

**§ 570.123 Agriculture.**

(a) Section 13(c) of the Act provides an exemption from the child labor provisions for "any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed." This is the only exemption from the child labor provisions relating to agriculture or the products of agriculture. The various agricultural exemptions provided by sections 7(b)(3), 7(c), 13(a)(6), 13(a)(10) and 13(b)(5) from all or part of the minimum wage and overtime pay requirements are not applicable to the child labor provisions. This exemption, it will be noted, is limited to periods outside of school hours in contrast to the complete exemption for employment in "agriculture" under the wage and hours provisions. Under the original act, the exemption became operative whenever the applicable State law did not require the minor to attend school. The legislative history clearly indicates that in amending this provision, Congress sought to establish a clearer and simpler test for permissive employment which could be applied without the necessity of exploring State legal requirements regarding school attendance in the particular State. It recognized that the original provision fell short of achieving the objective of permitting agricultural work only so long as it did not infringe upon the opportunity of children for education. By recasting the exemption on an "outside of school hours" basis, Congress intended to provide a test which could be more effectively applied toward carrying out this purpose.

(b) The applicability of the exemption to employment in agriculture as defined in section 3(f)<sup>32</sup> of the Act de-

<sup>32</sup> *Agriculture* as defined in section 3(f) includes "farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry, or lumbering operations) performed by a farmer or on a farm

depends in general upon whether such employment conflict with school hours for the locality where the child lives. Since the phrase "school hours" is not defined in the Act, it must be given the meaning that it has in ordinary speech. Moreover, it will be noted that the statute speaks of school hours "for the school district" rather than for the individual child. Thus, the provision does not depend for its application upon the individual student's requirements for attendance at school. For example, if an individual student is excused from his studies for a day or a part of a day by the superintendent or the school board, the exemption would not apply if school was in session then. "Outside of school hours" generally may be said to refer to such periods as before or after school hours, holidays, summer vacation, Sundays, or any other days on which the school for the district in which the minor lives does not assemble. Since "school hours for the school district" do not apply to minors who have graduated from high school, the entire year would be considered "outside of school hours" and, therefore, their employment in agriculture would be permitted at any time. While it is the position of the Department that a minor who leaves one district where schools are closed and who moves into and lives in another district where schools are in session may not work during the hours that schools are in session in the new district, it will not be asserted that this position prevents the employment of a minor in a district where schools are in session, if the school last attended by the minor has closed for summer vacation. As a reasonable precaution, however, no employer should employ a child under such circumstances before May 15, and after that date he should do so only if he is shown by the minor satisfactory evidence in the form of a written statement signed by a school official stating that the school with which he is connected is the one last attended by the minor and that the school is closed for summer vacation. Such statement

as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

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should contain the minor's name, the name and address of the school, the date the school closed for the current year, the date the statement was signed, and the title of the school official signing the statement.

(c) Attention is directed to the fact that by virtue of the parental exemption provided in section 3(1) of the Act, children under 16 years of age are permitted to work, for their parents on their parents' farms at any time provided they are not employed in a manufacturing or mining occupation.

(d) The orders (subpart E of this part) declaring certain occupations to be particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being do not apply to employment in agriculture, pending study as to the hazardous or detrimental nature of occupations in agriculture.<sup>33</sup>

[16 FR 7008, July 20, 1951, as amended at 23 FR 3062, May 8, 1958. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

## § 570.124 Delivery of newspapers.

Section 13(d) of the Act provides an exemption from the child labor as well as the wage and hours provisions for employees engaged in the delivery of newspapers to the consumer. This provision applies to carriers engaged in making deliveries to the homes of subscribers or other consumers of newspapers (including shopping news). It also includes employees engaged in the street sale or delivery of newspapers to the consumer. However, employees engaged in hauling newspapers to drop stations, distributing centers, newsstands, etc., do not come within the exemption because they do not deliver to the consumer.

## § 570.125 Actors and performers.

Section 13(c) of the Act provides an exemption from the child labor provisions for "any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions." The term "performer" used in this provision is obviously more inclusive than the term "actor." In regulations issued pursuant

<sup>33</sup> See note to subpart E of this part.

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to section 7(d)(3) of the Act, the Administrator of the Wage and Hour Division has defined a "performer" on radio and television programs for purposes of that section.<sup>34</sup> The Secretary will follow this definition in determining whether a child is employed as a " \* \* \* performer \* \* \* in radio or television productions" for purposes of this exemption. Moreover, in many situations the definition will be helpful in determining whether a child qualifies as a " \* \* \* performer in motion pictures or theatrical productions \* \* \*" within the meaning of the exemption.

## § 570.126 Parental exemption.

By the parenthetical phrase included in section 3(1)(1) of the Act, a parent or a person standing in place of a parent may employ his own child or a child in his custody under the age of 16 years in any occupation other than the following: (a) Manufacturing; (b) mining; (c) an occupation found by the Secretary to be particularly hazardous or detrimental to health or well-being for children between the ages of 16 and 18 years. This exemption may apply only in those cases where the child is exclusively employed by his parent or a person standing in his parents' place. Thus, where a child assists his father in performing work for the latter's employer and the child is considered to be employed both by his father and his father's employer, the parental exemption would not be applicable. The words "parent" or a "person standing

<sup>34</sup> Section 550.2(b) of this title provides:

(b) The term "performer" shall mean a person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor, singer, dancer, musician, comedian, or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting, singing, dancing, reading, narrating, performing feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively participates in such capacity in the actual presentation of a radio or television program. It shall not include such persons as script writers, stand-ins, or directors who are neither seen nor heard by the radio or television audience; nor shall it include persons who participate in the broadcast or telecast purely as technicians such as engineers, electricians and stage hands.