



Governor Mitchell E. Daniels, Jr.
Lt. Governor Rebecca S. Skillman, Secretary of Agriculture and Rural Development
Joseph M. Kelsay, Indiana Agriculture Director

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

Notice of Proposed Rulemaking Comments: RIN 1235-AA06

These comments are being submitted on behalf of the Indiana State Department of Agriculture (ISDA). ISDA was created in 2005 to support growth in Indiana agriculture by serving as an advocate at the local, state and federal level; defining and nurturing economic opportunity in the food, fuel and fiber sectors; and enhancing the stewardship of natural resources on agricultural land. ISDA is submitting comments on this rulemaking because the proposed standards will have a significant impact on opportunities for young people with an interest in agriculture.

We commend the Department of Labor for the comprehensive review and analysis of the criteria for permissible child labor employment. Farm safety for children is of utmost concern to the agricultural community. A periodic review of the standards is important to ensure they prohibit employment of youth in occupations that are particularly hazardous.

Some of the proposed revisions will improve clarity for the employer and better reflect modern agricultural practices. However, other proposals will limit a young worker's ability to take part in employment activities that serve as positive educational experiences to develop their skills for the future. For example, several of the regulations will prohibit a young worker from engaging in farm activities alongside a professional to learn how to conduct the activity in a safe manner.

Although the parental exemption is unchanged in this Notice of Proposed Rulemaking (NPRM), the Department proposes to clarify the exemption by addressing the situation where the farm is owned by a partnership or closely-held corporation consisting of family members or other close relatives.¹ It is our understanding that the Department has interpreted this exemption to only apply where the business entity is wholly owned by the parents. Since it is common for farms to be owned by several family members in a partnership or corporate structure, this interpretation excludes a considerable percentage of our family farms. We encourage the Department to reconsider this interpretation because these are farms where the parent typically holds a substantial ownership interest and a natural concern exists for the well-being of the child.

The Department also proposes to modify current exemptions from the Ag. H.O.s. Specifically, the Department proposes to eliminate the certification programs, such as Federal Extension Service and vocational agricultural training programs, and retain only the student learner exemption. The Department states that this change is being made due to concerns about the integrity and effectiveness of these programs.²

¹ See page 62.

² See pages 30-33.



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Removing these certification programs from the exemption will have a significant impact on the ability to provide youth with opportunities for applied and experiential learning. This type of learning is critical to teaching youth about how to safely operate agricultural equipment, which translates to better safety practices later in life. The practical effect of these revisions will be to limit tractor and machinery safety training to junior and senior high school agriculture teachers. The certification programs provide a valuable opportunity for other qualified individuals in the community to educate youth about tractor and machinery safety. In addition, the vocational training programs provide youth in need of guidance with a pathway to career opportunities involving use of ag machinery. We encourage the Department to consider alternatives to eliminating these programs from the exemptions.

The proposed revision to H.O. 1 will prohibit a hired farm worker under the age of 16 from operating a tractor, unless they qualify for the student-learner exemption. As discussed above, we encourage the Department to consider allowing a 14- or 15- year old to operate a safety equipped tractor after completing a Federal Extension Service or vocational agriculture tractor certification program. As an alternative to the certification programs, the youth should be allowed to operate a safety equipped tractor under the direct supervision of a professional.

Proposed Ag H.O. 2, which currently prohibits hired farm workers under 16 from operating specific machinery, will be revised to prohibit the operation of all power-driven equipment. The definition of "power driven equipment" includes any implement operated by any source of energy, such as electricity, fossil fuels, or batteries.³ This definition is overly broad because it includes small pieces of equipment that are not particularly hazardous. For example, it is appropriate for a hired farm worker under 16 to operate a battery powered screwdriver under the supervision of an employer. Furthermore, a young farm worker can benefit from the experience of learning how to operate milking equipment under the instruction of an experienced dairyman. We understand that maintaining a specific list of machinery is problematic due to the continuing introduction of new types of machinery in agricultural production. However, we support the National Institute for Occupational Safety and Health (NIOSH) recommendation to cover machines by their general functions rather than their specific names.⁴

Ag H.O. 1 and Ag H.O. 2 would prohibit young workers under the age of 16 from using electronic devices, including communication devices, while operating a tractor or power driven equipment. We appreciate the detailed explanation in the NPRM regarding what activities are prohibited in order to prevent distractions while operating equipment. However, we suggest that the prohibition not include an electronic communication between the youth and their supervisor that is related to the employment activity.

The NPRM also proposes to expand the current prohibitions in Ag. H.O. 4 regarding working with or around animals. We are concerned that the following proposed regulations are overly broad: *engaging or assisting in animal husbandry practices that inflict pain upon the animal and/or are likely to result in unpredictable behaviors; 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.*⁵ These proposals appear to prohibit vaccinating, treating sick or injured animals, or herding animals in confined spaces regardless of their size. If so, this prohibition would include numerous situations involving work with animals that are not particularly hazardous.

³ See page 44.

⁴ See page 41.

⁵ See page 89.



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For example, it would prohibit a hired farm worker under the age of 16 from assisting in the vaccination of nursery pigs or moving them to a finishing building. We recommend that the prohibited activities be narrowly defined so youth with an interest in veterinary medicine or livestock production can engage in these activities under the instruction and supervision of professionals. These experiences are important in order to teach young people how to properly and safely care for animals.

The proposed Ag H.O. 8 will prohibit a hired farm worker under the age of 16 from performing all work inside a grain storage structure or manure pit. We believe the standards set forth in the current Ag H.O. 8 address the specific, high risk activities involving work within these structures. Therefore, we do not support revising the current language in Ag H.O. 8. In the NPRM, the Department states that it is also considering whether the proposed order should be expanded to include other confined spaces, such as livestock confinement buildings with or without ventilation systems.⁶ Modern livestock buildings are designed with technologically advanced ventilation systems to maintain air quality that ensures the health of employees working in the barns and the animals. Prohibiting hired farm workers under the age of 16 from working in livestock barns will eliminate the valuable experience of working with the animals. For these reasons, we do not support expanding the proposed Ag H.O. 8 beyond the currently listed structures.

The NPRM also states that the Department is creating a nonagricultural hazardous order to prohibit the employment of young workers under the age of 18 in occupations in the farm-product raw material wholesale trade industries. Prohibited establishments would include country grain elevators, grain elevators, grain bins, silos, and livestock auctions. We believe this prohibition is overly broad because there are activities that a young worker can perform at these establishments outside the office that are not particularly hazardous.

We appreciate the opportunity to comment on this NPRM and support the Department in their commitment to ensuring that young people are employed only to conduct safe and age appropriate work. However, several of the proposed revisions will prohibit activities that are positive and appropriate work experiences for youth with an interest in agriculture. The suggestions set forth in these comments will allow these experiences in a supervised environment, which will have a positive impact on the safety practices of our next generation of agricultural workers.

Respectfully Submitted,

A handwritten signature in black ink that reads "Rebecca S. Skillman".

Rebecca S. Skillman
Indiana Lieutenant Governor
Secretary of Agriculture and Rural Development

A handwritten signature in black ink that reads "Joseph M. Kelsay".

Joseph M. Kelsay
Director of Agriculture
Indiana State Department of Agriculture

⁶ See page 55.