



December 20, 2021

Michael Primo  
Director of Operations  
Division of Labor Standards and Statistics  
Colorado Department of Labor and Employment

VIA EMAIL: michael.primo@state.co.us

Dear Mr. Primo:

Thank you for the opportunity to comment on the proposed Agricultural Labor Conditions Rules by the Colorado Department of Labor and Employment (the Department). We represent organizations who want to see Colorado's agricultural workers protected by meaningful and robust workplace safety standards. The Coalition appreciates the thoughtful consideration the Department has put into the proposed rules in regard to protecting agricultural workers from heat illness and injury as well as the provisions regarding access to service providers while working long hours. The proposed rules would do much to protect agricultural workers from overwork at high temperatures and under increased risk conditions, while also addressing the need of workers to access certain services when they are working extremely long hours. However, we have some recommendations that would strengthen and clarify key provisions regarding worker safety.

First, the proposed Rule 3.3 requiring adequate shade needs to provide employers clear guidance to protect workers from heat-related stress illnesses and injuries. Rather than the proposed disqualification of shaded areas "too far for use during rest and meal periods," the rule should specifically state that the "shade must be as close as practicable and not more than a quarter mile from where the workers are working." The circumstances where it would be considered "unsafe" or make it impossible for an employer to provide the required shaded area should also be defined in more detail. Without more specificity, this provision could become a loophole that undermines the shade requirement in its entirety. Finally, we recommend that employers be required to provide a shade structure versus relying on natural shade. This would benefit the workers seeking reliable shade while aiding in the enforcement of this provision.

Next, the Department should clarify that all rest breaks during increased risk conditions under proposed Rule 3.4 and all cool-down rest breaks under proposed Rule 3.5 are compensated. Reliance on spacing of the paid and unpaid breaks required in the Colorado Overtime and Minimum Pay Standards (COMPS) Order to achieve mandatory rest breaks makes the availability of compensation for the break-time unclear. All rest and cool-down breaks should be

compensated, and the rule should say that directly. For those working on a piece rate basis, the rule must clearly state all rest and cool-down breaks will be compensated by supplementing the piece-rate earnings for that day with additional pay for each rest or cool-down break.

The Coalition recommends several changes to the proposed Rule 3.4 requirements during increased risk conditions that would better protect workers from identified hazards. The heat threshold for increased risk conditions should be lowered to 90 degrees, rather than the proposed 95 degrees. We also advise adding a third tier of protections for when temperatures reach 100 degrees that would require a 20-minute rest break every two hours. Given that 86% of heat injuries were associated with a heat index range of 90 degrees to 104 degrees,<sup>1</sup> such additional protections are absolutely critical to keep workers safe.

We appreciate the rules' recognition that poor air quality creates increased risk conditions for agricultural workers that may necessitate additional break-time and other protections. Given the substantial wildfire smoke we have experienced in Colorado in the past couple of years, we encourage the Department to require agricultural employers to make N-95 masks available to each outdoor worker whenever the ambient air concentration for PM2.5 is at or above 35.5 ug/m3 (AQI 101). We must protect outdoor workers from the effects of particulate air pollution, and an easy and inexpensive way to do so is to make N-95 masks available to workers.

Recognizing that “almost half of heat-related deaths occur on a worker’s very first day on the job” and “over 70 percent of heat-related deaths occur during a worker’s first week,”<sup>2</sup> we also encourage the Department to fortify the acclimatization protocol in the proposed rules. In addition to the proposed break-time during the first four days of work at 80 degrees, the rules should cut shift duration in half during the first two days of work at high temperatures for workers who have not worked in high heat for over one month. Although this proposal would provide less protection than National Institute for Occupational Safety and Health suggests,<sup>3</sup> it would reduce the risks of heat-related illness and injury before full acclimatization is possible.

We also encourage expansion of the pre-shift training described in proposed Rule 3.4(B). Although pre-shift training need not be long, it must include information about the temperature or other increased risk conditions applicable that day and employers must encourage workers to drink water and/or to take breaks as needed. Employers must also use pre-shift trainings to remind workers of the signs and symptoms of heat stress, remind workers of the anti-retaliation protections under Rule 5, and make N-95 masks available when required.

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<sup>1</sup> NIOSH criteria for a recommended standard: occupational exposure to heat and hot environments. By Jacklitsch B, Williams WJ, Musolin K, et al. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication 2016-106, (“NIOSH 2016 Criteria Recommendations”), available at <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf>, citing Armed Forces Health Surveillance Center [2011]. Surveillance snapshot: reportable medical events of heat injury in relation to heat index, June–September 2011. *MSMR* 18(10):19.

<sup>2</sup> United States Department of Labor, Occupational Health and Safety Administration, Heat, Prevention, Protecting New Workers, <https://www.osha.gov/heat-exposure/protecting-new-workers>.

<sup>3</sup> NIOSH 2016 Criteria Recommendations (proposing new workers should work only 20 percent of the normal duration on their first day and increase work duration by 20 percent on subsequent days until performing a normal schedule).

To ensure that workers in employer provided housing can adequately cool their body temperature overnight, we strongly encourage the Department to include a provision in the rules requiring employers to provide fans and/or air conditioning units in employer provided housing when temperatures reach 80 degrees. Such residential cooling is essential to worker recovery from the heat stress of the day.

Finally, we suggest CDLE conduct targeted outreach to employers across the state to provide training and educational materials. In conjunction with these training sessions for employers, CDLE should also provide worker rights' education in a language understood by employees. These sessions should be conducted on an annual basis to ensure employer compliance with all provisions of the Agricultural Labor Conditions rules.

We appreciate your consideration of these suggestions and proposals. With these changes, the Agricultural Labor Conditions rules would be some of the strongest in the nation and would do much to protect agricultural workers in our rapidly changing world.

Sincerely,

**Organizations & Businesses:**

Acequia Institute

AFGE Local 1127

AFSC Colorado

Center for Reflection, Education and Action

Centro Humanitario Para Los Trabajadores

Child Labor Coalition

Colorado AFL-CIO

Colorado Blueprint to End Hunger

Colorado Center on Law & Policy

Colorado Consumer Health Initiative

Colorado Education Association

Colorado Immigrant Rights Coalition

Colorado Jobs With Justice

Colorado Latino Leadership Advocacy and Research Organization (CLLARO)

Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)

Colorado Working Families Party

Communication Workers of America District 7

Denver Compost Collective, LLC

Denver Metro Area Local APWU

Denver Urban Gardens

Detrick Snyder, LLC

Earth Action, Inc.

Farmworker and Landscaper Advocacy Project

Farmworker Justice

Food & Water Watch

Frontline Farming

GoFarm

Hispanic Affairs Project

Hunger Free Colorado

Jefferson County Food Policy Council

Justice for Migrant Women

Kaizen Food Rescue

Kalmanovitz Initiative at Georgetown University

Labor Network for Sustainability

Lutheran Advocacy Ministry Colorado

MDC Consulting & Training

Media Voices for Children

Migrant Clinicians Network

Mile High Farmers

National Child Labor Committee

National Consumers League  
National Employment Law Project  
National Farm Worker Ministry  
Natural Resources Defense Council  
New Jersey Work Environment Council  
Nourish Colorado  
Oregon Environmental Council  
PHILAPOSH  
Project Protect Food Systems Workers  
PSR Arizona  
Public Citizen  
Raise Colorado Coalition  
Rocky Mountain SER  
Spring Institute for Intercultural Learning  
Sprout City Farms  
Student Action with Farmworkers  
Together Colorado  
Towards Justice  
Twiggs & Co. Sustainability Consulting and Implementation  
UFCW 7  
Union of Concerned Scientists  
Utility Workers Union of America  
Western Slope Against Trafficking

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