DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Part 570

RIN 1215–AA89

Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document revises Subpart C (Child Labor Reg. No. 3) to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports, and to change the procedure for obtaining occupational variances for 14- and 15-year-olds enrolled in Work Experience and Career Exploration Programs. Other revisions to update these regulations delete the exception contained in § 570.35(b) for enrollees in work training programs conducted under the Economic Opportunity Act of 1964, which has been repealed, and the procedures relating to hazardous occupation determinations in Subpart D (Child Labor Reg. 5), which have been made obsolete by the Administrative Procedure Act (APA), 60 Stat. 237.

EFFECTIVE DATE: This rule is effective May 17, 1995.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, N.W. Washington, D.C. 20210. Telephone (202) 219–8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION

I. Paperwork Reduction Act

These rules contain no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The information collection requirements contained § 570.35a were previously approved by the Office of Management and Budget under OMB control number 1215–0121. While minor revisions are made in the procedure in § 570.35a(c)(3) for obtaining a variance from work-activities otherwise prohibited for 14- and 15-year-olds, the information needed by State Education Agencies to support variance requests is not materially different under the final rule. The general FLSA information collection requirements (including requirements contained in Part 570) were approved by the Office of Management and Budget under the control number 1215–0017.

II. Background

The Secretary of Labor is authorized by the Fair Labor Standards Act (FLSA) to provide by regulation for the employment of young workers under age 18. These regulations are contained in 29 CFR part 570. The regulations for 14- and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of 29 CFR part 570.

The Department published a notice of proposed rulemaking in the **Federal Register** on May 13, 1994 (59 FR 25164) inviting comments until July 12, 1994, on an exception from the permissible hours and time standards in Child Labor Regulation No. 3 (Reg. 3), subpart C of 29 CFR part 570, for 14- and 15-year-olds employed as attendants in professional sports. The notice also proposed technical modifications in § 570.35a of Reg. 3 to facilitate applications for certification under the Work Experience and Career Exploration Program (WECEP); the deletion of the exception contained in § 570.35(b) of Reg. 3 for enrollees in work training programs conducted under the now repealed Economic Opportunity Act of 1964; and the deletion of 29 CFR part 570, subpart D (Child Labor Reg. 5) because of the procedures provided by the Administrative Procedure Act (APA), 60 Stat. 237.

A total of 26 comments were received in response to the notice—from employers, trade and professional associations, advocacy organizations, State governments, and others, including the National Institute of Occupational Safety and Health (NIOSH).

Summary of Major Comments

I. 14- and 15-Year-Olds Employed as Sports Attendants

The Secretary proposed a narrow exemption to the Reg. 3 hours and time of day regulations so that 14- and 15-year-old minors may work as attendants in professional sports. The proposed rule would exempt 14- and 15-year-olds performing ''sports-attending services at professional sporting events'' from the regulations restricting the hours and time of day they may be employed, ''provided that the duties of the sports-attendant occupation consist of [certain specific sports-related duties].'' Based on careful consideration of the comments and other available information, the Secretary has determined that such an exemption would not be inconsistent with the FLSA's prohibitions against oppressive child labor, provided the minors work outside of school hours and they perform work that is limited to the traditional duties of typical sports attendants, i.e., specifically sports-connected duties.

As indicated in the preamble to the Proposed Rule, the Department conducted a study of the employment of sports attendants in professional baseball during 1986 and 1987. Congress mandated the study to determine whether a change in the permissible hours of employment for sports attendants would be detrimental to their schooling and health and well-being and whether any changes to the existing standards should be proposed. The study concluded that changes in the permissible hours and time standards for the employment of sports attendants in baseball would not interfere with their schooling and their health and well-being. The Secretary believes that the results of the study are equally applicable to other professional sports.

The Department received comments from eight minor league professional baseball teams supporting the Proposed Rule. These organizations stressed the unique and rewarding opportunity that the sports-attendant experience offers to young people. In addition, these commenters emphasized the benefits to young people of engaging in a healthy activity which can be a formative, character building experience. As the Fort Myers Miracle Baseball Club stated: ''There is no other environment equal to professional sports where a young man or woman has a chance to interact with local and national role models in a wholesome, family-oriented atmosphere while also being exposed to practicalities of the business world.''

The New York State Education Department concurred with the proposed exemption, while emphasizing the importance of having the rule specify activities that are acceptable for a sports-attendant to perform, as well as those that are impermissible.

Three advocacy groups (National Consumer League, Child Labor Coalition, and National PTA) and a labor organization (Food & Allied Service Trades) opposed the proposed rule, based on their concern that the increased hours and late time of day would be deleterious to the young people's health, safety, and education. The National PTA opposed lifting the current 18-hour per week restriction,

and suggested a case by case evaluation of a student's school attendance and academic record in determining whether a young person should work long hours. Two of the advocacy groups suggested that the proposed rule should be limited to professional baseball.

Commenters representing the restaurant industry objected to the narrow exemption for sports-attendants, asserting it was unfair to exempt the sports industry from the hours and time restrictions while leaving the restrictions in place for all other employment.

The Secretary finds that this exemption from the existing hours and time of day restrictions to permit 14- and 15-year-olds to work as attendants in professional sports will not constitute oppressive child labor under the FLSA, provided that the employment is limited to traditional duties of typical sports-attendants and that 14- and 15-year-old minors are not employed during school hours. The employment of 14- and 15-year-olds as sports-attendants under the terms of the regulation will provide positive, formative experiences to the young people without interfering with their schooling or their health and well-being. Such experiences are commonly regarded as opportunities to associate with individuals possessing attributes of success and achievement, *i.e.*, mentors or role models, and in some cases, ''heroes,'' and are genuinely enjoyed by participating youths.

While the Secretary is sensitive to the concerns of commenters who expressed views that the minors' school work will be adversely affected, there is an absence of evidence that sports-attending work interferes with their schooling. Further, it is the Secretary's view that end-of-day and weekly time restrictions add burdens on employers that would likely discourage the sports organizations from providing these employment experiences altogether. The Secretary has concluded, on balance, and in light of the lack of specific information to the contrary, that working as sports-attendants will not interfere with the schooling and health and well-being of the 14- and 15-year-old minors. Based on the comments, the Secretary believes that narrowly tailoring the exemption to 14- and 15-year-old minors working as attendants in professional sports will enable young people to participate in a memorable and unique work experience.

The Secretary emphasizes that the work to be performed by sports-attendants is strictly limited to those duties that would bring them into personal contact with the players and coaches, and in so doing, would provide the young people with role models. Permissible duties of the sports-attendant include: Pre- and post-game or practice setup of balls, items, and equipment; supplying and retrieving balls, items, and equipment during a sporting event; clearing the field or court of debris, moisture, etc. during play; providing ice, drinks, towels, etc. to players during play; running errands for trainers, managers, coaches, and players before (pre-game set-up and player warm-up), during, and after (post-game activities) a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, etc.; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts, or similar facilities; loading and unloading balls, items, and equipment from team vehicles before and after a sporting event; doing laundry and working in concession stands or other selling and promotional activities.

With respect to comments seeking special treatment for work experiences beyond sports-attending, the Department published in the **Federal Register** (59 FR 25167) an advance notice of proposed rulemaking requesting the views of the public on any changes they felt were necessary in the child labor regulations (29 CFR part 570). The comment period ended October 11, 1994, and the Department expects to publish a notice of proposed rulemaking during 1995. Interested parties will have an opportunity to offer comments on matters of permissible employment of minors under 18 years of age at that time. In light of this separate rulemaking process, it would be inappropriate for the Department to address such issues in this limited final rule.

II. WECEP Occupational Variations for 14- and 15-Year-Olds

The Department proposed a revision in § 570.35a which provides for the employment of 14- and 15-year-olds in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP).[1]

[1] Twelve States have Departmental approval to operate WECEP programs in the 1994–95 school-year. A condition for approval of such programs is that they provide sufficient safeguards to ensure that the employment will not interfere with the schooling of the minors or with their health and well-being.

Enrollees in approved WECEPs may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours, in occupations other than: (1) Those in manufacturing and mining; (2) those declared to be hazardous for the employment of minors under 18 years of age (set forth in subpart E of the regulations); (3) those declared to be hazardous for employment of minors below the age of 16 in agriculture (set forth in subpart E–1 of the regulations); or (4) those not permitted for minors aged 14 and 15 years (set forth in §§ 570.33 and 570.34 of the regulations (Reg. 3)).

The regulations at § 570.35a(c)(3) allow the Administrator of the Wage and Hour Division to approve a variation from the Reg. 3 prohibited occupations in individual cases or classes of cases after notice to interested parties and an opportunity to furnish views. The Department had consistently approved variations for particular activities requested in State Educational Agency applications for WECEP program approval. The Department proposed to amend the WECEP regulations to provide, in effect, a limited exception to the Reg. 3 occupations restrictions for WECEP participants engaged in the following activities:

(1) Using a deep fryer or cooking at a grill with a maximum temperature of 375 degrees;

(2) Operating power-driven mowers, weed-eaters, trimmers and whips with nylon string only;

(3) Retrieving and/or placing food in coolers/freezers;

(4) Loading and unloading goods weighing up to 30 lbs. provided that such work does not exceed 30 percent of the minor's weekly hours worked; and

(5) Operating noncommercial dishwashers.

The WECEP proposal also retained a provision for obtaining other variations from Reg. 3 occupational restrictions in special circumstances where a WECEP program applicant was able to demonstrate that the program would provide safe and suitable employment.

Of the sixteen commenters addressing this proposal, two (State of Ohio's Department of Education; National Council of Chain Restaurants) endorsed the proposed changes, including the specific work activity exceptions. The State of Ohio indicated that their WECEP program provides both general and job specific safety training, and that there were no reports of student employee injuries related to work in the activities which are the subject of this rulemaking. Four employer commenters

(two fast food restaurant franchises, a supermarket company, and a restaurant), endorsed the proposal and suggested that the regulations should be broadened beyond WECEP to generally permit 14- and 15-year-olds to cook, bake, make french fries and onion rings, unload stock trucks, or enter walk-in coolers.

Twelve commenters opposed either some or all of the proposed exceptions from work activities otherwise prohibited for 14- and 15-year-olds not participating in a WECEP. These commenters include two public health organizations (National Institute of Occupational Safety and Health (NIOSH); American Public Health Association (APHA)); one union (Food and Allied Services Trades (FAST)); one employer (Sugar Plum, Inc.); four public interest and child advocacy groups (Child Labor Coalition; National Consumers League; Parent Teachers Association; and the American Academy of Pediatrics); and four State government entities (State of Kansas Department of Human Resources; State of Kansas Department of Health and Environment; State of Washington Department of Labor and Industries; and University of Massachusetts Occupational Health Program). Several of these commenters referred to particular studies or data on work-related injuries to support their contentions that all or certain of the work activities for which a variation was proposed (*e.g.*, cooking at grills or deep fryers) were particularly dangerous for 14- and 15-year-olds, that coolers/freezers require further evaluation to determine whether appropriate safeguards would make it possible for WECEP participants to work in and around them safely, and that any variation from existing work restrictions should be linked to supervision and safety and health training appropriate for WECEP employees in activities approved by variation.

The comments opposing the proposed work-activity exceptions for WECEP participants are persuasive, and, on review, the Department has concluded that automatic exceptions for certain work-activities are inappropriate. Accordingly, the final rule modifies the procedure governing WECEP variations to create a clearer process which is less of a departure from the Reg. 3 restrictions than was the proposed rule's procedure. The Wage and Hour Administrator's long-established WECEP variation discretion is maintained, and requests for variations from the work-activities prohibited by Reg. 3 will continue to be considered where specified standards are met. Under the revised procedure, such requests will be reviewed on a case-by-case basis based on information furnished by the applicant State Educational Agency. The applicant will be expected to demonstrate that the activity under the State program for which the variation is requested will not interfere with the WECEP participant's schooling, health, or well-being. For example, the applicant will be expected to show that the work to be performed by the student(s) is safe; that adequate job training will be provided, including safety related training; that teacher-coordinators and work site supervisors will provide adequate supervision; and that employers in the program have not experienced job-related injuries of similarly employed 14- and 15-year-old students. The variation provision in the Final Rule also allows any interested party to review any application, to oppose the approval of a variation, and to request reconsideration of a previously approved variation.

III. Deletion of Subpart D (Child Labor Reg. 5)

The Department proposed to delete the regulations known as Child Labor Reg. 5 (Reg. 5), which provide a procedure for the Secretary to promulgate or amend hazardous occupation orders (HOs). The proposal to repeal Reg. 5 was based on the conclusion that its procedural requirements have been largely superseded by the Administrative Procedure Act (APA), 60 Stat. 237, which control DOL rulemaking, and that the APA provides greater administrative flexibility.

Only three commenters addressed the proposed deletion of Reg. 5. The National Consumers League and the Child Labor Coalition agreed with the Department's conclusion that the notice and comment procedures of the APA effectively obviated the need for Reg. 5, which was first promulgated in 1938, prior to enactment of the APA. The National Automobile Dealers Association, on the other hand, argued that Reg. 5 establishes a clear procedural framework for the promulgation and amendment of HOs which should be retained. Instead of repeal, they urged the Department to make whatever technical changes were needed to maintain consistency with the APA. After reviewing these comments, the Department believes that it is necessary to streamline regulatory procedures and eliminate redundant provisions wherever possible, and, therefore, has decided to adopt the proposal as a final rule.

IV. Deletion of § 570.35(b)

No comments were received on the proposal to delete the exception contained in § 570.35(b) for enrollees in work training programs conducted under the Economic Opportunity Act of 1964. The exception is unnecessary due to the repeal of the 1964 Act, and the proposal is adopted as a final rule.

Executive Order 12866

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It revises the permissible hours and time standards to permit greater flexibility in the employment of 14- and 15-year-olds as professional sports attendants. While these changes are expected to enhance opportunities for employment, the impact on overall employment levels of 14- and 15-year-olds is modest. Other changes are technical in nature and are expected to have only a minor impact on the employment of 14- and 15-year-olds. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

This rule will not have a significant economic impact on a substantial number of small entities. As indicated in the preamble to the proposed rule (59 FR 25164, May 13, 1994), the change to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports has narrow application and will affect only a limited number of employers of which some may be considered small entities. Although the other technical changes may affect small entities, the impact is believed to be insignificant. Thus, this rule will not have a significant economic impact on a substantial number of small entities, and the Secretary of labor has certified to this effect to the Chief Counsel for

Advocacy of the Small Business Administration. A regulatory flexibility analysis is not required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

Accordingly, 29 CFR part 570 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, on this 7th day of April 1995.

Robert B. Reich,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

1. The authority citation for part 570 continues to read as follows:

Authority: Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212.

Subpart C—Employment of Minors Between 14 and 16 Years of Age (Child Labor Reg. 3)

2. In § 570.35 of subpart C, paragraph (b) is revised to read as follows:

§ 570.35 Periods and conditions of employment.

* * * * *

(b) In the case of minors 14 and 15 years of age who are employed to perform sports-attending services at professional sporting events, *i.e.*, baseball, basketball, football, soccer, tennis, etc., the requirements of paragraphs (a)(2) through (a)(6) of this section shall not apply, provided that the duties of the sports-attendant occupation consist of pre- and post-game or practice setup of balls, items and equipment; supplying and retrieving balls, items and equipment during a sporting event; clearing the field or court of debris, moisture, *etc.* during play; providing ice, drinks, towels, *etc.*, to players during play; running errands for trainers, managers, coaches, and players before, during, and after a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, *etc.;* cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts or similar facilities; loading and unloading balls, items, and equipment from team vehicles before and after a sporting event; doing laundry; and working in concession stands or other selling and promotional activities.

3. Section570.35a(c)(3) of subpart C is revised to read as follows:

§ 570.35a Work experience and career exploration programs.

* * * * *

(c) * * *

(3) Occupations other than those permitted under §§ 570.33 and 570.34, except upon approval of a variation by the Administrator of the Wage and Hour Division in acting on the program application of the State Educational Agency. The Administrator shall have discretion to grant requests for special variations if the applicant demonstrates that the activity will be performed under adequate supervision and training (including safety precautions) and that the terms and conditions of the proposed employment will not interfere with the health or well-being or schooling of the minor enrolled in an approved program. The granting of a special variation is determined on a case-by-case basis.

(i) The Administrator's decision on whether to grant a special variation will be based on information provided in the application filed by the State Educational Agency, and/or any supplemental information that may be requested by the Administrator.

(ii) The Administrator's decision shall be in writing, and may designate specific equipment safeguards or other terms and conditions governing the work-activity approved by variation. If the request is denied, in whole or part, the reason(s) for the decision will be provided to the applicant, who may request reconsideration.

(iii) A special variation will be valid only during the period covered by an approved program, and must be renewed with the filing of a new program application.

(iv) The Administrator shall revoke or deny a special variation, in whole or in part, where there is reason to believe that program participants have been or will be employed contrary to terms and conditions specified for the variation, or these regulations, other provisions of the Fair Labor Standards Act, or otherwise in conditions detrimental to their health or well-being or schooling.

(v) Requests for special variations and related documentation will be available for examination in the Branch of Child Labor and Polygraph Standards, Wage and Hour Division, Room S3510, 200 Constitution Avenue, NW., Washington, DC 20210. Any interested person may oppose the granting of a special variation or may request reconsideration or revocation of a special variation. Such requests shall set forth reasons why the special variation should be denied or revoked.

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Subpart D—[Removed and Reserved]

4. Subpart D, consisting of §§ 570.41 through 570.49, is removed and reserved.

[FR Doc. 95–9328 Filed 4–14–95; 8:45 am]
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