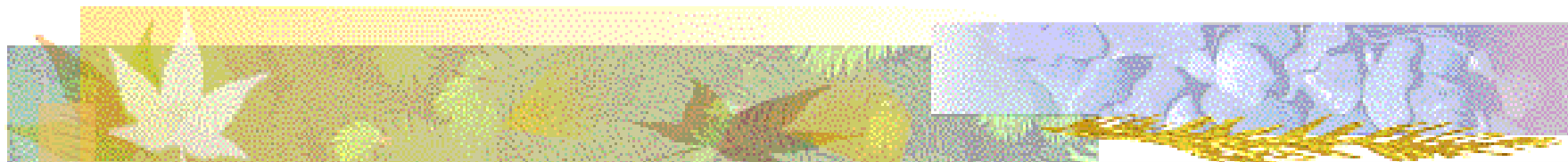




Proposed Changes to the Agricultural Child Labor Regulations



AGRISAFE NETWORK WEBINAR

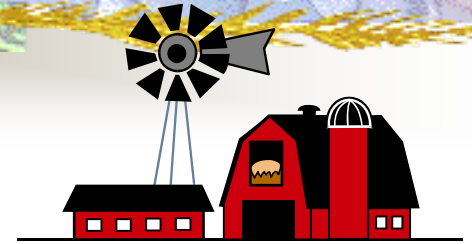
Co-sponsored by the Childhood Agricultural
Safety Network (CASN), Agricultural Safety and
Health Council (ASHCA) and National Rural
Health Association

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Washington State Dept of Labor and Industries

October 13, 2011

Objectives



- Understand the proposed changes to the Agricultural Child Labor Regulations.
- Describe the differences in coverage between agricultural and non-agricultural regulations.
- Identify gaps in coverage for protections for the groups of children not included by the proposed changes.
- Identify the mechanism for providing feedback on the proposed regulations to the US Department of Labor's Wage and Hour Division



Outline

- Overview
- Changes to regulations under FLSA
- Student-Learner Exemptions
- Ag Hazardous Occupations Orders
 - current & proposed
- Parental exemption
- New Non-Ag Hazardous Orders
- Submitting comments
- Resources

Overview

- The Notice of Proposed Rulemaking is the first update since the initial rules were promulgated in 1970.
- Does not change the Fair Labor Standards Act (FLSA)
- Affects only hired farm workers
 - Not - 4H and FFA projects





Fair Labor Standards Act: Agriculture Child Labor

- Covers only those under age 16.
- Permits youth under age 14 to work with parental permission
 - Those under age 12 may work where minimum wage is not required under FLSA
 - i.e., economic threshold not met
- No additional restrictions for youth less than age 14.
- Permits parental exemption

What the proposal does NOT change

- Does not change the FLSA
- Does not add protections for 16- and 17-year-old minors, in agriculture.
- Does not provide differential protections for those under age 14.
- Does not alter the current ability of younger children to work.
- Does not alter current parental exemption.



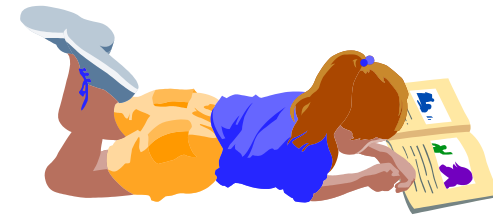
Student-Learner Exemption

Current

- Permitted only for 14- and 15-year-olds while enrolled in a voc ed program.
- Currently allowed for Ag H.O.s 1-6
- Limited requirements for Ag H.O. 1
 - One-time certificate program allows total exemption

Proposed

- Applies to 14- and 15-year-olds [no change]
- Change would allow exemption for Ag H.O.1 & 2 only
- Revise to be consistent with other S-L requirements (i.e., Ag H.O. 1 & 2 and Non-Ag)





Student-Learner Requirements

- Enrolled and participating in on-going bona fide vocational education training program in agriculture.
 - the exemption only applies while enrolled in the vocational education program.
- Must first complete a minimum of 90 hours of school instruction in agricultural education at or above the 8th grade level.
 - 90 hours equivalent to academic semester & includes classroom, virtual, hands-on training.



Criteria for S-L Exemption

- A written agreement between the school and employer identifies work activity is:
 - incidental to the teen's training;
 - intermittent and for short periods of time;
 - under direct and close supervision of a qualified adult at least 18 years of age;
- safety instruction is given by the school and connected to the employer's on-the-job training activities.

Ag H.O. 1 – Tractors, *current*

- Prohibited from operating a tractor of over 20 power take-off (PTO) Horsepower, or connecting or disconnecting an implement or parts of tractor
 - Student-learner exemption available
 - Training certificate option permitted





Ag H.O. 1 – Tractors, *proposed*

- Remove 20 PTO threshold
- Use OSHA definition of “agricultural tractors”
- Allow for student-learner expanded exemption requirement
 - Require ROPS and seatbelts
 - Remove training certificate option



Ag H.O. 1 – comments requested

- Should all tractors be banned for 14- and 15-year-olds with no student-learner exemption permitted?
- Are youth this age (under age 16) capable of absorbing and implementing requirements of a task or machine just based on training, or is the task inappropriate for this age regardless of training?

FR 54851



Ag H.O.2 – powered equipment, *current (operating or assisting to)*

- Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, power post-hole digger or non-walking type rotary tiller
 - including starting, stopping, adjusting, feeding, or any physical contact associated with the operation
 - student-learner exemption allowed

Ag H.O.3 – powered equipment, *current (operating or assisting to)*

- Trencher or earthmoving equipment, fork lift, potato combine, or power-driven saws
 - including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation)
 - student-learner exemption allowed.





New Ag H.O.2, *proposed*

- *powered equipment; combine H.O. 2 & 3*

- Expand prohibitions from lists of specific machines to ***all*** power-driven equipment.
- Prohibit minors from riding as passengers on all farm machines when being moved on public roads.
 - Revise and strengthen the exemption for student-learners and limit the types of equipment that student-learners may operate.



New Ag H.O.2, cont'd

- Student-learner must have valid license for type of equipment if operating on public road.
- S-L riding as passenger must have seat and seat belt.
- Distracted driving provisions apply
 - See Ag H.O. 1 and Non-Ag HO 19.



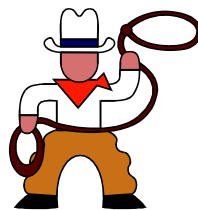
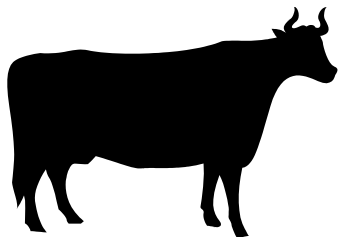
New Ag H.O. 3, *proposed* **- *hoisting apparatus***

- Prohibit employment in occupations involving the operation of non-power driven hoisting apparatus, such as winches; and gravity-operated conveyers
 - No student-learner exemption allowed

Ag H.O. 4 – work around animals

Current

- Working on a farm in a yard, pen, or stall occupied by a bull, boar, stud horse maintained for breeding purposes, sow with suckling pigs, or cow with newborn calf
 - student-learner exemption allowed



Proposed:

retain & expand

- working on a farm in a yard, pen, or stall occupied by male equine, porcine, bovine, or bison older than six months, a sow with suckling pigs, or cow with newborn calf
 - No student-learner exemption allowed



Ag H.O. 4 – *expand, proposed* **– work around animals**

- work in animal practices that inflict pain upon the animal and/or are likely to result in unpredictable animal behavior such as, branding, breeding, dehorning, vaccinating, castrating, and treating sick or injured animals;
- handling animals with known dangerous behaviors;

Ag H.O. 4 – *expand, proposed* – **work around animals**

- 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 all-terrain vehicles.



Confinement

FR 54858



Ag H.O. 5 – timber operations

Current

- Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches
 - student-learner exemption allowed.

Proposed

- Remove the 6-inch diameter threshold and specifically prohibit the removal of stumps by other than manual means
 - No student-learner exemption allowed



New Ag H.O. 6 - construction, communications, demolition, excavation

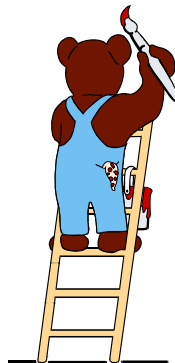
- Prevents employment in construction, communications, wrecking, demolition, and excavation.
 - Similar protections & prohibitions already applicable to the employment of 16- and 17-year-olds in non-agriculture.
 - Brings parity between the agricultural and non-agricultural child labor provisions.

Renumber Ag H.O. 6 as H.O. 7

- working at heights

Current Ag H.O. 6

- Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height > **20** feet
 - student-learner exemption allowed.



Revised Ag H.O. 7

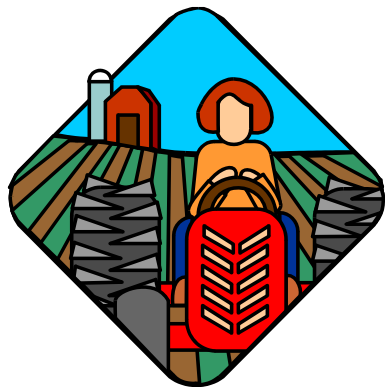
- Occupations involving work on roofs, scaffolds, ladders at elevations > **6** feet.
- Include work on elevated farm structures including silos, grain bins, windmills, and towers; and vehicles, machines, and implements.
 - No student-learner exemption allowed.

Expand Ag H.O. 7 -> H.O. 1 & 2

- driving motor vehicles

Current Ag H.O. 7

- Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper



Move to Ag H.O. 1 & 2

- Prohibit driving of all motor vehicles and off-road vehicles including ATVs.
- Prohibit work as an outside helper on motor vehicles.
- Move existing provision prohibiting riding on a tractor as a passenger or helper, to Ag H.O. 1

Ag H.O. 8 -> split H.O. 8 & 9

- work in silos/manure pits

Current Ag H.O. 8

- Work inside a fruit, forage, or grain storage or upright silo within **2 weeks** after silage has been added or when a top unloading device is in operating position;
- a manure pit; or
- horizontal silo.

Proposed Ag H.O. 8

- Prohibit ***all*** work inside a fruit, forage, or grain storage
 - Remove 2 week threshold

Proposed Ag H.O. 9

- Prohibit work inside a manure pit.



Ag H.O. 9, current

- pesticides

- Handling/applying agricultural chemicals classified under *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)* as Category I or II toxicity, identified by the word “poison”, “skull & crossbones” or “warning” on the label.
 - Includes cleaning or decontaminating equipment; disposal or return of empty containers; or serving as a flagger for aircraft applying.



New Ag H.O.10 (former H.O. 9)

– pesticides, *proposed*

- Revise to be consistent with the EPA Worker Protection Standard for classification of pesticides.
- Ban all work that falls within the EPA classification of pesticide handler.
- Restricts work activities based on re-entry requirements.



Ag H.O.10 & 11- retain, renumber -blasting agents; ammonia

Renumber Ag H.O. 10 as 11

- Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord

Renumber Ag H.O. 11 as 12

- Transporting, transferring, or applying anhydrous ammonia



New Ag H.O. 13

– tobacco, *proposed*

- Prohibit occupations involving the production and curing of tobacco
 - Includes, but not limited to, planting, cultivating, topping, harvesting, baling, barning, and curing of tobacco.
 - Prevent them suffering from green tobacco sickness (GTS).



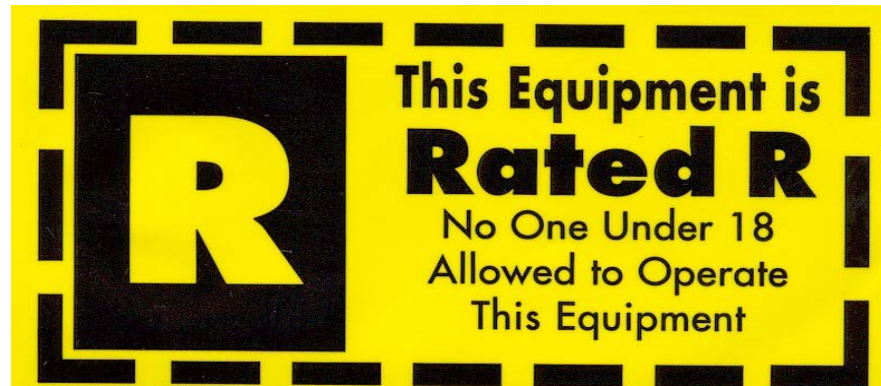
Parental exemption – *No Change*

- Allows youth to perform prohibited work or work regardless of age, if the farm is:
 - Owned by parent (100%); or
 - Operated by parent (regardless of ownership); or
 - Owned or operated by person “standing in” for parent, i.e., guardian, grandparent with custody
- Unchanged approximately 50 years
 - Not considered a “family farm” exemption

New Non-Agricultural HOs

- *proposed*

- Involves commercial, non-agricultural work activities.
- Adds new protections for 16- and 17-year-old youth.



New Non-Ag HO 18, *proposed*

Occupations in farm-product raw materials, wholesale trade industries





New Non-Ag HO 18, *proposed*

- Includes work in conjunction with storing, marketing and transporting of farm-product raw materials
- Includes occupations involving grain elevators, grain bins, silos, feed lots, feed yards, stockyards, livestock auctions, etc.
 - Packing fruits and vegetables not included; office work for such entities not included

New Non-Ag HO 19, *proposed*

The use of electronic devices, including communication devices while operating power-driven equipment



New Non-Ag HO 19, *proposed*

Electronic devices used for:

- Talking, listening in a conversation
- Sending/ receiving messages such as, texting, tweeting or email
- Does not include listening to music as long as operated “hands-free” without headphones or earbuds



New Non-Ag HO 19, *proposed*

Power-Driven Equipment:

- Includes operating, cleaning, repairing, starting, stopping, etc. any machine operated by a power source, other than human, e.g.
 - Cutting, nailing, shaping, forming pressing
 - Transporting people or goods
 - Excavation and demolition





Other Areas for Comments

- Should youth this age be permitted to work under adverse conditions like extreme heat or cold?
 - How to protect against heat-related illness?
 - What requirements should be established?
 - i.e., heat index charts, wet bulb globe temps
 - OSHA state-plans, WA and CA have rules that cover all workers regardless of age
- Does payment of piece rates to young workers prolong exposure to potentially harmful conditions?



Other Areas for Comments

- Are the transportation requirements under Migrant and Seasonal Ag Worker Protection Act sufficient for transporting youth?
- Issues such as vehicle inspections, insurance, availability of seats
 - www.dol.gov/compliance/laws/comp-msawpa.htm



Other Areas for Comments

- Should prohibitions of the proposed Ag H.O. 8 be expanded to include other confined spaces, such as livestock confinement buildings with/without ventilation systems, and whether such work could safely be performed by student learners;
 - Provide specific data supporting such a provision.

FR page 54862

Submit Comments November 1, 2011



- Portal to e-regulations,
 - <http://www.regulations.gov>
 - RIN docket number 1235-AA06
- Fact Sheet, NIOSH report*, instructions
 - www.marshfieldclinic.org/NCCRAHS
 - * *2002 NIOSH report to USDOL on Hazardous Orders*
- Summary of changes begins FR page 54869



Internet Resources

- Childhood Agricultural Safety Network
 - <http://www.childagsafety.org>

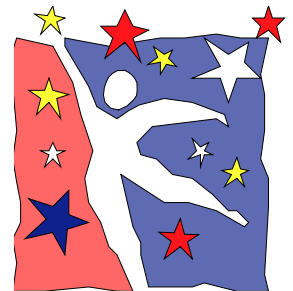
- Agricultural Safety and Health Council (ASHCA): <http://www.ashca.com>

- National Rural Health Association

- AgriSafe Network: <http://agrisafe.org>

More Resources

- National Children's Center for Rural and Agricultural Health and Safety
 - www.marshfieldclinic.org/NCCRAHS
- National Institute for Occupational Safety & Health (NIOSH)
 - www.cdc.gov/niosh/topics/youth



Contact Information

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**Questions? Comments!
Discussion**