

Subpart E-1—Occupations in Agriculture Particularly Hazardous for the Employment of Children Below the Age of 16

AUTHORITY: Secs. 12, 13, 18, 52 Stat. 1067, 1069, as amended; 29 U.S.C. 212, 213, 218.

§ 570.70 Purpose and scope.

(a) *Purpose.* Section 13(c)(2) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 213(c)(2)) states that the “provisions of section 12 [of the Act] relating to child labor shall apply to an employee below the age of 16 employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of 16, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.” The purpose of this subpart is to apply this statutory provision.

(b) *Exception.* This subpart shall not apply to the employment of a child below the age of 16 by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(c) *Statutory definitions.* As used in this subpart, the terms *agriculture*, *employer*, and *employ* have the same meanings as the identical terms contained in section 3 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203), which are as follows:

(1) *Agriculture* includes farming in all its branches and among other things includes the cultivation and tillage of 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 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.

(2) *Employer* includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State (except with respect to employees of a State or a political subdivision thereof, employed:

(i) In a hospital, institution, or school referred to in the last sentence of section (r) of the Act, or

(ii) In the operation of a railway or carrier referred to in such sentence), or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(iii) *Employ* includes to suffer or permit to work.

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§ 570.71 Occupations involved in agriculture.

(a) *Findings and declarations of fact as to specific occupations.* The following occupations in agriculture are particularly hazardous for the employment of children below the age of 16:

(1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(2) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

(iii) Power post-hole digger, power post driver, or nonwalking type rotary tiller.

(3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Trencher or earthmoving equipment;

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- (ii) Fork lift;
- (iii) Potato combine; or
- (iv) Power-driven circular, band, or chain saw.
- (4) Working on a farm in a yard, pen, or stall occupied by a:
 - (i) Bull, boar, or stud horse maintained for breeding purposes; or
 - (ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)
 - (5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
 - (6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
 - (7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
 - (8) Working inside:
 - (i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
 - (ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
 - (iii) A manure pit; or
 - (iv) A horizontal silo while operating a tractor for packing purposes.
 - (9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label;
 - (10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
 - (11) Transporting, transferring, or applying anhydrous ammonia.
- (b) *Occupational definitions.* In applying machinery, equipment, or facility terms used in paragraph (a) of this section, the Wage and Hour Division will be guided by the definitions contained in the current edition of *Agricultural*

Engineering, a dictionary and handbook, Interstate Printers and Publishers, Danville, Ill. Copies of this dictionary and handbook are available for examination in Regional Offices of the Wage and Hour Division, U.S. Department of Labor.

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§ 570.72 Exemptions.

(a) *Student-learners.* The findings and declarations of fact in §570.71(a) shall not apply to the employment of any child as vocational agriculture student-learner in any of the occupations described in paragraph (1), (2), (3), (4), (5), or (6) of §570.71(a) when each of the following requirements are met:

(1) The student-learner is enrolled in a vocational education training program in agriculture under a recognized State or local educational authority, or in a substantially similar program conducted by a private school;

(2) Such student-learner is employed under a written agreement which provides; (i) that the work of the student-learner is incidental to his training; (ii) that such work shall be intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person; (iii) that safety instruction shall be given by the school and correlated by the employer with on-the-job training; and (iv) that a schedule of organized and progressive work processes to be performed on the job have been prepared;

(3) Such written agreement contains the name of the student-learner, and is signed by the employer and by a person authorized to represent the educational authority or school; and

(4) Copies of each such agreement are kept on file by both the educational authority or school and by the employer.

(b) *Federal Extension Service.* The findings and declarations of fact in §570.71(a) shall not apply to the employment of a child under 16 years of age in those occupations in which he has successfully completed one or more training programs described in paragraph (b) (1), (2), or (3) of this section provided he has been instructed by his employer on safe and proper operation