

## Wage and Hour Division, Labor

## § 575.3

### § 575.2 Definitions.

As used in this part:

*Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.*).

*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 residences 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.

[43 FR 26562, June 21, 1978; 43 FR 28471, June 30, 1978]

### § 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

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the authorized representative of such employer or group.

(Approved by the Office of Management and Budget under control number 1215-0120)

[43 FR 26562, June 21, 1978, as amended at 47 FR 145, Jan. 5, 1982]

#### § 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 agricultural employers and employees and others, such as agricultural extension agents, in the region of employment who are familiar with farming operations and practices in the region and with the method of compensation used in such operations and practices.

(f) Designated dates of not more than 8 weeks in 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.

#### 29 CFR Ch. V (7-1-10 Edition)

#### § 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