



December 1, 2011

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

Re: RIN 1235-AA06: Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties

On behalf of the family farmer, rancher and rural resident members of National Farmers Union (NFU), I am pleased to have the opportunity to respond to the request for comments on proposed revisions to the child labor regulations issued pursuant to the Fair Labor Standards Act (RIN 1235-AA06). NFU supports regulations that improve the safety of young farmworkers in a way that is not burdensome for farmers with few or no employees. NFU wishes to provide perspective and clarity on some of the proposed regulations outlined in the Notice of Proposed Rulemaking.

NFU is a federated, grassroots organization that was formed in 1902 with the goal of protecting and enhancing the well-being and quality of life for family farmers, ranchers, fishers and their rural communities. Included in this goal are protecting and enhancing the health and safety of all farm workers, whether part of the family unit or hired help.

Parental exemption

NFU members believe that family-oriented agriculture is the most environmentally, economically and socially responsible model for agricultural production, as families have an inherent interest in ensuring their natural resources are sustainable, their rural communities are thriving, and their family members working on the farm are safe. NFU defines a family farm as one that is owned and/or operated by a farm family with the family providing most of the labor needed for the farming operation, assuming the economic risk, making most of the management decisions, and depending substantially on agriculture for a livelihood. Farming is a difficult job, and one that is nearly impossible to do alone. In a farm family, every member plays a valuable role in the economic success of the farm. Farming is not simply an occupation, but a lifestyle that has been passed down from generation to generation. In order to ensure the viability of our family farms for the future, it is critical that farmers are able to teach their children and grandchildren how to perform agricultural work safely and responsibly. For this reason, I commend the Department of Labor on ensuring the proposed agricultural revisions only impact hired farm workers and do not alter the statutory child labor parental exemption involving children working on farms owned or operated by their parents.

While the proposed agricultural revisions do not fundamentally change the parental exemption, the department does propose to provide some language to clarify this exemption; namely, by

providing guidance as to (1) who qualifies as a parent, (2) what determines that a farm is “operated by” a parent and (3) how the department interprets the extension of this parental exemption to persons standing in the place of a parent as well as a relative who may take temporary custody of a youth and stands in the place of the parent. NFU supports efforts to clarify the existing regulations regarding the parental exemption because, although this provision has been relatively unchanged since its adoption in 1938, it is clear that there is some conflict between the department’s interpretation of the parental exemption and standard practice on family farms.

NFU is especially interested in clarity surrounding youth employment on farms that are owned by a closely-held corporation or partnership consisting of family members or other close relatives. As families change and farm businesses become more complicated in structure, there ought to be greater flexibility in the department’s rules to allow for youth to be safely involved in family agriculture from a young age. It is important the department applies common-sense standards and exemptions for youth working in family agriculture regardless of the farm’s legal structure. NFU supports language that would alter the parental exemption requirement that the farm be owned *solely* by a parent, or person standing in place of a parent, to provide an exemption for youth employment on a farm owned *in part* by the child’s parent or parents. NFU supports the existing language in the Fair Labor Standards Act, sections 13(c)(1)(A) and 13(c)(2), that expands the parental exemption to include youth employed in agriculture by a parent or person standing in place of a parent on a farm *operated* by such parent or person.

In addition, many youth may work on their relatives’ (other than their parents’) farm on the weekend, sporadically during the summer, or during busy times such as harvest, although technically these instances would be violations of the law. Farming and ranching are inherently seasonal and require tremendous amounts of labor at certain times of the year. Legal or not, in reality, this scenario occurs regularly on family farms, although it is rarely, if ever, enforced by the Department. It is our belief that extended family members provide the same protections and take the same precautions as a parent would for young relatives working on the farm, and that these temporary arrangements should fall under the parental exemption for a person standing in place of a parent. NFU seeks additional clarity from the department on this topic.

Proposed new Nonagricultural Hazardous Occupations Orders

The department proposes to add two new Nonagricultural Hazardous Occupations Orders (HO), one prohibiting employment of youth under age 18 in farm-product raw materials wholesale trade industries (HO 18) and another prohibiting the use of electronic devices, including communication devices, by youth while operating power-driven equipment (HO 19).

NFU wishes to provide comments only on HO 18. As indicated in the Notice of Proposed Rulemaking, certain tasks associated with the transportation and sale of farm-product raw materials are quite dangerous, such as working in enclosed storage facilities for beans or grain or working with adult male animals that are intact (not castrated), and therefore it is important we provide protections for youth performing these tasks. However, we question the wisdom of prohibiting all youth under 18 from employment in any farm-product raw materials wholesale

trade industry. It is critical we consider both the benefits and the risks of employment in this industry.

For example, in rural areas, there are limited opportunities for employment and jobs in agriculture-related industries may be those most available to young workers. It is also important that we encourage youth interested in agriculture to pursue careers in related trades as to not discourage the next generation of farmers or agribusiness professionals. Finally, there may not be enough strictly clerical work in some of these occupations to justify hiring a full-time worker; therefore, these facilities may choose to hire only adults altogether in order to ensure they are complying with the regulations.

For these reasons, NFU supports modifying the proposed regulation so that only the most hazardous tasks associated with transportation and sale of farm-product raw materials are prohibited for youth, so that they can continue to perform less-hazardous tasks (in addition to clerical tasks that would be permitted under the proposed regulation) associated with these industries. Rather than defining these industries broadly as proposed, NFU recommends instead defining specific hazardous tasks quite narrowly to ensure these occupations remain viable for youth.

Modifications to existing and proposed new Agricultural Hazardous Occupations Orders

Several of the department's proposed revisions to existing Ag H.O.s – namely, Ag H.O.s 1 through 6 – relate to the removal or modification of existing student-learner exemptions. NFU is very concerned with these modifications and their impact on recruiting and training the next generation of farmers.

According to the National FFA Organization, nearly one million students are enrolled in school-based agricultural education programs across the United States and its territories. Supervised agricultural experience programs (SAE) allow students to take the skills they learn in the classroom and apply them on the farm under the guidance of their certified agricultural instructor. FFA estimates that approximately two-thirds of the students enrolled in SAEs were not raised on a farm. SAEs and other supervised experiential learning programs foster students' interest in agriculture in a safe, positive way. Because many students begin their involvement in agricultural education at age 14, the proposed elimination of student-learner exemptions would severely limit their ability to participate in experiential learning programs.

The department recommends that many of the existing student-learner exemptions for Ag H.O.s be removed or modified without providing specific data on the number of injuries youth performing these hazardous tasks have sustained during their participation in a properly supervised training course. NFU urges caution in removing student-learner exemptions as to not discourage youth from pursuing training altogether. As the Notice of Proposed Rulemaking states, student-learner exemptions allow the student-learner to safely acquire needed skills through a formal course of training or study. If youth are not permitted to perform hazardous work in an educational setting and under close supervision, it is likely their first experience with the hazardous task will be on the farm performing actual work, learning on the job. This isn't to suggest that on-the-job training isn't important or effective, but only to suggest that removing the

student-learner exemption may have an inverse effect on young workers' safety as it will remove an incentive for pursuing proper training.

NFU also supports the addition of a student-learner exemption to the proposed new Ag H.O. 3, the prohibition of employment by youth under age 16 in occupations involving the operation of non-power driven hoisting apparatus and conveyers.

Likewise, we urge you to further consider the impact of removing the certificate training option for 14- and 15-year-olds operating tractors, a proposed modification to Ag H.O. 1. Again, it would be better to have a 14- or 15-year-old take a vocational agricultural training course or 4-H/Extension training course in order to gain the certification than have them forgo all training and instead wait until age 16 to gain employment in agriculture when they can legally drive a tractor without certification – or worse, for a hired 14- or 15-year-old to illegally operate a tractor with no training at all. We must be doing all we can to encourage youth to receive the appropriate training rather than restricting their training opportunities.

The department proposes to combine existing Ag H.O. 2 and 3, prohibitions on youth under age 16 operating or assisting to operate certain power-driven machines, into one new Ag H.O. 2 based on recommendations from the National Institute for Occupational Safety and Health (NIOSH) report on youth employment HOs. The new Ag H.O. 2 would expand the prohibition from lists of specific machines to simply banning all power-driven equipment. The NIOSH report recommended that, rather than a blanket prohibition on all power-driven machinery, restricted machinery should be classified by function. This would ensure no specific machinery is left out because its specific name is not on the restricted list, while not imposing unnecessary restrictions on power-driven machinery that is not overly hazardous to operate. In order to ensure this regulation isn't overly restrictive, NFU supports NIOSH's recommendation on classifying restricted machinery by function.

Likewise, the proposed new Ag H.O. 3 would prohibit youth under age 16 from operating and assisting in the operation of all non-power-driven hoisting apparatus and conveyers. In order to ensure this regulation isn't overly restrictive, NFU recommends that machinery prohibited under this H.O. be classified by function rather than subject to a blanket prohibition on all non-power-driven hoisting apparatus and conveyers.

Finally, NFU supports the proposed expansion of Ag. H.O. 8, prohibiting youth under age 16 from performing all work inside a fruit, forage or grain storage facility, and of H.O. 9, prohibiting youth under age 16 from work inside a manure pit. NFU also supports the proposed revisions to Ag H.O. 10, prohibiting all work for youth under age 16 that falls under the Environmental Protection Agency definition of pesticide handler. These tasks are among the most dangerous performed on a farm, and they pose a clear, serious risk to youth.

Conclusion

Farm safety is an issue of the utmost importance to our organization, and NFU commends the department on its efforts to make workplaces safer for youth. In implementing these efforts, NFU urges the department to strike a balance between the above concerns, what is feasible for family

farmers and what is enforceable for the federal government. I encourage the careful consideration of these and other comments to ensure any new regulations have no unintended adverse effects on family farmers who do not employ non-family labor. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Roger Johnson, President
National Farmers Union