United States Senate

December 19, 2011

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

Dear Secretary Solis:

We write to follow up on a previous October 25, 2011, letter 32 U.S. Senators sent that raised concern with The U.S. Department of Labor Notice of Proposed Rulemaking, "Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties" (76 Fed. Reg. 54836) (hereinafter Proposed Rule). The October letter asked for a 60-day extension to the Proposed Rule's original comment period. We appreciate the Department extending the comment period 30-days, but given the substantial and complex changes proposed by the Department, we regret the Department declined to provide the full 60-day extension requested.

In addition, the October letter raised preliminary concerns about how the Proposed Rule could affect existing agricultural education programs and family farm structures. After having additional time to review the Proposed Rule and compare the proposed changes to existing statutory law, regulations, and the Department's existing interpretive documents, we believe the initial concerns were well-founded. As a result of these concerns, we request the Department withdraw the Proposed Rule in its entirety.

We would like to emphasize the Department was under no obligation to propose new regulations. Congress has not amended the Fair Labor Standards Act (FLSA) in regard to the agricultural standards referenced in the proposed rule since 1977. It is puzzling why the Department would suddenly propose changes to existing regulations, particularly considering the advancements in farm equipment and adoption of technologies that have improved operator safety in the last 35 years.

The Department's belief that it should pursue "parity between the agricultural and nonagricultural child labor provisions" is a misguided interpretation of the FLSA. Congress enacted different standards in the FLSA specifically to address the different occupational situations faced in agriculture compared to other areas of employment. The FLSA does not

contain, nor has Congress ever approved, the concept of "parity" between agricultural and nonagricultural sectors. The Department should abandon its goal of parity unless specifically authorized to do so in the future by Congress.

The Proposed Rule Would Restrict the Existing Agriculture Parental Exemption

We request the Department permanently withdraw its proposed revision to 29 C.F.R. § 570.123 because it unnecessarily restricts the existing statutory parental exemption for agriculture youth working in agriculture. In the "Summary" of the Proposed Rule, the Department claims: "The proposed agricultural revisions would . . . in no way compromise the statutory child labor parental exemption involving children working on farms owned or operated by their parents."[1] This statement is false based on existing regulations and the Department's own interpretive documents.

Current law exempts "an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen . . . where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person."[2] This statutory exemption is incorporated into the Code of Federal Regulations by reference in 29 C.F.R. § 570.123(c) (2011). The FLSA defines "person" as "an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons."[3]

Existing regulations provide further guidance as to the definition of a "parent or person standing in place of a parent." Section 780.322(b) of Title 29 of the Code of Federal Regulations provides:

> Individuals who are considered as 'his parent or persons standing in place of his parent' include natural parents, or any other person where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent.[4]

This regulation provides additional guidance about who can be considered "a parent" or "a person standing in of his parent," but it does not state whether a corporation or partnership

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[1] Child Labor Regulations, Order, and Statements of Interpretation; Child Labor Violations—Civil Money Penalties, 76 Fed. Reg. 54836 (proposed Sept. 2, 2011) (to be codified at 29 C.F.R. pt. 570 and 579) [hereinafter Child Labor Notice].
[2] 29 U.S.C. § 213(c)(2) (2011).
[3] 29 U.S.C. § 203(a) (2011).
[4] 29 C.F.R. § 780.322(b) (2011).

where a parent or person standing in place of a parent can qualify for the exemption.[5] In addition, section 780.322 places no temporal limits on transitions between when a child is employed by a parent or employed by a person standing in place of a parent. Therefore, under existing law it is possible for a child to be under the employment of a parent one day, the employment of a person standing in place of a parent the next day, and the employment of a parent the proceeding day.

The only other explanation of 29 U.S.C. § 213(c) is contained in the Department's most recent Wage and Hour Division Field Operation Handbook (hereinafter Handbook).[6] Section 33d03(d) of the Handbook directs field staff that "[T]he parent or person standing in place of the parent includes part ownership 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."[7]

The current Handbook interpretation by the Department properly recognizes the structure of modern agriculture. While a parent may have an active role in a farm operation, a family farm operation may be incorporated with various family members owning shares. The Handbook interpretation recognizes that while ownership may be diverse, youth can still participate in an operation where a parent owns a substantial, but not a sole or controlling interest. This is consistent with the FLSA definition of person that includes partnerships, corporations, and trusts.[8] Furthermore, the Department's use of a discussion on the floor of the U.S. House of Representatives in 1937 is a misinterpretation of the Congressional record.[9] The Congressional record referenced by the Department in no way suggests the parental exemption should not be extended to business entities partially or wholly owned by a parent or person standing in place of a parent.[10]

The Proposed Rule ignores the FLSA definition of "person" and ignores long standing interpretation of the agriculture parental exemption and significantly narrows its scope. The Proposed Rule's amendment to section 570.123 would preclude any family-owned corporation or partnership from qualifying for the agriculture parental exemption found in 29 U.S.C. § 213(c). The section states: "The 'parent or person standing in the place of the parent' shall be a human being and not an institution or facility, such as a corporation, business, partnership, orphanage, school, church, or a farm dedicated to the rehabilitation of children."[11]

In addition, the proposed amendment to section 570.123 for the first time imposes a temporal limit on transitions between a parent and person standing in place of a parent. The section limits the transition from a parent to a person standing in place of a parent by stating that

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[5] *Id.*
[6] WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR, FIELD OPERATION HANDBOOK, 33d03 (2002).
[7] WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR, FIELD OPERATION HANDBOOK, 33d03(d) (2002).
[8] *See* 29 U.S.C. § 203(a) (2011).
[9] *See* Child Labor Notice, at 54841.
[10] *See* Congressional Record, 75th Congress, at 1693 (Dec. 16, 1937).
[11] Child Labor Notice, at 54880.

"a period of less than one month would not be sufficient for the parental exemption to apply in such situations."[12]

We believe the Department's proposal to eliminate corporations and partnerships where parents or persons standing in place of a parent own a substantial interest in the corporation is unnecessary. We also disapprove of the Department placing temporal limits on the transition between a parent and a person standing in place of a parent. For these reasons the amendment to section 570.123 should be withdrawn. Should the Department insist on amending this section of the Code, we suggest the Department codify in regulations that "The parent or person standing in place of a parent includes part ownership as a partner in a partnership, as a shareholder in a corporation, or as a beneficiary of a trust, which owns the farm if the ownership interest in the partnership or corporation is substantial." We also request the Department exclude any reference to a temporal limit in regard to any transition between a parent and a person standing in place of the parent.

Prohibition of Extension and Vocational Training and Certification Programs

The Department's elimination of the training and certification programs conducted by the U.S. Department of Agriculture (USDA) Federal Extension Service (hereinafter Extension Service) and vocational agriculture education institutions is unnecessary and the elimination is not supported by credible data.[13] We request the Department withdraw any changes made by the Proposed Rule to 29 C.F.R. § 570.72, and preserve the existing Extension Service and vocational agriculture training and certification programs.

The Extension Service, 4-H, and thousands of local school districts through school-based agricultural education and the National FFA Organization (FFA) provide quality education and training in rural communities across the United States. These organizations have years of experience and are intimately connected to the needs of local agriculture. Despite these groups' educational experience, success, and long-tenured relationships with rural communities, the Department accuses these organizations of offering training "insufficient to provide a young hired farm worker with the skills and knowledge he or she would need to operate the diverse range of agricultural tractors and equipment in use on today's farms."[14] The Department, however, offers no data or peer-reviewed study to substantiate this accusation. In fact, the Department actually acknowledges in the Proposed Rule there is not research available to verify the effectiveness of the 4-H Tractor Program.[15]

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[12] *Id.*

[13] *See* Child Labor Notice, at 54849-54852.

[14] *Id.*, at 54850.

[15] *See id.*, at 54850 ('[t]he effectiveness of these tractor safety training programs has not been adequately evaluated nationwide,' quoting the National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders (July 2002)).

More concerning is that the Department actually ignored portions of the "National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders" (hereinafter NIOSH) that indicate Extension Service and vocational agriculture education programs have a positive influence on safety.[16] For example, the NIOSH report references studies that indicate "tractor safety programs demonstrate a greater level of confidence in operating tractors" and "have a positive influence on the safe operating procedures of participants in training."[17] We question why the Department would try to repeal a training and certification program that has been in existence for over 30 years without citing any data that proves the program ineffective other than the Department's own concern.

We are also disappointed in the Department's criticism of the Extension Service and vocational agriculture training and certification programs for integrating locally focused content.[18] Agriculture is regionally diverse and an attempt by the Department to change the curriculum by subjecting it to a Washington, DC-based national standard would be a mistake and could weaken, not strengthen these important training and certification programs.

The Department's proposed changes to the student-learner exemption, like the changes to the previously mentioned training and certification programs, are not based on credible data and should be withdrawn.[19] The changes to the student learner program, not only limits students ability to gain useful work experiences in many areas of agriculture, but it also unnecessarily limits classroom training exercises. There are growing concerns among Americans that the United States' manufacturing sector has diminished and the country has a limited workforce, especially in rural America, with the necessary skills to meet the needs of American industry. Attempts by the Department to exclude previously allowed activities under the student-learner exemption under 29 C.F.R. § 570.72 will limit vocational training in our nation's schools and prohibit valuable on-the-job training opportunities. Again, as with the Extension Service and vocational agriculture training and certification programs, prohibition of a long list of activities from eligibility under the student-learner exemption, are not founded on reliable data or peer-reviewed studies.

Changes to Existing Ag H.O.'s are Unnecessary

In its Proposed Rule, the Department failed to provide any credible evidence to justify creating new Agricultural Hazardous Occupation Orders (Ag HOs) or amending the existing Ag HOs. These unjustified changes and additions to existing Ag HOs will restrict training opportunities for youth, limit employment opportunities for youth, and constrict an already

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[16] *See* NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH) RECOMMENDATIONS TO THE U.S. DEPARTMENT OF LABOR FOR CHANGES TO HAZARDOUS ORDERS, at 70 (May 3, 2002) [hereinafter NIOSH].

[17] *Id.*

[18] *See* Child Labor Notice, at 54851.

[19] *See id.*, at 54849-54852, 54876-54879.

limited rural workforce for agricultural employers. Like the proposed changes to existing training and certification programs, the Department relies on no credible data to justify the amendments to existing regulations that designate previously non-hazardous activities as hazardous. The Department fails to identify any overall trends that would suggest the rules drafted in the 1970's are no longer effective. Discussing remote, individual stories do not create a basis for which the Department can make an informed decision.

In addition, in justifying many of the proposed changes to Ag HOs, the Department cites general statistics to suggest a broad category of farm-related activities result in a given percentage of total farm-related accidents. The Department, however, makes no effort to identify whether any of the accident victims were youth or whether any of the victims received the training it seeks to prohibit. Changes to Ag HOs should not be based on general statistics that do not provide a basis to draw reasonable conclusions about safety trends in agricultural operations or the effectiveness of existing regulations. We request the Department withdraw its proposed changes to 29 C.F.R. § 570.71 and all other regulations that modify existing Ag HOs or create new Ag HOs. To further illustrate our concerns, we discuss some of the more egregious problems with the Department's revised Ag HOs, but the list should not be interpreted to represent all objections to the proposed changes to Ag HOs.

Use of Electronic Devices

The Department's proposal to ban the use of nearly all electronic devices is overly broad and the prohibition is not based on reliable data.[20] By including such a broad definition of electronic device, the Department's proposal forecloses many useful electronic tools that improve the safety of farm equipment. Tractors, harvesting equipment, planting equipment, and other farm equipment often have an integrated electronic monitoring system that requires interaction between the machine and the operator during operation. This electronic system can make operation of the equipment easier and safer when compared to older farm equipment without such electronic devices. The Department's rule as written would preclude use of these advanced technologies.

Although the Department attempts to devise an exception to the rule by allowing use of global positioning systems and other electronic devices while a machine is not being powered or a motor vehicle is legally parked, it ignores the fact that integrated electronic monitoring and navigation devices require interaction while the machine is powered to operate.[21] The Department's narrow exemption would prevent adoption of these safe and useful tools. Furthermore, an outright ban on the use of all electronic devices unless a machine is powered down does not provide an exception for emergency situations where use of an electronic device while a machine is operating or while a motor vehicle is moving may prevent greater injury or a potential accident.

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[20] *See id.*, at 54848-54849, 54875-54878.
[21] *See id.*, at 54875.

Finally, the data used to justify the Department's proposed ban on electronic devices is unrelated to farm equipment accidents and represents an inadequate justification for this broad sweeping prohibition. The Department cites general statistics about accidents involving operation of motor vehicles, but does not state any evidence that explains how those motor vehicle accidents relate to operation of farm machinery or to youth operators of farm machinery.[22] The only evidence cited to justify the proposed ban on electronic devices is the Department's belief that the motor vehicle statistics may be applicable to operation of farm machinery. Without more concrete information, it is difficult to justify making such a widespread change to the existing Ag HOs.

Tractors

The Department's proposal declares operation of all classifications of tractors as hazardous, but provides no justification that changing the current regulation would lead to any positive impact on safety.[23] The Department acknowledges in the Proposed Rule that "available sources frequently do not include enough detail to determine the horsepower of tractors or PTOs involved in fatal and non-fatal injuries . . . ."[24] The Department tries to use this lack of information as a reason to declare all tractors hazardous. Given this admitted lack of data, the Department should instead choose to start examining the hazard levels of different horsepower tractors before reaching a conclusion that will adversely impact farm employers and student trainees. Before making the proposed changes, the Department must first be able to demonstrate that the activity in question is particularly hazardous.

The proposed changes to the tractor HO would also prohibit the current ability of 14 and 15 year olds to operate tractors upon completion of an Extension Service or vocational agriculture training and certification program. As discussed above, the Department cites little credible evidence that prohibiting trained and certified youth from operating tractors would provide any significant improvement in safety.

Mandatory seatbelt use, Department-approved passenger seats, and mandatory state-issued driver's license requirements for youth operating tractors on public roadways is an unnecessary interference in subject matter traditionally reserved for the states.[25] Individual states are responsible for setting seatbelt and driver's license standards for operation of motor vehicles on public roadways. While the Department may have the best of intentions, such mandates are properly reserved under the Constitution to the province of the individual states.

Power-Driven Equipment

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[22] *See id.*, at 54848.
[23] *See id.*, at 54852-54855, 54876-54877.
[24] *Id.*, at 54852.
[25] *See id.*, at 54877.

The Department's proposed modifications to existing Ag HOs that declare "occupations involving the operation of power-driven equipment, other than agricultural tractors" as hazardous is not substantiated by reliable data, is overly broad, and will lead to absurd results.[26] As with the other Ag HO modifications, the Department does not provide any reliable data to justify that a machine is hazardous simply because it is powered by a power source "other than human hand or footpower."[27] The current system that declares farm equipment as hazardous based on specific equipment categories allows the Department to collect information on a class of equipment and draw reasonable inferences as to the equipment's safety. The Department's proposed Ag HO on power-driven equipment will have the effect of foreclosing nearly every type of farm task without examining individual equipment types for the level of safety offered operators.

Through the previously discussed elimination of the Extension Service and vocational agriculture training and certification exemption, many types of farm equipment that currently fall into the category of "power-driven equipment" will no longer be able to be operated by youth. This includes the following activities currently listed in 29 C.F.R. § 570.71(a)(2), as well as numerous new activities not contained in the current regulations: operating a corn picker; cotton picker; grain combine; hay mower; forage harvester; hay baler; potato digger; mobile pea viner; feed grinder; crop dryer; forage blower; auger conveyor; unloading mechanism of a nongravity-type self-unloading wagon or trailer; power post-hole digger; power post-driver; and nonwalking type rotary tiller. The Department fails to discuss the efficacy of the training and certification programs in relation to the equipment that youth would no longer be allowed to operate under the proposed power-driven Ag HO.

The Department also proposes to eliminate a long list of equipment from the student learner exemption that is currently allowed under the student learner exemption.[28] For example, the Department's proposal would prohibit student-learners from operating garden hoses with pressurized nozzles, electric hand tools, lawn mowers, garden tillers, welding equipment, automobiles, milking equipment, and irrigation equipment, to name a few of the more absurd results. Again, the Department fails to cite any data to justify its position and fails to discuss why elimination of the specific categories of equipment from eligibility under student learner will improve safety.[29] The only quantitative statistics offered by the Department is in regard to milking equipment, but these statistics suffer from the same flaw as the other statistics used by the Department – the statistics do not segregate accident occurrences by age group and fail to indicate whether any of the accident subjects had received training or certification.[30]

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[26] *Id.*, at 54849-54852, 54876-54879.
[27] *Id.*, 54877; *see also id.*, at 54855-54858.
[28] *See id.*, at 54878.
[29] *See id.*, at 54855-54858.
[30] *See id.*, at 54848.

Non-Power Driven Hoisting Apparatus and Conveyors

The Department's prohibition of youth from "operating and assisting in the operation of hoisting apparatus and conveyors that are operated either by hand or by gravity" is overly broad and exceeds the Department's authority under the FLSA.[31] The FLSA limits the Department's reach to those occupations that are "particularly hazardous."[32] Due to the breadth of the proposed Ag HO on hoisting apparatuses, the Department is prohibiting hand tools and other devices for which there is no supporting data that the activities are hazardous. For instance, as written, the Department would prevent youth from using such tools as shovels, pitchforks, and wheelbarrows.

Occupations Involving Working With or Around Animals

The Department's amendment to the farm animal Ag HO unnecessarily expands the Ag HO to prevent youth from working with nearly all types of farm animals without information that demonstrates the changes will improve youth farm safety. Furthermore, the Department's proposed changes to the animal Ag HO is contrary to the recommendations of the NIOSH report, which is the primary resource relied on by the Department throughout the Proposed Rule. NIOSH recommended the Department "Retain [the] current HO."[33] The NIOSH report then specifically quotes the language in 29 C.F.R. § 570.71(a)(4).

The existing Ag HO limits hazardous activities to those activities that include working with mature male species and female species with newborns.[34] The Proposed Rule would expand the Ag HO to prevent youth from working around immature male species and would severely restrict other currently allowed activities.[35] For instance, the Proposed Rule declares six-month old bulls as hazardous, but six-month old bull calves are not sexually mature and do not demonstrate the same behaviors as mature bulls. The six months of age timeframe is typically a time when bull calves may still be nursing, depending on the rancher's management system. The Department, however, provides no information to demonstrate that sexually immature male farm animals pose the same threat to youth safety as mature male farm animals.

The Department's attempt to declare any activity "engaging or assisting in animal husbandry practices that inflict pain upon the animal and/or are likely to result in unpredictable animal behavior" as hazardous is ambiguous, places employers at risk of an arbitrary enforcement action by the Department, and would impose an unnecessary regulatory loophole that could be exploited by animal rights activists seeking to frustrate animal agriculture operations.[36] Whether an animal is experiencing pain is a subjective standard that has little

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[31] *Id.*, at 54878.
[32] 29 U.S.C. § 203 (2011).
[33] NIOSH, at 76.
[34] 29 C.F.R. § 570.71(a)(4) (2011).
[35] *See* Child Labor Notice, at 54879.
[36] *Id.*

connection to the safety of farm workers working with the animal. By using such a description and ignoring the NIOSH recommendation to retain the existing animal Ag HO, it appears the Department is more concerned with animal welfare than youth welfare.

In the Proposed Rule, the Department generally discusses some risks associated with vaccination, but the Department does not provide any discussion about the individual risks associated with breeding, dehorning, castrating, or treating sick animals, or herding animals in confined spaces that suggest these activities are hazardous.[37] Furthermore, while the Department references one study on the risks of accidental injection of an antibiotic,[38] it does not discuss the risks associated with individual vaccines typically used in animal agriculture.[39] Without evaluating the individual risks of vaccines available for farm-use, it is difficult to see how the Department can declare all vaccines hazardous.

An additional concern is the Departments inclusion of herding animals on horseback as a hazardous activity.[40] Again, the Department cites no statistics that suggest this activity is hazardous.[41] Instead, the Department cites a report that states no data exists to suggest that youth have the ability to handle the responsibility of herding on horseback.[42] This suggests, however, that no information to the contrary exists either. In the absence of information to justify classifying herding on horseback as hazardous, the Department does not have sufficient grounds to declare the activity hazardous.

While the Department cites thirteen-year old data suggesting that twenty percent of all farm-related youth injuries were animal-related, the data does not indicate the age, sex, species, or animal-related activities that contributed to the animal-related accidents.[43] Without more information, the Department does not have sufficient information to decide whether expanding the existing Ag HO will lead to less animal-related accidents or whether the expanded scope of the proposed animal Ag HO is appropriate. Unless the Department can demonstrate that the animal-related accidents occurred to youth conducting currently non-hazardous activities, it does not have sufficient basis to declare additional animal-related activities as hazardous.

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[37] *See id.*, at 54858-54859.

[38] It should be noted that the antibiotic Micotil 300 is used to treat sick animals and is not an animal vaccine. *See* U.S. FOOD AND DRUG ADMINISTRATION, NADA 140-929 MICOTIL 300 – original approval, *available at* http://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts/FOIADrugSummaries/ucm054869.htm. This error demonstrates the Department's lack of knowledge on the subject and that the proposed animal Ag HO is not based on sound knowledge of the industry.

[39] *See* Child Labor Notice, at 54858-54859.

[40] *See id.*, at 54879.

[41] *See id.*, at 54859.

[42] *See id.*

[43] *See id.*, at 54858-54859.

Occupations Involving Work at Elevations Greater Than Six Feet

The Department's justification for lowering the elevations at which youth can work from twenty feet to six feet suffers from the same lack of data as the other amendments to the Ag HOs.[44] The Department cites general accident data that is not broken down between age groups and those youth who have received training or certification.[45] The Department attempts to give an exemption to student learners operating tractors and power-driven equipment because many operator platforms are above six feet.[46] However, the Department's intention to exempt these activities, as evidenced by section V.H. of the Proposed Rule, are not reflected in the proposed amendment to existing regulations.[47] The proposed amendment to the Code of Federal Regulations, proposed as section 570.99(7)(ii) of title 29, only references student learners operating tractors, but omits a reference to power-driven equipment.[48]

Occupations Involving the Handling of Pesticides

The Department has proposed amending the existing Ag HO for pesticides to ban nearly any type of activity related to pesticides, regardless of pesticide toxicity.[49] This amendment is too far reaching in nature and bans the use of non-restricted use pesticides that pose little risk to users. In addition, it creates a scenario where a youth employee could not handle pesticides like Roundup and 2,4-D at work on a farm, but could stop at the local hardware store on the way home to purchase the pesticides.

The Department cites concerns that the current youth pesticide restrictions, categorized by acute toxicity level, are not sufficient to protect against other hazards such as "potential neurotoxicity, reproductive toxicity, endocrine toxicity, and carcinogenic effects."[50] The Department, however, does not discuss any specific data in regard to the aforementioned toxicities, and it should be noted that all farm pesticides are examined for toxicity concerns before being registered for use under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Furthermore, the Department only has authority to regulate activities that are "particularly hazardous."[51] By restricting the handling of "any substance or mixture of substances" based on the Department concerns and conjectures about additional toxicity categories, the Department has exceeded its authority under the FLSA.[52] Rather than enact a nearly complete ban on all pesticide handling, the Department should withdraw the proposed

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[44] *See id.*, at 54860-54862.
[45] *See id.*
[46] *See id.*, at 54861, 54879.
[47] *See id.*
[48] *See id.*, at 54879.
[49] *See id.*
[50] *Id.*, at 54863.
[51] 29 U.S.C. § 203 (2011).
[52] Child Labor Notice, at 54879.

pesticide Ag HO and limit any future rulemakings to address only those health concerns for youth that are identified through the FIFRA registration process.

Occupations in Farm-Product Raw Materials Wholesale Trade Industries

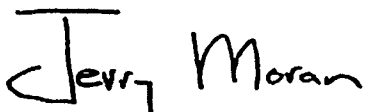
The Proposed Rule's amendment to the Code of Federal Regulations proposed as section 570.69 of title 29 unnecessarily restricts employment of youth who are sixteen and seventeen years of age from working in "[a]ll occupations in farm-product raw materials wholesale trade industries . . . ."[53] Such a broad rule would prohibit the employment of sixteen and seventeen-year old youth in places like small country elevators, grain-handling operations of feed mills and grain processing plants, livestock auctions, and feedyards, even if the scope of employment does not incorporate hazardous activities.[54] These rural employers often rely on sixteen and seventeen-year old youth to meet seasonal employment needs. Many of the employment activities of these businesses do not include activities delineated in the current HOs. It would be an economic hardship on these employers to comply with the absolute ban on youth employment proposed in section 570.69, while yielding no proven significant benefit to youth safety. The Department should withdraw this provision of the Proposed Rule and not propose a new amendment unless the employment prohibition is limited to only those activities currently classified as hazardous under existing HOs.

Conclusion

As a result of the many deficiencies of the Proposed Rule outlined in this letter, we request the Department withdraw the Proposed Rule immediately until such time as it can substantiate that any proposed changes to current Ag HOs will significantly improve youth safety, while at the same time prevent significant adverse economic impacts on rural employers.

Thank you for considering these comments and we look forward to hearing your response.

Sincerely,



U.S. Senator Jerry Moran

U.S. Senator Ben Nelson

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[53] *Id.*, at 54875.
[54] *See id.*

Mike Johanns

Kent Conrad

Pat Roberts

Claire McCaskill

Roy Blunt

Herb Kohl

John Barrasso

Mark Pryor

Jon E Kirsch

Mike Crapo

Chuck Grassley

John Boozman

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Dan Coats

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Michael B. Enzi

John Howson

Ron Johnson

John Thune

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Jeff Sessions

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Thad Cochran

Tom Kyl

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Olam Kim

Orrin G. Hatch