

October 18, 2011

Wage and Hour Division  
U.S. Department of Labor  
Room S-3502  
200 Constitution Avenue, NW  
Washington, DC 20210

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

Dear Sir or Madam:

The undersigned organizations, representing a broad spectrum of United States production agriculture and the industries that serve farmers and ranchers, encompassing all 50 states and nearly every sector, are writing about the above-referenced rule. We respectfully but strongly request that the Department of Labor extend the comment period for a minimum of 60 days, thus extending the comment deadline from Nov. 1, 2011 to Jan. 1, 2012.

All of our organizations have begun to read and analyze the Department's proposed rule, to assess its potential impact on our members and operations. We are uniformly concerned not only with the breadth of the proposed changes but also with our ability to comment in a meaningful way on the proposal in the time period allowed. Should the proposed rule be promulgated in its current form, it would entail sweeping changes in current private and commercial agricultural practices, coupled with an increase in legal liability to farm and ranch families. Its potential negative impact on educating and training a future generation of farmers is real. Given this broad proposal, we are requesting that the Department provide a minimum of an additional 60 days in which interested parties can respond to this rulemaking. A few of the reasons that cause us to ask for this extension are outlined in detail below. We wish to stress, however, that the comments below are illustrative, not exhaustive; they touch on only a few of our concerns and should not be interpreted as encompassing all our concerns with the proposed rule.

**1. The comment period falls directly during harvest activities, making it difficult to gather input and analysis from working farms and ranches.**

The late summer and fall are among the busiest times of the year for America's farms and grain handling facilities. Harvest is now at its peak in many areas of the country. For the undersigned organizations to respond responsibly and completely to the changes proposed by the Department, it is necessary for us to engage our stakeholders and members, to explain the Department's changes to them and to solicit their feedback and suggested reforms to the proposed rule. This is impossible to do in the timeframe suggested by the department, particularly during this time of the year. A minimum extension of 60 days is required for us to be able to comment on the Department's proposal.

2. **The Department itself took years to develop this proposal. It is not reasonable to grant the regulated community only 60 days in which to respond.**

The National Institute of Occupational Health and Safety (NIOSH) report referenced in the proposed rule was published on May 3, 2002 – nearly a decade ago. The Department’s current proposal has been in development and review for nearly a year and a half. The secretary announced on May 5, 2010, in response to a report issued by an advocacy organization<sup>1</sup>, that the Department would undertake a rulemaking in this area (<http://www.dol.gov/opa/media/press/ilab/ILAB20100616.htm>). On July 23, 2010, the Department convened by phone a limited group of stakeholders to solicit their input on the initiative; the Department’s proposal, however, was not issued until nearly fourteen months later. Given that the Department itself has taken such a long time to consider these changes, interested parties should be granted a minimum of an additional 60 days in which to comment on the proposal.

3. **The substance of the Department’s proposal calls into question longstanding practices in agriculture and has implications for the livelihoods of future farmers. An appropriate amount of time is critical to analyze, evaluate and comment on these proposals.**

The Department’s proposal is extraordinarily broad, touching upon ownership patterns and operations of family farms; operations of grain elevators, grain bins and silos; calling into question current practices of educating and training future farmers; potentially threatening longstanding activities of youth in connection with livestock; and presumably attacking standard practices in the harvest of fruits and berries. We touch upon these specific items below only to illustrate the sweep and breadth of what the Department is proposing. We will provide more extensive comments before the close of the comment period. But it is critical for the Department to understand the impact of what it is proposing and how its perspective will affect farming and ranching operations throughout the United States.

a. **Ownership patterns of farming operations**

The Department in its notice states that it is “clarifying” the family farm exemption by assuring that children of individuals who operate, as well as those who own, farms are eligible to work. Without criticizing this common sense interpretation, the undersigned organizations firmly believe that any Department proposal must take into account the realities of American agriculture. Over the decades, farms have grown larger as they have consolidated; ownership patterns have changed as land has passed from one generation to another. It is quite common in rural America for siblings jointly to own and operate farms with extended family participation in agricultural production. The Department, in implementing congressional intent under the Fair Labor Standards Act, must take into account these realities. The provisions related to youths under 15 years of age being able to work on a farm only owned by their parents could fundamentally disrupt employment situations where a youth works for his or her aunt or uncle, or an LLC that their family has a relationship with.

---

<sup>1</sup> “Fields of Peril: Child Labor in U.S. Agriculture” issued by Human Rights Watch

**b. Training and education of young people pursuing careers in agriculture**

Tightening the hazardous occupation orders to limit youths' ability to participate directly in learning experiences about farming operations is very troublesome. One of the realities of American agriculture today is that the average age of farmers is well over 50. We must dedicate ourselves to identifying, educating and training the future leaders in U.S. agriculture. The Department's proposal would make that all the more difficult, and has raised particular concerns with school-based agricultural education organizations including FFA, one of the nation's premier organizations involved in working with youth in agriculture.

It is perhaps worth noting that on Sept. 30, the Department of Agriculture (USDA) announced it was awarding 36 grants totaling \$18 million to organizations that will provide training and assistance to beginning farmers and ranchers to help them run successful and sustainable farms. (See USDA release at [http://www.csrees.usda.gov/newsroom/news/2011news/09261\\_beginning\\_farmers.html](http://www.csrees.usda.gov/newsroom/news/2011news/09261_beginning_farmers.html)). It is ironic that one agency of the federal government wishes to reduce and restrict employment and training opportunities for future farmers while another agency wishes to spend \$18 million of taxpayer funds to do exactly the opposite.

**c. Working with livestock**

The provision related to youth under 15 years of age not being allowed to work near sexually mature livestock requires careful review and reconsideration because it could result in youths not being able to work on certain farms altogether because of the presence of a bull or boar or nursing cows and sows, even if their job duties do not entail working with that livestock. Further, many livestock husbandry practices pose little to no risk and should not be prohibited simply because they occur in the proximity of mature livestock. Separate comments submitted by Dr. Mark A Purschwitz point out one such example. Dr. Purschwitz describes the common practice of neutering baby piglets and points out the educational value to young people while posing little safety hazard.

**d. Harvest of fruits and berries**

In its proposal<sup>2</sup>, the Department states that it "is also considering whether to create a new Ag H.O. [Hazardous Occupation Order] 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." The Department goes on to say that: "Such 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." The Department further states: "Comments are also requested about whether the payment of piece rates to young farm workers impacts their prolonged exposure to potentially harmful conditions." The Department has not proposed a specific H.O. to which the regulated community has the opportunity to respond. Yet, in a briefing for stakeholders hosted by USDA on Sept. 7, representatives

---

<sup>2</sup> Federal Register, September 2, page 54865

of the Department were specifically asked whether, based on this generalized request for comments, they would propose an H.O. or whether they might go directly to a final rule. The response from the Department was it felt it could go directly to a final H.O., without first proposing it, thereby denying interested parties an opportunity to comment.

We have grave concerns with the Department's approach. First, while we do not countenance, encourage or otherwise desire youth work in inappropriate conditions or occupations, youth employment in harvesting fruit and berries is a common practice in many states and is regulated not only by the federal government but by many states as well. Second, we do not believe the Department should proceed to a final H.O. based merely on comments it may receive as a result of this proposed rule. Further, we do not believe the Department should use this rule as a way to undermine the common practice of using piece rates. Lastly, we note that the Department's interest in this rule apparently has its genesis in the report from the Human Rights Watch. That report<sup>3</sup> was based on interviews of 59 children in 14 states. We do not question at all the experience of the respondents or countenance any employer putting youth in situations for which they are not qualified. At the same time, we counsel the Department not to respond to anecdotal information with a broad regulatory initiative. The Department's authority under the Fair Labor Standards Act is determined by Congress; legislation to broaden that authority and to address the exact set of issues addressed in this rulemaking has been introduced in the 109<sup>th</sup>, 110<sup>th</sup>, 111<sup>th</sup> and 112<sup>th</sup> Congresses. Congress has not only not taken up the measure, but the bill has failed even to gain a hearing in the committee of jurisdiction. We do not believe the Department should attempt to do through regulation what it has not been given the authority to do by Congress.

In addition to the above proposed agricultural H.O.s, the Department also seeks to establish a new nonagricultural H.O. to prevent youth less than 18 years of age from being employed in the storing, marketing and transporting of farm product raw material in places such as grain elevators, grain bins, silos, feedlots, stockyards, livestock exchanges and livestock auctions. Such a proposal could have a profound economic impact on rural communities, and our preliminary assessment is that – contrary to the Department's assertion – the proposal would reduce appropriate work opportunities for young workers. Like other aspects of the proposed rule, we need further time to evaluate the full impact of this proposal.

Again, we respectfully but urgently request that the Department extend the comment period on this rulemaking for a minimum of 60 days.

The undersigned organizations are committed to producing safe and wholesome food products for the people of the United States and the world. We are also committed to ensuring the workers on our farms and operations work in conditions that are safe and healthy. We look forward to working with the Department as it proceeds in this effort so that whatever final rule is adopted, it does not unnecessarily restrict employment or training opportunities for youth in agriculture.

Sincerely,

---

<sup>3</sup> <http://www.hrw.org/node/90126>

Agribusiness Association of Iowa  
Agricultural Retailers Association  
American Farm Bureau Federation  
American Feed Industry Association  
American Horse Council  
American Seed Trade Association  
American Soybean Association  
American Sugar Alliance  
Association for Career and Technical Education (ACTE)  
CropLife America  
Fair Food Network  
Florida Fruit and Vegetable Association  
Florida Strawberry Growers Association  
Illinois Fertilizer & Chemical Association  
MBG Marketing/The Blueberry People  
Michigan Nursery and Landscape Association  
Michigan Cattlemen's Association  
Michigan Christmas Tree Association  
Michigan Association of Fairs and Exhibitions  
Michigan Maple Syrup Association  
Michigan Sugar Company  
Michigan Agri-Business Association  
Michigan Soybean Promotion Committee  
Michigan Equine Partnership  
Michigan Corn Growers Association  
Michigan Sheep Breeders Association  
Michigan Floriculture Growers Council  
Michigan Vegetable Council  
Michigan Asparagus Advisory Board  
Michigan Food and Farming Systems  
Michigan Processing Apple Growers  
Michigan State Horticulture Society  
Michigan Apple Committee  
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 Barley Growers Association  
National Corn Growers Association  
National Cotton Council  
National Cotton Ginners Association  
National Council for Agricultural Education (NCAE)  
National Council of Agricultural Employers  
National Council of Farmer Cooperatives  
National Farm & Ranch Business Management Education Association (NFRBMEA)  
National FFA Organization  
National FFA Alumni Association  
National FFA Foundation

National Grain and Feed Association  
National Milk Producers Federation  
National Young Farmer Education Association (NYFEA)  
New England Apple Council  
Oklahoma Agribusiness Retailers Association  
Oklahoma Grain and Feed Association  
Oklahoma Seed Trade Association  
United Fresh Produce Association  
USA Rice Federation  
Washington Growers Clearing House Association  
Western Washington Agricultural Association  
Wisconsin Agri-service Association