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NFIB to EPA: Stop Using Planes to Monitor Farms

Last month, NFIB wrote to the administrator of the Environmental Protection Agency and asked that the agency stop using aerial surveillance over farms. NFIB sent the letter just one day after the agency confirmed to news outlets that it has used planes to monitor runoff from farms.

In the letter, NFIB asked the agency to immediately stop the program because NFIB believes that such methods of inspection go well beyond what the EPA is authorized to conduct. In addition, it is a clear violation of privacy for the farmers.

The EPA came under fire when Nebraska's Congressional delegation wrote to the agency and demanded answers about the program. The agency admitted using aerial surveillance as a way to monitor the activities of farmers on the ground. According to news reports, the program began in 2010 and has featured at least 16 flights between Iowa and Nebraska to monitor livestock, as well as flights in other parts of the country for additional monitoring.

The EPA also said that it believes the program is an effective way to monitor runoff into streams from nearby farms.

NFIB disagrees and contends that the EPA lacks the authority under any of its authorizing legislation to conduct such a program. In addition, in states like Nebraska, the state environmental agency is responsible for conducting inspections and reporting to the EPA. The aerial surveillance program intrudes on the state's own inspection activities.

Furthermore, NFIB believes the flights to be an unfair form of inspection, since in an on-site inspection the farmer is at least aware that an inspection is taking place. The aerial program monitors farmers' activities without warning or notification. Farmers have no ability to prepare and were entirely unaware of the program's existence until it came to light last month.

Unfortunately for farmers, this is only the latest in a series of overzealous regulatory programs aimed at agriculture. Prior to this, the EPA pushed hard to lower

permissible levels of dust in the air, a move that would have severely hurt farms in dry, rural areas. The U.S. Department of Labor also recently proposed a rule that would have denied kids the ability to work on farms of family members other than their parents and also would have prohibited many activities taught in programs like 4-H.

NFIB was able to help get the two agencies to back off their unreasonable goals, and will continue to watch how the EPA addresses complaints over its aerial surveillance program.

Compliance Extension Granted for ADA Pool Lifts



The U.S. Department of Justice recently delayed the enforcement of a provision in Americans with Disabilities Act regulations that requires businesses with pools open to the public to have fixed lifts installed for disabled customers. The new compliance date is January 31, 2013.

The regulations mandate that any business with a pool or spa that is open for use by customers have a lift, which is a device capable of delivering a customer from a wheelchair into a pool. Those businesses that are especially affected are hotels, motels, gyms and spas.

However, less than two months before the original March 15, 2012 deadline, the DOJ issued a guidance document explaining that in order for a business to be deemed in compliance it must have a lift that is permanently attached to pool decking, also known as a fixed lift.

Because the regulatory language simply said businesses must install a lift, many small businesses began making plans to install temporary lifts that can be moved when not in use. In addition to being more affordable – most temporary lifts average about \$5,000, whereas fixed lifts when installed can cost about \$10,000 – small-business owners prefer to be able to remove the lifts when not in use so that no one playing around the pool can run into it and get injured.

NFIB commented to the agency that because of the late notice of the need for fixed lifts, the DOJ should delay the compliance date for at least six months. NFIB also questioned the need for fixed lifts at all, due to the cost and liability concerns they present to small businesses.

Now that the compliance date has been extended, NFIB is now focusing its efforts on a legislative fix to the DOJ requirement. NFIB supports the Pool SAFE Act, which would allow businesses to use portable lifts. In addition, it would also drop a requirement that businesses have a lift for each pool they have on premises.

Small businesses are committed to making sure that everyone can enjoy access to their services and products. However, the pool lift requirement is a prime example of over-regulation and regulatory uncertainty.

The DOJ has over-regulated in this instance because the fixed lifts are too expensive and can potentially be unsafe for other customers. The requirement that each pool have a lift is also excessive to meet the goal of accessibility. At the same time, the DOJ has created an uncertain situation for small businesses because it waited until less than two months before the original compliance date to specify the required lift.

NFIB will continue to watch this issue as it progresses and work toward a common-sense solution that will make compliance more affordable for small businesses.

For more information on the new standards and what your business must do to comply, visit www.ada.gov or call 1-800-514-0301.

Update: DOL Drops Regulation to Limit Young Farm Workers

In our July issue we wrote about U.S. Department of Labor's effort to curb the types of activities young workers are allowed to do on the farm. We're happy to report that thanks to a public outcry over the severe limitations the rule would have imposed, the agency withdrew the proposal.

The DOL proposed changes to its regulations that cover farm workers under 18. The changes would have limited the types of work young workers can perform and the equipment they would work with. While these changes would not have affected children working on their parents' farm, it would have applied to those working on the farms of other relatives or neighbors.

If adopted as proposed, the regulations would have prohibited, with few exceptions, children under 16 from operating or assisting in the operation of power-driven equipment other than tractors. Tractors would have been limited to use by a person under 18 if the operator has a valid driver's license.

The proposal would have also prohibited persons under 18 from working in areas where large animals like cows and horses are kept and from participating in any practice that may result in unpredictable behavior from any animal – such as castration, vaccination and herding.

Moreover, the proposed rule would have severely limited other types of work around the farm, including timber activities, construction, and handling of certain chemicals.

In general, these proposed changes would have impacted the ability of farmers to employ children under 18 and thereby limit the flexibility the original rules provided to farms. The proposed changes would have seriously inhibited the valuable skills children can learn by doing such work, which will affect their employment opportunities down the road.

NFIB is pleased with the final outcome, but is concerned that such a rule was proposed in the first place since its impact on small farms would have been extraordinary.

NFIB Opposes Changes to J-1 Visa

Changes to the J-1 Visa program made by the U.S. State Department will have a significant effect on small businesses that use the program to meet their hiring needs.

The Summer Work Travel visa, more commonly called the J-1 visa, is part of the Student Exchange Program administered by the State Department. The program allows students from foreign countries to come work in the United States for the summer to learn more about American culture.

Many seasonal small businesses have come to rely on this program as a way to fill vacancies during peak times in the summer. Such businesses include concessionaires and businesses located near summer travel destinations. These businesses have tried but have been unable to attract American students and young workers to fill these positions.

The State Department recently issued final regulations that significantly change the types of jobs and tasks that foreign students can perform. J-1 students can no longer drive as part of their duties – even if they are licensed to do so – and

are also prohibited from working for concessionaires. In addition, they are barred from jobs involving manufacturing, construction and maintenance, or farming.

NFIB believes that the new rule is overly punitive to small businesses that have come to rely on J-1 workers to fill their employment needs during the busy summer season.

The State Department issued these changes in response to a few chronicled incidents where either a sponsor or employer misused and took advantage of J-1 workers.

NFIB believes the correct course for the State Department to take is to adequately enforce the current rules to penalize abusers of the system, rather than this heavy-handed approach that punishes the thousands of small businesses that have enjoyed mutually beneficial experiences with foreign students.

NFIB will submit comments to the State Department this month asking that the Department rethink some of the changes, specifically the bans on driving and working in concessions. Instead, we believe the State Department should focus on enforcing the existing regulations on the few bad actors that have taken advantage of the system in the past. NFIB members that use the J-1 program are committed to providing a safe and mutually beneficial working environment.

Update

FWS Will Not List Lizard as 'Endangered'

The U.S. Fish and Wildlife Service recently decided that it will not list the sagebrush dunes lizard – a five-inch lizard that lives in western Texas and eastern New Mexico – as endangered. The decision comes after a public comment period in which NFIB urged the FWS not to list the lizard as endangered. Doing so would have triggered an avalanche of new restrictions and permits that would have slowed energy production and made farming more difficult in one of the most booming areas of America.

For more information on these and other upcoming NFIB regulations, contact Dan Bosch, NFIB's manager of regulatory policy, at dan.bosch@nfib.org.

Be sure to follow NFIB's campaign for better regulations, Small Businesses for Sensible Regulations, at www.sensiblereg.org.