



July 16, 2007

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Room S-3502
200 Constitution Avenue
Washington, DC 20210

Re: Child Labor Regulations, Orders and Statements of Interpretation; RIN 1215-AB57

Dear Sir or Madam,

The Food Marketing Institute (FMI) is pleased to submit these comments in response to the Department of Labor's (DOL) recent Federal Register notices regarding the Department's intent to revise and update the regulations governing the employment of teenagers. 72 Fed. Reg. 19337 (April 17, 2007). FMI commends DOL for its efforts to conform the regulations to the twenty-first century workplace. There are several aspects of the proposals that we believe need to be modified as discussed more fully below.

FMI conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 50 countries.

Background

FMI's food retailer and wholesaler members employ more than 3 million Americans, many of them students in entry level positions. Indeed, grocery retailers in particular serve as the entry point into the workforce for vast numbers of our nation's young adults. Our members are strongly committed to providing a productive, satisfactory, and safe, experience for these young employees. DOL's child labor regulations play an important role in this process, protecting young people from abuse while encouraging the integration of work into the learning process. We are concerned, however, that some of the proposed modifications to the regulations could inadvertently make it more difficult for employers to hire young people and make it more difficult for students to

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coordinate their schedules with potential employers; thereby discouraging their employment. We do not believe that this is the intent of the proposal.

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 16 years for employment, except in certain occupations deemed to be hazardous by the Secretary of Labor. The Secretary also is authorized to issue regulations allowing 14- and 15- year olds to work in suitable occupations and during periods that will not interfere with their schooling, health or well-being. The current regulation (Reg. 3, subpart C of 29 CFR part 570) identifies a number of occupations permitted for this age group, including a variety of specified jobs in retailing and food service establishments. Proposed section 570.34 revises this list of occupations, essentially incorporating the current list of jobs allowed in retailing and food service establishments and expanding the list to include the same type of jobs in other industries. DOL is also proposing to modify the regulations concerning the periods of employment for 14- and 15- year olds and the hazardous occupation orders for 16- and 17- year olds.

Our comments on the specific proposals of concern to our members follow.

Periods and Conditions of Employment for 14- and 15- Year Olds

Reg. 3 specifies the hours that 14- and 15- year olds can work. Under Reg. 3, the hours of permissible work for 14- and 15- year olds are limited to the following: (1) non-school hours; (2) 40 hours in any week that a school is not in session; (3) 18 hours in a week when school is in session; (4) 8 hours in a day when school is not in session; (5) 3 hours per day when school is in session; and (6) between 7 am and 7 pm except during the summer when the evening hour is 9 pm.

DOL is not proposing to change any of the current limitations. It is, however, proposing to modify the regulation to define some of the terms used in a manner that will cause confusion and disruption for employers.

Proposed section 570.35(b) proposes to incorporate into the regulation a definition of the word *week* as “a standard calendar week of 12:01 am Sunday through midnight Saturday, not an employee’s workweek...” We strongly object to this change, which would create an administrative nightmare, and see no reason for it.

Most employers track and schedule employees’ hours based on their own established workweek. Many of our members have systems in place that automatically check hours worked to make sure minors do not exceed their allowable hours. These systems track thousands of minors based on the employer’s standard workweek. By requiring the use of a Sunday to Saturday midnight week, employers would be forced to check hours worked manually, making it more likely that mistakes would be made. It would make it more difficult and less likely that these youth would

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be employed. The notice provides no rationale of any kind for this arbitrary definition and we urge that it be rethought.

While not making specific regulatory proposal at this time, DOL is also asking for comments on definitions for the terms *school hours* and *school is in session*. It suggests that the proper definition should be the hours of the operation of the local public school where the minor resides. Such a definition would make no sense for the many young people who do not go to public schools. It is hard to understand why their work hours should be governed by a school system they have nothing to do with—whether it is a local system or in another state. Indeed, in many cases it is difficult to determine a school system’s standard hours, with split hours and other scheduling differences between schools in the same system. Such a definition could even result in a student being employed during hours when his own school is in session, but the local public school is not. Clearly the most appropriate definition is the student’s actual academic schedule.

Power Driven Meat Slicers

Hazardous Occupation Order (HO) 10 generally prohibits 16- and 17- year olds from operating power driven meat processing machines when performed in slaughtering and meatpacking establishments, as well as in wholesale, retail or service establishments. This prohibition includes operation of a meat slicer in a deli department or restaurant. In 2002 the National Institute for Occupational Safety and Health (NIOSH) issued a report, which had been commissioned by DOL, making recommendations for changes to the HOs. One of the few recommendations in the report to “relax” an order involved HO 10. NIOSH recommended that HO 10 be revised to allow 16- and 17-year olds to operate and feed meat and food slicers in retail, wholesale and service industry establishments.

NIOSH made this recommendation based on the fact that injuries, when they do occur in conjunction with the use of this equipment, are relatively minor. Despite this, DOL has decided not to implement the NIOSH recommendation. We find this surprising as the NIOSH recommendations are based on the hard data and analysis that DOL asked NIOSH to provide. We believe that DOL is being overly cautious and that the NIOSH recommendation should be adopted.

Bakery Machines

Hazardous Occupation Order 11 generally prohibits 16- and 17- year olds from operating power driven bakery equipment. The NIOSH report recommends that HO 11 be modified to allow the operation of counter-top models of power driven bakery machines, comparable to those intended for household use. DOL proposes to adopt this recommendation and to allow the operation-including setting-up, adjusting, repairing, oiling, and cleaning- of this equipment. We support this modification.

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DOL is also proposing to modify HO11 to permit 16- and 17- year olds to operate pizza-dough rollers that are constructed with certain specified safeguards. However, the setting up, adjusting, cleaning and repairing of this equipment would continue to be prohibited. We support the change to allow 16- and 17- year olds to operate this equipment.

* * *

FMI commends DOL for updating the child labor regulations to conform with the current work environment. We urge that the proposal be modified as discussed above to promote a safe and productive work experience for young Americans. We appreciate the opportunity to submit comments on this important subject.

Respectfully submitted,



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