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January 14, 2014

The Honorable David Michaels, PhD, MPH
Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Assistant Secretary Michaels:

We are increasingly concerned about the Occupational Safety and Health Administration's (OSHA) reliance on guidance documents, letters of interpretation, and other non-regulatory actions to dramatically change OSHA policy. A glaring example is the June 28, 2011 enforcement guidance to regional administrators regarding family farming operations. The agency should withdraw this misguided guidance and restore long-standing policies that have served the best interests of family farms for decades.

As you know, for nearly 40 years federal law has exempted family farms from OSHA jurisdiction. This policy has been supported by Congress and administrations dating back to the Carter administration. Now, without any public notice or review, the Obama administration has begun to overturn this legal standard through executive fiat. The June 2011 guidance redefines "farming operations" to allow OSHA inspectors onto family farms. Under the agency's new and unprecedented logic, it appears anything outside of the actual growing of crops and raising of livestock could be deemed "non-farming operations" that would subject family farms to OSHA inspections.

The guidance is a clear attempt to circumvent the law and the will of Congress that has held since 1978:

None of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees.

Contrary to the agency's belief, the law does not hold that farmers engage in farming *only* during the harvest and that post-harvest activities do not constitute farming. We believe most family farmers would be stunned to learn the storage of grain is not essential to sustaining livestock or a farm's operations. Yet

the administration has already begun enforcing this unprecedented change. Reportedly, one farm is currently in litigation before the Occupational Safety & Health Review Commission.

The guidance simply does not reflect the reality of family farming or the will of Congress as supported by both Democrat and Republican administrations; therefore, it should be withdrawn. Additionally, to inform the committee of OSHA's actions throughout the development and implementation of the guidance, provide to the committee **no later than January 28, 2014** the following:

1. All documents and communications relating to the department's internal review process for the issuance of this policy change;
2. All documents and communications relating to the development of this policy change;
3. A list of all meetings and telephone conversations between the Departments of Labor and Agriculture relating to the planning for and implementation of this policy change, include the date, a list of attendees, and a short explanation of the topics discussed;
4. All documents and communications from OSHA, the Office of the Solicitor (SOL), or any other agency relating to the decision to make this policy change through a letter of interpretation instead of through the regulatory process under the *Administrative Procedure Act*;
5. All documents and communication from OSHA, SOL, or any other agency used to support the conclusion that implementation of the guidance does not conflict with the legal prohibitions under appropriations statutes and congressional intent for including such prohibitions in the law;
6. All guidance materials provided to Compliance Safety and Health Officers related to implementation of this guidance; and
7. A description of the process by which OSHA communicated this guidance to the regulated community, including, but not limited to, the date the guidance appeared on OSHA's website.

If you have any questions regarding this request, please contact Loren Sweatt, House Committee on Education and the Workforce, at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



TIM WALBERG
Chairman
Subcommittee on Workforce Protections

The Honorable David Michaels
January 14, 2014
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DAVID P. ROE
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions



TODD ROKITA
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education



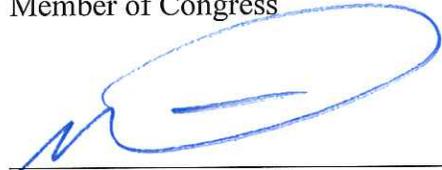
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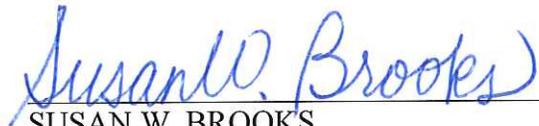
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Member of Congress



SUSAN W. BROOKS
Member of Congress



RICHARD HUDSON
Member of Congress

Enclosure

CC: The Honorable George Miller, Senior Democratic Member