

Congress of the United States
Washington, DC 20515

October 26, 2022

Honorable Roberta Reardon
Commissioner
New York State Department of Labor
Building 12
W.A. Harriman Campus
Albany, NY 12240

Dear Commissioner Reardon:

We respectfully submit these comments in response to the New York State Department of Labor proposed regulation titled: I.D. No. LAB-41-22-00024-P, Overtime Threshold for Farm Laborers, which was published in the *New York State Register* on October 12, 2022.¹ As members of the New York Congressional delegation, we are strongly opposed to the proposed rule. The New York State Department of Labor's proposed regulations to lower the overtime threshold from 60 hours a week to 40 hours a week will cause significant harm to the agriculture and economic sectors throughout the state.

On September 6, 2022, the Farm Laborers Wage Board submitted insufficient recommendations to the Department of Labor. The Board disregarded most of the solicited testimony advocating for a continued 60 hour week overtime threshold and two scientific reports on the issue from Cornell University's College of Agriculture² and Life Sciences and Farm Credit East.³ According to Cornell, imposing a 40 hour overtime threshold would force two-thirds of dairy farms in the state out of milk production and half of fruit and vegetable farms would exit the industry.⁴ Increasing labor costs would disincentivize expansion of the agricultural sector, forcing changes in farm operations to less labor-intensive crops and hours per worker.

The reduction of the overtime threshold would have a devastating impact on the agricultural sector and the livelihoods of our farmers in New York. Our hardworking farmers are already facing considerable struggles due to skyrocketing inflation, rising input costs, and an ongoing labor shortage. The last thing our farmers and producers need is more burdensome red tape forcing them to evaluate the crops they grow or livestock they raise, the number of hours they can offer their employees, and their ability to compete in the marketplace. A 40 hour per week overtime threshold would cost farms an increased 42% in labor costs, totaling to \$264 million per year.⁵

The agricultural industry is a critical economic driver in Upstate New York and the North Country, employing thousands of individuals and accounting for \$37.2 billion⁶ in economic impact for agriculture and related processing activities. Across New York State, there are approximately 33,400 farms spread across 6.9 million acres of land.⁷ Considering approximately 98% of farms in

¹ XLIV N.Y. Reg. 20-22 (Oct. 12, 2022). <https://dos.ny.gov/system/files/documents/2022/10/101222.pdf>

² Christopher Wolf, et al., Cornell University, Effects of NY Overtime Laws on Production Costs and Competitiveness (2021). https://dyson.cornell.edu/wp-content/uploads/sites/5/2022/01/EB2021-06_w_Acknowledgement-VD.pdf

³ Tom Cosgrove & Chris Laughton, Farm Credit East, The Economic Impact of Overtime Pay for New York State Agriculture (2021). <https://www.farmcrediteast.com/en/resources/Industry-Trends-and-Outlooks/Reports/economic-impact-of-overtime-pay-for-nys-agriculture>

⁴ Christopher Wolf, et al., Cornell University, Effects of NY Overtime Laws on Production Costs and Competitiveness (2021). https://dyson.cornell.edu/wp-content/uploads/sites/5/2022/01/EB2021-06_w_Acknowledgement-VD.pdf

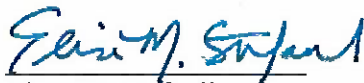
New York are family-owned, farm owners face narrow margins, are price takers in the marketplace, and depend on agriculture as their primary source of income.⁸

Implementing a reduced overtime threshold of 40 hours per week will make New York less competitive by forcing our workers to seek labor opportunities in neighboring states and exacerbate the current labor shortage. When our farmers cannot afford to foot the bill for the massive labor costs, they will have to either hire more workers, offer each worker less hours, change their operation, or cease production. The farmworkers in our nation are hardworking and want to work extra hours, therefore workers will move to neighboring states, such as Vermont or Pennsylvania, to seek better opportunities.

The Department of Labor claims that the use of a phased-in structure lowering the overtime threshold over ten years is intended to mitigate economic hardship for farm owners and improve the economic viability of farm laborers. In practice, this phased-in structure will not effectively mitigate the hardship or make the overtime threshold of 40 hours a week any more manageable for our farmers and producers in New York. Farmers generally are price takers, indicating that they must accept the prevailing market price for their products and cannot influence market prices. Therefore, it is challenging for producers to pass along increased labor costs, resulting in the farmers absorbing the cost and forfeiting profits.

Farm families and the agriculture industry in New York State will suffer tremendously if the Farm Laborers Wage Board's overtime recommendations are implemented. Our farmers cannot withstand higher labor costs amidst an already strained labor force and will have to face significant financial decisions regarding their farm operations. Without operating farms, our state will undergo food shortages, endanger the future of our agricultural industry, and negatively impact our economy. We urge you to revise this proposed rulemaking to maintain the current 60 hour a week overtime threshold.

Sincerely,



Elise M. Stefanik
Member of Congress



Lee Zeldin
Member of Congress



Chris Jacobs
Member of Congress



John Katko
Member of Congress

⁵Tom Cosgrove & Chris Laughton, Farm Credit East, The Economic Impact of Overtime Pay for New York State Agriculture (2021). <https://www.farmcrediteast.com/en/resources/Industry-Trends-and-Outlooks/Reports/economic-impact-of-overtime-pay-for-nys-agriculture>

⁶Tom Cosgrove & Chris Laughton, Farm Credit East, The Economic Impact of Overtime Pay for New York State Agriculture (2021). <https://www.farmcrediteast.com/en/resources/Industry-Trends-and-Outlooks/Reports/economic-impact-of-overtime-pay-for-nys-agriculture>

⁷U.S. Department of Agriculture: 2021 New York State Agricultural Overview (2022).

https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=NEW%20YORK

⁸Tom Cosgrove & Chris Laughton, Farm Credit East, The Economic Impact of Overtime Pay for New York State Agriculture (2021). <https://www.farmcrediteast.com/en/resources/Industry-Trends-and-Outlooks/Reports/economic-impact-of-overtime-pay-for-nys-agriculture>



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