December 13, 2022

Amy DeBisschop
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division (WHD)
U.S. Department of Labor Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: Comments of the National Pork Producers Council in Response to Proposed Rule "Employee or Independent Contractor Classification under the Fair Labor Standards Act" (WHD-2022-0003)

Ms. DeBisschop:

The National Pork Producers Council (NPPC), which represents the interests of America's more than 66,000 pork producers, submits the following comments regarding the Wage and Hour Division (WHD) Proposed Rule "Employee or Independent Contractor Classification under the Fair Labor Standards Act" (WHD-2022-0003). NPPC appreciates the opportunity to submit comments and highlight concerns regarding the Proposed Rule.

Introduction

The U.S. pork industry is a global supplier of pork and a major contributor to the American economy. In addition to the thousands of jobs created on hog farms, pork producers source inputs and services from many other sectors, supporting additional economic activity and opportunity. The pork industry's backward and forward linkages throughout the economy are critical to industry growth and the ability to produce safe, high-quality, affordable protein for consumers.

Many pork producers rely on independent contractors within agriculture and related industries to provide services that support production. Examples include truck transportation, washing and sanitation, manure logistics, and construction services. Because most hog farms are concentrated in rural areas close to feed input production, independent contractors can work with multiple farms and have the freedom and flexibility to pursue other emerging business opportunities. Additionally, production contracts in the pork industry have become increasingly prevalent since the 1980s. This arrangement allows pig owners to grow their businesses and creates opportunities for other farmers to build equity as independent contract growers.

Pork Industry Economic Importance

In 2021, U.S. pork producers marketed more than 140 million hogs valued at over $28 billion in gross cash receipts. A recent study estimates that roughly 36,000 full-time-equivalent workers are required to produce the current volume of hogs.[1] While these numbers are significant on their own, the economic contribution of the U.S. pork industry goes far beyond the farm-level impacts. Pork producers rely on many other sectors of the economy to supply inputs, transportation, sanitation, consulting, and other services. In fact, when accounting for all the inter-industry transactions stemming from pork production, the industry supports nearly $180 billion in gross output, $57 billion in value-added GDP, and more than 613,000 U.S. jobs.

Analysis of Proposed Rule

U.S. businesses, including pork producers, rely on both employees and independent contractors to support production. The Department of Labor has historically used an "Economic Realities" test to determine proper classification and protections for workers under the Fair Labor Standards Act. The economic realities test looks at several factors that help determine whether, as a matter of economic reality, the worker is reliant on the hiring party to earn a living (making them an employee) or is self-reliant and independent (making them a contractor).

The current rule for determining employee or independent contractor status involves an assessment of five factors, with two core factors weighted most heavily. Core factors include the nature and degree of control over the work and the worker's opportunity for profit or loss based on initiative and investment. The other three factors include the amount of skill required for the work, the degree of permanence, and whether the work is part of an integrated unit of production. The current rule reduces uncertainty by relying heavily on the two core factors, and if they indicate contradicting results, the other factors are then applied.

The Proposed Rule would establish a more complicated test including six equally weighted factors to consider when determining independent contractor or employee status. This change would make it more difficult to classify legitimate independent contractors and significantly increase uncertainty and confusion for hiring entities trying to make this distinction. As a result, pork producers and other business owners could be subject to increased legal and tax issues.

Additionally, the new regulations are not limited to any specific industry and could significantly impact the agricultural economy. The unintended consequences of the Proposed Rule would threaten existing business relationships and practices in the pork industry and significantly increase the cost of raising pigs while driving industry consolidation. In the current environment of worker shortages, high production costs, and rising consumer food prices, creating additional restrictions and regulatory uncertainty would only exacerbate these issues. The Proposed Rule would also reduce opportunities for independent contractors, threatening the livelihood of small business owners in rural areas.

Conclusion

The potential consequences of the Proposed Rule would negatively impact farmers, rural businesses, and the local communities in which they operate. For this reason, the National Pork Producers Council opposes the Proposed Rule and asks that the current rule be kept in place. If you should have any

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[1] https://nppc.org/the-pork-industry/

questions about the submitted comments, please contact NPPC Staff Economist Holly Cook at cookh@nppc.org.

Respectfully submitted,

Bryan Humphreys

CEO

National Pork Producers Council