is a far cry from an "orphanage" or "church" that might

²³ *Field Operations Handbook -- 5/16/02.*, Rev. 648, Chapter 33, Child Labor -- FLSA, Chapter 33d (Children Employed in Agriculture), section 33d03

operate some farms and hire individuals for tasks. They should not be treated the same and we urge the department to maintain the integrity of the family farm exemption approved by Congress.²⁴ Moreover, the department provides little justification for its interpretation other than the HRW report and two citations to letters from DOL personnel that have no legal authority and were not provided in the public record to enable public comment.

Accordingly, we urge DOL not to abridge congressional intent by narrowly interpreting the family farm exemption. It should be read as Congress intended – for all family farms to continue to operate as they have for generations.

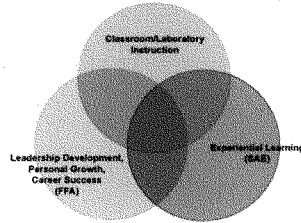
Student Learner Exemption

Another area of concern is the Student Learner Exemption. The existing provisions of the FLSA provide an exemption for students enrolled in vocational training in agriculture. Today, those programs are referred to as school-based agricultural education and are a part of career and technical education. Nearly 1 million students are enrolled in these programs across the United States and its territories. Some 7,500 such programs are available primarily through public high schools, and instruction is provided by 11,000 highly qualified teachers certified to teach agriculture. These programs play a critical role in educating young people and introducing them to careers in agriculture and agricultural science.

Since its inception nearly a century ago, the model of delivering high-quality, effective instruction in agriculture has been centered around three integral components. First is the *classroom/laboratory* setting, in which students receive formal academic, hands-on instruction related to agricultural science. Such courses are organized sequentially and offer students opportunities to explore myriad career options as they learn science, technology, engineering and mathematics (STEM) through the applied context of agriculture, food and natural resources. Safety education has always been, and continues to be, an important part of the classroom and laboratory instruction.

²⁴ We do draw the department's attention, however, to explicit language in the Fair Labor Standards Act (29 U.S.C. 203) that defines a "person" as "an individual, partnership, association, corporation, business trust, legal representative, or any organization group of persons." According to the U.S. Supreme court, in determining to what extent the Fair labor Standards Act could be interpreted and how the plain language of the act must be followed, "Congress could have expressly exempted from the Act employees engaged in producing goods for interstate transportation not leading to a sale or exchange. Congress also could have exempted employees engaged in producing munitions for use by the United States in war, rather than for sale or exchange by it. Congress might even have exempted all employees producing goods in any Government-owned plants. However, Congress stated no such exemptions. On the contrary, Congress included, by express definition of terms, employees engaged in the production of goods for interstate transportation." (See *Powell, et al. v. United States Cartridge Co. Aaron et al. v. Ford Bacon & David, Inc. Creel et al. v. Lone Star Defense Corporation* 339 U.S. 497 ((70S.Ct. 755, 94 L. Ed. 1017), Nos. 96, 79, 58. Argued; and Submitted Dec. 8-9, 1949, Decided: May 8, 1950. An entity might qualify as a "person" without qualifying for the exemption. However, any "person" – including a business entity – standing in place of a parent still qualifies for the exemption.

Agricultural Education Model



The second component is *experiential learning*, also referred to as supervised agricultural experience, or SAE. This part of the program takes place predominately outside of the classroom and school, but it is supervised by the agricultural instructor. Supervised agricultural experience programs come in many forms, including entrepreneurship, placement (at a job site), research and service-learning. While historically many of our students come from farms, today a large number, roughly two-thirds, do not have that opportunity. These students are very interested in learning about agriculture. The experiential learning programs, especially in job placement settings, provide invaluable opportunities for students to learn the application of what is taught in the classroom/laboratory environment. A recent review of SAEs showed that one in three students received their experiential learning through placement experience.

The third component is *leadership, citizenship and personal growth* that is taught through the National FFA Organization (FFA). FFA, a student organization formerly known as the Future Farmers of America, not only helps students grow as leaders and productive citizens, it also provides students opportunities to maximize learning from both the classroom/laboratory and supervised agricultural experience environments.

Agricultural educators go above and beyond to help students succeed. They care deeply about their students, regarding their safety. That is why agricultural education programs place strong emphasis on teaching safety and ensuring that students understand how to apply these lessons in the real world.

A major concern with the proposed changes to the child labor regulations is that the changes proposed by the department will limit, if not eliminate, opportunities to teach students to be safe when working in agriculture. If the proposed rules go into place unchallenged, most of these learning opportunities, especially those that take place in the first two years of an instructional program, would be lost or seriously compromised. A recent sample of SAE data across several states indicated that 36 percent of first and second year agricultural education students were involved in agricultural placement type SAEs. We believe it is critical to allow the system to operate in order to continue to teach students to be safe while receiving relevant work experience in agriculture.

The school-based agricultural education community (students, teachers, parents, state supervisory staff and other industry stakeholders) and the supporting agricultural community have serious concerns about many aspects of the proposed rules. Because the majority of the students they serve begin their involvement in agricultural education at age 14, the proposed rules would severely limit or eliminate opportunities to participate in the experiential learning aspects of the program.

We appreciate the recognition of the education and training programs provided for students. The current regulations make this central to the application of the law; however, the proposed regulations and expanded HOs either do not include the student learner exemption, or they limit severely the opportunities for students enrolled in agricultural education programs to be involved. We believe it is more responsible to teach students to be safe, rather than to tell them, “Oh don’t do that, you might get hurt.”

Ultimately, we are concerned about the limits these rules place on the ability and opportunities for students to learn by doing. “Learning by doing” is a critical part of the preparation and education through which we prepare students for careers in agriculture and related occupations. Agricultural education teachers realize they have a responsibility to work with their students, provide supervision, deliver safety instruction and work with employers of students so that the SAE is educational, meaningful and safe. They also recognize the role they must play in working with the students’ parents, employers and student themselves to have well-documented training agreements that clearly identify appropriate agriculture HO and safety requirements.

We reiterate the commitment and concern we share for the safety of students. We believe that through education, safety instruction and supervision, they are provided safe learning environments that help them succeed in the field of agriculture. This is important to our communities, our states and the nation. We believe DOL’s regulations can and should continue to allow students to learn while they working in agriculture, and we believe this can be accomplished safely and in accord with the law.

In our following comments, we address specific HOs.

Hazardous Occupation Order #1

The department seeks to “retain and expand”²⁵ agriculture HO1 by removing the 20 power take-off (PTO) horsepower threshold; requiring that tractors operated by 14- and 15-year old student-learners be equipped with roll-over protective structure (ROPS), mandating seatbelt use by student-learners, requiring student-learners to have a valid state driver’s license if operating tractors on public roads, and prohibiting the use of most electronic devices.

In our view, this HO would effectively prohibit youth from operating tractors in most situations, even in instances when such operation is not particularly hazardous. Therefore, we believe it exceeds the department’s authority and ignores congressional intent. The practical effect of the revised HO would be to reduce legitimate opportunities for employment and training for youth on farms, making it more difficult to educate and train future farmers in agricultural practices.

²⁵ Attachment A, page 2

The department has noted in various places in the NPRM a lack of data and information²⁶ about youth employment in agriculture; unfortunately, it seems intent on expanding its regulatory reach regardless. Its expansion of HO1 is a case in point. The NPRM states:

The Department is concerned that the training and skill sets that youth must complete in order to receive certification under the limited exemptions contained in §570.72(b) and (c) – which allow 14- and 15-year-old hired farm workers to operate tractors and several types of farm implements and have not been modified since their creation in 1971 – are not sufficiently extensive and thorough to ensure the safety of young hired farm workers.²⁷

We would draw the department’s attention to the possibility that moving tractor and equipment training to public/private schools could reduce the operator safety training now provided under the 4-H/Extension programs. The California Equipment Operation and Maintenance core curriculum model provides an example of current “in-school” programs that have a very limited amount of safety training related to equipment operation. Under this program, operator training is accomplished with two pages of basic operation safety rather than the comprehensive approach used by the 4-H/Extension program.²⁸

The Department is concerned that twenty hours of classroom training is insufficient to provide a young hired farm worker with the skills and knowledge he or she would need to safely operate the diverse range of agricultural tractors and equipment in use on today’s farms.²⁹

Typical 4-H programs require a minimum of 20 hours plus a written test and a skills test.³⁰ Youth 14 years and 8 months can begin driving vehicles on the road with only four hours of classroom training and are only required to have 24 hours of classroom time to complete driver’s training – plus written and skills testing.³¹ The federal Occupational Health and Safety Administration does not specify any length of training time necessary for powered industrial truck (PIT) training, only that the 24 topic areas be covered. An operator may begin operation of a PIT immediately, without training, while “under the direct supervision of persons who have knowledge, training and experience to train operators and evaluate their competence.”³²

²⁶ cf. *Federal Register*, page 54842 (“Adequate data concerning younger hired farm workers does not exist.” “It is important to recognize certain inherent limitations of NAWS.” “Information on the demographic characteristics of workers on farms where the growers do not participate is not obtainable.”). Page 54843 (“The health effects of pesticides on children, as opposed to adult worker population, have not been adequately studied and data is limited.”)

²⁷ *Federal Register*, page 54850

²⁸ California High School, Advanced Cluster Curriculum

²⁹ *Ibid.*, page 54851

³⁰ New York State Safe Tractor and Machinery Operation Program Certification Guidelines
<http://nys4h.cce.cornell.edu/Documents/Staff/Program%20Management/Tractor%20Safety/Tractor%20and%20Machinery%20Guidelines%202008.pdf>

³¹ Michigan Department of State, Driver Programs Division

³² 29 CFR Part 1910.178(l)(2)(iii)

The Department is also concerned that there has been almost no monitoring by any government agency to ensure the integrity and effectiveness of these certification programs.³³

While DOL alludes to studies cited in the NIOSH report, it appears to cherry pick the results it wants. The NIOSH report is instructive:

Carrabba et al. [2000] recently conducted a study in Indiana to determine the impact of 4-H tractor safety programs on the behavior and attitudes of youth tractor operators [Carrabba et al. 2000]. The results of this study indicate that participants in tractor safety programs demonstrate a greater level of confidence in operating tractors, and that the programs appear to have a positive influence on the safe operating procedures of participants in the training. A study by Wilkinson et al. [1993], which evaluated the training certification programs in Wisconsin, found that youth who had completed a training program reported an increase in usage of tractors equipped with ROPS and were less likely to ride on a tractor as a passenger.³⁴

Thus DOL, while citing the NIOSH report (i.e., that the “effectiveness of these tractor safety training programs has not been adequately evaluated nationwide),³⁵ goes on to declare the need for more examination of tractor safety training programs while effectively banning the practice. DOL also asks for “public comment as to whether the child labor provisions should permit any hired farm worker under the age of 16 years to operate or assist in the operation of agricultural tractors or agricultural implements.”

Our organizations represent the diversity of American agriculture. We represent farm families, many of whom have made agriculture their livelihood for generations. As stated earlier, we do not support having youth engaged in inappropriate occupations on the farm. We do believe, however, based on our generations of experience that the existing HO is sufficiently protective of agricultural youth on the farm and should not be expanded to foreclose all youths under age 16 from operating tractors.

Hazardous Occupation Order #2

This HO is a combination of previous HOs #2 and #3. In principle, we believe some equipment may be inappropriate for operation by youth at certain ages and DOL may classify such equipment. As proposed, however, the rule is over-broad, mandating “restrictions on the operation of power-driven machinery consistent with those applied to non-agricultural employment.” The term “operating” includes “cleaning, oiling and repairing” of the equipment; “connecting or disconnecting an implement or any of its parts to or from such equipment;” or “any other activity involving physical contact associated with the operation or maintenance of the equipment.” The term “power-driven equipment” is defined by DOL to include “all

³³ Ibid., page 54851

³⁴ National Institute for Occupation Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders, May 3, 2002, page 70

³⁵ Federal Register, page 54850

machines, equipment, implements, vehicles, and/or devices operated by any other power source other than human hand or foot power.”³⁶

DOL’s proposal, taken on its face, will result in extreme prohibitions that far exceed the department’s regulatory authority. For example, we believe that neither the NIOSH recommendations nor the statutory language provides a basis to regulate simple devices such as a battery powered hand-held screwdriver, drill or flashlight. We do not believe that cleaning a refrigerator or a weather station is particularly hazardous, yet both would be prohibited under the “cleaning any powered equipment” provision. As the use of a water hose under pressure would be prohibited, any cleaning would need to be from a provided bucket of water, but the youth would not be able to draw the water from a tap as the tap is under pressure.

The HO states that “farm field equipment means implements, including self-propelled implements, or any combination thereof used in agricultural operations.” This would appear to include both powered and non-powered implements, and when a non-powered implement is connected to a powered implement or tractor, any physical contact would be prohibited.

DOL’s proposal, thus, would prevent a youth from placing picked fruit or vegetables on a wagon, from hauling hay or picking rocks. It would prohibit the youth from riding an asparagus cart, operating a wiggle hoe or utilizing a powered pruner.

The prohibition of having physical contact with a vehicle presumably would prohibit the hand loading or unloading of materials, tools or products onto pickups or trucks if the “operation” of the vehicle would include the preparation for operating.

We also are concerned about the proposed prohibition as it relates to irrigation equipment. As written, the rule would prohibit movement or contact with all (presumably powered) irrigation equipment including trickle, solid set, and even hose and wand watering of bedding plants. It would prohibit youth from running trickle lines with ATVs or even walking tree-to-tree or plant-to-plant to determine if a one-gallon emitter is working and, if not, replace it, or to determine if there are any breaks in the trickle line and install a connector. If they could replace it (presumably by having a person age 16 or older turn it off and first drain the line as it could be under pressure), they would not be able to use a battery powered cutting or tube expanding device, inasmuch as all powered devices are prohibited.

Perhaps most importantly, DOL here appears to be engaged in a regulatory sleight-of-hand. Earlier in the preamble, DOL says that it “places great value on the information and analysis provided by NIOSH.”³⁷ This HO, however, departs significantly from the NIOSH recommendation, which is to

Combine HO2 and HO3, and expand prohibition from lists of specific machines to machines that perform general functions...following the terminology used in current coding systems.

³⁶ *Federal Register*, page 54856

³⁷ *Federal Register*, page 54837

Here, however, DOL – without any justification and going well beyond the authority it possesses under the law – takes an enormous regulatory leap. It states:

The Department appreciates the NIOSH recommendations regarding the classification of equipment by function, but *believes that adopting general restrictions on the operation of power-driven machinery consistent with those applied to non-agricultural employment*, along with revising the student-learner exemption to permit the limited and supervised operation of certain power-driven equipment after proper training has been received, *would more adequately protect young hired farm workers.*³⁸ [Emphasis added]

DOL cannot on the one hand justify its far-reaching regulatory regime by claiming it is relying on NIOSH and then, without justification, abandon that report because it does not supply the department the justification it requires for adopting even more restrictive regulations. DOL further distances the NIOSH recommendations by using contracted third party modified recommendations not made by NIOSH.³⁹ The FLSA authorizes the secretary of labor to designate occupations for youth that are “particularly hazardous.” This is not a blank-slate to DOL to substitute its own judgment on how to “adequately protect young hired farm workers.” This is regulatory over-reach, not justified either by the statute or the NIOSH report.

Hazardous Occupation Order #3

This proposal by DOL prohibits “operating and assisting in the operation of hoisting apparatus and conveyors that are operated either by hand or by gravity.” Similar broad definitions of terms are employed in the proposal.⁴⁰

DOL here clearly exceeds its congressional mandate to identify occupations that are “particularly hazardous” and, in fact, might even contravene common sense. The department, in this HO, has actually turned the law on its head by prohibiting youth from being employed in occupations that utilize devices that actually *reduce* risk. For example, a hand cart is a mechanical device that applies leverage by hand and foot power to hoist or lift a load and lowers the load by gravity or by hand or foot. It is foolish for DOL to use a broad brush in an effort to “protect” youth and in so doing actually increase the risk of injury. We believe DOL would be more wise, and follow congressional intent far more closely, to designate specific devices – such as manlifts and boatswain-chair-type devices – that are prohibited, rather than to attempt to ban all activity. Such an approach is a sweeping arrogation of authority that was not granted to DOL by Congress.

³⁸ *Federal Register*, page 54856

³⁹ *SiloSmashers, Inc.* page 54837. For example see HO 10.

⁴⁰ *Federal Register*, page 54878, where “operating” is defined to include “tending, setting up, adjusting, moving, cleaning, oiling, repairing” the equipment.

Hazardous Occupation Order #4

DOL broadly expands the previous agricultural HO related to working with animals and does so in a way that greatly exceeds congressional intent – as well as the NIOSH report on which the department purportedly bases these new HOs. The impact of the HO on working with livestock would be to greatly reduce youths’ exposure to livestock and animal husbandry practices. Among the notable tasks the proposed HO would prohibit youth from performing are: engaging or assisting in animal husbandry practices that inflict pain upon the animal and/or are likely to result in unpredictable animal behavior, treating sick or injured animals, and herding animals in confined spaces such as feed lots or corrals or on horseback.

Here again, DOL ignores the NIOSH recommendation, which is to retain the existing HO. Instead, the department seeks to expand its regulatory reach by “incorporating the important and thoughtful recommendations of the National Farm Medicine Center.”⁴¹ Following this path, as DOL seeks to do, will lead to very broad regulatory prohibitions, potentially increasing liability for farmers and imposing excessive government controls on agricultural producers. We believe it exceeds DOL’s statutory authority and should not be pursued.

Moreover, the department appears to be attempting to codify into a labor regulation a veterinary standard without any supporting scientific studies or analysis to support what it means to “inflict pain”. The classification of certain animal husbandry activities as “inflict[ing] pain” is not within the scope of the department’s power. If there is any department in the federal government that regulates animal husbandry, that would be USDA. As with many sections of this NPRM, the department has again set forth a proposed standard with absolutely no analysis to support its position in violation of the APA.

For example, the NPRM says that the “National Farm Medicine Center noted that past and recent data indicate a significant number of animal-related injuries occur to youth when they are involved in the activities cited in its second recommendation [i.e., prohibiting youth from engaging or assisting in animal husbandry practices that inflict pain upon an animal and/or are likely to result in unpredictable animal behavior]. It also reports that “[h]orseback herding requires a person to monitor and anticipate the behaviors of two large animals simultaneously. No youth development data exists to suggest youth younger than 16 years have the cognitive ability to handle this responsibility.”

We find it astonishing that DOL would rely upon a single recommendation of an organization that “no youth development data exists” to suggest youth under 16 years of age can herd animals on horseback. In fact, there is almost unlimited real-world experience on which to rely. This is an activity that has been performed for generations, both in America and in other nations. The test is not that there is an absence of injury in the task. Youth engage in many activities – competitive horseback riding, skateboarding, surfing, cycling – that can entail some risk, injury

⁴¹ *Federal Register*, page 54859

and, in extreme cases, fatality. To impose a federal prohibition on an activity that has a long, iconic history is regulatory over-reach.

We also draw DOL's attention to another pernicious aspect of this proposed HO. By using as a standard any activity that might "inflict pain," DOL, unwittingly or not, may be opening the door for animal rights activists to pursue their own agendas on the back of labor standards. We note that a lawsuit was recently filed by an animal rights organization, three marine-mammal experts and others alleging that several orca whales now held at SeaWorld are being held as slaves in violation of the 13th Amendment to the U.S. Constitution.⁴² The orcas have been named as plaintiffs in the suit and the general counsel of People for the Ethical Treatment of Animals (PETA) has been quoted as saying, "Slavery is slavery, and it does not depend on the species of the slave any more than it depends on gender, race, or religion."⁴³ Furthermore, we draw DOL's attention to the fact that this might well be a regulatory loophole some might use to further restrict not only youth employment but to further an animal rights crusade. As noted on one website, "Some scientists suggest that only primates and humans can feel emotional pain, as they are the only animals that have a neocortex – the 'thinking area' of the cortex found only in mammals. However, research has provided evidence that monkeys, dogs, cats and birds can show signs of emotional pain and display behaviours associated with depression during painful experience, i.e. lack of motivation, lethargy, anorexia, unresponsiveness to other animals."⁴⁴

Rather than expand its regulatory reach, we urge DOL to follow the NIOSH recommendation and retain the current HO without expansion.

Hazardous Order #5

The preamble states that "for purposes of this Ag H.O. *timber* means trees, logs, and other similar woody plants. However, this HO would not prohibit a hired farm youth from performing such tasks as carrying firewood or clearing brush."⁴⁵ As drafted, the HO may have the effect of mandating an outright prohibition of youth working on Christmas tree farms or in plant nurseries. It should be clarified to allow such occupations, which are not particularly hazardous. It also should be made clear that it does not prohibit youth from ordinary, non-hazardous activities connected with trees (e.g., pruning).

Hazardous Order #6

HO6 references 29 CFR Part 570.33(n)(4) that prohibits occupations "in connection with" construction (including demolition and repair). We are concerned this reference will prohibit the use of hammers and other hand construction tools in not only the repair and maintenance of any building, facility or other structure on a farm but also the use of hand tools entirely. Common tasks such as fence mending and painting, nailing a slat on an apple bin or carrying materials to a stall for repair would be prohibited. As the terms "in connection with" are used, we worry that

⁴² <http://www.peta.org/b/thepetafiles/archive/2011/10/25/peta-sues-seaworld-for-violating-orcas-constitutional-rights.aspx>

⁴³ *Ibid.*

⁴⁴ <http://www.wellcome.ac.uk/en/pain/microsite/culture2.html>

⁴⁵ *Federal Register*, page 54860

tasks such as pounding stakes in the ground to “build” stake support “structure” to support vegetable plants would also be prohibited. We disagree that all tasks “in conjunction with” construction are particularly hazardous.

Hazardous Order #7

DOL is overly broad in HO7 when it prohibits work at elevations greater than six feet. Falls occurring on the same level accounted for 19 percent of all workplace fall fatalities in 2009, while falls from ladders accounted for 20 percent.⁴⁶ In 2010, falls contributed to 6 percent of agricultural fatalities but 33 percent of all construction fatalities.⁴⁷ While 20-foot ladders have become obsolete for many tree fruit operations, the use of 8 to 12 foot ladders is still common. We believe modern production practices, such as high-density plants, have significantly reduced the fall potential for the most common use of ladders on farms.

We are concerned this HO would prohibit youth from working in many terraced vineyards and orchards, as well as work near collies, ditches, levees or in other hilly terrain areas.

Similarly, the proposed rule provides no qualifying language regarding “above another elevation.” As currently written, the rule would prohibit work locations such as hay lofts but also second-floor offices, mezzanines or any other location where stairs are used to ascend more than six feet regardless of walls, railings or other enclosing methods.

Without data related to the agricultural fall causal factors we disagree with this HO expansion to six feet.

Hazardous Order #8

This HO would prohibit occupations involving working inside any fruit, forage, or grain storage silo or bin. While we recognize that some such occupations could be particularly hazardous for youth, we believe, as proposed, DOL has established parameters that make the regulation too vague and encompassing. For instance, it is not clear what constitutes storage. Does forage storage apply to hay barns? Does it include livestock barns that may have a temporary “forage” storage, such as a pile of feed or hay? Would an un-sided empty fruit bin or hay storage structure be prohibited at all times or just when a bin or bale is present? Are pole barns that are normally used to store farm equipment but could be used to store overflow grain or fruit now a prohibited work area? Are empty bunker silos covered? Would “fruit storage” include a bushel crate or bin? If all fruit storages are prohibited, then a walk-in cooler at a farm stand, a 1,000-bushel cold room or a 20,000 cold storage would also be prohibited. Alternatively, the current standard applies to storages designed to maintain a hazardous atmosphere and to those areas recognized to present a hazard.

⁴⁶ U.S. Bureau of Labor Statistics, U.S. Department of Labor, 2011

⁴⁷ Fatal Occupational Injuries by Occupation and Selected Event or Exposure, 2010, U.S. Bureau of Labor Statistics, U.S. Department of Labor

The NIOSH report speaks to engulfment, exposure to silo gases, depletion of oxygen from cave-in or collapsed materials, toxic gases or oxygen deficiency. Common fruit storages, with the exception of controlled atmosphere (CA) storages that are already covered, do not present the hazards listed as a basis for work inside all of the listed storages. For a CA room to function the room must be air tight prior to establishment of the modified atmosphere. Seals such as rubber gaskets, mastic, gas tight tape or paint are used to seal the locked entry doors and any other penetrations to the room.⁴⁸ While the hazard, low oxygen, is present there is no entry to the room.

Common fruit storage generally maintains a refrigerated condition with normal ambient air conditions. Fruit respire, or ripens, near and after harvest. Any fruit surface build up of respiratory gases such as ethylene or carbon dioxide is detrimental to fruit quality; air movement and humidity are essential for fruit quality. Cold rooms are regularly used for short-term storage of fresh or packed fruit and include certain packing areas. Fourteen and 15 year olds are allowed to work inside fruit cold storages but not freezers under the revised Non-Agricultural Youth Standards.⁴⁹ The proposed rule far exceeds the Non-Agricultural Standards.

We believe DOL needs to clarify the HO to assure that it would only apply to those occupations that are particularly hazardous for youth.

Hazardous Order #10

We agree with maintaining the current Danger/Poison or Warning for registered agricultural pesticides that are used in accordance with the Agricultural Use Requirements box as required by the EPA Worker Protection Standard.⁵⁰

The EPA has established a significant review process, possibly the most extensive in the world, to determine the hazards associated with regulated agricultural pesticides. EPA designates the relative toxicity by the use of Signal Words: Danger/Poison; Warning; Caution; and Caution (optional).

Toxicity categories.

Study	Category I	Category II	Category III	Category IV
Acute oral	Up to and including 50 mg/kg	>50 through 500 mg/kg	>500 through 5,000 mg/kg	>5,000 mg/kg
Acute dermal	Up to and including 200 mg/kg	>200 through 2,000 mg/kg	>2,000 through 5,000 mg/kg	>5,000 mg/kg
Acute inhalation *	Up to and including 0.05 mg/liter	>0.05 through 0.5 mg/liter	>0.5 through 2 mg/liter	>2 mg/liter

⁴⁸ United Nations Industrial Development Organization, Controlled Atmosphere Storage

⁴⁹ 29 CFR Part 570.34(e) and (j)

⁵⁰ 40 CFR Part 170 – The Worker Protection Standard

Primary eye irritation	Corrosive (irreversible destruction of ocular tissue) or corneal involvement or irritation persisting for more than 21 days	Corneal involvement or other eye irritation clearing in 8-21 days	Corneal involvement or other eye irritation clearing in 7 days or less	Minimal effects clearing in less than 24 hours
Primary skin irritation	Corrosive (tissue destruction into the dermis and/or scarring)	Severe irritation at 72 hours (severe erythema or edema)	Moderate irritation at 72 hours (moderate erythema)	Mild or slight irritation at 72 hours (no irritation or slight erythema)
*4-hour exposure.				

Signal word as determined by toxicity category.

Toxicity category	Signal word
I	DANGER
II	WARNING
III	CAUTION
IV	None required

Typical statements for acute oral toxicity.

Toxicity category	Signal word	Statements
I	DANGER-POISON Skull and crossbones required*	Fatal if swallowed. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, or using tobacco.
II	WARNING	May be fatal if swallowed. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, or using tobacco.
III	CAUTION	Harmful if swallowed. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, or using tobacco.
IV	CAUTION (optional)	No statements are required. However, manufacturers may choose to use category III labeling.
*For products containing $\geq 4\%$ methanol, EPA believes that in order to mitigate potential risk the following statement should be added to the label: "Methanol may cause blindness."		

We caution the department, however, to ensure that any final rule not overstep the department's authority by prohibiting activities that are not particularly hazardous. For example, it appears that as currently written, the proposed rule might prohibit youth from washing their hands with typical antibacterial soaps as they contain disinfectants and/or sterilants or other substances used to kill, repel, or mitigate pests,⁵¹ and it meets the definition of the handler task of applying a pesticide.⁵² Additionally, employers complying with the federal Field Sanitation Standard⁵³ would need to replace all anti-bacterial materials with detergent soap. The proposed rule could affect the Occupational Safety and Health Administration's benefit determination that "a total of 214,319 expected parasitic cases [would be] reduced by 139,307; 20,280 gastrointestinal cases reduced by 12,776; 4,148 viral hepatitis cases reduced by 1,037 because of the new federal standard and state standards."⁵⁴

Hazardous Order #13

This HO would prohibit all work involved in the production and curing of tobacco. This restriction is overly broad and clearly goes beyond DOL's authority, which is only to restrict those occupations that are "particularly hazardous." We agree with comments already filed by Mark Purschwitz, Ph.D., Extension Professor and Agricultural Safety and Health Specialist with the University of Kentucky, which point out that there are occupations in the production and curing of tobacco which are not particularly hazardous. If it is the goal of DOL to assure that youth avoid situations in which they can contract green tobacco sickness (GTS), the department should tailor its regulation to address those situations, and not promulgate a blanket regulatory prohibition that exceeds its statutory mandate.

Request for Comments

In the NPRM, DOL states that it is "considering whether to create new Ag H.O. that would limit the exposure of young hired farm workers to extreme temperatures and/or arduous conditions and is asking for comment on this subject."⁵⁵ DOL goes on to state that:

An Ag H.O. could provide that youth under the age of 16 would not be permitted to work in agricultural occupations where the temperatures at which they are working exceed or drop below a certain temperature, factoring in such things as humidity, wind velocity, and the degree and duration of the physical exertion required by the work. It might also require that hours in direct sun be limited, if the temperature reaches certain thresholds for prolonged periods of time, and/or that workers be provided with shade, additional water supplies, more frequent breaks, the use of fans in shaded rest areas, or other options for relieving heat stress in certain

⁵¹ Congressional Research Service Report RL30022

⁵² *Federal Register* Pg. 54879

⁵³ 29 CFR Part 1928.110

⁵⁴ U.S. Department of Labor, Fact Sheet No. OSHA 92-25

⁵⁵ *Federal Register*, page 54865

circumstances. Comments are also requested about whether the payment of piece rates to young farm workers impacts their prolonged exposure to potentially harmful conditions.

We do not support creation of such a new agriculture HO and caution DOL in the strongest terms not to embark on such a regulatory expedition in the absence of convincing evidence on the public record that its position is justified and it is acting within the regulatory authority conferred on it by Congress. We amplify our concerns in the comments below.

1. DOL cites no documentation or evidence substantiating its view.

As noted earlier, DOL states that it “places great value on the information and analysis provided by NIOSH.”⁵⁶ Nowhere in its report, however, does NIOSH recommend an agriculture HO limiting exposure to “extreme temperatures and/or arduous conditions.” Neither in its revisions to the existing HOs nor in its recommendations for new HOs does NIOSH even raise this matter.

2. The seminal publication on this issue makes no mention or recommendation in this area.

Children and Agriculture: Opportunities for Safety and Health, a National Action Plan was published in April 1996 and was a prelude to later efforts, including the NIOSH report on which DOL purportedly rests its regulatory agenda. The report contained “the goal, 13 objectives, and 43 recommended action steps proposed by committee members.”⁵⁷ Nowhere in the National Action Plan is there a mention, much less a recommendation, to restrict youth from participating in the harvest of fruits and vegetables, much less an attack on the use of piece rates.

3. Later documents on this issue make no mention of this as a “particularly hazardous” occupation for youth.

In 2002, a subsequent report⁵⁸ cited as a document that “builds upon the 1996 National Action Plan”⁵⁹ similarly examined these issues. That report contained no such recommended agriculture HO on “arduous conditions” or “extreme

⁵⁶ Ibid., page 54837

⁵⁷ *Children and Agriculture: Opportunities for Safety and Health, A National Action Plan*, page 6. Available at <http://www.marshfieldclinic.org/proxy/mcrf-centers-nfmc-nccrahs-reports-nationalactionplan.1.pdf>

⁵⁸ *Childhood Agricultural Injury Prevention: Progress Report and Updated National Action Plan from the 2001 Summit*, published April 2002 by the Marshfield Clinic available at <http://www.marshfieldclinic.org/proxy/MCRF-Centers-NFMC-nccrahs-reports-summitreport.1.pdf>

⁵⁹ Ibid., Foreword to the publication

temperatures” or whether particular wage structures contributed to such conditions. It is noteworthy, however, that the report did contain a goal and objective that might have touched on this area.

The report included the recommendation that “exposure limits should be established to guide agricultural work assignments for children less than 18 years of age.”⁶⁰ None of its discussion, however, reflected the avenue down which DOL apparently wishes to proceed. The report noted that “workers are exposed to agrochemicals, organic dusts, gases, nitrates, volatile organic compounds, oils, and solvents. In addition to toxins, there are exposures to noise, vibration, and cumulative body strain.” Nowhere is temperature mentioned.

4. DOL’s approach is overly broad and arbitrarily vague.

It is a near impossibility for the regulated community to respond thoughtfully and substantively to a DOL request on an unstated, unspecified HO that might encompass restrictions based on “arduous conditions.” Any specific physical task might be characterized as “arduous,” but we remind the department that it does not have the authority to impose its own view on the sector. It is authorized solely to identify those occupations which are “particularly hazardous,” not ones which might be simply “arduous.”

Moreover, DOL has an obligation to the regulated community to state the hazardous nature of an occupation, how it seeks to address it and to spell out the HO in a manner that allows the agricultural community to respond substantively. In a meeting of stakeholders held at the USDA on Sept. 7, 2011, DOL officials of the department were explicitly asked whether they would propose an HO which farmers and ranchers would be allowed to evaluate and to which they would be allowed to respond or whether DOL might instead promulgate a final rule. The response of officials from the Wage and Hour Division was that they might well go directly to a final rule. Such an approach by the department would be an abuse of discretion and violate its obligations under the Administrative Procedure Act.

5. DOL appears to rely on the Human Rights Watch report for this initiative.

In the NPRM, the department states “As Human rights Watch documented in its May 2010 Report, *Fields of Peril: Child Labor in Agriculture*, pp.54-55, agricultural work naturally lends itself to occupational exposure to extreme heat and cold.”⁶¹ As discussed earlier in these comments, we do not believe the HRW report, whatever its merit as a work of advocacy, does not rise to such a level that it “documents” the need for additional regulation by DOL.

⁶⁰ Ibid., page 20

⁶¹ Federal Register, page 54865

6. DOL should not override existing state protections.

A number of states have in place existing regulatory or statutory requirements that must be met before youth can be employed in agriculture. California, for instance, has a number of strict standards protecting youth. One of the undersigned organizations⁶² submitted extensive comments to the department in August 2010 noting the protections afforded by states to youth working in agriculture. We do not believe DOL has established the need to regulate in an area which is already amply overseen by the states.

Non-agricultural Hazardous Order

We also wish to comment briefly on DOL's proposal⁶³ related to a prohibition on work in Farm-Product Raw Materials Wholesale Trade Industries. While it is not an agricultural HO, it does touch on the employment opportunities afforded to youths in rural and agricultural communities, and we wish to draw the department's attention to the overly broad proscription it is proposing and to urge that it be brought closer to conformity with DOL's authority under the law. We believe it is possible for DOL to meet its statutory responsibilities while still providing for acceptable employment opportunities for youths below the age of 18. For example, there are occupations located at country grain and terminal elevators, as well as the grain-handling activities of feed mills and grain processing plants, that we believe do not pose hazards that would foreclose the jobs for employment of youth under the age of 18. Such tasks might include general cleaning and related duties, administrative tasks in scale houses, or other responsibilities that do not encompass the threats of engulfment or entrapment. By recognizing these appropriate jobs, DOL would continue to allow employment opportunities for teens, particularly in summer and during times of harvest. Even though employees under 18 will be allowed to work in an office, we also recommend that the department further define what constitutes an "office."

We appreciate the opportunity to submit these comments to DOL and stand ready to work with you in any appropriate way to assure that youth seeking employment in agriculture are both protected from particularly hazardous occupations and are provided the employment opportunities Congress intended.

Sincerely,

Advanced Insurance Marketers
Agri-business Association of Iowa
Agricultural Retailers Association
AgStar Financial Services, ACA
American Farm Bureau Federation

⁶² See Attachment B, submission by American Farm Bureau Federation

⁶³ *Federal Register*, pages 54846-54848

American Feed Industry Association
American Horse Council
American Nursery & Landscape Association
American Seed Trade Association
American Soybean Association
Association for Career and Technical Education (ACTE)
Badgerland Financial
Citizens LLC
Colorado Association of Wheat Growers
Cooperative Elevator Co.
Cooperative Network
CropLife America
Dairy Farmers of America
Dairylea Cooperative Inc.
Falmouth Cooperative Co
Florida Fruit & Vegetable Association (FFVA)
G & R Van Driessche Farms
Great Lakes Packing Company
GreenStone Farm Credit Services
Idaho Dairymen's Association
Illinois Fertilizer and Chemical Association
Independent Professional Seed Association (IPSA)
Kansas Cooperative Council
Land O'Lakes
Maryland & Virginia Milk Producers
MBG Marketing/The Blueberry People
Michigan Agri-Business Association
Michigan Bean Shippers
Michigan Milk Producers Association
Michigan Sugar Company
Minnesota Crop Production Retailers
Montana Grain Growers Association
National All-Jersey
National Association of Agricultural Educators (NAAE)
National Association of State Departments of Agriculture
National Association of Supervisors of Agricultural Education (NASAE)
National Association of Wheat Growers
National Corn Growers Association
National Cotton Council
National Cotton Ginners Association
National Council for Agricultural Education (NCAE)
National Council of Agricultural Employers (NCAE)
National Council of Farmer Cooperatives
National Farm & Ranch Business Management Education Association (NFRBMEA)
National FFA Alumni Association
National FFA Foundation

National FFA Organization
National Grain and Feed Association
National Grape Co-operative Association, Inc.
National Milk Producers Federation
National Renderers Association
National Young Farmer Education Association (NYFEA)
Rocky Mountain Agri-business Association
Ohio AgriBusiness Association
Society of American Florists
South Dakota Agri-Business Association (SDABA)
South Dakota Grain & Feed Association
South East Dairy Farmers Association
Southern States Cooperative
USA Rice Federation
United FCS
United Fresh Produce Association
US Apple Association
Virginia Agribusiness Council
Washington Farm Labor Association
Welch Foods Inc
Western United Dairymen

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Article published Feb 1, 2012

Pricey tractors not earning keep on small, local farms

Farmers finding it hard to make ends meet on the land



Photo by: STEVE LEWIS/Durango Herald
Increasing costs for farm tractors and equipment, such as these in the yard of Southwest Ag Inc. in Gem Village, are increasingly placing them beyond the reach of small-scale farmers in Southwest Colorado.

By **Heather Scofield** Herald Staff Writer

Some in the food and agriculture industry are sounding the alarms. The future of our food is in jeopardy, they say.

"I don't know what the answer is, but something has to change or we're not going to be able to eat," Durango hay farmer John Boughman said. "If people can't afford to farm, where will we get our food?"

News headlines often raise the issue of rising food costs and the pressure it puts on the nation's struggling families. But local farmers say a deeper, more behind-the-scenes problem could jeopardize the nation's access to healthful food produced by small, local farming operations.

Even as more Americans, and Durangoans, are turning to farmers markets and roadside produce stands for locally grown, often organic foods, farmers continue to find their costs far outstrip the value of their harvests.

2/2/12

The Durango Herald 02/01/2012 | Pricey tractors not earning keep on small, ...

Local farmers, ranchers, officials and farm-equipment suppliers interviewed for this story said that for most small and mid-size farming operations, a tractor no longer earns its keep. That is to say, over the expected lifespan of most farming heavy equipment, the food the equipment produces no longer nets enough cash for a farmer to pay for the equipment before it needs to be replaced.

Bottom line: Planting, growing and bringing the food that's on your table to market came at a net loss to the family that did the work.

"Most of the farmers in our local market have another full-time job," said Rich Hillyer, part-owner of Southwest Ag, a local farming-equipment retailer. "That's been the case for a long time."

Boughman echoed the sentiment, saying it's almost impossible to be "just a farmer" anymore.

Even at today's high prices for some types of produce and hay, "you're not making it unless you have a really large farm," said Ben Wilson, sales manager for Witt & Sons Irrigation.

A whole host of issues are playing a role in a growing epidemic of small farms going broke, officials and agricultural workers said.

Land costs have risen drastically during the last decade, farmers and ranchers said. Equipment costs alone have risen more than 30 percent in just three years, said Hillyer and Wilson. Gas costs have risen. Tax policies and local land-use rules and regulations also can create hurdles for farmers.

Even new air-quality rules posted by the U.S. Environmental Protection Agency will cost farmers, Hillyer said.

To meet the requirements of the regulations, a \$60,000 tractor today will cost \$75,000 next year, Hillyer said.

"It's scary," Hillyer said.

The farmers have been surviving the only way they know how, several people said. They're taking on debt. They're borrowing to pay for the land, equipment and seed.

"The only thing that saves the farmer now is installment payments," said Kent Ellison, a hay farmer in Arboles.

It's a disaster waiting to happen, said Evert Oldham, area director for the U.S. Department of Agriculture Rural Development office in Aztec.

"You end up with these required massive capital investments and no profits after you pay all the debt service," Oldham said.

One bad year, one flood or crop infestation could begin a farmer's downward spiral to watching the death of his life's work, he said.

"Our food security, stability and sustainability depend upon us returning to a smaller-scale system," Oldham said. "It's not about going back to the good ole' days, but the food system

2/2/12

The Durango Herald 02/01/2012 | Pricey tractors not earning keep on small, ...

model we've had for the last 40 years is a proven failure."

With food-contamination scares increasing in numbers and gas and energy costs soaring, people like Oldham say they question the wisdom of recent decades' scaling up of food production operations into larger and larger commercial farms.

"There comes a point when consolidation makes you so fragile that it's not sustainable," Oldham said. "We cannot risk that with our food."

But reversing the food system's path, which Oldham says looks remarkably like the path the recently bailed out banking industry took to in recent decades, won't be easy.

Food will inevitably cost more, but there would be long-term health-care cost savings, Oldham said.

Though Jim Dyer, director of Healthy Community Food Systems, knows a struggling family who needs cheap food today might find it hard to adopt that long-term view.

In the end, Dyer said, semantics will matter.

"People want cheap food, but I think we need affordable food," he said. "There's a difference."

Affordable to Dyer means fair prices for the producer, the consumer and everyone in between. Getting there will involve fixing more than a broken food system. Working wages also must be addressed across the board.

"We have to also start talking about living wages to deal with this in the longer term," Dyer said.

And a problem this big cannot be fixed overnight, Dyer said. It starts with people feeling entitled to a say how their food is moved, grown and what it costs, he said. Right now, "everyone owns the system but us," Dyer said.

Solutions will come if people are taking ownership in area food systems, playing a role in organizations working to find a solution, supporting their local farmers and keeping a closer eye on the trends surrounding the commodities that keep us fed and healthy, locals in the agriculture industry said.

In the meantime, Ellison said, "buying a farm is a good deal for people who need a write-off because it's a good loss."

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February 2, 2012

Statement of the Child Labor Coalition on
Proposed Hazardous Occupations Orders
To the Subcommittee on Agriculture, Energy and Trade, Committee on Small Business
February 2, 2012 Hearing:
“The Future of the Family Farm:
The Effect of Proposed DOL Regulations on Small Business Producers”

The following comments represent the views of Child Labor Coalition—28 groups committed to increasing the health and safety of teen workers in the U.S. and reducing abusive child labor here in the U.S. and abroad. Our members include human and worker rights organizations, educational groups, faith-based groups and several major unions concerned about child labor and the safety of children who work in agriculture. We represent millions of Americans—educators, workers, farmworkers, farmworker advocates, and human rights activists concerned about the safety, education, and welfare of children who work in agriculture.

We ask subcommittee members that in discussing the proposed Hazardous Occupation (H.O.) orders they remember that agriculture is the single most dangerous industry in which children are allowed to work in large numbers.

In its 2008 edition of *Injury Facts*, The National Safety Council ranked agriculture as *the most dangerous industry*, with 28.7 deaths per 100,000 adult workers. In 2006, an estimated 5,800 children and adolescents were injured while performing farm work. The proposed regulations we are here to discuss today—regulations which have not been updated substantially for the last four decades—seek to protect these young workers, who because of exemptions to

the Fair Labor Standards Act, are often exposed to dangers that other youth in America do not have to face. This past year has provided painful reminders of the dangers posed by work in agriculture:

- On August 4th, two 17-year-olds suffered serious injuries—each losing a leg—when they became trapped in a grain auger in Kremlin, Oklahoma.
- On July 25th, two 14-year-old girls were killed and eight others injured while they detasseled corn in Tampico, Illinois. The youth worked in water-soaked fields and were electrocuted by nearby irrigation equipment.
- In December, 2010, a 16-year-old boy named John Warner was killed in a farm machinery accident in Darke County, Ohio. Apparently, the boy's clothing became entangled in a power-take-off shaft of a manure spreader and he was pulled into the machinery.

Each year, several youth workers die as they toil in U.S. agriculture, which has the highest fatality rate for youth workers of any industry—40% of fatalities for teen workers occur on farms. Each day, 12 Americans working on farms suffer a permanent disability.

According to the National Institute of Occupational Safety and Health (NIOSH), between 1995 and 2002, an estimated 907 youth died on American farms—well over 100 per year. Between 1992 and 2000, more than four in 10 work-related fatalities of young workers occurred on farms. Half of the fatalities in agriculture involved youth under age 15.

For workers 15 to 17, the risk of fatal injury is four times the risk for young workers in other workplaces, according to U.S. Department of Labor's Bureau of Labor Statistics. Yet, U.S. law specifically exempts 16- and 17-year-old youth from hazardous work protections—if they are working in agriculture.

We join numerous health and safety experts in the country who question why youth should be allowed to perform hazardous tasks in one industry—agriculture—when they are not allowed to perform the same tasks in other industries. A 1998 Institute of Medicine report stated that the current distinction in the protections provided under hazardous orders in different

industry sectors should be eliminated. Children of all ages, especially those under 16, deserve to be protected and must be protected from known hazards.

We disagree with comments made by members of the farm community that the proposed H.O.s will prevent farmers from training the next generation of farmers or that they will inhibit children from wanting to enter farming. First, the current “parental exemption” allows the sons and daughters of farmers to perform any job on a farm at any age—no matter how dangerous it is. Second, the proposed H.O.s would allow youth in agricultural communities to begin work for wages at age 12, performing a wide range of safe farm activities. Third, the H.O.s will have little impact on current agricultural training programs like 4-H and Future Farmers of America. Fourth, as the Department of Labor (DOL) has noted, farm youth will still be allowed to help with chores on neighboring farms—even if the work is defined as hazardous—as long as no employment relationship exists.

The proposed child safety rules discussed here today would help protect hundreds of thousands of youth workers. In the span of a decade, the CLC estimates that the H.O.s will save 50-100 youth who work for wages and will contribute to developing safety consciousness on farms that will likely save even larger numbers of youth performing farm chores.

Delaying these regulations further at this point will mean that youth working in farm work will be killed and maimed unnecessarily. The non-agricultural child labor regulations took three years to move from the “proposed” to “final” stage. Given the extreme dangers posed by agricultural work, a delay of this length would be disastrous for youth working in agriculture.

We understand that the prospect of regulatory change produces fear for many farmers in agricultural areas, but we wish to remind the farmers that these regulations seek to protect their sons and daughters when they work on neighboring farms. The regulations would still preserve “parental exemptions” for children working on their parents’ farms. We have seen the heartbreak to families and communities when teens are killed on farms. Is the cry, “We need the labor,” proper justification for risking the lives of children? No other industry is allowed an exemption for hazardous teen work. Statistics suggest that coal mining compares in danger to agriculture. Yet, coal companies are not allowed to hire teenagers when there is a labor shortage. Adult co-

miners who want their children to follow in their footsteps are not allowed to bring them to work into the mines with them until they are adults because the work is too dangerous.

According to recent consumer polling conducted by the National Consumers League, a co-chair of the Child Labor Coalition, the American public supports the concept that children working in agriculture should receive the same level of protection from U.S. child labor law that children working in other industries receive. [Results can be found at www.nclnet.org]

Disparities in U.S. child labor law exempt children working in agriculture from many Fair Labor Standards Act protections, including protections against work that is known to be hazardous. Sixteen- and 17-year-olds are allowed to perform work in agriculture that is known to be dangerous. With two exceptions—working with tobacco and working in food storage facilities—this pervasive exemption would be untouched by the proposed child safety rules. Given that, the CLC believes it is especially important that 14- and 15- year olds receive increased protections proposed by DOL.

The CLC has specific comments about specific H.O.s:

H.O. 1: The CLC supports the improved protections in H.O. 1 which would remove the 20 PTO Horsepower threshold criteria. We oppose the “student-learners” exemption. Tractor operation is a leading cause of deaths among agricultural workers. According to the ROPS Retrofit (Tractor) Program, it is **the leading cause of death** on the farm and one in seven farmers involved in tractor overturns are permanently disabled by their accidents. Between 1992 and 2005, on average, more than 100 workers a year died from tractor accidents on farms.

The use of all tractors and machines should be banned for use by workers under 16, regardless of whether youth have participated in short-term training courses (the effectiveness of these courses has not been proven). There has been ample research suggesting that neurologically teenagers are still developing and that their still-developing brains lack the capacity to perform the risk assessments that accompany the use of potentially lethal machinery. The CLC suggests that this is one of the reasons that most states do not allow youth under 16 to operate motor vehicles. Teenagers are four times as likely to be involved in a car crash as adults, according to the Insurance Institute for Highway Safety. We believe these same risk factors apply to the use of tractors, which are the leading cause of death on farms among young

agricultural workers. The risks of rollover and the risks of running over young siblings on farms are too great to allow children under 16 to operate tractors.

H.O. 2: The CLC supports the proposed changes encompassed by the new H.O. 2 which would protect young workers from many types of power-driven machinery by prohibiting the use of all power-driven equipment. The CLC is, however, against the student-learner exemption.

H.O. 3: The CLC supports the proposed prohibition of employment in occupations involving the operation of non-power driven hoisting apparatuses and conveyers. Given that apparatuses and conveyors are often used to move heavy objects, there is an unacceptable risk of injury involved with their use by young workers. We agree with the decision to not permit a student learner exemption.

H.O. 4: The CLC supports all of the proposed protections that involve working with or around animals. As noted previously, working with livestock is one of the most common causes of injuries to agricultural workers, according to John Slocombe, an extension farm safety specialist at KSU. A recent 15-state summary of farm accidents from the North Dakota Farmers Union (NDFU) revealed that animals were a factor in one of every eight farm injuries reported, ranking it second after farm machinery as the major cause of injuries. Livestock accidents account for just under 100 deaths a year on farms, noted the NDFU. We support the prohibition on herding animals in confined spaces such as feed lots or corrals, or on horseback, or using motorized vehicles such as trucks or all terrain vehicles.

H.O. 5: The CLC supports the removal of the 6-inch threshold when it comes to felling, bucking, skidding, loading or unloading timber.

H.O. 6: The CLC supports the new proposed H.O. 6 which prevents employment in construction, communications, wrecking, demolition, and excavation and extends protections enjoyed by other 14- and 15-year-olds in non-agricultural industries. The dangers of construction, wrecking, demolition, and excavation work are well known, killing more than one thousand American workers each year. According to an ABC News report citing federal statistics, in 2006, over 1,200 workers died in construction accidents. The Web site www.trenchsafety.org notes that between 1990 and 2000, on average, 70 workers died in excavation accidents each year. Ten times that number of workers are estimated to be injured each year in excavation accidents.

H.O. 7: The CLC supports the new proposed H.O. 7 which prohibits work on roofs, scaffolds and at elevations greater than 6 feet. The dangers of work place falls is evident. According to the 2009 data from the Bureau of Labor Statistics, 605 workers were killed and an estimated 212,760 workers were seriously injured by falls to the same or lower level. Youth workers, with their smaller bodies, are at greater risk of injuries for heights over 6 feet—a 15-

foot fall may represent three times the height of a 5-foot-tall worker. **The CLC supports prohibitions of any work on ladders involving youth workers.** Ladders represent a particularly unstable work surface. **The CLC supports the expansion of current regulations to prohibit work on elevated farm structures, including silos, grain bins, windmills, and towers; and vehicles , machines, and implements.**

H.O. 8: The CLC supports the prohibition against all work inside a fruit, forage, or grain storage container, including silos and bins. According to researchers at Purdue University in a recent article, at least 26 U.S. workers were killed in grain entrapments in the prior year. Each year in the U.S., teenaged workers suffocate as they become trapped in shifting grain in grain structures and facilities:

- In July 2010 in Middleville, Michigan, 18-year-old Victor Perez and 17-year-old Francisco M. Martinez died after falling into a silo they were power washing.
- In July 2010, in Mount Carroll, Illinois, two workers — Alejandro Pacas, 19, and Wyatt Whitebread, 14 — also suffocated in a grain silo.
- David Yenni, a 13-year-old was killed in a grain loading accident at a Petaluma, California mill in August 2009.
- In May 2009, Cody Rigsby, a Colorado 17-year-old was working in a grain bin when he vanished. It took rescuers six hours to find his body.

Suffocation is not the only threat when it comes to working. Workers face dangers from gases that emanate from grains and dangers from equipment used to move grain within structures. On October 31, 2011, six workers—four of them 24-years-old or younger—were killed in a grain facility explosion in Atchison, Kansas. An Associated Press article, “Risky Grain Elevator Jobs Attract Young Workers,” about the tragedy cites data from the Occupational Safety and Health Administration that there have been “more than 600 explosions at grain elevators, killing more than 250 people and injuring more than 1,000 over the past four decades.” In 2010, according to AP, “there were non-fatal grain explosions or fires in several states including Nebraska, Illinois, Ohio, South Dakota, and Louisiana.”

As noted previously, on August 4, 2011, two 17-year-olds suffered serious injuries—each losing a leg—when they became trapped in a grain auger in Kremlin, Oklahoma.

H.O. 9: The CLC supports the prohibition against all work inside a manure pit or other manure containers. The CLC urges WHD to consider the feasibility of developing a confined spaces standard with broader scope. The recent death of 16-year-old Armando Ramirez, a Californian worker, drives home the dangers of confined spaces. Ramirez was asked to clean out a drainage tunnel. While working in the tunnel, he was overcome with hydrogen sulfide gases and died. His brother tried to rescue him but also died in the attempt.

H.O. 10: The CLC supports the improved pesticide protections in the proposed regulations and attempts to bring consistency with the Environmental Protection Agency's Worker Protection Standard (WPS) proposed in the new H.O. 10. One of the greatest dangers that farm work poses to young workers is the dangers posed by pesticide exposure. The following excerpt from the Web site of the Environmental Protection Agency (EPA) discusses risk factors for children:

Children are at a greater risk for some pesticides for a number of reasons. Children's internal organs are still developing and maturing and their enzymatic, metabolic, and immune systems may provide less natural protection than those of an adult. There are "critical periods" in human development when exposure to a toxin can permanently alter the way an individual's biological system operates. Children may be exposed more to certain pesticides because often they eat different foods than adults.

Adverse effects of pesticide exposure range from mild symptoms of dizziness and nausea to serious, long-term neurological, developmental and reproductive disorders. Americans use more than a billion pounds of pesticides each year to combat pests on farm crops, in homes, places of business, schools, parks, hospitals, and other public places.

Recent research has suggested links between pesticide exposure and "Attention Deficit Disorder," presenting yet another educational obstacle to the long list of obstacles that accompany migration and working in the fields and contributing to the frightening dropout rate suffered by the migrant farmworker community.

During field investigations conducted by members of the CLC, we have noticed youth worker behaviors that increase the likelihood of increased pesticide exposure. Many teen crop harvesters work while wearing less protective clothing than adults. We have witnessed numerous children work in bare feet, exposing their bodies to additional exposure risks. Many farmworker children acknowledge eating unwashed fruit and vegetables as they work.

The CLC supports the ban on all work that falls within the EPA classification of pesticide handler. The CLC supports prohibitions on the emptying, handling or washing of used pesticide containers based on concerns that empty or rinsed pesticide containers often have enough chemical residue left to endanger the health of working teens. Our understanding is that an employee is NOT considered to be a handler (and thus not covered under the WPS) if the containers have been washed according to the label instructions and/or triple rinsed or pressure rinsed.

H.O. 11 & H.O. 12: The CLC supports the retention of prohibitions regarding the handling and using of blasting agents and the retention of the prohibition regarding the transporting, transferring, or applying of anhydrous ammonia.

H.O. 13: **The CLC supports prohibitions regarding work in the tobacco industry.** The dangers of “Green Tobacco Sickness,” are well-known by the Farmworker healthcare community and contact with tobacco and the toxic chemicals contained in tobacco plants is not something young workers should experience. The CLC recommends adding “packing and transporting” to the list of specifically prohibited activities. Given the toxicity levels of this product and prohibitions of its consumption by minors, the CLC supports banning all work on this crop by workers under 18.

Non-Ag H.O. 18: The CLC supports the prohibition against work in occupations involving farm-product raw materials wholesale trade industries, including most occupations performed at country grain elevators, grain bins, silos, feed lots, feed yards, stockyards, live stock exchanges and livestock auctions.

Non-Ag H.O. 19: The CLC supports prohibitions against using electronic devices, including communication devices, while operating power-driven equipment, including motor vehicles. The dangers associated with operating vehicles and power-driven equipment should not be enhanced by distractions.

In addition to the proposed H.O.s, the CLC urges U.S. DOL to consider other youth worker related safety measures:

Support for a Heat Stress H.O. The CLC believes that DOL should adopt a Heat Stress H.O. in the next iteration of protective child labor regulations. Children, as young as 12—and sometimes even younger, are working eight, 10, and 12 hour days in 100-degree heat, performing back-breaking, strenuous labor, putting far too great a strain on their developing bodies. The dangers

of working in extreme heat were made clear in May 2008 when 17-year-old Maria Isabel Vasquez Jimenez collapsed after she was denied access to shade as she worked in near-triple-digit heat in a California vineyard.

The Occupational Safety and Health Administration (OSHA) considers heat stress to be a major concern in the workplace. Working in hot environments can create heat stress, which is a dangerous—potentially fatal—condition. The body functions most effectively within a limited temperature range. If the temperature rises too high, the body's metabolic rate increases and its efficiency decreases. The body loses fluid through perspiration and the blood vessels dilate in an attempt to cool the body. Eventually, the body suffers from heat exhaustion or heat stroke.

The CLC fears that children, with their developing bodies, may be more susceptible to heat stroke than adults. It is our understanding that children's bodies take longer to adapt to changes in weather/heat, and they produce more heat with activity and sweat less than adults. They may not think to take frequent rest periods or remember to drink water as frequently as adults. Children with chronic health problems, medications or obesity may be especially vulnerable to heat-related problems.

Our observations from field visits suggests that children often wear hats less frequently and wear less protective clothing than adults, exposing their bodies more to the sun.

Every summer, large groups of children on educational or recreational outings that involve little exertion succumb to heat stress. The tremendous exertion associated with most field work increases the risk of suffering heat stress and heat exhaustion.

We urge DOL to implement a ban that would prevent children from working when the temperature is over 100 degrees and to implement regulations that require rest, shade, and water breaks for work in fields where the temperature is between 90 and 100 degrees.

Both California and Washington State have implemented heat stress rules and we urge DOL to examine these regulations in implementing new heat stress regulations.

Prohibit Piece-Rate Work for Children Under 16. Many crops in U.S. agriculture are harvested under the piece-rate compensation system. Under this system, the more crops an individual picks or harvests, the more they are paid. This causes farmworkers to work at extreme speed for hours on end and it prompts many farmworkers to bring their children to work with them in the fields.

Typically, farmworker youth ages 12 and higher work under their father's or mother's name performing piece rate harvesting. The actual compensation rate these children are earning is often only \$1 to \$3 an hour. As a result of this, the CLC believes that the piece-rate payment system is a vehicle for rampant wage theft, causing farmworker youth to work for what might be called "slave wages."

There are health and safety implications associated with the piece-rate payment system as well since it causes children to work at the edge of their capacity. Members of the CLC have personally witnessed children as young as 10, working as hard as humanly possible, as they harvested onions in Texas in temperatures that were in the mid-90s. Pushing themselves to their limits, these children will often harvest thousands of pounds of produce over an 8 to 14 hour span. Simply put, the piece-rate payment system is inhumane and not fit for children.

Conclusion

Once again, we applaud WHD for releasing these proposed regulations which we believe will have a profound impact in protecting young workers in U.S. agriculture. **Any delay in issuing these protections, will almost certainly result in the needless deaths and permanent disability of numerous young agricultural workers.**

Child Labor Coalition Members

- American Federation of School Administrators
- American Federation of Teachers
- Association of Farmworker Opportunity Programs
- Calvert Group Ltd.
- Communications Workers of America
- Farmworker Justice
- First Focus
- GoodWeave
- Human Rights Watch
- International Center on Child Labor and Education

- Injury Control Research Center, West Virginia University
- International Brotherhood of Teamsters
- International Initiative to End Child Labor
- International Labor Rights Forum
- Media Voices for Children
- Migrant Legal Action Program
- National Association of State Directors of Migrant Education
- National Consumers League
- National Education Association
- National Migrant and Seasonal Head Start Association
- The Ramsay Merriam Fund
- Solidarity Center, AFL-CIO
- United States Fund for UNICEF
- United Food and Commercial Workers International Union
- United Methodist Church, Board of Church and Society
- United Methodist Church, Women's Division
- Walden Asset Management
- World Vision

Comments submitted by:

Reid Maki

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CLC Coordinator

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Testimony Submitted by the Association of Farmworker Opportunity Programs

Subcommittee on Agriculture, Energy and Trade

February 2, 2012

The Association of Farmworker Opportunity Programs (AFOP) would like to thank Chairman Tipton, Ranking Member Critz, and the subcommittee members for the opportunity to provide testimony regarding the proposed agricultural child labor rules.

AFOP is a national federation of 52 non-profit and public agencies that provide training and employment services to migrant and seasonal farmworkers. Our goal is to improve the quality of life for all farmworkers and their families through advocacy, education, and training.

For more than 40 years, AFOP members have worked directly with farmworker families in America's agricultural communities. Our organization understands the needs of our nation's farmworker families and has seen first-hand the effects of agricultural work, especially on children. We are concerned about the safety, education, and welfare of children who work on farms.

As many as 500,000 children and teenagers toil in agriculture, an industry consistently ranked as one of the most dangerous industries in America. Last year, 12 of the 16 children under age 16 who suffered fatal occupational injuries worked in crop production, according to the Bureau of Labor Statistics.

Just this past August, Oklahoma teens Tyler Zander and Bryce Gannon, both 17, each lost a leg in a grain auger accident. We can prevent these tragedies from happening to other children by implementing the proposed updates to the hazardous orders without delay. The rules

won't impair the rural way of life; they simply put the safety and well-being of children above corporate profit.

For agricultural workers 15 to 17, the risk of fatal injury is four times the risk for young workers in other workplaces, according to DOL's Bureau of Labor Statistics. Furthermore, the National Institute of Occupational Safety and Health (NIOSH) reports that between 1995 and 2002, an estimated 907 youth died on American farms, well over 100 per year. Between 1992 and 2000, more than four in 10 work-related fatalities of young workers occurred on farms. Half of the fatalities in agriculture involved youth under age 15.

Agriculture uses more heavy machinery and more dangerous chemicals since the days when the U.S. child labor rules were established, yet there have been no updates to these policies in over 40 years. The DOL's proposed rules will help protect tens of thousands of youth workers from life-threatening injuries. In the span of a decade, it will save dozens of lives.

Imperative that Regulations be Adopted without Further Delay

The proposed rules must be adopted as expeditiously as possible. The CLC and undersigned organizations request the DOL the rules be adopted within 30 days. The DOL has spent nearly a decade refining the proposed rules and wisely followed the recommendations of NIOSH, producing a body of rules, based upon the evidence of disproportionate injuries and deaths among children performing the tasks the tasks outlined in the rules. The proposed update both improves the safety of youth workers and passes the common sense tests most average Americans would apply. These health and safety rules for child laborers are reasonable and they will save lives.

As recent months have shown, delaying these rules further at this point will mean that youth working in farm work will be killed and maimed unnecessarily. The updates to the non-agricultural child labor rules took three years to be implemented after they were proposed. Given the extreme dangers posed to children by these types of agricultural work, a delay of this magnitude would have devastating consequences.

Furthermore, children will still be allowed to perform most types of agricultural work – just not the jobs that have proven to be especially hazardous. The proposed rule would in no way prohibit a child from raising or caring for an animal in a non-employment situation through educational programs, such as Future Farmers of America and 4-H — even if the animal were housed on a working farm — as long as he or she is not “employed” to work with the animal.

We estimate the rules will save 50 to 100 lives of teen workers and countless injuries over the next decade. Delaying these common sense protections will certainly result in the needless deaths and permanent disability of numerous young farmworkers.

Sincerely,

David A. Strauss

Executive Director



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

December 1, 2011

The Honorable Hilda L. Solis
Secretary United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Document ID: WHD-2011-0001-0001 RIN: 1235-AA06

Dear Secretary Solis:

As the longest serving Commissioner of Agriculture of any state in the country (in my 43rd year), I feel compelled to respond to the negative impact Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations-Civil Money Penalties proposed rule changes will have on agriculture in West Virginia and the entire country.

Safety is first and foremost in any occupation, but limitations imposed in this proposal will greatly diminish the opportunity for youth to become involved in an occupation that has helped make the United States of America the world leader in agriculture and food production.

During a time when much attention is given to encouraging farmers and ranchers to produce more food, this rule will have a detrimental effect. If young people who have an interest in agriculture are not allowed to have the same opportunity to experience "farm life" as those fortunate enough to be a member of a "farm family", they are less likely to choose an agricultural occupation. At some future time this will most assuredly lead to a state of crisis in food production.

The National Institute for Occupational Safety and Health (NIOSH) makes fourteen (14) recommendations concerning the existing agricultural hazardous occupations orders (Ag H.O.s). While I agree with some of the recommendations by NIOSH such as prohibiting the use of cell phones and texting while operating equipment, safe handling of pesticides, blasting agents, and anhydrous ammonia, I have serious reservations about limiting the working height on a ladder to six (6) ft. This will prohibit young farmers from picking tree fruit above six (6) ft., or putting up hay in hay lofts for example. Also, by limiting operation of tractors over 20HP, activities such as pulling a hay wagon or transporting hay to cattle, all normal farm activities, will be prohibited.

Also, working around breeding age animals in order to show a seven (7) month old bull at a fair, or assisting a farmer with stacking hay or straw in a barn on a "hot" day are a few examples of possible prohibitions that I strongly disagree with.

Secretary Hilda Solis
December 1, 2011
Page 2

In West Virginia and other states throughout the country, there have been programs in place such as "Youth State Farm" which educate and instruct farmers in order to reduce farm injuries to youth. These programs are research driven, and developmentally age appropriate.

The statistics scattered throughout the proposed rule relating to deaths of youths working in agriculture do confirm hazards. WHAT IS NOT included, are the statistics of youth deaths from drugs and alcohol, riding skateboards, bicycles, ATVS, and motorcycles on highways. Through education and grants we are raising awareness of such dangers, and are better equipped to correct past mistakes and instruct our youth in safety awareness. Compared to the number of youth deaths attributed to WHAT IS NOT included, working on a farm and learning how to work safely is not as deadly as presented in this proposed rule.

Youth actively engaged in 4-H, FFA, and other agriculture-related programs are the future of agriculture. These young adults should not be denied the opportunity to learn and participate in agricultural opportunities, such as showing animals at fairs and festivals and other agricultural events nationwide. If we allow the federal government to restrict these experiences from our youth, we are losing valuable opportunities to impart confidence, leadership and success to them. Education, not regulation, should be the rule of the day when dealing with these important issues.

In closing, I am requesting Congressional hearings to further examine the true impact these proposed rules will have on agriculture now and in the future.

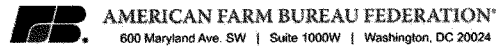
Sincerely,



Gus R. Douglass
Commissioner

GRD:jfm

c: The Honorable Jay Rockefeller, United States Senate
The Honorable Joe Manchin, United States Senate
The Honorable David McKinley, United States House of Representatives
The Honorable Shelley Moore Capito, United States House of Representatives
The Honorable Nick J. Rahall, United States House of Representatives
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**American Farm Bureau Federation
 Comments on DOL Regulations Governing Agricultural Employment of Youth**

As a general frame of reference, the American Farm Bureau Federation (AFBF) supports existing policy that not only functions to protect the exploitation of minors employed in agriculture but also recognizes and permits employment because of the educational and other benefits it can provide to youth. Those benefits include (among others): exposure to the work ethic; gaining understanding of labor and the value it creates for business; providing economic returns to employed youth; the importance of agriculture; and respect for the positive environmental role played by farmers and ranchers. AFBF supports existing protections in the law and would not support efforts to further restrict the ability of youth to work, at an appropriate age and under appropriate conditions, in agriculture. AFBF policy explicitly states: "We support enforcement of federal child labor laws designed to prevent underage children from working in all industries. We support existing FLSA provisions, which specify and provide opportunities for young people of the proper age to perform certain agriculture jobs."

AFBF members play a vital role in protecting children employed in agriculture, not only in providing them opportunities but in advising employers of their responsibilities under the law. Based on that extensive experience in nearly every state in the country, we believe that states are the most appropriate level of government for regulating this issue. Not only are they closer to employers, but some states already have in place exacting standards related to the employment of minors in agriculture. For example, in California, which has a higher percentage of hired labor in agriculture than any other state, the California Farm Bureau Federation, through its affiliate (the Farm Employers Labor Service, or FELS), provides employers full-time staff to provide educational and training information. One specific document (Attachment 1) goes into detail about the obligations of employers as they pertain to the employment of youth. Other states, such as Washington, which also hire a large number of agriculture laborers, provide similar educational information to their members to avoid exploiting children. For instance, Oregon Farm Bureau, like its sister organizations in California and Washington, has developed and made available to the membership a farm employer consultation service known as FEELDS (Farm Employer Education and Legal Defense Service) that is specifically designed to help employers know and comply with their legal obligations. Employment of youth is one area that is specifically included in the kinds of services provided.

As the Department contemplates changes to its regulations governing the employment of minors in agriculture, we believe it should not seek to duplicate processes and regulations that are currently employed at the state level; that would be unnecessary and burdensome to employers without adding any further protections for minors. Moreover, we believe the department should approach the issue keeping in mind a few important principles. In short, we believe that any departmental effort should:

1. Acknowledge and support the vital role played by the states in protecting minors employed in agriculture and assuring that children are not engaged in occupations that are either inappropriate or prohibited.
2. Recognize that parents continue to play the most important role in overseeing the safety and well-being of their children. That obligation continues for parents who, either through desire or exigent circumstances, have their children accompany them in the field. Employers have legal obligations, to children and others, that they must fulfill, but these do not supersede the role of parents.
3. While examination of current standards may be appropriate, stricter standards should not be promulgated merely in response to sensational stories. There are demonstrated benefits for children when they are employed in age-appropriate jobs, and this fact has long informed the approach of the law and been acknowledged by public officials.
4. Any regulations promulgated by the department, either in their proscriptions or in the limitations they place on youth employment, should be based on the actual risks posed by the specific job.

1. Role played by the states

California, as mentioned earlier, hires more farm labor than any other state, and there is extensive regulation in the state on whether or not minors may be employed and in which occupation. In California, a work permit is required for anyone under 18 to be employed. The local school district must issue the work permit, and the reality is that many school districts simply will not issue a work permit for any work for anyone under 17. School districts also have been known to pull a child's work permit if his or her grades fall, or to refuse to issue one if a child's grades are deemed inadequate. In order to employ a child on a work permit, permission must be received from the Labor Commissioner.

Another state that is extremely engaged in protecting the welfare of younger works is the state of Washington. For instance, in Washington, minor workers are required to be listed on the company's business license. Listed below are just some of the easily accessible links that are available to employers and others that set out the laws and regulations governing the employment of minors in agriculture in the state:

- a) An extensive matrix of the hours/jobs that can be worked:
<http://lni.wa.gov/WorkplaceRights/TeenWorkers/Agri/Hours/default.asp>
- b) A list of the current requirements in order to hire minors:
<http://lni.wa.gov/WorkplaceRights/TeenWorkers/Agri/HiringMin/default.asp>
- c) Comparison of Washington State and Federal child labor laws:
<http://lni.wa.gov/WorkplaceRights/Rules/WaFedCLSidebySide.pdf>
- d) Summary of agricultural employment open to teens:
<http://lni.wa.gov/WorkplaceRights/TeenWorkers/Agri/default.asp>
- e) The minor work form: <http://lni.wa.gov/Forms/pdf/F700-002-000.pdf>
- f) The master business license that requires minor worker endorsement:
<http://www.dol.wa.gov/forms/700028.html>

- g) Teen labor covered in the required workplace poster:
<http://www.lni.wa.gov/ipub/700-074-909.pdf>

As mentioned earlier, the state of Oregon also provides members counseling and advice on how to comply with employment law, including permissible occupations for youth. This service can be found at <http://www.oregonfb.org/programs/feelds.shtml>.

2. Role of parents in youth employment

In Washington state, which has a high percentage of hired agricultural labor, the experience of many growers is that a distinction should be drawn between (a) the children of migrant workers, who accompany their parents in the field (perhaps because day care or other arrangements cannot be made) and (b) local children from the surrounding communities, where work in the fields is a tradition that includes parents or other relatives who did such work in their youth and who value the benefits such work provides in shaping a child's character. Testimony from one particular farm operation may help to illustrate this latter example:

Farm A in Washington state annually hires up to 200 minors each year to assist with the berry harvest. In Washington, children may start picking strawberries at age 12, and those who do, as they get older, often progress into other tasks while some continue to work each summer thru their college years and others have gone on to become full time employees. After a few years of hand-harvest experience, some of the older minors are selected to be checkers and harvest assistants. Following strawberry harvest, several of the older minor workers then progress to working on raspberry harvesting machines (not as operators and those under 16 are prohibited from doing such work), followed by blueberry harvest. Some will assist with various duties in the processing plant (if they are age 16 or above). The farm also hires teachers, teachers' aides, school bus drivers, and others to help in supervision of the minor worker crews. The farm's general experience is that they probably turn away as many youth as they hire because they have made a specific decision to staff to a certain level; it is clear, however, that interest in employment exceeds the number of opportunities available. It is the farm's experience, as well, that the majority of parents help their children learn about handling money – requiring them to set up a bank account and to learn about spending and saving. During strawberry harvest, the farm operators dedicate a field or fields just for the “kid crews” and keep them distinct and separate from where the adult seasonal crews are working. Employed youth must bring their own lunches and suitable clothing (including rain gear). Parents are allowed to assist their child, but generally most don't or do so only to get them started. After the first year, assistance from parents is rare.

The farm also ensures that they have qualified supervisors, supervisors and managers must be First Aid/CPR/AED trained and certified. First aid kits are on site, porta-potties for male and

female, wash water and towels, drinking water and cups, cell phones for communication, as well as access to an AED. All parents get maps of field locations, contact information, emergency information, and rules.

One interesting development noticed by the farm is that, contrary to years past, after the farm saw a drop in the number of kids working in berry harvest, there has been a resurgence of parents wanting their kids to work and to experience an important economic fact of life: the amount of effort expended is directly proportional to the pay check. The majority of the kids now employed by this farm are coming from mid- to upper-class families. They often get hundreds of comments each year from adult customers at the farm retail market stand that “they used to pick strawberries here” and they have fond memories of that experience. Many of those parents and grandparents are now the ones bringing their own children or grandchildren to the fields each morning. In fact, both the governor of the state of Washington, as well as the director of the state division of Labor and Industry have stated how they started out picking berries and doing other work as kids and that it added to their life experiences and provided a good start to their eventual careers.

This farm points out that it is required to list minor workers on our business license and is also required to have a parent authorization form signed by the parent or legal guardian before the minor can work. (Because the farm doesn’t hire minors while school is in session, school authorization is not required.)

This farm also notes that it doesn’t hire kids because it is profitable to do so because, in reality, it is not. They do it as a commitment to the community and because they are in a position to offer work in agriculture that almost no other farms in their area can provide any more. The farm company believes it is important to give kids a chance, to provide a good experience, introduce them to responsibility, to learn to work, and to develop a sense of values, and to understand that there are many career opportunities in agriculture.

In addition to the “kid crews,” this farming operation hires about 850 seasonal workers in Washington for harvest for both the farm and processing business operations as berries are very labor intensive.

3. **Benefits of youth employment**

AFBF hears continually from its members about the value of youth employment (when done legally and within existing regulations) and the benefits it provides to children. The foregoing testimony from one farming operation is typical. Thus, while AFBF supports existing protections for children employed in agriculture and does not in any way favor the exploitation of minors, we think it is critical for the department to acknowledge in its regulations the benefits agricultural work provides to youth when done in accordance with existing protections and state programs that are designed specifically to prevent abusive practices.

4. Regulations should be based on actual risk

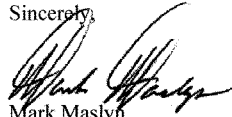
As stated earlier, it is the experience of many of our members that state-based programs work well in providing a balance between protecting youth and providing them age-appropriate job opportunities. We do not believe any departmental initiatives should eliminate job opportunities that are age- and risk-appropriate for youth. In particular, some concerns have been raised by a recent initiative of the department in connection with the Child Labor Final Rule for nonagricultural Employment of 14- and 15-Year Olds. In a fact sheet available on the department's website (<http://www.dol.gov/whd/cl/SidebySideReg3FinalRule.htm>), it is noted that the regulation is "revised so that it is clear that 14- and 15-year-olds may do only what the Secretary of Labor has declared they may do. 'If a task is not specifically permitted, it is prohibited.'"

AFBF would not support such an exclusionary approach for child labor in an agricultural setting. We believe it would be counterproductive to the manifest benefits that youth receive in age-appropriate occupations and would have the effect of severely limiting, if not eliminating entirely, much youth employment.

As evidenced by the testimony cited above, there are very real, tangible benefits that result from the employment of youth in agriculture when appropriately supervised and when done in accordance with existing protections. There is no justification for an overbroad regulatory prohibition and we would strongly oppose such an approach were it proposed by the Department.

We appreciate this opportunity to provide these remarks as you embark upon this effort. Please feel free to contact Paul Schlegel at (202) 406-3687 or at pauls@fb.org if you have any questions or require additional information.

Sincerely,



Mark Maslyn
Executive Director
Public Policy

ATTACHMENT 1

(NOTE: This following document may be found at:
http://www.fels.net/1/index.php?option=com_content&view=article&id=90:minors-working-in-agriculture&catid=1&Itemid=184)

Minors Working in Agriculture

California and federal laws regulate the conditions under which minors may be employed and the hours they may work. The employment of minors in some situations is completely banned.

Work Permits

An employer that directly or indirectly employs a minor under 18 years of age (other than a high-school graduate or equivalent) must keep a "Permit to Employ" and a "Work Permit" on file throughout the minor's employment. The Permit to Employ must be obtained before the minor starts work. Minors apply for Work Permits from the minor's school. Minors visiting from another state (or country, if eligible to work in the United States) who wish to work in California must obtain the standard Permit to Employ and Work, and their employers must possess such permit. These permits may be issued by the local school district in which the minor will reside while visiting.

Agricultural Zone of Danger

Minors under 12 may not work or accompany an employed parent into an "agricultural zone of danger," which includes being near moving equipment, unprotected chemicals or water hazards. Minors under 16 may not perform hazardous duties.

Minors employed on a farm owned or operated by their parents or guardians are not subject to minimum wage, overtime, or working-condition requirements. While not needing work permits, they may not work during hours that school is in session.

Child Labor Summary

Exemption for One's Own Children: A minor of any age (even under age 12) may be employed without either a permit or any limitation in agricultural, horticultural (including fruit curing and drying but not canning), viticultural and domestic labor for or under the control of his or her parent or guardian upon or in connection with premises owned or operated by the parent or guardian. This exemption applies only during nonschool hours and even if the minor is under school age.

In a nonagricultural workplace operated by a grower (*e.g.*, a packinghouse where the commodities being handled were produced by that grower and other growers) a minor is exempt from federal Fair Labor Standards Act (FLSA) coverage only if the minor's parent or guardian is the exclusive employer; where such an operation is a partnership or corporation, a minor is exempt from FLSA coverage only if the minor's parents or guardians are the sole partners or shareholders. (A minor employed in such a workplace is exempt under California law as long as the conditions stated in the above paragraph exist.)

Minimum Age Standards Generally:

Minors aged 14 through 17: May work in any job except those listed for their respective age bracket under **Restricted and Hazardous Occupations**, below.

Minors aged 12 and 13: May not work in FLSA-covered nonagricultural jobs (*e.g.*, commercial processing operations). May work, with either written parental consent or on a farm where the minor's parent or person standing in the parent's place is also employed, in any agricultural job except those listed for their age bracket under **Restricted and Hazardous Occupations**, below.

Permits to Work and to Employ: Required unless minor is a high-school graduate or has a certificate of proficiency. Minor obtains permits from school district where minor resides or attends school. Permits must be available for inspection by state labor-law and local and state school authorities.

Recordkeeping: In addition to regular requirements for maintaining employment records, an employer must keep for 3 years a record of the birthdate of one who was a minor when hired; copy of work permit is acceptable.

Hours of Work:

Exception: High-school graduates and those with a certificate of proficiency may work same hours as adults.

Minors aged 16 and 17: When school is in session, may work 4 hours on school days and 8 hours on nonschool days; with special permission may work 8 hours on school days before nonschool days.

When school is not in session, may work 8 hours per day and 48 hours per week.

Exception: May work 10 hours per day on nonschool days during peak harvest season in an agricultural packing plant to which the Labor Commissioner has issued an exemption.

Minors aged 14 and 15: When school is in session, may work 3 hours per day and 18 hours per week.

When school is not in session, may work 8 hours per day and 40 hours per week.

Minors aged 12 and 13: May work only in agriculture for 8 hours per day and 40 hours per week on nonschool days only.

Spread of Hours:

Minors aged 16 and 17: May work between 5 a.m. and either 10 p.m. on school days or 12:30 a.m. on nonschool days.

Minors aged 14 and 15: May work between 7 a.m. and 7 p.m., but from June 1 to Labor Day may work until 9 p.m.

Minors aged 12 and 13: May work only in agriculture between 7 a.m. and 7 p.m., but from June 1 to Labor Day may work until 9 p.m.

Restricted and Hazardous Occupations:

All minors: No minor may be employed in: explosives manufacturing and storing; motor-vehicle driving and outside helping on public roads; mining; logging and sawmilling; power-driven woodworking, metal forming, punching, shearing, hoisting-apparatus, bakery, paper-products, and sawing machine operations; jobs involving exposure to radioactive substances; slaughtering; meat packing, processing and rendering; brick and tile (etc.) manufacturing; wrecking, demolition and ship-breaking; roofing; excavating; certain jobs in gasoline service stations selling or serving alcoholic beverages; or handling pesticides.

Minors aged 12 through 15: No minor under age 16 may be employed in: manufacturing or processing (*e.g.*, cracking nuts, dressing poultry) **occupations or workplaces**¹; public messenger services; transporting persons; warehousing; communications; construction; certain work in retail or food-service businesses; automobile or truck driving; operating a tractor of over 20 PTO, or connecting or disconnecting implements to or from such a tractor; operating or otherwise physically contacting these machines--corn or cotton picker, grain or potato combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, power post-hole digger, power post driver, nonwalking-type rotary tiller, trencher, earthmoving equipment, forklift, or power-driven saw; near a bull, boar or stud horse, or a sow with suckling pigs or cow with newborn calf (with umbilical cord); working on a ladder at a height of over 20 feet, or on any scaffolding; felling, bucking, skidding, loading or unloading timber over 6 inches thick; riding on a tractor; oxygen-deficient or toxic-atmosphere fruit, forage or grain storage facility; certain silos; manure pits; handling explosives or anhydrous ammonia; adjusting, sewing or lacing machinery belts; oiling, wiping or cleaning machinery; **near moving machinery**²; and certain other hazardous jobs.

¹ Exception: May work subject to the restrictions listed above (*i.e.*, performing only non-hazardous tasks) in noncommercial agricultural processing/ packing of only the grower's own commodities (*i.e.*, where the commodities being handled were produced by only the grower/processor/packer employing the minor).

² The restriction on working near moving machinery means that minors may not work "in harm's way" of *any* moving machinery; the restricted activities involving moving machinery listed in this section (which are specified in various laws and regulations) should thus be regarded as examples and not as an exhaustive listing of such activities or machinery that minors under age 16 must avoid.

Posting of Notice: Farms employing any parent or guardian with minor children in immediate custody must post a notice, in English and Spanish, stating that minors are not allowed to work on the premises unless legally permitted to do so by duly constituted authorities.

Wages: Generally, minors must be paid wages on same basis as adults. Employers may pay a sub-minimum wage to adult and minor employees who qualify as "learners" as specified under IWC Orders.

Citations and Penalties: Citations may be issued for violations.

A "Class A" citation is issued for violations of Labor Code sections 1292, 1293, 1293.1, 1294, 1294.1, 1308, and 1392, and for others that present an imminent danger to minor employees, or a substantial

probability that death or serious physical harm would result therefrom. A civil penalty of at least \$5,000 and up to \$10,000 is imposed for each Class A violation.

A "Class B" citation is issued for violations of Labor Code sections 1290, 1299, 1308.5 and for others that have a direct or immediate relationship to the health, safety, or security of minor employees. A civil penalty of at least \$500 and up to \$1,000 is imposed for each Class B violation.

These penalties may be imposed on a landowner who knowingly benefits from child-labor violations, regardless of whether the landowner is the minor's employer.

**Statements from Small Businesses Submitted to the Small
Business Committee's Open Mic Web Forum.**

"As owner of a small business that just turned 5 years old and is a Subchapter S, we've grown from 3 employees to almost 50 in the last 5 years. The growth has kept our income low, as we've invested back into the company in the form of additional jobs and equipment. We have always had to tax plan at the year's end because we've never seen a penny of what the company has made, with the exception of what we've had to pull out for taxes on the income we've not seen. Bottom line, raising our taxes means we'll quit growing, lay off people and stay under the \$250K level for income. We are not the problem."

-Steve Piechota (San Jose, CA) Netronix Integration

"This additional tax, along with the Health Care Act would definitely suppress our growth. We would have to make sure that we continually upgrade our staff while keeping our active staff at a low number. Our margins are already stressed to the max and this would hurt our lower income employees. My guess is that we would have to start looking for ways to outsource some of our jobs in order to keep the company solvent. This is the worst time to put this kind of pressure on any small business. If the Government is trying to reduce hiring and to reduce the number of small businesses then they are on target. If they wish to grow employment and increase the tax base then they are way off target."

-Steve Woodall (Houston, TX) Reliant Business Products

"My wife and I own a subchapter (S) business that develops and manufactures realistic artificial wounds and medical mannequins to train combat medics and emergency medical personnel. If we make a year-end profit, it gets taxed at the individual rate, yet we have never taken that profit for ourselves. We always use it for our cash flow needs--paying the 23 employees, buying the necessary raw materials, paying all of the overhead bills, and investing in new equipment. Thanks to the Bush tax cuts, we have been able to expense the equipment and company truck purchases instead of amortizing them. If Obama succeeds as he announced today, we will be "rich" and pay higher tax rates, and probably lose the other advantages of the Bush tax cuts as well."

-Dave Parry (Willow Grove, PA) MPS Techline of PA, Inc.

"I understand what the President is trying to do - I really do, but he is not going about it the right way. Small business is the backbone of our country and allows us to keep American's working. Since any profit is a pass-through on a personal tax return - it very seldom actually goes into the hands of the business owner. It allows the business owner to grow the business and expand - employing more Americans and increasing wages of those already working hard. If we have to take our profits as we have in the past and hand them over in the form of taxation - it will force companies like mine to keep wages lower and hire less people - or lay off those working for us to compensate for the taxes. It is not in the best interest of our country."

-Gloria Cuerdo-Caley (Canton, OH) Media Resources, Ltd

"This kind of taxation is what is hurting our small businesses today. We are forced by the Administration to jump hurdles that really should apply only to large businesses. We provide Health Care, Retirement Benefits and matching payroll funds to our employees like any other business does, but yet we are continually being over-taxed by the Government. Of course unemployment is running high, no one can afford to add employees at this time. We just work leaner with longer hours to get by and have less to show for it in the end. Wealthy - I don't think so."

-Becky Hinkle (Kansas City, MO) Bears Printing, Inc.

"We have been in business 32 years, as a family owned S Corp, and have weathered ups and downs before. We are at capacity with current staff and really should expand, but the uncertainty of what our healthcare costs will be next year, the prospects of higher taxes, the uncertainty of what will happen with the national debt and the economy are holding us back. Why should we expand, take on the additional headaches, if the government is just going to tax and take away what little more we would be able to make?"

-Keith Kramer, Keith M. Kramer Associates, St. Louis, MO

"We have a few hurdles we are facing. One, the lack of being able to get any decent funding or loans to help expand our company. We have been in business for 17 years and have a staff of over 12 employees and could use more but don't have the funds to cover the extra expense, nor the healthcare costs. The uncertainty in the tax laws also hurt us because we can't budget because we don't know what our rate will be, and what extra expenses we will have from Obama Care."

-Michael Evans, National Billing Inst., West Palm Beach, FL

“I had the opportunity to build two new buildings to expand our business in two cities. However, because of the risk associated with the uncertain financial health of our country, future interest rates, proposed tax hikes, the healthcare debacle, etc. we decided to forego our plans to build and expand. There are just too many question marks...”

-Clifford Laverty, Total Radio, Inc., Tulsa, OK

“...The uncertainty of what the current Administration will do next to hamper our business deters us from hiring some new people. The excessive regulations are choking small business. The Administration wants to demonize and punish successful small business with increased taxes. The Administration is absolutely clueless to help small business.”

-Ronald Gibbs, Emery Air Conditioning, Port Charlotte, FL

“...This business climate is worse, and more unpredictable, than the administration understands. Its stifling to business owners to live in a climate of uncertainty, and not being able to plan for tax liabilities.”

-Patricia Secore, Archetype International, Santa Ana, CA

“What is killing small businesses are the uncertainty of "obamacare", the uncertainty of new taxes, the certainty of more presidential directives and regulations, and the certainty of a hostile small business environment within this administration. Let the entrepreneurial spirit flourish - Government, get out of our business!”

-Chris Fuedo, UREdge Security Solutions, Fairfax Station, VA

“Uncertainty is our biggest deterrent. We don't know how the health care bill is going to affect costs (besides knowing the cost is going to go up). Don't know what our federal tax rate is going to be, so we can't accurately plan. We try to project every year what are costs are going to be but in this rhetoric filled administration, it is hard to determine what is actually going to become policy.”

-Karen Russell, Russell Oilfield, Houston, TX

“The greatest hurdle our business faces is uncertainty of undefined business, tax, and entitlement policies such as Obama's healthcare bill. As a small business generating around 2 Million with 30 employees, we must seriously think about it before hiring more people, in fear that we might have to fully take the health care expenses when those take effect. Also, as an S-Corp the business income will flow through my personal income tax return making me "Mega Rich" which may cause me to be taxed even more. Not every household "making millions" is rich. I certainly am not...”

-Jorge O., Hawk Construction, El Paso, TX

“As owner of a small business, 30 years, and a Subchapter S, we've grown from 2 employees to as much as 225 employees and presently to approx. 40 employees. The last few years have been hard to survive especially with such uncertainty in the economy. Raising our taxes means less growth, less passion and motivation for growth, lay off people and stay under the \$250K level for income. Possibly retiring as that seems to be a better future of securing our years of very hard work to have retirement as an option...”

-Mary Avila, MJVila Construction, Fresno, CA

“Our small business faces major uncertainty in three areas that are exacerbated by Government policy 1. As a defense contractor we face major uncertainty as to what the effect of the pending defense cuts will be next year. 2. As a "S Corp" the impact of higher taxes hits the business directly. Requiring the owners to take more cash out to pay taxes impacts our working capital, increases our borrowing costs and directly impacts our ability to invest in capital equipment. This required cash distribution in April has a major negative financial impact on our entire business 3. The uncertainties surround health care implementation and increasing costs are also a major negative. Overall, we are hunkering down, trying to preserve cash and buying as little as possible, shedding all but core employees until things become more certain.”

-Gary Smith, Brandywine Communications, Tustin, CA

“Owning a small manufacturing company has been a real trial in the last few years due to continuing uncertainty in the overall economy, particularly in the industrial sector. We do almost exclusively sales to other businesses and manufacturers and everyone has put stuff on hold and delayed repeatedly which has, in turn, made our production schedule very up and down. This makes it nearly impossible to add to our workforce with any long term employment as tomorrow we may not have the business to support the number of employees...”

-Paul Jones, LM Containers, Caruthersville, MO

“As a small manufacturing business owner in the current business environment, we are continually faced with rapidly changing cost of supplies driven by the cost of fuel, taxes, and uncertainty (i.e., healthcare reform, etc.). In the past (2009),we have employed as many as 17 and are now at 10 employees due to loss of business and becoming more productive.”

-Manny Ornellas, CDG Technology, LLC, Redding, CA

“There is little investment during periods of high uncertainty. Much of the uncertainty which is killing progress is coming from Washington. American planning and the ingenuity of business leaders, large and small, can handle most any situation. They can't handle uncertainty--taxes or no taxes; more fiscal stimulus or drastic fiscal reductions during a recession; mounting federal debt with no plan to handle or balanced approaches. Washington is killing progress and needs to act. Establish a fixed environment for the near term, it doesn't make a great difference which you chose, and business will plan for it and we will begin to grow again.”

-George Geyer, HyperLearning Technologies, Virginia Beach, VA

“We are in protection mode, not growth mode as a small business. The uncertainty surrounding healthcare, estate tax, S-Corp tax liability, and overreaching local and federal government regulation has stifled most of us in business. I really don't see how anyone with enough capital to start a new business would even try in this country any longer. Many programs may have started with good intentions but as is always going to be the case get taken to unhealthy extremes when administered by any government. I often use the analogy that if your Daddy owned the farm (or small Business) you can probably make a living but if you have to buy the farm there is no way you can make it today. I genuinely am concerned for our country and kids future.”

-Matt Horn, Ditch Witch of Maryland, Sykesville, MD

“My small business needs a stable forecast of Government regulation and taxation. Business investment needs certainty of risk, business owners need confidence of calculated risk. Confidence and belief in a stable future is what's lacking in America today. My business investments are calculated risk, today there are too many unknowns to calculate that risk therefore my investments in my business have waned.”

-Brian Olson, Imperial Coffee, Pierre, SD

“We would like to hire another employee/operator but the uncertainty in this economy restrains our decision. How can we make the commitment to give a stable income to support a household, a car payment, telephone, send the kids to school etc... with the uncertainty that surrounds every aspect of our lives at this time. We are taxed as individuals and then as a corporation or a business from every governing level i.e., from City, County, State to Federal and all in between.”

-Susan Terrell, A-Line Crane Rental Services, Orange, CA

“My wife and I own a small business, and yes, we have a combined income of just over \$250,000. Once again, President Obama is intent on raising my income taxes... The current economic environment and this administration's inability to articulate a clear vision for turning it around, are the biggest hurdles preventing the growth of my small business. This climate of uncertainty and finger pointing helps no business - small or large.”

-Randy Jennings, Education Technology Partners, St. Louis, MO

“I have had a motto since our beginning in 2006: we can only be as successful as our customers. Well, our customers are facing constant uncertainty from Washington DC. New regulations, budget shifts, consumer concerns, and new health care taxes are some of the characteristics of a very, very uncertain environment. If my customers can't invest because of uncertainty, how can I?”

-Patrick McNally, VI-grade, Dexter, MI

“We are a single owner S Corp. If we are fortunate to have a net profit this year of 200K then, when you add mine and my wife's salary we could end up with a taxable income of 400K. That may sound like a lot, but profit is not cash. We invest our profits back into the business. We're not millionaires, nor are we corporate jet owners, in fact we may have to borrow money to pay taxes. There is something wrong with that. Uncertainty is why small business is not creating jobs. We need the federal government to stop borrowing money. Reduce spending, stop strangling us with regulations, we don't want the federal government to do anything except take care of their own budget and leave ours alone.”

-Ron Kensey, Kennon Products, Inc., Sheridan, WY

“I will instead speak to the uncertainty in the market and the lack of a clear economic plan as reasons that many of us have curtailed hiring (and even growth). Business owners do not hire blindly or make decisions without obtaining all related information first. That said; we will not hire, generally, without first understanding exactly how much we will be taxed for doing so. Simply promising to temporarily suspend additional employment taxes is not enough. I should add that business owners view the mandatory health coverage as an additional tax, assessed against the business, as well. Simply put we are concerned about how much it will cost us to hire additional employees, even at the potential cost of losing business due to not having adequate staffing to provide the service/s needed.”

-Eric Morgan, Centurion Private Security, Morro Bay, CA