



**State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner**

**Janet L. Fisher
Deputy Commissioner**

**Bob Tabb
Deputy Commissioner**

**Steve Miller
Assistant Commissioner**

Testimony of Robert Tabb

On Behalf of The West Virginia Department of Agriculture

Before the Committee on Small Business

Subcommittee on Agriculture, Energy and Trade

**“The Future of the Family Farm: The Effect of Proposed DOL Regulations on
Small Business Producers”**

Thursday, February 2, 2012, 10:00 a.m.

2360 Rayburn House Office Building

Washington, DC

Good Morning. Thank you Chairman Tipton, Ranking member Critz and members of the Subcommittee on Agriculture, Energy and Trade for allowing me to speak.

I am Bob Tabb, Deputy Commissioner for the West Virginia Department of Agriculture. I am a fourth generation farmer from Jefferson County in West Virginia. I grew up on a dairy farm there and have been involved in Agriculture my whole life.

I am honored to testify on behalf of Commissioner Gus Douglass, the longest serving Agriculture Commissioner in the United States.

West Virginia has over 23,000 farms, many of which are small operations who rely on part-time help. In West Virginia and across the country the average age of our farmers is approaching 60 years. If the Department of Labor’s proposed rule changes on Child Labor Law are

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enacted, we believe the effect will be detrimental to an industry that takes great pride in producing the safest, most plentiful and most economical food in the world.

The National Institute for Occupational Safety and Health (NIOSH) makes fourteen (14) recommendations concerning the existing agricultural hazardous occupations orders (Ag H.O.s). While we agree with some of the recommendations, such as related to the use of cell phones (in certain instances), safe handling of pesticides, blasting agents, and anhydrous ammonia, we strongly disagree with limiting the working height on a ladder to six (6) ft. This will prohibit youth from picking tree fruit above six (6) ft., or even putting up hay in hay lofts, as well as doing routine farm chores such as painting and repairing barns. The limitations in the rule for operating tractors will stop the pulling of a hay wagon, or transporting hay to cattle, and other farm tractor related activities.

The proposed rule change to prohibit youth under sixteen (16) years of age from working with any male equine, porcine or bovine older than six (6) months will further limit the opportunities for youth to participate in the normal activities of raising livestock. This proposed rule would even prohibit youth under sixteen (16) from showing these male animals at fairs and festivals.

The proposed rule change to "Employment in Agriculture Under Adverse Conditions" states in part "the Department is asking for comments on whether it should create a new Ag H.O. addressing youths' exposure to extreme temperatures. Such an Ag H.O. could provide that youth under the age of sixteen (16) would not be permitted to work in agricultural occupations where the temperatures at which they are working exceed or drop below a certain temperature, factoring in such things as humidity, wind velocity, and the degree and duration of the physical exertion required by the work. It might also require that hours in direct sun be limited, if the temperature reaches certain thresholds for prolonged periods of time..."

Anyone who has ever farmed understands weather is the most unpredictable part of farming. To comply with this proposed rule would most likely require one of two options: (1) Hire a full-time meteorologist to document all of the requirements and advise when youth under sixteen (16) could work. (2) Limit farming if you rely on youth under sixteen (16) to stack hay, pick fruits or vegetables, feed or work with livestock or just pull weeds.

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The proposed rule change to limit Ag H.O.s only to children of farm operators will eliminate opportunities in agriculture for anyone not “born to farm parents”. Many “family” farms today are operated as a LLC or some form of a corporation. In this case being “born to farm parents” is not enough to have Ag H.O.’s exemption.

Studies show that in an eleven year period from 1998 to 2009, the rate of childhood agricultural injuries per 1,000 farms, including youth who live on, visit, and are hired to work on farms, declined by 59%. The rate of injuries per 1,000 household youth (those living on farms) declined by 48% during that same period. NIOSH.2010. Trends in childhood agricultural nonfatal injury rates, 1998-2009. Internal analysis of the Childhood Agricultural Injury Survey (CAIS) surveillance system. Morgantown, WV: National Institute for Occupational Safety and Health.

This study by NIOSH confirms our belief that continued education, training and improved technology have and will continue to reduce the number of youth farm injuries and deaths. Our youth actively engaged in 4-H, FFA and other agriculture-related programs are the future of agriculture.

Attached are the National Children’s Center for Rural and Agricultural Health and Safety 2011 Fact Sheet (Childhood Agricultural Industries), comments by the West Virginia Department of Agriculture to Secretary Solis on the proposed rule changes, and also the National Association of State Departments of Agriculture (NASDA) comments to the proposed rule changes.

Commissioner Gus Douglass and the West Virginia Department of Agriculture have been and continue to work closely with the member states of NASDA on issues affecting agriculture throughout the United States of America. In closing, I respectfully request that you further examine the true impact that these proposed rules will have on agriculture now, and in the future.

Robert “Bob” Tabb