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February 17, 2012

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Solis:

We write to request additional information on an issue of significant concern to many farmers and ranchers throughout the United States. On September 2, 2011, the Department of Labor published a Notice of Proposed Rulemaking (NPRM) to revise labor regulations under the *Fair Labor Standards Act of 1938* (FLSA) for minors hired as farm workers.¹ According to the department, this rulemaking was written based, in part, on recommendations from a decade old National Institute of Occupational Safety and Health (NIOSH) study² and the Wage and Hour Division's (WHD) enforcement actions, with an underlying goal of having similar regulations for agricultural and non-agricultural work.³

As you know, more than 2.2 million farms and ranches operate in the United States.⁴ Since September, many family farmers and ranchers have expressed questions and concerns about the rulemaking. We are troubled that despite the rulemaking's potential consequences for such a large sector of the economy, the department held only one public hearing, in a single geographic area, lasting only two hours, after the NPRM was published. It appears shareholder participation was limited by a number of factors: (1) the public hearing was published in the *Federal Register* more than 30 days into the initial 60-day public comment period; (2) interested parties were

¹ Regulatory Information Number (RIN) 1235-AA06, 76 Fed. Reg. 54836 (Sept. 2, 2011) [hereinafter NPRM].

² National Institute for Occupational Safety and Health, *Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders*. (2002)

³ U.S. Department of Labor, Wage and Hour Division, *Fact Sheet on Notice of Proposed Rulemaking to Revise Federal Child Labor Provisions*. (Accessed February 15, 2012), http://www.dol.gov/whd/CL/AG_NPRM.htm.

⁴ U.S. Department of Agriculture, National Agricultural Statistics Service, Agricultural Statistics Board, *Farms, Land in Farms, and Livestock Operations 2010 Summary*. (February 11, 2011), <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1259>.

given only seven days to make their request to speak at the hearing; and (3) this hearing was held at a place and time particularly inconvenient to most farmers - in Tampa, Florida on October 14, 2011 - during harvest season for many American farmers.

Despite the department's insufficient outreach to stakeholders, we were pleased that on February 1, 2012, a portion of the NPRM was withdrawn to address one of the chief concerns related to the rulemaking, the "parental exemption."⁵ However, we believe many concerns remain. To better understand the rulemaking, evaluate its implications for America's farmers and ranchers, and assess the department's February 1, 2012 decision to withdraw and re-propose the parental exemption portion, we ask the department to provide the following information and responses to the House Committee on Education and the Workforce **no later than March 5, 2012**:

1. A detailed timetable outlining the department's internal review process for the rulemaking, including, but not limited to, the offices and agencies that have reviewed or will review it, documents created for each review to date, and the names and job titles of officials who have reviewed and/or approved the rulemaking.
2. A list of all meetings with outside groups relating to the development of the rulemaking after January 20, 2009, as well as the date, location, attendees, and topics of such meetings; and all documents and communications relating to such meetings.
3. A list of the dates, attendees, and topics for all meetings and telephone conversations between the departments of Labor and Agriculture (USDA) relating to the rulemaking and preparation for the rulemaking, and all documents and communications relating to such meetings or telephone conversations.
4. All documents and communications—from WHD, the Office of Solicitor, USDA, or any other agency—relating to the decision to hold public hearing(s) before and after the publication of the NPRM.
5. All documents and communications—from WHD, the Office of Solicitor, NIOSH, USDA, or any other agency or contractor—relating to the rulemaking's revisions and updates concerning (1) minors' operation of tractors and other farm implements, (2) their work with animals, (3) their work at elevations greater than six feet, and (4) the use of electronic devices including while operating power-driven machinery.
6. A list of all material including, but not limited to, studies and governmental reports used to justify the rulemaking. Please explain the extent to which this research has been reviewed by experts within the department, USDA, and other interested stakeholders.
7. All documents exchanged and communications between the department and the Office of Management and Budget (OMB) concerning the rulemaking, including, but not limited to, all documents relating to the rulemaking's initial transmission to OMB and the

⁵ U.S. Department of Labor, Wage and Hour Division, *Wage and Hour Highlights*. (February 1, 2012) http://www.dol.gov/whd/Highlights/archived.htm#Feb01_2012

February 1, 2012, announcement that the rulemaking would be re-proposed at a later date.

8. A list of the dates, attendees, and topics for all meetings and telephone conversations between the department and OMB relating the rulemaking, and all documents and communications relating to such meetings or telephone conversations.
9. All documents exchanged and communications between the department and NIOSH concerning the 2002 study including, but not limited to, discussions about receiving updated information concerning child labor in agriculture.
10. All documents and communications concerning the department's enforcement records referenced in connection with the rulemaking.
11. Identify and explain the department's authority under the FLSA to "increase parity between the [FLSA's] agricultural and nonagricultural child labor provisions."⁶
12. Identify and explain the department's authority under the FLSA to interpret the statutory parental exemption as prescribed in the NPRM:

Application of the parental exemption in agriculture is limited to the employment of children exclusively by their parents or person(s) standing in place thereof on a farm owned or operated by the parent(s). 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.⁷

13. All documents and communications relating to the parental exemption, specifically including:
 - a) All documents and communications relating to injury statistics for minors under the age of 16 working on farms under the parental exemption;
 - b) All versions of the department's Field Operations Handbook (FOH) or other related manuals and enforcement guidance from 1966 to date, pertaining to child labor under the FLSA;
 - c) All documents and communications relating to the definition of "owned by" and "operated by" in section 33d03 of the FOH dated "12/28/93"; and

⁶ NPRM, *supra* note 1, at 54836.

⁷ *Id.* at 54883 (emphasis added).

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- d) All enforcement records relating to the parental exemption from 1966 to date, including enforcement case files, charges of violations, enforcement proceedings records, findings of violations, and any other administrative enforcement determinations or information.

14. The timing and description of the process by which the department will re-propose the parental exemption portion of the NPRM.

Thank you for your attention to this matter. If you are unable to provide the requested information by the date specified, please inform the committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information. If you have additional questions or comments, please contact Donald McIntosh or Joe Wheeler of the committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



TIM WALBERG
Chairman
Subcommittee on Workforce Protections



KRISTI NOEM
Member of Congress

Enclosure

CC: The Honorable George Miller, Senior Democratic Member

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i. e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one *CD*, hard drive, memory stick, thumb drive, box or folder is produced, each *CD*, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflect s, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.