



Statement of the American Farm Bureau Federation

**TO THE HOUSE COMMITTEE ON EDUCATION
AND THE WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS**

**RE: OSHA Regulation and Enforcement of Exempt Farming Operations that
include grain bins and grain storage**

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**Presented by:
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Mr. Chairman and members of the committee, thank you for this opportunity to provide testimony to the subcommittee on a matter of great importance to small family farms. My name is Scott VanderWal. I am a third-generation corn and soybean farmer in Volga, South Dakota. I am pleased to offer this testimony on my own behalf, as well as that of the American Farm Bureau Federation (AFBF), where I sit on the board of Directors. We appreciate the subcommittee's interest in overreaching enforcement activity of the Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) against agricultural producers. From increased delays in the H-2A visa program and the withdrawn overreaching child labor proposal, agriculture has seen an increase in the amount of DOL investigation in recent years. We believe many of these investigations are in areas where agency authority is limited, if not entirely restricted, by Congress.

Congress has historically worked to preserve and protect the unique nature of the agricultural sector and family farming operations. They have done this in a number of instances, but one in particular has been in consistently assuring that OSHA does not spend time, energy and public resources investigating routine activities on small family farms. Specifically, in the 1976 Labor-HHS Appropriations bill – and in every appropriations bill thereafter – Congress has exempted small farming operations from OSHA enforcement actions that do not maintain a temporary labor camp and that employ 10 or fewer employees. Despite this clear direction from Congress, OSHA has drafted investigator guidance, conducted investigations and penalized farming operations in complete disregard of a law that has been on the books for nearly four decades.

A June 2011 Memorandum by OSHA Director of Enforcement Programs declares that all activities under SIC 072—including drying and fumigating grain—are subject to all OSHA requirements. OSHA goes further to say: “Many of these small farm employers mistakenly assume that the Appropriations Rider precludes OSHA from conducting enforcement activities regardless of the type of operations performed on the farm.” Farm Bureau agrees that there is a mistake here, but it does not lie with small farm employers. Instead, OSHA “mistakenly assumes” what is integral to a farming operation and has thereby circumvented clear congressional direction.

OSHA appears to take the position that any activity that takes place after a kernel is severed from the stalk would be considered post-harvest activities, such as storing and drying grain for market, and thus placing those activities under OSHA regulation. This is an illogical position. Post-harvest activities are necessary to prepare crops for sale and are fundamental in any farming operation. Merely possessing storage capacity for grain and utilizing that storage capacity does not create a separate and distinct operation from the farming operation itself. The purpose in planting, cultivating and harvesting the crop is to sell the crop. Practically speaking, it is necessary to store and prepare the grain for sale. Most farming operations, if not all, have to store -- even if for short periods of time -- the commodity in order to get it to market. Thus, if the operation has fewer than 10 employees and does not have a labor camp it is covered by the small farm operation exemption designated by Congress.

Congressional intent is clear that this language was adopted to protect small farms and should be interpreted broadly to protect farms with fewer than 10 employees and no labor camp. In fact,

Congress feels so strongly that the fiscal year 2013 Appropriations Act report contains language that reinforces the small farm exemption and suggests that OSHA should work with USDA before moving forward with any attempts to redefine and regulate post-harvest activities in relation to the exemption. We hope that this language will forestall any further enforcement actions by OSHA and encourage that office to re-evaluate its interpretation of farming operations as they relate to post-harvest activity.

Farm Bureau understands OSHA's concern with grain bin safety. In fact, Farm Bureau remains committed to grain bin and farm safety generally. Throughout the country, state and county Farm Bureaus have safety training programs, including grain bin safety. We work to ensure everyone who is working on our farms is trained and safe. Prior to instituting the June 2011 memo, had OSHA reached out to Farm Bureau and others in the industry, we would have been eager to work with them to develop additional safety training programs if necessary to prevent injury. This preventative action would have better served OSHA's mission and the shared goal of farm safety.

However, rather than working cooperatively with industry, OSHA apparently reached the conclusion that it was preferable to penalize small farmers through enforcement. Utilizing the 2011 memo, a Nebraska farming operation, with one non-family employee, was fined approximately \$130,000 for allegedly not following OSHA regulations related to storage of grain grown and harvested by the farmer. An Ohio farmer had a strikingly similar situation, but was relieved when fines were withdrawn after Congress began to raise awareness of the agency's overreach. Unfortunately, the Nebraska farmer is now tied up in litigation. The fact is that both of these farms fall under the farmer exception and these enforcement actions never should have taken place. It is clear that OSHA is ignoring congressional intent and the agency should withdraw the 2011 memo entirely.

Regulation, guidance and enforcement that circumvent a clear legislative directive are not an acceptable solution. We remain committed to working with OSHA, USDA and the industry as a whole in doing the utmost to ensure worker safety on all farms. At the same time, we urge Congress to take action that prevents this type of regulatory overreach.

I appreciate this opportunity to testify and I will be pleased to answer any questions the members of the committee might have.