



FIRST FOCUS

MAKING CHILDREN & FAMILIES THE PRIORITY

1110 Vermont Avenue NW, Suite 900 | Washington, DC 20005 | T: 202.657.0670 | F: 202.657.0671 | www.firstfocus.net

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Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue, NW
Washington, DC 20210

RE: RIN 1235-AA06 Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations – Civil Money Penalties; Notice of Proposed Rulemaking and Request for Comments

Dear Sir or Madam:

First Focus is pleased to submit these comments regarding the Department of Labor's (DOL) proposed child labor regulations. First Focus is a bipartisan children's advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. As advocates for children, we strongly believe that all working youth, regardless of the sector they work in, should be afforded equal protections to ensure their safety, health, and overall well-being.

As many as 500,000 children and teenagers toil in agriculture, an industry consistently ranked as one of the most dangerous industries in America. In its 2008 edition of *Injury Facts*, the National Safety Council ranked agriculture as the most dangerous industry, with 28.7 deaths per 100,000 adult workers.

This past year has provided painful reminders of the dangers posed by work in agriculture:

- On August 4th, two 17-year-olds suffered serious injuries—each losing a leg—when they became trapped in a grain auger in Kremlin, Oklahoma.
- On July 25th, two 14-year-old girls were killed and eight others injured while they de-tasseled corn in Tampico, Illinois. The youth worked in water-soaked fields and were electrocuted by nearby irrigation equipment.

Each year, several youth workers die as they toil in U.S. agriculture. According to the U.S. Department of Labor Statistics, **the risk of fatal injuries for agricultural workers ages 15 to 17 is four times greater than that of youth working in other sectors.** According to Kansas State University (KSU) in 2007, there were 715 deaths on farms involving workers of all ages and more than 80,000 workers suffered disabling injuries. The majority of the injuries were caused by livestock and farm machinery while tractors were responsible for a majority of the deaths.

Despite these risks, exemptions in the Fair Labor Standards Act continue to allow children as young as 12 to work in agriculture with fewer protections. In 2006, an estimated 5,800 children and adolescents were injured while performing farm work. According to the National Institute of Occupational Safety and Health (NIOSH), between 1995 and 2002, an estimated 907 youth died on American farms—well over 100 per year. Between 1992 and 2000, more than four in 10 work-related fatalities of young workers occurred on farms. Half of the fatalities in agriculture involved youth under age 15.

The DOL proposed regulations seek to improve regulations which have not been updated for the last four decades by providing more adequate safeguards for young agricultural workers. These regulations have the potential to protect tens of thousands of youth workers from serious injuries. In the span of a decade, it would save dozens of lives.

It is Imperative that Regulations be Adopted within 30 Days

The primary message that we would like to deliver to the Wage and Hour Division is that the proposed regulations must be adopted as expeditiously as possible—within 30 days of the end of the comment period. The Department of Labor has spent nearly a decade refining the proposed regulations and wisely followed the recommendations of NIOSH, producing a body of regulations that both improves the safety of youth workers and passes the common sense tests that most average Americans would apply. These regulations are reasonable and they save lives.

Thirty (30) days should be the maximum time allowed for any minor tweaks needed to the proposed regulations. Any new major expansions of these safety proposals should be begun immediately and implemented separately. The H.O.s must be updated on a continual basis every two or three years henceforth. Four decades is too long to wait for needed protections.

As recent months have shown, delaying these regulations further at this point will mean that youth working in farm work will be killed and maimed unnecessarily. The non-agricultural child labor regulations took three years to move from the “proposed” to “final” stage. Given the extreme dangers posed by agricultural work, a delay of this magnitude would be disastrous for youth working in agriculture.

We understand that the prospect of regulatory change produces fear for many farmers in agricultural areas, but we wish to remind the farmers that these regulations seek to protect your sons and daughters when they work on neighboring farms. The regulations would still preserve “parental exemptions” for children working on their parents’ farms. We have seen the heartbreak to families and communities when teens are killed on farms.

According to recent consumer polling conducted by the National Consumers League, a co-chair of the Child Labor Coalition, the American public supports the concept that children working in agriculture should receive the same level of protection that children working in other industries receive. [Results can be found at www.nclnet.org]

Because of disparities in U.S. child labor law that exempt children working in agriculture from many Fair Labor Standards Act protections, including protections against work that is known to be hazardous, we believe it is especially important that 14- and 15- year olds

receive increased protections. We has the following specific recommendations about the proposed regulations:

Support for H.O. 1 but Against the Learner Exemption

First Focus supports the improved protections in H.O. 1 which would remove the 20 PTO Horsepower threshold criteria. We oppose the “student-learners” exemption. As noted earlier, tractor operation is a leading cause of deaths among agricultural workers. According to the ROPS Retrofit (Tractor) Program, it **is the leading cause of death** on the farm and one in seven farmers involved in tractor overturns are permanently disabled by their accidents.

The use of all tractors and machines should be banned for use by workers under 16, regardless of whether youth have participated in short-term training courses (the effectiveness of which has not been proven). There has been ample research suggesting that neurologically teenagers are still developing and that their still-developing brains lack the capacity to perform the risk assessments that accompany the use of potentially lethal machinery. We suggest that this is one of the reasons that most states do not allow youth under 16 to operate motor vehicles. Teenagers are four times as likely to be involved in a car crash as adults, according to the Insurance Institute for Highway Safety. We believe these same risk factors apply to the use of tractors. The risks of rollover and the risks of running over young siblings on farms are too great to allow children under 16 to operate tractors. We believe that even well-designed training programs are not capable of overcoming this neurological issue.

First Focus supports the expansion to prohibit outside helpers on vehicles. We also support the proposed provision regarding prohibiting electronic devices, including communication devices, while operating tractors.

If the student-learner exemption continues, we support the requirement that student-learners operating tractors have a valid state driver’s license to operate tractors and other farm machinery on public roads.

H.O. 2:

First Focus supports the proposed changes encompassed by the new H.O. 2 which would protect young workers from many types of power-driven machinery by prohibiting the use of all power-driven equipment. We are, however, against the student-learner exemption.

We also agree that minors should not be allowed to ride as passengers on farm machines being moved on public roads.

As stated in the above H.O. 1 section, our support is based on our concern that neurologically, teenagers lack sufficient risk assessment capabilities to operate such equipment safely.

If student-learners are allowed to operate equipment on public roads (which we advise against), we agree that they should hold a valid license for such operations.

If student-learners are allowed to ride as passengers (which we advise against), we agree that they should have an approved seat with a seat belt and that seat-belt use should be required.

We oppose the possibility of waiving driving restrictions for H.O. 2 for 14- and 15-year-old student learners to drive licensed vehicles in states that provide for licensing 14- and 15-year-olds.

H.O. 3:

First Focus supports the proposed prohibition of employment in occupations involving the operation of non-power driven hoisting apparatuses and conveyers.

Given that apparatuses and conveyors are often used to move heavy objects, there is an unacceptable risk of injury involved with their use by young workers.

We agree with the decision to not permit a student learner exemption.

H.O. 4:

We support **all of the proposed protections** that involve working with or around animals. We concur with the decision to not exempt student-learners.

As noted previously, working with livestock is one of the most common causes of injuries to agricultural workers, according to John Slocombe, an extension farm safety specialist at KSU. According to a publication from the North Dakota Farmers Union (NDFU), a recent 15-state summary of farm accidents revealed that animals were a factor in one of every eight farm injuries reported, ranking it second after farm machinery as the major cause of injuries. According to the NDFU, livestock accidents account for just under 100 deaths a year on farms.

We support the prohibition on herding animals in confined spaces such as feed lots or corrals, or on horseback, or using motorized vehicles such as trucks or all terrain vehicles.

H.O. 5:

We support the removal of the 6-inch threshold when it comes to felling, bucking, skidding, loading or unloading timber.

We agree that the student-learner exemption should be removed to ensure the safety of young workers and students.

H.O. 6:

We support the new proposed H.O. 6 which prevents employment in construction, communications, wrecking, demolition, and excavation and extends protections enjoyed by other 14- and 15-year-olds in non-agricultural industries.

The dangers of construction, wrecking, demolition, and excavation work are well known, killing hundreds of American workers each year. According to an ABC News report citing federal statistics, in 2006, over 1,200 workers died in construction accidents. The Web site

www.trenchsafety.org notes that between 1990 and 2000, on average, 70 workers died in excavation accidents each year. Ten times that number of workers are estimated to be injured each year in excavation accidents.

H.O. 7:

We support the new proposed H.O. 7 which prohibits work on roofs, scaffolds and at elevations greater than 6 feet. The dangers of falls to workers is evident.

According to the 2009 data from the Bureau of Labor Statistics, 605 workers were killed and an estimated 212,760 workers were seriously injured by falls to the same or lower level.

Youth workers, with their smaller bodies, are at greater risk of injuries for heights over 6 feet.

We are concerned that the 6-foot threshold may not provide adequate safeguards and encourages USDOL to examine height restrictions in non-agricultural occupations to determine if greater protections might be achieved.

First Focus specifically opposes the possibility of adopting a 10-foot threshold. We believe it does not provide adequate protection for the smaller bodies of youth workers for whom a 10-foot height might represent a height twice the length of their body.

We support prohibitions of any work on ladders involving youth workers. Ladders represent a particularly unstable work surface.

We support the expansion of current regulations to prohibit work on elevated farm structure, including silos, grain bins, windmills, and towers; and vehicles, machines, and implements.

We support the removal of the student-learner exemption.

H.O. 8:

We support the prohibition against all work inside a fruit, forage, or grain storage container, including silos and bins. According to researchers at Purdue University in a recent article, at least 26 U.S. workers were killed in grain entrapments in the prior year. Each year in the U.S., teenaged workers suffocate as they become trapped in shifting grain in grain structures and facilities:

- In July 2010 in Middleville, Michigan, 18-year-old Victor Perez and 17-year-old Francisco M. Martinez died after falling into a silo they were power washing.
- In July 2010, in Mount Carroll, Illinois, two workers — Alejandro Pacas, 19, and Wyatt Whitebread, 14 — also suffocated in a grain silo.
- David Yenni, a 13-year-old was killed in a grain loading accident at a Petaluma, California mill in August 2009.
- In May 2009, Cody Rigsby, a Colorado 17-year-old was working in a grain bin when he vanished. It took rescuers six hours to find his body.

Suffocation is not the only threat when it comes to working. Workers face dangers from gases that emanate from grains and dangers from equipment used to move grain within structures. As noted previously, on August 4th, two 17-year-olds suffered serious injuries—each losing a leg—when they became trapped in a grain auger in Kremlin, Oklahoma.

H.O. 9:

We support the prohibition against all work inside a manure pit or other manure containers.

We ask WHD to consider the feasibility of developing a confined spaces standard with broader scope. The recent death of 16-year-old Armando Ramirez, a Californian worker, drives home the dangers of confined spaces. Ramirez was asked to clean out a drainage tunnel. While working in the tunnel, he was overcome with hydrogen sulfide gases and died. His brother tried to rescue him but also died in the attempt.

H.O. 10:

We support the improved pesticide protections in the proposed regulations and attempts to bring consistency with the Environmental Protection Agency's Worker Protection Standard (WPS) proposed in the new H.O. 10. One of the greatest dangers that farm work poses to young workers is the dangers posed by pesticide exposure. The following excerpt from the Web site of the Environmental Protection Agency (EPA) discusses risk factors for children:

Children are at a greater risk for some pesticides for a number of reasons. Children's internal organs are still developing and maturing and their enzymatic, metabolic, and immune systems may provide less natural protection than those of an adult. There are "critical periods" in human development when exposure to a toxin can permanently alter the way an individual's biological system operates. Children may be exposed more to certain pesticides because often they eat different foods than adults.

Adverse effects of pesticide exposure range from mild symptoms of dizziness and nausea to serious, long-term neurological, developmental and reproductive disorders.

Americans use more than a billion pounds of pesticides each year to combat pests on farm crops, in homes, places of business, schools, parks, hospitals, and other public places.

Recent research has suggested links between pesticide exposure and "Attention Deficit Disorder", presenting yet another educational obstacle to the long list of obstacles that accompany migration and working in the fields and contributing to the frightening dropout rate suffered by the migrant farmworker community.

During field investigations conducted by my members of We , we have noticed youth worker behaviors that increases the likelihood of increased pesticide exposure. Many teenaged-workers work while wearing less protective clothing than adults. We have seen children work

in bare feet, exposing their bodies to additional exposure risks. Many farmworker children acknowledge eating unwashed fruit and vegetables as they work.

- **We support the ban on all work that falls within the EPA classification of pesticide handler.**
- **We support the continual automatic updating of WHD regulations as EPA revises the WPS.**
- **We support the use of the definition of pesticides contained in FIFRA.**
- **We support prohibitions on the emptying, handling or washing of used pesticide containers based on concerns that empty or rinsed pesticide containers often have enough chemical residue left to endanger the health of working teens.**

We suggest that WHD examine protections contained in pesticide protections in California and Washington State to determine if any might warrant being added to this H.O. in future improvements.

H.O. 11:

We support the retention of prohibitions regarding the handling and using of blasting agents.

H.O. 12:

We support the retention of the prohibition regarding the transporting, transferring, or applying of anhydrous ammonia.

H.O. 13

We support prohibitions regarding work in the tobacco industry. The dangers of “Green Tobacco Sickness,” are well-known by the healthcare community and contact with tobacco and the toxic chemicals contained in tobacco plants is not something young workers should experience.

- **We recommend adding “packing and transporting” to the list of specifically prohibited activities.**
- **Given the toxicity levels of this product and prohibitions of its use by minors, we support banning all work on this crop by workers under 18.**

Non-Ag H.O. 18

We support the prohibition against work in occupations involving farm-product raw materials wholesale trade industries, including most occupations performed at country grain elevators, grain bins, silos, feed lots, feed yards, stockyards, live stock exchanges and livestock auctions.

[Please refer to our specific comments about the dangers posed by working in grain structures and facilities in our discussion of H.O. 8]

Non-Ag H.O. 19

We support prohibitions against using electronic devices, including communication devices, while operating power-driven equipment, including motor vehicles.

OTHER IMPORTANT RECOMMENDATIONS

Support for a Heat Stress H.O.

We believe that WHD should adopt a Heat Stress H.O. in the next iteration of protective child labor regulations. Children, as young as 12—and sometimes even younger, are working eight, 10, and 12 hour days in 100-degree heat, performing back-breaking, strenuous labor, putting far too great a strain on their developing bodies. The dangers of working in extreme heat were made clear in May 2008 when 17-year-old Maria Isabel Vasquez Jimenez collapsed after she was denied access to shade as she worked in near-triple-digit heat in a California vineyard.

The Occupational Safety and Health Administration (OSHA) considers heat stress to be a major concern in the workplace. Working in hot environments can create heat stress, which is a dangerous—potentially fatal—condition. The body functions most effectively within a limited temperature range. If the temperature rises too high, the body's metabolic rate increases and its efficiency decreases. The body loses fluid through perspiration and the blood vessels dilate in an attempt to cool the body. Eventually, the body suffers from heat exhaustion or heat stroke.

We fear that children, with their developing bodies, may be more susceptible to heat stroke than adults. Our observations from field visits suggests that children often wear hats less frequently and wear less protective clothing than adults, exposing their bodies more to the sun. The tremendous exertion associated with much field work increases the risk of suffering heat stress and heat exhaustion.

We urge DOL to implement a ban that would prevent children from working when the temperature is over 100 degrees and to implement regulations that require rest, shade, and water breaks for work in fields where the temperature is over 90. Both California and Washington State have implemented heat stress rules and we urge DOL to examine these regulations in implementing new heat stress regulations. DOL should also examine the feasibility of using a heat index and other criteria for deciding when weather conditions are too extreme for children to work. We realize, however, any standard must be relatively simple to understand and enforce.

Prohibit Piece-Rate Work for Children Under 16

Many crops in U.S. agriculture are harvested under the piece-rate compensation system. Under this system, the more crops an individual picks or harvests, the more they are paid. This causes farmworkers to work at extreme speed for hours on end and it prompts many farmworkers to bring their children to work with them in the fields.

Typically, farmworker youth ages 12 and higher work under their father's or mother's name performing piece rate harvesting. The actual compensation rate these children are earning is often only \$1 to \$3 an hour. As a result of this, We believes that the piece-rate payment system is a vehicle for rampant wage theft, causing farmworker youth to work for what might be called “slave wages.”

There are health and safety implications associated with the piece –rate payment system as well since it causes children to work at the edge of their capacity. I have personally witnessed

children as young as 10, working as hard as humanly possible, as they harvested onions in Texas in temperatures that were in the mid-90s. Pushing themselves to their limits, these children will often harvest thousands of pounds of produce over an 8 to 14 hour span. Simply put, the piece-rate payment system is inhumane and not fit for children.

We believe the U.S. is in violation of Convention 182 concerning the worst forms of child labor. The piece-rate payment system and the health dangers posed by farm work at very young ages are two of the salient reasons that we believe the U.S. is in violation of this important international convention.

We urge DOL to prohibit the piece-rate payment system for youth under 16. And encourages DOL to pursue its enforcement activities in agriculture with a focus on ensuring that every individual working in the fields is listed as an employee on the employers' books. All children should be listed and not permitted to work under other individual's names, including their parents' names.

We Support a Prohibition that Transferring Students not be Hired Before June 1

We support the proposed change that would prohibit employers from hiring workers prior to June 1 when the workers in question are under 16 and have transferred schools. While good data is lacking, the advocacy community believes that farmworker youth, particularly those who migrate, drop out of school at dizzying rates. As many as two out of three, migrant youth do not graduate high school. Child labor plays a large part in forcing these youth to drop out. Exhaustion from back-breaking work and the difficulties associated with transferring school districts combine to make it extremely difficult for even the hardest working children to succeed in school. As noted previously, work in pesticide-treated fields impairs the ability of young farmworkers to focus mentally.

The astronomical dropout rate among Farmworker youth perpetuates a cycle of poverty that causes great harm to the farmworker community. By requiring a later hire date for farmworker youth, the Department can mitigate this negative phenomenon and help ensure that farmworker youth finish the school year in their home district or improve the likelihood that children who have already moved will be able to focus on their school work. The extent to which they attend school while they are exhausted from work in the fields will decrease because of this proposed change.

Transportation Recommendation

We urge WHD to adopt transportation protections that constitute a stronger level than those under the Migrant and Seasonal Farmworker Protection Act (MSPA). We believe that all minor workers transported in agriculture should require a bolted seat with a working seat belt.

The dangers of transportation in the farmworker community are well known. Crew leaders often transport workers in buses lacking safety equipment or in over-crowded 12- and 15-passenger vans which have had seats removed. Workers have been known to sit on wooden planks supported by cinderblocks, which become lethal missiles during crashes.

CONCLUSION

Once again, we applaud WHD for releasing these proposed regulations which we believe will have a profound impact in protecting young workers in U.S. agriculture. Any delay in issuing these protections, will almost certainly result in the needless deaths and permanent disability of numerous young farmworkers. We strongly urge that they be promulgated 30 days after the comment period ends, and that work begin immediately to add heat stress and piece-rate prohibitions and that proposed rules in these areas be issued before the end of 2012.

Although we understand that the current regulations do not address protections for 16- and 17-year-olds working in agriculture, we wish to express our hope that the DOL will work to support when possible the equal protection of farmworker youth under U.S. child labor law, including raising the minimum wage for hazardous work in agriculture to 18—the same as all other industries—and raising the minimum age for non-hazardous work to that of other sectors.