

PROPOSED RULE CHANGES TO FEDERAL CHILD LABOR LAWS

October 2011

The U.S. Department of Labor is proposing changes to the child labor rules that apply to young hired agricultural workers. The department points out that these revisions are meant to bring the safety rules governing young farm workers up to the same safety standards as those for nonagricultural workers. They cite Bureau of Labor Statistics reports that “the fatality rate for agricultural workers who are 15 to 17 years of age is 4.4 times greater than the risk for the average worker in that age range” (U.S. Department of Labor, 2011).

It is important for the 4-H community to note that in a recent telephone conversation, a Department of Labor spokesperson (A. M. Kerschner, personal communication, September 29, 2011) emphasized the following points:

- **The proposed rules would not apply to children who work for their parents (or a relative who acts in place of the parent) on a farm owned or operated by that parent.**
- **The rules apply only to “young hired farm workers” and are not intended to apply to 4-H participants tending their animals boarded on someone else’s farm, or performing duties relating to a fair project, as long as they are not performing these duties for hire.**

These proposed rules would apply only to “**young hired farm workers**,” defined as:

- Fourteen- and 15-year-olds who are NOT the children of the farm owner or operator.
- Twelve- and 13-year-olds who work on the same farm where their parents (or a person standing in place of a parent*) are employed, or with the written consent of a parent or a person standing in place of a parent.
- Children under the age of 12 who are employed with the written consent of their parents, or a person standing in place of their parents, on a small farm where no employee is required by the Fair Labor Standards Act to be paid the minimum wage.

In all cases, there must be an “employment relationship” between the young hired farm worker and the farm owner.

Exceptions are provided for “volunteers or students performing educational work for their own well-being and who are generally not considered employees” (U.S. Department of Labor, 1993).

The most significant proposals would do the following:

1. Broadly prohibit **young hired farm workers** under the age of 16 from operating or tending any power-driven equipment. Currently, **young hired farm workers** who are 14 and 15 may operate tractors and other farm equipment after completing a safety course offered by 4-H or if they are enrolled in student-learner programs or vocational agricultural training programs. Under the proposed rules, **young hired farm workers** could not operate power-driven machinery, including tractors or machines powered by animals (such as horses). An exception would be made for student learners who have completed 90 hours of agricultural education offered by a state or local educational authority, or in a similar program conducted by a private school. The proposed rules also would prohibit **young hired farm workers** from riding as passengers on any power-driven machinery being moved on a public road, with some exceptions.

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* The complete proposal explains that “a person standing in place of a parent” has been interpreted by Congress and the DOL to mean a “relative, such as a grandparent or aunt or uncle, who assumes the duties and responsibilities of the parent . . . regarding all matters relating to the child’s safety, rearing, support, health, and well-being.” It does “not include a corporation or partnership, unless wholly owned by the parent.” See *Child Labor Regulations, Orders, and Statements of Interpretation: Child Labor Violations—Civil Money Penalties*, p. 24–25.

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“Operating power-driven equipment” would include such duties as supervising or controlling the operation of machines designed to move or transport people, goods, or materials; cut, shape, form, surface, nail, staple, stitch, fasten, punch, or assemble, press, or print materials; excavation or demolition operations; setting up, adjusting, repairing, oiling, or cleaning a machine; starting and stopping the machine; placing materials into or removing them from the machine; or any other functions directly involved with the operation of the machine.

2. Prohibit **young hired farm workers** from working on a farm in a yard, pen, or stall occupied by an intact (not castrated) male horse, pig, cow, or bison older than six months, a sow with suckling pigs, or cow with newborn calf (with umbilical cord present); engaging or assisting in animal husbandry practices; handling animals with known dangerous behaviors; poultry catching or cooping in preparation for slaughter or market; and herding animals in confined spaces such as feed lots or corrals, or on horseback, or using motorized vehicles such as trucks or ATVs.
3. Prohibit **young hired farm workers** from using electronic communication devices while operating or assisting to operate power-driven equipment. This would include, but not be limited to, participating in a conversation electronically; using the Internet; sending or receiving text messages, e-mail, instant messages, “chats,” “status updates,” or “tweets,” playing electronic games; or entering data into a navigational device or GPS. This would NOT include listening to music or other recorded information on a one-way, noninteractive device such as a radio or mp3 player, as long as the device is being operated “hands free” without headphones or earbuds. Glancing at a GPS, using a cell phone to call 911 in an emergency, and wearing appropriate hearing protection would not be prohibited under the proposal.

The period of public comment closes November 1, 2011.

Public comments are accepted online at www.regulations.gov

(Please identify all comments submitted in electronic form by the RIN docket number 1235-AA06). Mail can be addressed to Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave, NW, Washington, DC

20210. Submit your comments by only one method—not both electronic and mail. Because of continued delays in receiving mail in the area of Washington, DC, commenters are strongly encouraged to submit their comments electronically or to send them by mail early.

A detailed report explaining all of the proposed rule changes, rationale, background, definitions of key terms, and violations can be found on the U.S. Department of Labor’s website: <http://webapps.dol.gov/federalregister/HtmlDisplay.aspx?DocId=25286&AgencyId=14>.

To obtain the complete report referenced above in Microsoft Word format, please email Claire Layman at layman@msu.edu.

Questions about these proposed rule changes can be addressed to Arthur M. Kerschner, Jr., Division of Enforcement Policy and Procedures, Branch of Child Labor and Special Employment, Wage and Hour Division, U.S. Department of Labor, Room S-3510, 200 Constitution Ave, NW, Washington, DC 20210; telephone: (202) 693-0072.

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Sources:

Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties, 76 Fed. Reg. 54,836 (proposed September 2, 2011) (to be codified at 45 C.F.R. parts 570 and 579). Retrieved from: <http://webapps.dol.gov/federalregister/HtmlDisplay.aspx?DocId=25286&AgencyId=14>

U.S. Department of Labor. (1993). *Field operations handbook* (Chapter 10). Washington, DC: U.S. Department of Labor, Wage and Hour Division. Retrieved from www.dol.gov/whd/FOH/FOH_Ch10.pdf

U.S. Department of Labor. (2011). *Notice of proposed rulemaking to amend the child labor in agriculture regulations – Frequently asked questions*. Washington, DC: U.S. Department of Labor, Wage and Hour Division. Retrieved from: http://www.dol.gov/whd/CL/NPRM_FAQs.htm