

TESTIMONY OF
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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.