



November 20, 2011

BY ELECTRONIC SUBMISSION

US Department of Labor
Wage and Hour Division

**RE: RIN 1235- AA06. Notice of Proposed Rulemaking (NPRM),
Child Labor Regulations, Orders and Statements of
Interpretation; Child Labor Violations--- Civil Money Penalties.**

Public comment to RIN 1235-AA06

The National Council of Agricultural Employers (NCAE) submits the following detailed comments on RIN 1235-AA06 on behalf of our Members.

NCAE is the national trade association focused exclusively on the policy concerns of Agricultural Employers. NCAE advocates for Agricultural Employers before Congress and federal regulatory agencies.

NCAE appreciates the opportunity to offer public comment on the issue of youth labor standards for agriculture. Our comments will be divided into three major groupings:

- 1) General comments relative to the value of early work experience and the uniqueness of agricultural work and career opportunities.
- 2) Discussion of our concern over the definitions and potential future enforcement direction of the farm family exemptions as proposed,

with recommendations for clarification and expansion as proposed in RIN 1235-AA06.

- 3) Specific comments and recommendations by Hazardous Occupation Orders (HOs) as proposed in RIN 1235-AA06, and referenced by part V (A) through (M) as published in the September 2, 2011 Federal Register, starting on page 54876 as published.

Please note that we have not offered comments on every HO. Where we do not believe we have sufficient technical knowledge, Member base representation, time, and/or other resources required to make productive comments we have answered "NCAE does not have direct comments on this HO." In not making a specific comment we do not imply either support or disagreement with that specific HO

Youth represent the future of Agriculture and of America. Youth must be protected, educated, trained, mentored, and offered meaningful early work experience opportunities; both in order to allow informed career planning, and to offer income opportunities. In rural areas, agriculture may provide the only youth work/income opportunities available. Not every young person in America has the luxury of unlimited family income to allow them to pursue educational and career opportunities without income generating work opportunities.

Some of the popular media and several interest group documents on children in agriculture paint a false picture of U.S. farm labor. Portrayal of American farms and agribusinesses populated by poorly paid underage workers toiling in dangerous unhealthy conditions while being forced to forgo the opportunity to participate in the American dream of education and social/economic advancement is simply false. These allegations are not reflective of conditions in modern American agriculture.

The standard practice on American farms when underage minors apply for jobs, or are brought into the fields by their parents is to keep them out of the workplace. In most states, agricultural employers must get proof of age, parental permission and school authorization (during the school year) before they hire minors. NCAE has a model workplace policy regarding

unauthorized/underage children present in the workplace available to our members. A major reason that parents bring children to the fields is the lack of child care options in the right locations and open at the right times (very early) to accommodate farm work schedules. This is an issue that needs a solution, but is not unique to agriculture alone.

We believe that youth should only work in safe situations and tasks, unexposed to hazards or situations that would subject them to undue risk of injury or negative long-term health effects from machinery, livestock, or other working conditions. We believe that teenagers can work in agriculture in ways that provide safe conditions and appropriate hours. We understand that teenagers are different from adults in many respects, and that businesses that employ teenagers must supervise them differently from adults, to that end we support the work of the National Children's Center for Rural and Agricultural Health and Safety, and the National Farm Medicine Center.

Some agricultural operations can indeed be hazardous and special protections must be mandated and implemented to protect youth and untrained workers of any age from specific risks, locations, and practices. This does not mean wholesale bans on participation of youth, less trained, or less able workers across the board from participation in all agricultural work. In fact, with proper training and supervision coupled with fair, adequately resourced, and consistent enforcement activity agricultural work, farm work, can provide safe and valuable introductory work experiences, as well as important income opportunities, for youth. In many cases, farm work may be the only introductory employment opportunities available for rural youth. With fewer and fewer people directly engaged in agriculture, an early employment experience is increasingly the motivation for young people entering college programs in farming, food processing and marketing, landscaping, horticulture, and other agricultural disciplines so important to the future, and the well-being of the American people.

The majority of abuses being described as problems are already illegal and improper under current law in addition to being unethical and/or immoral. If they have not been fully prosecuted, assuming the documentation is valid, we would ask why not? We believe the Congress must adequately fund the

Department of Labor to assure that current laws and regulations are obeyed in order to prevent, or stop, the type abuses alleged in every industry.

Our organization and our industry support legal and responsible employment of youth. We believe that all children in America should go to school, and that if they work, their work should not interfere with their education or their safety.

All regulations should be clear, useful, reasonable, and doable in the real-world, understandable, enforceable and unlikely to be misunderstood and/or misinterpreted by either the regulatory or the regulated communities. As currently proposed, this NPRM will serve to encourage even more farmers to impose blanket policies to not employ any workers less than 16 years of age. This is not in the long term best interest of rural youth with limited employment opportunities; families, who need, greatly benefit from, the added seasonal income of their children; rural economies; the training of youth in work/career experiences; or the long term future of agriculture if youth are not exposed to the opportunities available in American agricultural businesses. These increasingly strict policies will further work to insure that only the children of landed farm families will pursue the experience and education needed for agricultural careers. This is not conducive to growth, innovation, or equal opportunity for American agriculture's future.

As currently proposed, NPRM- RIN 1235-AA06, states that it intends to bring parity to agricultural employment of youth with other industrial employment law/regulations. The NPRM also notes that there is no change in the family farm exemptions for youth employment. 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 many other traditional activities and employment opportunities for rural youth. But it is critical for the Department to understand the impact of what it is proposing and how its perspective will negatively affect farming and ranching operations throughout the United States for many years to come. We wish to address these two issues in our comment:

In the introductory language to the NPRM and in conversations with proponents of the proposed rule both inside and outside the US DOL we see comment that this NPRM 'only attempts to bring parity between agricultural and industrial employment rules for youth.' It is our belief and understanding that the original Congressional intent was that agriculture was different, and that agriculture warranted different standards which resulted in the very disparity that DOL is now attempting to change. We believe that agriculture is different than the industrial settings quoted by DOL personnel and several activist groups and that while youth work standards for agriculture should indeed include extra training, extra supervision, and extra safety precautions, that they should also provide age appropriate opportunities that are different and unique to agriculture. Agriculture is NOT mining and manufacturing.

When the family farm exemptions to youth labor regulations were written into law in 1937, Congress clearly intended that farm families should make their own decisions relative to age appropriateness of work activities for their own children. At that time, Congress could not have imagined that in the 21st Century even smaller family farms would have moved in such large numbers to legal incorporation in order to secure some protection from the nations ever more complex tax codes, from litigation in an increasingly litigious society, for succession planning, to improve ability to leverage assets, and many more reasons.

Despite repeated verbal assurances from DOL and others that the family farm definition is sufficiently broad and will not be enforced in ways that interfere with most American family farms, we do not have any written confirmations that the strict exclusions of "corporate" farms in the NPRM will NOT adversely impact many true family farms when enforced. We do have numerous legal and enforcement opinions, from around the country, and from within DOL, when we pose examples of even some very small family farms, that they will not be exempted because of the common practices in structuring contemporary farm ownership.

We do not believe Congress ever envisioned or intended that a brother and sister, jointly managing their parent's 200 acre farm, would find it illegal to employ their own children because the land was held as a Limited Liability Corporation. As it is in current regulations, and is proposed to remain in the

NPRM, this is exactly the situation many farm families, who currently believe they are exempted, will learn to understand the hard-way with the inevitable increased emphasis in enforcement from all levels of government that normally accompany the issuance of major new rules at the federal level.

We believe other commenter's with access to legal expertise on farm structure and ownership will submit comments suggesting how the exemption language should be written, interpreted, and enforced to include the congressional intent of exempting American family farms owners and their children. Without updating the exemption language to include what has become normal ownership patterns for family farms in 21st Century America, the exemption becomes increasingly meaningless. We are not talking about extremely large multi-state/multi-national family corporations, but traditional family farms, often as small as 10 to 20 acres that have chosen to incorporate out of economic/business necessity. The larger corporate farms that some commenter's have already complained may "benefit" generally already have strict policies of not hiring workers under 16, and in many cases under 18 already.

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. As an example, we do not think it was Congressional intent that 200 or 300 acre fruit, vegetable, dairy, or other farm owned as an LLC, equally operated by a brother and sister whose families live on the farm, and perhaps partly owned by an off-farm sibling cannot legally include their own children under the exemption; but if they rented the farm to a single manager/operator, his/her children would be exempt. We expect those commenter's with the appropriate legal resources will suggest the proper legal wording, if not, we ask DOL to commit to a stakeholder process to come to agreement on this issue.

We also offer another general comment regarding the overall concepts of youth opportunity, farm ownership structure vis-a-vis-exemptions, parity with other business entities, and the general nature of the "family" farm in America. This is, that although the issues and concerns that NCAE and others will comment on specifically in our public comment are of great concern to all of agriculture, it is probable that this rule, as proposed, will have far more negative economic impact on very small and very specialized farms, including start-up and non-traditional farming ventures. This seems

contradictory to the goals and policies of the current Administration who seem to be attempting to encourage new and nontraditional agricultural enterprise to encourage rural growth and development.

Comments on specific Hazardous Occupation Orders (HOs.)

HO#1: Occupations involving the operation of agricultural tractors.

In general, we believe the exemptions from the prohibitions for tractor operation by youth under 16 are too broad. Although we understand, and applaud, the desire for safety, we believe there are many supervised and limited basic tractor operations that youth can safely perform and which are integral to farm work and to learning.

The Department will receive numerous and very detailed comments on each of the specific issues addressed in HO#1 from sources with the experience, background, and resources to provide background and evidence for their comments. NCAE knows that many general farm groups, at both the national and state levels, will provide excellent detailed comments to support both our overall concerns and the specific issues that will far exceed our ability to comment on behalf of agricultural employers.

Included in areas of concern to NCAE are:

- We disagree with the proposal that the only exceptions will be for student learners enrolled in a school program. Although we understand the concern that all certification programs may not have been equal, we disagree with removal of the tractor operator certifications that were done through 4-H, County Extension offices, Schools who run certification programs for all youth (not just those enrolled in the vocational program), associations, and even private entities. Instead of eliminating these options, we propose that the Department should specify the necessary base components and delegate each state to approve and implement programs that comply. Limiting tractor operation for those under 16 to "student learners" as proposed is unfair to those who are not enrolled in specific vocational programs, generally only offered in public schools, and generally geographically very limited. This limitation will be particularly discriminatory to those who are migratory workers travelling with their families and therefore not under supervision of the local vocational

program, while being geographically limited from being under the direct supervision of their own home school district program--- and to many college bound students who do not have sufficient class time available in the school day to participate in the vocational program (many vocational programs are now full half-day programs.) Additionally, we do not believe the public school vocational programs will be able to field the time and resources to assume this entire workload.

- We do not agree with any notation suggesting motor vehicle licensing (1F.) In fact, as written, since most states do not have any license for farm equipment, the requirement to “hold a state motor vehicle license valid for the class of vehicle being operated” serves as a de-facto prohibition for operating such equipment.
- While we are sure the Department will receive numerous and detailed comments on the prohibitions to operating a tractor while using electronic devices, and we believe there should be specific exceptions to such prohibitions, we would like to see language that clearly **ALLOWS** use of such devices if the tractor is either turned off, or is locked into a parking mode so that communications devices may be safely used for farm operations, convenience, safety, and even emergency response situations in clearly defined situations.
- In the definition of “operating”, we request clarification that is not as broad and vague as currently suggested. As written, this definition would prohibit a youth under 16 from being employed to wash mud off parked tractors, from checking oil levels and tire pressure, or even helping to get tools from a tractor mounted tool-box for someone else (“or any other physical contact---.”)

HO#2: Occupations involving the operation of power-driven equipment, other than agricultural tractors.

- All of our notes, comments, and recommendations under HO #1, above, also apply to HO #2 with the following additions:

- The list of prohibited equipment is far too comprehensive. While many would not argue that some of the listed equipment may be too hazardous for the average youth to manage safely, to include milkers, all irrigation equipment, all walk-behind rotary tillers, all lawn mowers, all lawn and garden tractors, and even “serving as an outside helper” ((b)(1)(i)(1) is neither value adding nor necessary. One pictures a situation where a neighbor youth is be asked if both headlights on a farm pick-up truck, or tractor, are working and a violation being written to the farmer under [(b)(1))(i)(1) of this section. We recognize this is probably not the intent, but with wide disparity among federal, state, and local regulatory agencies and individual enforcement agents, this sort of unpredictable outcome is what farmers have been conditioned to expect. Prohibitions should be written only where the hazards are real and substantial and complete prohibition is the only practical way to mitigate them. All regulations should be completely clear, useful, reasonable, and doable in the real world, understandable, enforceable, and unlikely to be misunderstood and/or misinterpreted by either the regulatory or the regulated communities.
- Prohibition for “equipment” and “devices” remains so broad and so vague that we fear wide disparity in enforcement resulting in farmers being cited for so-called “violations” for such trivial device/equipment violations as operating a flashlight, turning on a light switch, leaning against a parked machine while on break. Farmers and others will be forced to expend time and valuable resources appealing such ill-conceived citations imposed by government agencies at all levels.

HO#3: Occupations involving the operation of non-power-driven hoisting apparatus and conveyers.

- NCAE does not have direct comments on this HO.

HO#4: Certain occupations involving working with or around animals.

- HO# 4 as written is too broad. This HO does not even offer the exemptions for student learners and others that would be needed in order to facilitate continuation of traditional and important livestock activities such as showing 4-H, and independent entry, livestock by youth whose parents are not sole owner/operators of farms.
- Absent specific concerns about the atmosphere in confined spaces, what is the rationale for prohibition of poultry catching?
- This HO, as written, absent exemptions for student learners, 4-H, and other organized youth programs such as those sponsored by breed associations, etc. serves to eliminate youth participation in livestock breeding programs or work. Because of the definition of agricultural employment, farmers will quickly see their potential liability if they “allow” youth other than their own children (and only if they are sole owner/operators) from using stall or pasture space for animal husbandry programs and experiences.
- As written, this HO virtually eliminates all potential employment opportunity for youth under 16 in the dairy, swine, sheep, and cattle industries.

HO#5: Occupations involving timber operations.

- NCAE does not have direct comments on this HO.

HO#6: Occupations involving work in construction; in communications; in public utilities; in wrecking and demolition; and in excavation.

- NCAE does not have direct comments on this HO.

HO#7: Occupations involving work on roofs, scaffolds, and at elevations greater than six feet.

- The use of 8 to 12 foot ladders is still common. We believe modern production practices, such as high-density plantings, have significantly

reduced the fall potential for the most common uses of ladders on farms. It would be more productive to limit ladder length for tree-fruit harvest by youth to 10 or 12 feet, this would allow a measurable standard and still permit youth to work in many historical small-fruit industries while leaving the issue of ladder uses and heights in other areas to those specific HOs.

- We also believe that the blanket six foot prohibition, as proposed, should be modified to allow use of picking platforms, crew carriers, and other specialized height adjusting devices that have proper and fully workable safety features such as railings, cages, harnesses, etc installed and in use.
- We are concerned this HO would prohibit youth from working in many terraced vineyards and orchards, as well as work near ditches, levees or in other uneven terrain areas.
- The proposed rule provides no qualifying language regarding “above another elevation.” As 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.

HO#8: Occupations involving working inside any fruit, forage, or grain storage silo or bin.

- These blanket prohibition are too broad. If the intent is to protect youth and other workers from specific hazards of controlled environment situations, fumes or gasses, and the known hazards specific to grain and other situations where there is real risk of engulfment, intoxication, asphyxiation, etc., then write the proposal to address these hazards. It seems inappropriate to simply ban youth from working in any and every storage structure.

HO#9: Occupations involving working inside manure pit.

- NCAE does not have direct comments on this HO.

HO#10: Occupations involving the handling of pesticides.

- 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 (40 CFR Part 170- The Worker Protection Standard).

HO#11: Occupations involving the handling of blasting agents.

- NCAE does not have direct comments on this HO.

HO#12: Occupations involving the transporting, transferring, or applying of anhydrous ammonia.

- NCAE does not have direct comments on this HO.

HO#13: Occupations involving the production and curing of tobacco.

- The issue, for people of any age, is to avoid being in the field when tobacco is wet or to wear appropriate safety equipment including shoes, long pants, long sleeve shirts, and gloves. A complete prohibition of jobs such as hand cultivation, weeding, and fertilizer application serves no useful purpose.
- Even articles and publications from medical and farm-worker groups on the issue of Green Tobacco Sickness do not recommend banning youth or others from tobacco culture work, but do recommend specific preventative measures. See the following links (North Carolina Farmworker Health Modules), <http://www.ncfhp.org/module/GTS.pdf> and the (North Carolina Department of Labor bulletin), http://www.pmi.com/eng/Documents/GTS_Fact_Sheet_English.pdf both of which recommend specific practical methods to avoid adverse impacts of working with tobacco.

- Green tobacco sickness is preventable. We recommend the NPRM section on tobacco work be modified to include the following specific requirements for youth under 16 working in tobacco culture (mostly taken from the NC Farmworker Health Module):
 - Cover bare skin. Wear long-sleeve shirts, long pants, shoes that cover the entire foot, hats, and gloves. All protective clothing (with the exception of shoes) must be readily washable material.
 - Avoid working in tobacco fields while leaves are wet with dew, rain, or irrigation.
 - Wear rain gear or other waterproof clothing if working while leaves are wet.
 - Change clothes immediately on leaving the field. Shower as soon as possible.
 - Wear freshly laundered work clothes each day, including hat and gloves.

NCAE appreciates the opportunity to comment on this NPRM and invites DOL to further discuss or clarify our comments as needed.

Respectfully submitted,

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