Wage and Hour Division, Labor

within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation. For the exemption to apply, the youth must also be required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust.

[75 FR 28460, May 20, 2010]

EFFECTIVE DATE NOTE: At 75 FR 28460, May 20, 2010, § 570.130 was added, effective July 19, 2010.

ENFORCEMENT

§ 570.140 General.

(a) Section 15(a)(4) of the Act makes any violation of the provisions of sections 12(a) or 12(c) unlawful. Any such unlawful act or practice may be enjoined by the United States District Courts under section 17 upon court action, filed by the Secretary pursuant to section 12(b) and, if willful will subject the offender to the criminal penalties provided in section 16(a) of the Act. Section 16(a) provides that any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) In addition, FLSA section 16(e) states that any person who violates the provisions of FLSA sections 12 or 13(c), relating to child labor, or any regulations issued under those sections, shall be subject to a civil penalty, not to exceed:

1. $11,000, for each employee who was the subject of such a violation; or
2. $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is repeated or willful.

(c) Part 579 of this chapter, Child Labor Violations—Civil Money Penalties, provides for the issuance of the notice of civil money penalties for any violation of FLSA sections 12 or 13(c) relating to child labor. Part 580 of this chapter, Civil Money Penalties—Procedures for Assessing and Contesting Penalties, describes the administrative process for assessment and resolution of the civil money penalties. When a civil money penalty is assessed against an employer for a child labor violation, the employer has the right, within 15 days after receipt of the notice of such penalty, to file an exception to the determination that the violation or violations occurred. When such an exception is filed with the office making the assessment, the matter is referred to the Chief Administrative Law Judge, and a formal hearing is scheduled. At such a hearing, the employer or an attorney retained by the employer may present such witnesses, introduce such evidence and establish such facts as the employer believes will support the exception. The determination of the amount of any civil money penalty becomes final if no exception is taken to the administrative assessment thereof, or if no exception is filed to the decision and order of the administrative law judge.

[75 FR 28460, May 20, 2010]

EFFECTIVE DATE NOTE: At 75 FR 28460, May 20, 2010, an undesignated center heading and §570.140 were added, effective July 19, 2010.

PART 575—WAIVER OF CHILD LABOR PROVISIONS FOR AGRICULTURAL EMPLOYMENT OF 10 AND 11 YEAR OLD MINORS IN HAND HARVESTING OF SHORT SEASON CROPS

Sec.
575.1 Purpose and scope.
575.2 Definitions.
575.3 Application for waiver.
575.4 Information to be included in application.
575.5 Supporting data to accompany application.
575.6 Procedure for action on an application.
575.7 Statutory conditions for employment under the waiver.
575.8 Secretary’s conditions for employment under the waiver.
575.9 Failure to comply with terms and conditions of the waiver.

AUTHORITY: Secs. 11, 12, 13, 18, 52 Stat. 1067, 1069, as amended; 29 U.S.C. 211, 212, 213, 218. Secretary of Labor’s Order No. 16-75, 40 FR
§ 575.1 Purpose and scope.

(a) Section 13(c)(4) was added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1977. This section provides that:

(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment for not more than 8 weeks in any calendar year of individuals who are less than 12 years of age, but not less than 10 years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that:

(i) The crop to be harvested is one with a particularly short harvesting season and the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) The employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) The level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) Individuals age 12 and above are not available for such employment; and

(v) The industry of such employer or group of employers has traditionally and substantially employed individuals under 12 years of age without displacing substantial job opportunities for individuals over 16 years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that:

(i) The individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) Such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) Such individuals be employed under such waiver (I) for not more than 8 weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(b) The child labor provisions of the Fair Labor Standards Act, section 12, require the following age standards for employment in agriculture:

(1) 16 years of age in any occupation at any time;

(2) 14 and 15 years of age outside of school hours except in occupations found and declared by the Secretary to be particularly hazardous for the employment of minors under 16 years of age (subpart E–1, 29 CFR 570.70, et seq.);

(3) 12 and 13 years of age in nonhazardous occupations outside of school hours if:

(i) Such employment is with the written consent of a parent or person standing in the place of a parent of such minor, or

(ii) Such employment is on the same farm where such parent or person is also employed;

(4) Under 12 years of age in nonhazardous occupations outside of school hours if such employment is with the written consent of a parent or person standing in place of a parent of such minor, on a farm where, because of the provisions of section 13(a)(6)(A) of the Act, none of the employees are required to be paid at the wage rate prescribed by section 6(a)(5) of the Act;

(5) 10 and 11 years of age in nonhazardous occupations outside of school hours employed to hand-harvest short season crop or crops under a waiver issued pursuant to section 13(c)(4) of the Act and this part;

(6) Minors of any age may be employed by their parents or persons standing in place of their parents at any time in any occupation on a farm owned or operated by their parents or persons standing in place of their parents.

(c) This part provides the procedures to be used under section 13(c)(4) of the Act. This part describes the information and defines the supporting data that the employer or group of employers must submit when applying for a waiver of the child labor provisions for the employment of 10 and 11 year old minors as hand-harvest laborers in an agricultural operation. It further explains the specific requirements imposed by the statute for employment under a waiver and specifies the conditions prescribed by the Secretary for employment under a waiver.
§ 575.2 Definitions.

As used in this part:


Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part.

Agriculture means agriculture as defined in section 3(f) of the Act and as interpreted in part 780 of this chapter.

Commute daily means the minors shall travel by foot, car, or other vehicle designed for transporting passengers from their permanent residence to the field or farm where they will work and return thereto at the end of each workday.

Department means the U.S. Department of Labor.

Employer means employer as defined in section 3(d) of the Act.

Group of employers means a number of employers who seek to be considered together for the purpose of applying for a waiver under section 13(c)(4) of the Act.

Hand-harvest laborers means agricultural workers engaged solely in harvesting by hand soil grown crops such as but not limited to berries, potatoes, and beans, and as interpreted in § 780.312 of this chapter.

Outside school hours means such periods as determined by the school district of the minor's permanent residence. These periods include before or after school hours, holidays, summer vacation, Saturdays, Sundays, or any other days on which the school for the school district does not assemble.

Permanent residence means the place where the minor and the minor’s parent or person standing in place of a parent reside year-round.

Secretary means the Secretary of Labor, United States Department of Labor, or an authorized representative of the Secretary.

Waiver means a letter signed by the Administrator advising the named employer or group of employers that 10 and 11 year old minors may be employed in the hand-harvesting of the specified short season crop or crops for the period designated, in accordance with the terms and conditions set forth in section 13(c)(4) of the Act and this part.


§ 575.3 Application for waiver.

(a) An application for a waiver shall be filed with the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, Washington, DC 20210. To permit adequate time for processing, it is recommended that such applications be filed 6 weeks prior to the period the waiver is to be in effect.

(b) No particular form is prescribed. The application, which may be in letter form, shall be typewritten or clearly written and shall include the following information:

(1) The general information as described in § 575.4 of this part:
   (i) Name and address of employer or group of employers;
   (ii) Telephone number;
   (iii) Location of farm(s);
   (iv) Crop or crops to be hand harvested;
   (v) Whether payment is customarily paid on a piece rate basis;
   (vi) Requested period of waiver;
   (vii) Statement that such employment shall be outside school hours;
(2) The objective data as required in § 575.5 of this part to show that:
   (i) The crops have a short harvesting season;
   (ii) Without 10 and 11 year olds the industry would suffer severe economic disruption;
   (iii) Employment will not be deleterious to the health and well-being of 10 and 11 year olds;
   (iv) The level of pesticides will not adversely affect 10 and 11 year olds;
   (v) Individuals 12 years and over are not available for employment;
   (vi) Employer or group of employers has traditionally used minors under 12 years and this will not displace employees 16 years or older.
(c) The application shall be signed and dated by the employer or group of employers requesting the waiver or by
§ 575.4 Information to be included in application.

An application for a waiver pursuant to section 13(c)(4) of the Act shall contain the following information:

(a) The name, address, and zip code of the employer, or each employer of a group of employers, and the authorized representative, if any, of an employer or group.

(b) The telephone number and area code for any employer or authorized representative from whom additional information concerning the application may be obtained.

(c) The address, location, and/or area (State, county, and/or other geographic designation), clearly identifying each employer’s farm(s) or field(s) where 10 and 11 year old hand-harvest laborers are to be employed.

(d) The specific crop or crops to be hand-harvested at each designated farm or field.

(e) Substantiation of the claim that such agricultural operation “is customarily and generally recognized as being paid on a piece rate basis in the region in which such individuals would be employed.” The Administrator will accept signed statements to that effect from cultural extension agents, in the region of employment who are familiar with farming operations and practices.

(f) Designated dates of not more than 8 weeks an any calendar year, between June 1 and October 15, during which it is anticipated that 10 and 11 year old minors will be employed in the hand-harvesting of the specified short season crop or crops.

(g) A statement that the 10- and 11-year old hand harvesters will be employed outside school hours.

§ 575.5 Supporting data to accompany application.

Objective data, as required by section 13(c)(4) of the Act, shall also be submitted by the employer or group of employers applying for a waiver, to show that:

(a) The crop to be harvested is one with a “particularly short harvesting season.” The variety of each crop to be harvested must ordinarily be harvested within 4 weeks in the region in which the waiver will be applicable. The Administrator will accept the written statement to that effect from the agricultural extension agent for the county.

(b) The 12-year minimum age prescribed by the Act for such employment would cause “severe economic disruption in the industry of the employer or group of employers applying for the waiver.” Severe economic disruption in the industry refers to the consequences of not meeting a compelling need for the employment of 10- and 11-year olds to avoid loss of a significant portion of the crop. Evidence of this need includes the projected number of laborers needed to harvest the acreage planted and evidence that recruitment requirements specified in paragraph (e) of this section have been complied with. Data concerning the number of hand harvest laborers used in previous years for given acreages will serve as a basis for evaluating needs for the current year. If the requisite number of workers cannot be recruited from the labor supply of 12 years and above, this would ordinarily demonstrate the compelling need for the employment of 10 and 11 year olds.

(c) The employment of minors under the waiver “would not be deleterious to their health or well-being.” This refers to the prospective effect on the health or well-being generally (i.e., other than the tolerance level of pesticides or other chemicals) of 10 and 11 year-old hand harvesters. The Administrator will accept signed statements to that effect from doctors, or nurses or public health officials in the region.

(d) The “level and type of pesticides and other chemicals used would not have an adverse effect on the health or well being of” minors employed under the waiver. The safe reentry standards
established by the Environmental Protection Agency, and followed by other Federal and State agencies, were established for adult workers and have not been shown to be safe for 10 and 11 year olds. Therefore, the applicant, in order to satisfy this condition, will either have to submit a statement that no pesticides or other chemicals were used on the crop to be harvested or submit data which upon study by the Secretary or the Secretary’s designee establishes a safe reentry times for 10 and 11 year olds. If such data, or additional studies conducted by the Secretary or the Secretary’s designee, establish safe reentry standards for 10 and 11 year olds, this section will be amended to include such standards and the applicant will then need only identify the type and level of pesticides or chemicals used and the date of last application of same prior to harvest.

(e) Individuals age 12 and above are not available for such employment. Evidence of such unavailability must be documented by the applicant by:
   (1) Placement of intrastate and interstate job orders, in which the piece rate is specified, with the state employment service sufficiently in advance of the harvest to allow reasonable time for the recruitment of local and migrant workers. An interstate order need not be placed if the applicant can demonstrate that suitable housing is not available.
   (2) Placement of at least two advertisements in local papers of general circulation or advertisements over local radio stations.
   (3) Contact with farm labor contractors, migrant workers, and other potential workers.
   (4) Contact with schools, business and labor organizations, non-profit organizations and public agencies to enlist their help. Data showing the responses received to these solicitations must be categorized by age and submitted with the waiver application to verify that older workers are not available to perform the work.
   (f) The “industry of such employer or groups of employers has traditionally and substantially employed individuals under 12 years of age.” Documentation that the industry has traditionally and substantially employed individuals under 12 years of age may include newspaper reports, magazine articles, research organization reports, or other appropriate sources. Data to indicate that such employment did not displace substantial job opportunities for individuals over 16 years of age may include the signed statement of an appropriate official of the employment service agency of the State (or States, if region designated crosses State lines) certifying to that fact. This certification must be based on statistical documentation for at least the previous year.

(g) When supporting data required by this section are submitted by an employer or group of employers, the objective data required by paragraph (d) of this section shall be submitted on the basis of each individual employer. However, objective data required by paragraphs (a), (b), (c), (e), and (f) of this section may be submitted for the specific geographic area, e.g., an entire county, of the employer or group of employers.

§ 575.6 Procedure for action on an application.

(a) Upon receipt of an application for a waiver, the Administrator shall review all of the information and supporting data. If sufficient, the Administrator shall grant a waiver; if insufficient, the Administrator may seek further information. If such information is not made available to the Administrator, the Administrator shall deny the waiver.

(b) The Administrator shall deny the application for a waiver from any employer against whom a final civil money penalty is outstanding under section 16(e) of the Act for violation of the child labor provisions of the Act.

(c) The waiver, in the form of a letter signed by the Administrator, shall set forth the terms and conditions for employment under the waiver as provided in §§575.7 and 575.8. The waiver shall be issued to the employer or group of employers applying for it.

§ 575.7 Statutory conditions for employment under the waiver.

Any waiver granted pursuant to section 13(c)(4) of the Act and this part shall require that:

(a) Employment of 10 and 11 year old minors pursuant to the waiver be outside school hours.

(b) Individuals employed commute daily from their permanent residence to the farm(s) or field(s) where employed.

(c) Such individuals be employed for not more than 8 weeks between June 1 and October 15 of any calendar year. When schools are in session, any employment under a waiver shall be confined to outside of school hours.

§ 575.8 Secretary's conditions for employment under the waiver.

The Secretary prescribes the following terms and conditions for the protection of minors employed pursuant to a waiver granted under section 13(c)(4) of the Act:

(a) An employer or group of employers granted such a waiver shall obtain and keep on file a signed statement of the parent or person standing in the place of the parent of each 10 and 11 year old minor employed consenting to the employment of such minor under the waiver.

(b) Any employment pursuant to a waiver shall be in compliance with applicable Federal and State laws, and any regulations issued under them.

(c) No employer or group of employers shall employ any 10 or 11 year old minor pursuant to a waiver for more than 5 hours in any one day or for more than 30 hours in any workweek with a meal break of at least 30 minutes and two rest breaks of at least 15 minutes each.

(d) An employer or group of employers granted such a waiver shall provide emergency transportation either to the minor’s permanent residence or to the nearest hospital for any 10 or 11 year old hand harvester who becomes ill or is injured during the normal hours of employment.

(e) An employer or group of employers granted such a waiver shall provide emergency transportation either to the school of the minor or to the nearest hospital for any 10 or 11 year old hand harvester who becomes ill or is injured during the normal hours of employment.

(f) No 10 or 11 year old employed under a waiver shall ride upon or be employed in the operation of or in the close proximity to any power driven machinery or equipment. Generally, a distance of fifty feet or more will be construed to meet the requirement that employment not be in “close proximity” to machinery or equipment.

(g) An employer or group of employers granted such a waiver who owns, operates, or causes to be operated any vehicle for the transportation of such minors shall be responsible for assuring that:

(1) Every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations issued by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation;

(2) Every such vehicle be designed for transporting passengers and be operated by a lawfully licensed driver; and

(3) A vehicle liability insurance policy provides insurance in an amount not less than the amounts applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act and its regulations. These amounts currently are as follows:
Insurance Required for Passenger Equipment

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<th>12 or less passengers</th>
<th>More than 12 passengers</th>
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</thead>
<tbody>
<tr>
<td>Limit for bodily injuries to or death of 1 person</td>
<td>$100,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>Limit for bodily injuries to or death of all persons injured or killed in any 1 accident (subject to a maximum of $100,000 for bodily injuries to or death of 1 person)</td>
<td>$300,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Limit for loss or damage in any 1 accident to property of others (excluding cargo)</td>
<td>$50,000</td>
<td>$50,000</td>
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(h) A copy of the waiver shall be posted or readily available at the site or sites of such employment of such minors during the entire period.

(i) The employer or group of employers shall maintain and preserve a record of the name, address, and occupation of each minor employed under the waiver in accordance with §516.33(b) of this chapter. In addition, the record shall also include the date of birth, the name and address of the school in which the minor is enrolled, and the number of hours worked each day and each week of the designated period. Each employer required to maintain records under this part shall preserve them for a period of at least 2 years.

(j) A waiver shall be effective for the period designated therein with no provision for amendment.

§ 575.9 Failure to comply with the terms and conditions of the waiver.

If the employer or group of employers granted a waiver pursuant to section 13(c)(4) of the Act and this part do not comply with the terms and conditions set forth in the waiver and this part, the waiver shall be null and void and the employer or group of employers will be subject to civil money penalties under section 16(e) of the Act.

Part 578—Minimum Wage and Overtime Violations—Civil Money Penalties

§ 578.2 Definitions.


(b) Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division who is authorized by the Administrator to perform any of the functions of the Administrator under this part.

(c) Person includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.