



Agricultural Law Update

February 2012

Update On Department Of Labor Proposed Rulemaking Regarding Child Labor In Agriculture; Dol To Re-Propose "Parental Exemption"

- Liza C. Moore

Last fall's Department of Labor (DOL) publication of a Notice of Proposed Rulemaking affecting child labor regulations in agriculture grabbed nearly everyone's attention in the agriculture sector. By the December 1, 2011 close of the comment period on the proposed rules, over 10,000 comments had been submitted to the government website for the regulations. On February 1, 2012, the DOL reacted to the public response by announcing that the DOL will re-propose the portion of its regulation interpreting the "parental exemption" in summer 2012. The DOL's news release stated:

The department recognizes the unique attributes of farm families and rural communities. The re-proposal process will seek comments and inputs as to how the department can comply with statutory requirements to protect children, while respecting rural traditions. The re-proposed portion of the rule is expected to be published for public comment by early summer. The department will continue to review the comments received regarding the remaining portions of the proposed rule for inclusion in a final rule.

"The Department of Labor appreciates and respects the role of parents in raising their children and assigning tasks and chores to their children on farms and of relatives such as grandparents,

aunts and uncles in keeping grandchildren, nieces and nephews out of harm's way," said Secretary of Labor Hilda L. Solis. "Today's announcement to re-propose the parental exemption means the department will have the benefit of additional public comment, and the public will have an opportunity to consider a revised approach to this issue. We will continue to work closely with the U.S. Department of Agriculture to ensure that our child labor in agriculture rule generally, and the parental exemption specifically, fully reflect input from rural communities." ■■

Look for continued updates on this important topic. To view the DOL's February 1, 2012 news release, please visit:
www.dol.gov/opa/media/press/whd/WHD20120203.htm



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DATES TO REMEMBER:

- Feb. 15-18, 2012** | National Farm Machinery Show, Louisville, KY
- Feb. 15, 2012** | Meeting of Michigan Commission of Agriculture and Rural Development, Lansing, MI
- Feb. 25, 2012** | Equine Business Conference, East Lansing, MI
- Mar. 6-7, 2012** | Michigan Farmers Market Association Conference, East Lansing, MI
- Mar. 7-9, 2012** | Michigan FFA Convention, East Lansing, MI
- Mar. 30, 2012** | Deadline to apply for USDA NRCS conservation innovation grants

MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT ACCEPTING APPLICATIONS FOR MICHIGAN AGRICULTURE EXPORTER OF THE YEAR

- Liza C. Moore

The Michigan Department of Agriculture and Rural Development is accepting applications for the Michigan Agriculture Exporter of the Year Award. "Our state's food and agriculture companies are producing innovative products showcasing the diversity and quality of our commodities while delivering safe and healthy products to both the domestic and international markets," said Keith Creagh, MDARD director. "Michigan's high quality agricultural and food products are helping our state compete in the global marketplace and expand into new trade markets," said Creagh. Applicants' products must be over fifty percent grown, processed, or manufactured in Michigan. Prior winners may apply five years following their prior award.

Cherry Central Cooperative was awarded the title last year. Nominations must be received by Monday, March 12, 2012. Self nominations are encouraged. ■■

To view the MDARD press release, please visit:
www.michigan.gov/mda/rd/0,4610,7-125-1572_28248-268950,00.html

To view the application and other information, please visit:
www.michigan.gov/mda/rd/0,4610,7-125-1568_2387_3784-229313,00.html

FARM BILL HEARING SCHEDULE FOR FEBRUARY AND MARCH 2012 ANNOUNCED

- Liza C. Moore

On February 1, 2012, the U.S. Senate Committee on Agriculture, Nutrition and Forestry announced the schedule of several hearings for the Farm Bill. The tentative schedule set the following meetings and topic areas: February 15, 2012--Energy and Economic Growth for Rural America; February 29, 2012--Strengthening Conservation through the 2012 Farm Bill; March 14, 2012--Health Food Initiatives, Local Production and Nutrition; March 21, 2012--Risk Management

and Commodities in the 2012 Farm Bill. The announcement did not identify the locations of these hearings or the witnesses that will be heard. ■■

To view the announcement, please visit:
www.ag.senate.gov/newsroom/press/release/chairwoman-stabenow-announces-farm-bill-hearing-schedule-for-february-march

USDA ANNOUNCED CLOSURE OF 259 OFFICES NATIONWIDE

On January 9, 2012, the USDA announced a "Blueprint for Stronger Service" aimed at streamlining the USDA. According to the news release, the USDA will close 259 domestic offices, facilities and labs across the country.

- To view the USDA news release for the consolidation proposal, please visit:
www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr_20120109_rel_0003.html

Michigan FSA held a public meeting in Kalamazoo County on January 26, 2012 to take public comment on the proposed consolidation plan, which is considering consolidation of the Kalamazoo County FSA office.

- To view the Michigan FSA news release for the Kalamazoo meeting, please visit:
www.fsa.usda.gov/FSA/newsReleases?mystate=mi&area=stnewsroom&subject=stnr&topic=landing&newstype=stnewsrel&type=detail&item=stnr_mi_20120125_rel_005.html

LITIGATION 101-- WHAT HAPPENS IN A LAWSUIT?

- Liza C. Moore

You may find yourself in a situation where you need to sue someone, or someone has sued you, and you are unsure what happens next. Of course, if you find yourself in that situation, the first step is to call your attorney as soon as possible. Only your attorney can be sure that you comply with the court rules and that you do not miss important deadlines that could have serious financial implications for you and your business. The rules and deadlines in litigation are different in each case and depend upon what court has jurisdiction over the lawsuit, which judge is assigned to the case, what types of parties are involved, and what claims are at stake. This article provides a general overview of different litigation stages to help with basic understanding of what happens in a lawsuit.

The Complaint. A plaintiff begins a lawsuit by filing a complaint. In numbered paragraphs, the complaint will explain the jurisdiction (what court has the power to hear the case), venue (where the lawsuit may be filed), claims or counts (for example, breach of contract or negligence), and damages (how much money the plaintiff wants from the defendant) in a case. The complaint will ask for a jury if the plaintiff wants a jury trial. Where the complaint is filed depends on the dollar amount of the claimed damages, the type of claims, and where the parties live or do business.

The First Responsive Pleading. The person sued, the defendant, must respond to the complaint within a deadline set by the applicable rules or a default will enter. A defendant may respond in an answer that admits or denies each of the plaintiff's allegations in the complaint. The answer will list defenses and counter-claims or cross-claims against the plaintiff or other defendants. The answer will state whether the defendant wants a jury trial. The case will then continue. Sometimes a defendant may respond by filing a motion in lieu of an answer, which seeks immediate dismissal of all or part of the complaint. The judge will grant or deny the motion, and the case will either be dismissed or continue and the defendant will answer the complaint. Alternatively, the parties may appeal the judge's decision on the motion.

The Scheduling Order. The judge will issue a scheduling order for each case, setting important deadlines for when the parties may exchange information, file motions, or go to trial.

Discovery. Discovery is the time period where the parties request and obtain information from each other. The court rules set specific requirements for how the parties may seek and produce this information. If a plaintiff or defendant fails

to respond to another party's request as required by the rules, that party may file a motion to compel responses and go before the judge. Often, parties will depose witnesses in the case. In a deposition, attorneys ask a witness questions and everything said is typed word-for-word by a court reporter. The parties then use the transcripts of the deposition in the litigation.

Motions. Motions are a way for parties to ask the judge for specific relief, including dismissal or judgment of a case. Motions are typically accompanied by a written "brief" (often not brief at all) that explains the legal argument and may attach many exhibits. If one party files a motion, the other party will usually have the chance to file a written response. The judge may schedule oral argument on the motion, where the attorneys will have to appear in court and verbally explain their position. The judge will make a decision, either orally at the hearing or in a written order or opinion. Parties may appeal final decisions or orders.

Case Evaluation, Mediation, and Settlement. Michigan state courts require parties to participate in case evaluation where a panel of seasoned attorneys evaluates the case and assigns it a monetary value or states that there is no cause of action. The parties may accept the case evaluation award and settle the case. Rejection of case evaluation has implications after trial. At other times, the parties may mediate informally to try to settle the case. When a case is settled, the case is resolved by the parties themselves through negotiations, not by a jury or judge. A settlement agreement is signed by the parties after a settlement, and the parties must then comply with its terms or face further legal action.

Trial. After discovery has concluded, if the case does not settle and is not resolved by a motion for summary disposition or judgment, the case will go to trial. Trial requires extensive preparation on the part of attorneys. In a jury trial, the jury is the fact-finder; in a bench trial, the judge decides the facts. In all trials, the judge will rule on objections and motions to exclude certain evidence or testimony. At trial, attorneys will present arguments, witnesses, and evidence. Once the trial has concluded, the parties may sometimes submit post-trial motions or briefs. Attorneys may appeal the judgment entered after a trial.

Appeal. In an appeal, a trial court's decision is revisited by another "higher" court. An appeal may happen at many times in a case. Depending on the type of appeal, the attorney may have to first seek leave (or permission) from the court to ►

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see if it will take the appeal. Sometimes a stay is needed to keep the case from continuing while an issue is up on appeal. Appellate briefs explain why a trial court's decision should be affirmed or reversed and rely on citations to statutes and prior appellate court decisions as authority for their arguments. Rules in appellate courts are different than those at the trial court level. Often attorneys specializing in appellate litigation handle appeals.

As this overview shows, litigation is a complicated process involving many strict deadlines. If you find yourself facing a lawsuit, Foster Swift litigation attorneys have the experience to assist. ■■

THE SIGNIFICANCE OF ROYALTY PROVISIONS IN OIL AND GAS LEASES


- Scott A. Storey

Every provision of an oil and gas lease is negotiable, including the royalty to be paid to the landowner in the event of a successful well. The royalty is usually expressed as a fraction of the net revenue realized from the sale of oil and gas produced from the well. The initial lease presented to our landowner clients typically provides for a one-eighth royalty. If, however, we are successful in negotiating for a one-sixth royalty (which is the same royalty required on all leases with the State of Michigan) what difference would this small change make to a typical landowner?

(.125) royalty would realize approximately \$135,000 in annual revenue (\$1,687.50 per acre). However, the landowner who negotiated a one-sixth (.1666) royalty would realize \$180,000 in annual revenue (\$2,250 per acre).

Foster Swift attorneys have the experience and expertise to assist landowners in negotiating royalty provisions as well as all other aspects of oil and gas leases and contracts. ■■

If, for example, a successful well is drilled on a unit consisting of 80 acres leased from a landowner, the well produces 60 barrels of oil per day, operates 200 days per year, and the market remains at \$90 per barrel, the well would generate yearly revenue of approximately \$1,080,000 (60 barrels x 200 days x \$90). In this example, the landowner whose lease provides for a one-eighth



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