



November 30, 2011

Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue,
Washington DC 20210

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

Dear Sir or Madam:

The American Horse Council (AHC) appreciates the opportunity to submit the following comments on the proposed rule concerning child labor regulations.

The AHC is also submitting joint comments in conjunction with a broad collation of agricultural organizations.

The AHC is a Washington-based association that represents the horse industry before Congress and the federal regulatory agencies. The AHC includes individual members and over 150 equine organizations representing all horse breeds and virtually every facet of the horse industry, including, horse owners, breeders, veterinarians, race tracks, horse shows, state horse councils, recreational riders rodeos, farriers, breed registries, horsemen's associations, and commercial suppliers.

The Horse Industry and Young Workers

Young people are very important to the horse industry and agriculture in ways that far exceed their contribution as employees. Similarly, the experience and opportunity offered to young people working on horse farms and ranches are far more meaningful than just a pay check.

Young people who grow up working on a farm or ranch have an opportunity to connect with a special heritage, learn important skills and become interested in agriculture as a career. For young people who did not grow up on farms and ranches owned by family, working in agriculture offers them an opportunity to learn the skills necessary to work with livestock, like horses, after school, weekends and while on summer vacation. Working around horses on farms and ranches will lead many of these young people to later careers as veterinarians, horse trainers, breeders and farriers or other agricultural pursuits. They do not go to work on horse farms and ranches only for a pay check but because of a desire to learn about and be around horses.

Members of the horse community do not employ young people simply because they need workers. In most instances they employ young people to give them the same opportunities they had to learn and do something they love. With fewer and fewer young people staying in rural communities and working in agriculture it is important now more than ever that they are given this opportunity to learn about and become interested in agriculture.

Proposed Rule

Generally

The AHC and horse community are very concerned by the proposed rule. We appreciate the intention of the Department of Labor (DOL) to strengthen protections for young people working on farms and ranches, and the horse community has no desire to see young workers put in danger. However, this proposed rule is excessive, overly broad, and could effectively bar most individuals under the age of 16 from working in agriculture.

When Congress enacted the Fair Labor Standard Act (FLSA), it drew a clear distinction between agricultural jobs and nonagricultural jobs. Congress explicitly allowed young people under the age of 16 to work in agriculture because of its unique nature and the important role young people play on farms and ranches, only granting the authority to restrict youth from the most hazardous activities (Hazardous Occupation Orders). Since the FLSA was signed into law in 1938 Congress has taken no action that would alter or restrict the special role of youth in agriculture and we believe this proposed rule is a radical departure from the original and current intent of Congress.

Additionally, we do not believe the DOL has given the agricultural community adequate time to analyze and comment on the proposed rule. It takes a significant amount of time to reach out to the horse community and collect information on a rule that could have far reaching consequences for young people working on the horse farms and ranches or who wish to. We continue to request the DOL further extend the comment period to allow the agricultural community to fully understand and respond to this proposed rule.

Parental Exemption

The AHC is concerned with the DOL treatment of the FLSA exemption for children working on farms or ranches owned or operated by their parents or persons standing in place of their parents. The DOL claims that “None of the revisions proposed in this NPRM in anyway change or diminish the statutory child labor parental exemption in agricultural employment contained in the FLSA,” and therefore leaves the current parental exemption unchanged. However, the AHC is concerned family farms and ranches that are owned as partnerships, even with other family members, such as grandparents, or brothers and sisters, or operated as LLCs would not qualify under the parental exemption in this proposed rule. Specifically, the proposed rule would not apply the parental exemption “where the ownership or operation of a farm is vested in persons

other than the parent, such as a business entity, corporation or partnership (unless wholly owned by the parent(s)).”

We believe this is a significant departure from Congressional intent and current DOL interpretation of the FLSA. For example the DOL “Field Operation Handbook” dated May, 2002 defines “owned” and “operated by” for purposes of the parental exemption in the following manner:

Owned by the parent or person standing in place of the parent includes part ownership as a partner in a partnership or as an officer of a cooperation which owns the farm if the ownership interest in the partnership or cooperation is substantial.

Operated by the parent or person standing in place of the parent means that they exert active and direct control over the operation of the farm or ranch by making day today decisions affecting the basic income, work assignments, hiring and firing of employees and exercising direct supervision of the farm and ranch work.

The AHC does not believe the proposed rule recognizes the reality that many family farms and ranches are held as LLCs or partnerships with other family members. We believe there is no reason to believe it has ever been the intent of Congress to exclude farms owned by two siblings or multiple generations of a family from the parental exemption. Doing so would impact thousands of family farms and ranches and unnecessarily deprive young people of the opportunity to work on a family farm or ranch and all the benefits associated with such work addressed earlier.

The AHC requests that any final rule address this issue and make clear family farms and ranches held as partnerships or LLC will be covered under the parental exemption.

Hazardous Occupations Orders

The proposed rule would expand the number and scope of Hazardous Occupation Orders (HOs) to such an extent that young people not working on a farm or ranch owned by their parents would be precluded from working in agriculture.

The proposed rule would prohibit herding livestock on horseback or foot in confined spaces such as pens and corrals. Furthermore, the DOL would prohibit youth from engaging or assisting in almost all common animal husbandry practices, such as branding, breeding, dehorning, vaccinating, castrating livestock, or treating sick or injured animals including horses. All these activities combined represent a great deal of the work performed in association with livestock.

The DOL justifies the herding prohibition based on a National Farm Medicine Center Statement that “horseback herding of animals requires a person to monitor and anticipate the behaviors of two (large) animals simultaneously. No youth data exists to suggest they

have the cognitive ability to handle this responsibility.” In the proposed rule the DOL basically takes the position that all livestock is dangerous and youth should not be employed around livestock.

The AHC would like to point out that every year hundreds of thousands of youth younger than 16 compete in rodeos and equestrian events such as reining and cutting competitions that are very similar to work performed on a ranch or farm as well as eventing, show jumping, polo and other equestrian activities that all include complicated maneuvers on horseback. Besides participating in these events these young people are often responsible for taking care of their horses and performing many activities that would be prohibited for hired youth workers under this proposed rule. We believe this is strong evidence that young people have the capability to safely work on and around horses.

This HO is so broadly written that the prohibition on herding in confined spaces could preclude a worker under 16 from walking into a corral or stall to place a lead rope on a horse, one of the most basic actions that occurs when working with horses.

Because of its overly broad and restrictive nature the AHC recommends the DOL retain the current HO for livestock.

Additionally, the proposed rule greatly expands the number and scope of a number of HOs that impact almost all aspects of agricultural work. Currently, workers younger than 16 are prohibited from operating specific farm equipment, such as tractors with more than 20 PTO horsepower, corn pickers, cotton pickers, combines, hay mowers, forge harvesters, etc. with exemptions for workers with certificates from vocational programs such as Future Farmers of America (FFA). The proposed rule would bar workers under 16 from operating any tractors or any equipment not foot or hand-powered including equipment such as lawn mowers and milking machines and prohibit contact with such equipment even when off. We believe as currently written HOs 2, 3, and 6 in the proposed rule could even prevent youth from using such simple hand operated tools like wheelbarrows and hammers or performing basic farm work such as mending fences or unloading hay from a wagon pulled by a tractor.

As currently written almost every HO in this proposed rule is overly broad and restrictive. The AHC supports the current method used to protect young workers that prohibits youth from operating specific equipment or specific activities that are deemed dangerous and inappropriate for their age and skills.

Student Learner Exemptions

Educational agricultural organizations like FFA and school-based agriculture programs are important to the horse community and agriculture in general. They provide young Americans with valuable experience, skills, and get them excited about horses and agriculture. A major component of these programs is hands-on experience on horse farms and ranches with many programs beginning when students are 14 years old. The current regulations contain student learner exemptions for workers enrolled in such programs to

perform certain work or operate certain equipment after a student has completed appropriate instruction. The proposed regulations would sharply limit those student exemptions.

Curtailing student exemptions could sharply limit the amount of hands-on learning available to these students and have a negative impact on such programs and students ability to gain valuable experience. While we do believe student safety should be of great concern, any final rule must recognize the value of these programs and make certain student exemptions are broad enough to allow for useful learning experiences.

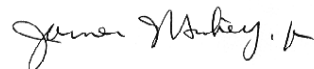
Conclusion

The safety and well being of young workers is of paramount importance to the horse community. It is prudent and proper that certain specific hazardous activities be limited or prohibited as is the case with current regulations governing youth employed in agriculture. The AHC certainly believes employers who exploit or put young people improperly at risk should be held accountable. However, in its current form the proposed rule would effectively bar any young person under 16 from any sort of meaningful employment on a farm or ranch not owned or operated solely by their parents. This was clearly not the intention of Congress when it explicitly provided for youth to be employed in agriculture as part of FLSA.

We urge the DOL to revisit this propose rule, after reviewing comments from the agricultural community, and produce a rule that recognizes the original Congressional intent that youth be able to productively work in agriculture with adequate protections or retain existing regulations.

The AHC appreciates this opportunity to comment on the proposed rule. If you need any additional information, please contact us.

Sincerely,



James J. Hickey, Jr.
President