

DEPARTMENT OF LABOR**Wage and Hour Division****29 CFR Parts 520, 521, 522, 523 and 527**

RIN 1215-AB10

Employment of Student-Learners, Employment of Apprentices, Employment of Learners, Employment of Messengers, and Employment of Student Workers

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

ACTION: Proposed rulemaking and request for comments.

SUMMARY: The Department of Labor proposes to remove the regulation found at 29 CFR Part 527 and consolidate the regulations found at 29 CFR Parts 520, 521, 522, and 523, into a single Part 520. These rules were promulgated under section 14(a) of the Fair Labor Standards Act (FLSA), and provide for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage to prevent the curtailment of employment opportunities. These workers include apprentices, messengers and learners, including student-learners and student-workers. Employers must apply for special certificates issued by the Wage and Hour Division of the U. S. Department of Labor which state the terms and conditions of employment at subminimum wages. Many of the provisions of these individual regulations are duplicative and can be merged into one comprehensive document. The language and context of the rules have been simplified, shortened and formatted to make them easier to use while the essential requirements of the regulations have been maintained. The substantive criteria used to determine an employer's eligibility to receive a certificate under these programs remains generally unchanged.

DATES: Comments on the proposed rule are due April 15, 1997.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard or to submit them by certified mail, return receipt requested. As a convenience to

commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219-5122. This is not a toll free number. If transmitted by FAX and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3510, 200 Constitution Avenue, NW., Washington, D.C. 20210: telephone (202) 219-7640. This is not a toll free number. Copies of the Notice of Proposed Rulemaking (NPRM) in alternative formats may be obtained by calling (202) 219-7605, (202) 219-4634 (TDD). The alternative formats available are large print, electronic file on computer disk and audio-tape.

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act**

This rule contains reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96-511), which were previously approved by the Office of Management and Budget (OMB) under Regulations, 29 CFR Parts 516 and 522, and assigned OMB control numbers 1215-0017 and 1215-0012, respectively.

The recordkeeping requirements contained in these regulations have been submitted to and approved by OMB under control number 1215-0017 through May 31, 1998. The recordkeeping requirements contained in Regulations, 29 CFR Parts 520, 521, and 522 and 527 were submitted to, reviewed and approved by OMB in conjunction with the basic recordkeeping requirements contained in Regulations, 29 CFR Part 516, Records to be Kept by Employers under the Fair Labor Standards Act (FLSA).

The reporting requirements contained in Regulations, 29 CFR Parts 520 (OMB No. 1215-005), and 522 (OMB No. 1215-0012) have been approved by OMB. However, in this proposed rulemaking the Department of Labor intends to consolidate current 29 CFR Parts 520, 521, and 522 into a revised 29 CFR Part 520 and eliminate 29 CFR Part 527. Further, the Department is proposing to amend the current Application for a Certificate to Employ Learners at Subminimum Wages (Form WH-209) so the form may also be used to apply for a certificate to employ messengers at subminimum wages. In addition, the Department is proposing to reduce the amount of information

requested on the form which will lessen the reporting burden on the public.

No application form is required to be completed by an employer to employ apprentices at subminimum wages, however, employers are required to submit a copy of the apprenticeship agreement, along with evidence of registration. Information collection requirements for approval and registration of apprenticeship agreements are contained in Regulations, 29 CFR Part 29, Labor Standards for the Registration of Apprenticeship Programs and have been approved by OMB under control number 1205-0023.

The reporting requirements contained in these proposed regulations have been submitted for review to OMB pursuant to section 3507(d) of the Paperwork Reduction Act of 1995.

A. Title: Application for a Certificate to Employ Learners/Messengers at Subminimum Wages, Form WH-209

Summary: These regulations eliminate Regulations, 29 CFR Part 522 and incorporate the procedures to obtain a certificate to employ learners/messengers at subminimum wages into a revised Part 520.

Need: Section 14(a) of the FLSA provides, in part, that the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of learners and messengers at subminimum wage rates. This section also authorizes the Secretary to set limitations on such employment as to time, number, proportion and length of service.

Form WH-209 is an application for a certificate authorizing an employer to employ learners and/or messengers at subminimum wage rates for a period up to one year. The requirements for application and issuance of a learner and/or messenger certificate are set forth in subpart D of these proposed Regulations, 29 CFR Part 520.

Form WH-209, Application for a Certificate to Employ Learners and/or Messengers at Subminimum Wages, is completed by an employer (in the case of messengers, such application may be filed by an employer or group of employers), in order to obtain a certificate authorizing the payment of learners and/or messengers at a wage rate less than the Federal minimum wage. Section 14(a) of FLSA requires that a certificate be issued before subminimum wages can be paid to learners or messengers.

Respondents and proposed frequency of response: Learners historically was one of the largest subminimum wage programs with over 2,200 certificates issued in the 1960s. However, since wage rates have risen in many industries where certificates were previously issued and an adequate supply of experienced workers exists in these industries, the use of learner certificates has declined drastically over the last twenty years. No requests to employ learners at subminimum wages have been received since 1995.

The Wage and Hour Division narrowly defined what type of firm is eligible to acquire special certificates for messengers. No applications for messengers have been received since 1949.

Estimated total annual burden: It is estimated that it takes approximately 20 minutes to complete a learner/messenger application. Since there is no current activity in this program, there is no annual burden and no respondent costs.

B. Title: Application to Employ Student-Learners at Subminimum Wages, Form WH-205

Summary: Section 14(a) of the FLSA provides, in part, that the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of learners at subminimum wage rates. This section also authorizes the Secretary to set limitations on such employment as to time, number, proportion and length of service.

Form WH-205 is used by the employer to obtain certification to employ student-learners at wages lower than the Federal minimum wage to prevent curtailment of opportunities for employment. Upon joint application by the employer, the appropriate school official, and the student-learner, the application will provide temporary authority to employ the named student-learner at a subminimum wage provided the school official certifies that the named student will be receiving instruction in an accredited school and will be employed pursuant to a bona fide vocational training program. At the end of 30 days, this authority is extended to become the approved certificate unless the Administrator or his/her authorized representative denies the application, issues a certificate with modified terms and conditions, or expressly extends the period of review. The employer must provide a statement outlining the vocational program and showing, particularly, the processes in which the student-learner will be engaged when in training on the job; a

statement outlining the school instruction directly related to the job; the age of the student-learner; and the period of employment at subminimum wages. The requirements concerning the issuance of certificates for student-learners are contained in proposed Regulations, 29 CFR 520, Subpart E.

Respondents and proposed frequency of response: It is estimated that 800 respondents will each use the WH-205 once annually. It is estimated that 30 minutes is required for the respondent to complete the form. This results in 400 annual reporting burden hours (800 forms X 30 minutes).

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the Fair Labor Standards Act (FLSA). In addition, employees of firms which are not covered enterprises under FLSA may still be subject to FLSA if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. Accordingly, the FLSA covers a wide range of different sizes and types of employers, from a small retail store, to a farm, to a large multi-unit manufacturing enterprise with locations in several states. Any one of these employers, or a designated employee, may choose to complete the application forms described in this submission. Without the availability of specific data on those employers who complete these forms, the 1995 average hourly rate for production or nonsupervisory workers on nonfarm payrolls of \$11.46 is being utilized to determine respondent costs (Monthly Labor Review, U.S. Department of Labor, Bureau of Labor Statistics, April, 1996). Annual respondent costs are estimated as \$4,854 ($\11.46×400 hours). Estimated mailing costs for 800 applications are \$280 ($800 \times \0.32 postage + $800 \times \$0.03$ envelope).

C. Title: Application to Employ Apprentices at Subminimum Wages

Summary: Section 14(a) of the FLSA provides, in part, in order to prevent curtailment of employment opportunities, for the payment of special minimum wage rates to workers employed as apprentices under special certificates issued by the Department of Labor.

Need: There is no application form to be completed by employers to obtain authority from the Department to employ apprentices at subminimum wages. The employer or apprenticeship committee must submit a copy of the

registered apprenticeship program or agreement for such apprentices to the appropriate Regional Office of the Wage and Hour Division of the Department of Labor. A registered apprenticeship program or agreement is one that has been approved by a recognized apprenticeship agency as meeting the basic standards adopted by the Department of Labor's Bureau of Apprenticeship and Training (BAT), upon the recommendation of the Federal Committee on Apprenticeship. A registered apprenticeship program constitutes a temporary special certificate authorizing the employment of an apprentice at the wages and under the conditions specified in such program until a special certificate is issued or denied, *provided* that within 90 days from the beginning date of the employment of such apprentices, the employer or the apprenticeship committee sends a copy of each apprenticeship agreement, with evidence of registration to the appropriate Regional Office of the Wage and Hour Division. The requirements concerning the issuance of certificates for apprentices are contained in proposed Regulations, 29 CFR 520, Subpart D.

Respondents and proposed frequency of response: Regulations issued by the BAT no longer permit the payment of subminimum wages to apprentices in an approved program (29 CFR 29.5(b)(5)). Thus, no apprentice certificates have been issued since 1987.

Estimated total annual burden: We estimate the submission of a copy of an approved apprenticeship program to take approximately one minute. However, since no apprenticeship programs are approved by BAT which employ apprentices at subminimum rates there is no annual burden and no respondent costs.

The public is invited to provide comments on these information collection requirements so that the Department of Labor may:

- (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) evaluate the accuracy of the agency's estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;
- (3) enhance the quality, utility and clarity of the information to be collected; and
- (4) minimize the burden of the collections of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, U.S. Department of Labor, Washington, DC 20503.

II. Background

Section 14(a) of the FLSA provides for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage to prevent the curtailment of employment opportunities. These workers include messengers, learners (including student-learners and student-workers), and apprentices.

Separate regulations were established for each of these subminimum wage categories with many provisions common to all the separate rules. These rules were also issued before the enactment of the Administrative Procedure Act and other laws and regulations that impact the content of regulations. The regulations at 29 CFR Parts 520, 521, 522, 523, and 527 were promulgated pursuant to FLSA and establish a certificate system for employment of these classes of workers at subminimum wages. Employers must apply for special certificates issued by the Wage and Hour Division of the U.S. Department of Labor, which state the terms and conditions of employment at subminimum wages.

Under Part 522, learners may be employed at less than the applicable minimum wage in certain skilled occupations. Certificates specify the number and proportion of learners authorized on any date, the subminimum wage rates permitted during the learning period, and length of the learning period in each occupation (ranging by occupation from 160 to 960 hours, and normally limited to not more than one year; new or expanding plants not more than six months). Certificates are conditioned upon there being an inadequate supply of qualified, experienced workers and the applicant making reasonable efforts to recruit experienced workers. The use of learners must not create unfair competitive labor cost advantages nor depress wages or working standards for experienced workers in comparable work. Employers submit separate applications for each establishment and must demonstrate that efforts to hire

experienced workers have been ineffective.

Under Part 520, student-learners are pupils at least sixteen years old (eighteen if employed in certain hazardous occupations) who are enrolled in an accredited school, college or university and who are employed part-time under a bona fide vocational training program approved by a State board of vocational education. Certified student-learners must be paid at least 75 percent of the applicable minimum wage, with limits on the number of hours of employment training each week at subminimum wages.

Employment of a student-learner must not have the effect of displacing an employee of the establishment, nor depress wages or working standards for experienced workers in comparable work, nor impair the development or continuation of apprenticeship standards in the occupation or industries. Separate applications must be submitted for each student-learner, describing the vocational training program in detail and demonstrating how it relates to the jobs to be performed by the student-learner.

Under Part 527, student-workers are pupils enrolled in an educational institution who are at least 16 years old (18 if employed in certain hazardous occupations) and who are employed on a part-time basis in shops owned by the educational institution for the purpose of enabling the students to defray part of their school expenses. Student-workers employed under a special certificate must be paid no less than 75 percent of the applicable minimum wage. Certificates specify the number of students authorized on any day, the rates permitted during the training period, and length of the training period for each occupation (not to exceed one school year). Certificates are submitted by each educational institution seeking to employ student-workers.

Under Part 521, apprentices at least sixteen years old (eighteen if employed in certain hazardous occupations) may be employed at less than the applicable minimum wage in skilled trades under registered apprenticeship programs. Apprentices must receive a progressively increasing schedule of wages which average at least 50 percent of the journeyman level rate over the period of apprenticeship (one year or more [2,000 or more hours] of work experience). The Department of Labor's Bureau of Apprenticeship and Training (BAT) establishes criteria and registration procedures for both individual apprentices and employer apprenticeship plans.

Under Part 523, messengers employed primarily to deliver letters and messages may be paid subminimum wages to prevent curtailment of employment opportunities. Applications may be filed by an employer or an employee or group of employers or employees.

The use of these certificates was prevalent when the wages paid in many industries were equal to or very near the minimum wage. As the prevailing wage rates increased to levels well above the statutory minimum wage, fewer employees were willing to work at subminimum wage rates. Over the last twenty-five years, very few employers have applied for special certificates, except in the student-learner program.

The learner program, which includes learners, student-learners, and student-workers, historically was one of the largest subminimum wage programs. As wage rates rose in many industries employing learners and an adequate supply of experienced workers was available, the use of learner certificates declined. At its peak in 1962, over 2,200 certificates covering more than 46,000 learners were issued. The use of student-learner certificates rose to over 17,000 in 1975, but has fallen in recent years. Currently less than 800 student-learner certificates are issued each year. Because of the narrow focus of the student-worker program, the most certificates ever issued was 33 (covering 1,320 workers) in 1961.

About 900 apprentice certificates were issued in 1967, mostly in the Caribbean area (838). Regulations issued by the BAT no longer permit the payment of subminimum wages to apprentices. The Wage and Hour Division, therefore, has not issued any special certificates for apprentices since 1987.

On March 29, 1976, the Secretary of Labor presented a report to Congress in response to the directive of section 4(d)(2) of FLSA to conduct studies on the justification or lack thereof of each special exemption issued under section 14 of the Act. The Secretary reported that section 14(d), added by the 1974 FLSA Amendments, which made provision for a minimum wage and overtime exemption without requiring a special certificate for elementary or secondary school students employed by their schools, may have the impact of eliminating the need for the student-worker program. The Secretary recommended, however, that section 14(a) continue to make provisions for special employment of student-workers until the impact of section 14(d) could be evaluated.

No regulations regarding the provisions of section 14(d) were

promulgated. In the absence of regulations, the Department decided to take no action with respect to public or private elementary or secondary school students employed by their schools in various school-related work programs if their employment complied with the FLSA child labor provisions. Since enactment of section 14(d), no student-worker certificates have been issued.

In his report of March 29, 1976, the Secretary of Labor also recommended that the provisions authorizing subminimum wages for messengers be deleted from the FLSA. He also determined that the special provisions for learners could no longer be justified and should be limited to student-workers and student-learners. The report also recommended that the provisions for apprentices be retained until the impact of proposed BAT regulations could be evaluated. No action was taken on these recommendations and the section 14 requirements remain in the FLSA; thus there is a continuing need for these rules.

III. Summary and Discussion

This rule proposes to remove the regulation at 29 CFR Part 527, Employment of Student-Workers, and reserve the part. Section 14(d) of the FLSA makes provision for a minimum wage and overtime exemption for elementary or secondary school students employed by their schools where such employment is an integral part of the regular education program. In the absence of regulations regarding section 14(d), the Department has taken no action with respect to public or private elementary or secondary school students employed by their school in various school-related work programs if employed in compliance with the FLSA child labor provisions. Since section 14(d) of the FLSA was enacted in 1974, no applications for student-worker certificates have been submitted by any type of school, elementary, secondary or any other. The existing rule is unnecessary.

This rule proposes to merge the regulations at 29 CFR Parts 520, 521, 522, and 523 into one new Part 520 and to reserve the remaining sections. This proposal eliminates repetition of text contained in each separate regulation. Those sections overtaken by requirements of the Administrative Procedure Act were also deleted. The essential requirements contained in the current regulations are maintained in this revision. The language and context of these regulations have been simplified, shortened, and formatted to make them easier to understand.

As discussed above, the use of special certificates to employ messengers, learners, and apprentices at subminimum wages has declined considerably. It is appropriate to replace extended pages of obsolete regulations by consolidating these rules. This proposal, where possible, supplants the current language containing specific requirements with more general criteria common to all of the programs. Since long-standing regulatory requirements are being removed, a comment period is being provided. The Department does not expect to increase the number of certificates issued under these proposals because the economic conditions stated above are unchanged.

The specific criteria currently contained in 29 CFR Parts 520, 521, 522, and 523 will be replaced by the requirements of 29 CFR Part 520, subparts D and E. Applicants will be required to demonstrate that the criteria for issuance of special certificates have been met. Those situations where special certificates will not be issued have been clarified.

The proposed rule eliminates the previous industry specific learning periods for learners and replaces them with a standardized period of 240 hours absent extraordinary circumstances relating to a particular occupation warranting a longer learning period. It also removes the different learner program standards for new plants and established plants. The Department welcomes comments from the public regarding the establishment of a standardized learning period and whether 240 hours is an appropriate length.

The requirement to publish in the Federal Register a list of learner certificates issued has been removed as they are so few in number in recent years and no purpose is served by the publication of such a list. Interested parties may contact the agency for this information. This proposal removes any requirement that a hearing be held when an interested party objects to a certificate being issued or denied and replaces it with an informal reconsideration procedure that is more responsive to such parties. The period for requesting reconsideration and review has been extended to 60 days to accommodate those programs that previously required publishing a list of certificates issued in the Federal Register. The proposed rule also removes a section which allowed nonregistered apprenticeship agreements to be submitted for consideration when applying for a special certificate. Only properly

registered apprenticeship agreements will be accepted in the future.

The proposed rule permanently fixes, as the basis for establishing the special minimum wages that may be paid to messengers and learners (including student-learners) under section 14(a), the minimum wage applicable under section 6(a). This precludes combining the use of the youth opportunity wage established under section 6(g) with the special minimum wages authorized by section 14(a). It has been determined that the minimum wage applicable under section 6(a), which is greater than the youth opportunity wage, is both a necessary and a sufficient basis to establish special minimum wages which prevent the curtailment of employment opportunities as required by section 14(a).

The proposed rule also permanently sets the subminimum wage rate that may be paid messengers and learners at 95 percent of the minimum wage required by section 6(a) of the FLSA. This reflects the historical difference between the minimum wage and the authorized subminimum wage rate for learners, but it has always been stated in these sections as a dollar amount (i.e. \$4.10 per hour, \$3.65 per hour). By setting the authorized subminimum wage at a fixed percentage of the applicable minimum wage, we will no longer have to amend these sections each time the minimum wage is changed. All certificates issued under this rule will list the authorized subminimum wage rate.

The proposal incorporates the Division's long-standing policy of limiting the availability of special certificates for messengers to those firms whose principal business is the delivery of such letters and messages.

The changes discussed above will have no significant effect on the current operation of these programs.

Executive Order 12866 and Significant Regulatory Actions

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866. The consolidation of the current regulations at 29 CFR Parts 520, 521, 522, and 523, and the removal of Part 527 does not affect the current operation of any program and this action will not: (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.

Executive Order 12875 and Section 202 of the Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any federal mandate that may result in increased expenditures by either state, local and tribal governments in the aggregate, or by the private sector.

Regulatory Flexibility Analysis

This rule will not have a significant economic impact on a substantial number of small entities. The obligations and responsibilities established under the existing regulations will remain essentially the same under the proposed rule. The Department has certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Therefore, no Regulatory Flexibility Analysis is 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

29 CFR Part 520

Minimum wages, Reporting and recordkeeping requirements, Students, Wage and Hour Division.

29 CFR Part 521

Manpower training programs, Minimum wages, Reporting and recordkeeping requirements, Wage and Hour Division.

29 CFR Part 522

Cigar and cigarettes, Clothing, Electronic products, Manpower training programs, Minimum wages, Reporting and recordkeeping requirements, Wage and Hour Division.

29 CFR Part 523

Minimum wages, Wage and Hour Division.

29 CFR Part 527

Minimum wages, Reporting and recordkeeping requirements, Students, Wage and Hour Division.

For the reasons set forth above, 29 CFR Part 520, 29 CFR Part 521, 29 CFR Part 522, 29 CFR Part 523, and 29 CFR Part 527 are proposed to be amended as set forth below.

Signed at Washington, D.C. on the 6th day of February, 1997.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 521—[REMOVED AND RESERVED]

1.–2. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, unless otherwise noted, Title 29, Code of Federal Regulations is proposed to be amended by removing part 521.

PART 522—[REMOVED AND RESERVED]

3. Under the authority of Sec. 14, 52 Stat. 1062, 1064 (29 U.S.C. 214); secs. 2–12, 60 Stat. 237–244 (5 U.S.C. 1001–1011), 29 U.S.C. 214, Title 29, Code of Federal Regulations is proposed to be amended by removing part 522.

PART 523—[REMOVED AND RESERVED]

4. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is proposed to be amended by removing part 523.

PART 527—[REMOVED AND RESERVED]

5. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is proposed to be amended by removing part 527.

PART 520—[REVISED]

6. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is proposed to be amended by revising part 520 to read as follows:

PART 520—EMPLOYMENT UNDER SPECIAL CERTIFICATE OF MESSENGERS, LEARNERS (INCLUDING STUDENT-LEARNERS), AND APPRENTICES

Subpart A—[Reserved]

Subpart B—What Are The General Provisions Governing the Employment of Messengers, Learners (Including Student-Learners), and Apprentices at Subminimum Wages?

Sec.

520.200 What is the legal authority for payment of wages lower than the minimum wage required by section 6(a) of the Fair Labor Standards Act?

520.201 How are those classifications of workers which may be paid subminimum wages under section 14(a) of the Fair Labor Standards Act defined?

520.202 How do persons who want to apply for a particular certificate find out what is needed?

520.203 What records does an employer have to keep when subminimum wage certificates are granted? How long do they have to be kept?

520.204 If someone does not agree with the Department of Labor's decision on a certificate, can the decision be appealed?

520.205 How do these rules affect other Federal, state and local laws and collective bargaining agreements?

Subpart C—Definitions

Subpart D—Messengers, Learners (Excluding Student-Learners), and Apprentices

520.400 Who are messengers, learners, and apprentices?

520.401 Are there any industries, occupations, etc. that do not qualify for a certificate to employ messengers, learners, or apprentices at subminimum wages?

520.402 How do I obtain authority to employ messengers, learners, or apprentices at subminimum wages?

520.403 What information is required when applying for authority to pay less than the minimum wage?

520.404 What must I demonstrate in my application for a messenger, learner, or apprentice certificate to receive a favorable review?

520.405 Must I notify my employees that I am applying for a certificate to employ messengers and/or learners at subminimum wages?

520.406 What happens once I have submitted my request for authorization to pay messengers, learners, or apprentices subminimum wages?

520.407 What is the subminimum wage for messengers and what must I do to comply with the terms of my certificate?

520.408 What is the subminimum wage for learners and what must I do to comply with the terms of my certificate?

520.409 When will authority to pay apprentices special minimum wages become effective and what is the special minimum wage rate?

- 520.410 How long does a messenger, learner, or apprentice certificate remain in effect?
- 520.411 Does a certificate authorizing payment of subminimum wages to messengers and/or learners remain in effect during the renewal process?
- 520.412 What records, in addition to those required by part 516 of this chapter and § 520.203 of this part, must I keep relating to the employment of messengers, learners, or apprentices under special certificate?

Subpart E—Student-Learners

- 520.500 Who is a student-learner?
- 520.501 How do I obtain authority to employ student-learners at subminimum wages?
- 520.502 What information must an application to employ student-learners at subminimum wages contain?
- 520.503 What must I demonstrate in my application for a student-learner certificate to receive a favorable review?
- 520.504 When will authority to pay student-learners subminimum wages become effective?
- 520.505 How will I be notified that my request to employ student-learners at subminimum wages has been denied and can I appeal the denial?
- 520.506 What is the subminimum wage for student-learners and what must I do to comply with the terms of my student-learner certificate?
- 520.507 How long does my certificate remain in effect?
- 520.508 What records, in addition to those required by part 516 of this chapter and § 520.203 of this part, must I keep when student-learners are employed?

Authority: Sec. 14, 52 Stat. 1062, 1064 (29 U.S.C. 214); secs. 2–12, 60 Stat. 237–244; (5 U.S.C. 1001–1011); 52 Stat. 1068, as amended, 29 U.S.C. 214.

PART 520—EMPLOYMENT UNDER SPECIAL CERTIFICATE OF MESSENGERS, LEARNERS (INCLUDING STUDENT-LEARNERS), AND APPRENTICES

Subpart A—[Reserved]

Subpart B—What Are the General Provisions Governing the Employment of Messengers, Learners (Including Student-Learners), and Apprentices at Subminimum Wages?

§ 520.200 What is the legal authority for payment of wages lower than the minimum wage required by section 6(a) of the Fair Labor Standards Act?

Section 14(a) of the Fair Labor Standards Act provides, in order to prevent curtailment of employment opportunities, for the payment of special minimum wage rates to workers employed as messengers, learners (including student-learners), and apprentices under special certificates issued by the Department of Labor.

§ 520.201 How are those classifications of workers which may be paid subminimum wages under section 14(a) of the Fair Labor Standards Act defined?

(a) A messenger is a worker who is primarily engaged in delivering letters and messages for a firm whose principal business is the delivery of such letters and messages.

(b) A learner is a worker who is being trained for an occupation, which is not customarily recognized as an apprenticeable trade, for which skill, dexterity and judgment must be learned and who, when initially employed, produces little or nothing of value. Except in extraordinary circumstances, an employee cannot be considered a “learner” once he/she has acquired a total of 240 hours of job-related and/or vocational training with the same or other employer(s) or training facility(ies) during the past three years. An individual qualifying as a “learner” may only be trained in two qualifying occupations.

(c) A student-learner is a student who is at least sixteen years of age, or at least eighteen years of age if employed in an occupation which the Secretary has declared to be particularly hazardous, who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a “bona fide vocational training program” as defined in subpart C of this part.

(d) An apprentice is a worker, at least sixteen years of age unless a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade through a registered apprenticeship program. Training is provided through structured on-the-job training combined with supplemental related theoretical and technical instruction. This term excludes pre-apprentices, trainees, learners, and student-learners. The terms learner and student-learner are defined in subpart C of this part. Standards governing the registration of apprenticeship programs are established and administered by the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT) and are found in part 29 of this title.

(e) Additional terms used in this part are defined in subpart C.

§ 520.202 How do persons who want to apply for a particular certificate find out what is needed?

The application process, terms, conditions and requirements of certificates and other matters are discussed in subparts D and E of this part. Messengers, learners (excluding student-learners), and apprentices are

discussed in subpart D and student-learners in subpart E.

§ 520.203 What records does an employer have to keep when subminimum wage certificates are granted? How long do they have to be kept?

(a) In addition to other records required under the record-keeping regulations (part 516 of this chapter), the employer is required to keep records specific to certification under section 14(a) of the Fair Labor Standards Act. All workers employed under a subminimum wage certificate shall be designated as such on the employer's payroll records. Further recordkeeping requirements are described in each applicable subpart of this part (see §§ 520.412 and 520.508).

(b) Employers must maintain and preserve all required records for at least three years from the last date of employment under a subminimum wage program. The employer's copy of the application and the certificate shall also be maintained for three years. Such records shall be kept secure and accessible at the place of employment or where payroll records are customarily maintained. All records must be available for inspection and copying by the Administrator.

§ 520.204 If someone does not agree with the Department of Labor's decision on a certificate, can the decision be appealed?

(a) Any person, applicant, trade union, association, etc. who does not agree with action granting or denying a certificate (pursuant to §§ 520.406 and 520.505) may, within 60 days of that action or such additional time as the Administrator may allow, file with the Administrator a petition for review. The decision of the Administrator becomes final unless such a written request is timely filed.

(b) Such requests should contain a statement of the additional evidence which the person believes may materially affect the decision and establish that there were reasonable grounds for failure to present such evidence during the original certification process.

(c) If a request for reconsideration or review is granted, the Administrator, to the extent it is deemed appropriate, may afford other interested persons an opportunity to present data and views.

(d) The Administrator may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this part.

§ 520.205 How do these rules affect other Federal, state and local laws and collective bargaining agreements?

No provision of this part, or of any special minimum wage certificate issued thereunder, shall excuse noncompliance with any other Federal or state law or municipal ordinance or collective bargaining agreement establishing higher standards.

Subpart C—Definitions

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, or his/her authorized representative.

Apparel industry means the manufacturing of the following products as referred to in subpart D of this part:

(1) Rainwear means the manufacture of waterproofed garments and raincoats from oiled cloth or other materials, whether vulcanized, rubberized, cravenetted, or otherwise processed.

(2) Leather and sheep-lined clothing means the manufacture of leather, leather-trimmed and sheeplined garments for men, women or children.

(3) Women's apparel division of the apparel industry for the manufacture of women's, misses', and juniors' dresses means the production of women's, misses' and juniors' dresses; washable service garments; blouses from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear and negligees from woven fabrics; corsets and other body supporting garments from any material; infants' and children's outerwear; and other garments similar to them.

(4) Robes, means the manufacture of robes from any woven material or from purchased knitted materials, including, without limitation, men's women's and children's bath, lounging and beach robes and dressing gowns.

Apprentice means a worker, at least sixteen years of age unless a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade through a registered apprenticeship program. Training is provided through structured on-the-job training combined with supplemental related theoretical and technical instruction. This term excludes pre-apprentices, trainees, learners, and student-learners. The terms learner and student-learner are defined in this subpart.

Apprenticeship agreement means a written agreement between an apprentice and either his/her employer, or an apprenticeship committee acting as agent for employer(s), which

agreement contains the terms and conditions of the employment and training of the apprentice.

Apprenticeship committee means those persons designated by the sponsor to act for it in the administration of the program. A committee may be "joint", i.e., it is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be "unilateral" or "non-joint" and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

Apprenticeship program means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirements for a written apprenticeship agreement.

BAT means the Bureau of Apprenticeship and Training, Employment and Training Administration, United States Department of Labor.

Bona fide vocational training program means a program authorized and approved by a state board of vocational education or other recognized educational body that provides for part-time employment training which may be scheduled for a part of the work day or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner's course by an accredited school, college, or university.

Department means the United States Department of Labor.

Experienced worker means a worker whose total experience in an authorized learner occupation in the industry, including vocational training, within the past three years is equal to 240 hours or such other period as authorized by a learner certificate issued pursuant to the regulations in this part.

Experienced worker available for employment means an experienced worker residing within the area from which the plant/business customarily draws its labor supply or within a reasonable commuting distance of such area, and who is willing and able to accept employment in the plant/business; or an experienced worker residing outside of the area from which the plant/business customarily draws its labor supply, who has in fact made

himself or herself available for employment at the plant/business.

FLSA means the Fair Labor Standards Act of 1938 as amended (29 U.S.C 201 *et seq.*).

Learner means a worker who is being trained for an occupation, which is not customarily recognized as an apprenticeable trade, for which skill, dexterity and judgment must be learned and who, when initially employed produces little or nothing of value. Except in extraordinary circumstances, an employee cannot be considered a "learner" once he/she has acquired a total of 240 hours of job-related and/or vocational training with the same or other employer(s) or training facility(ies) during the past three years. An individual qualifying as a "learner" may only be trained in two qualifying occupations.

Learning period means a period of time measured in work hours and vocational training hours that is normally required to fully train an inexperienced worker in a particular occupation within an industry where the learner is employed. The learning period will not exceed 240 hours for any qualifying occupation except in extraordinary circumstances where the employer demonstrates that the occupation to be learned requires an extended period of specialized training.

Men's and boys' clothing industry means the industry which manufactures men's, youths', and boys' suits, coats, and overcoats.

Messenger means a worker who is primarily engaged in delivering letters and messages for a firm whose principal business is the delivery of such letters and messages.

Minimum wage means the wage rate required by section 6 of FLSA. For purposes of this part, subminimum wage rates are based exclusively on the applicable minimum wage provided by section 6(a).

Recognized apprenticeship agency means either a state apprenticeship agency recognized by the BAT, or if no such apprenticeship agency exists in the state, the BAT.

Registered apprenticeship program or agreement means a program or agreement which has been approved by a recognized apprenticeship agency as meeting the basic standards of apprenticeship adopted and published by BAT.

Secretary or Secretary of Labor means the Secretary of Labor, United States Department of Labor or his/her authorized representative.

Shoe manufacturing industry means the manufacture or partial manufacture of footwear from any material and by

any process except knitting, vulcanizing of the entire article or vulcanizing (as distinct from cementing) of the sole to the upper, including the manufacturing of the following: athletic shoes; boots; boot tops; burial shoes; custom-made boots or shoes; moccasins; puttees, except spiral puttees; sandals; shoes completely rebuilt in a shoe factory; slippers. This term also includes the manufacture from leather or from any shoe-upper material of all cut stock and findings for footwear, including bows, ornaments, and trimmings. It also includes the manufacture of cutsoles; midsoles; insoles; taps; lifts; rands; toplifts; bases; shanks; boxtoes; counters; stays; stripping; sock linings; and heel pads. Shoe manufacturing also includes the manufacture of heels from any material except molded rubber, but not including the manufacture of woodheel blocks; the manufacture of cut upper parts for footwear, including linings, vamps and quarters; and the manufacture of pasted shoe stock; as well as the manufacture of boot and shoe patterns. However, the manufacture of cut stock and findings is included within this definition only when performed by companies engaged in the production of shoes who incorporate most of the cut stock and findings in the manufacture of their product(s).

Skilled trade means an apprenticeable occupation which possesses all of the following characteristics:

- (1) It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training.
- (2) It is clearly identified and commonly recognized throughout an industry.
- (3) It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.
- (4) It requires related instruction to supplement the on-the-job training.
- (5) It is not merely a part of an apprenticeable occupation and does not fall into any of the following categories: marketing; sales administration; administrative support; executive and managerial; professional and semi-professional occupations (this category covers occupations for which entrance requirements customarily include education of college level).

Standards of apprenticeship means the apprenticeship program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, which meets the requirements established by BAT, and is

subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

State means any state of the United States or the District of Columbia or any territory or possession of the United States.

Student-learner means a student who is at least sixteen years of age, or at least eighteen years of age if employed in an occupation which the Secretary has declared to be particularly hazardous, who is receiving instruction in an accredited school, college or university and who is employed by an establishment on a part-time basis, pursuant to a bona fide vocational training program.

Subminimum wage means the rates which may be paid under temporary authorization or under certificate as provided by section 14(a) of FLSA and this part.

Vocational Training Program. See "Bona fide vocational training program".

Wage and Hour Division means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

Subpart D—Messengers, Learners (Excluding Student-Learners), and Apprentices

§ 520.400 Who are messengers, learners, and apprentices?

The terms messenger, learner, and apprentice are defined in subpart C of this part.

§ 520.401 Are there any industries, occupations, etc. that do not qualify for a certificate to employ messengers, learners, or apprentices at subminimum wages?

(a) Certificates to employ messengers at subminimum wages are available to only those establishments engaged in the business of providing messenger service, i.e., the delivery of letters and messages. Requests for such certificates are uniformly denied to applicants whose principal business purpose is not the delivery of messages and letters.

(b) All applications for special certificates authorizing the employment of learners at subminimum wage rates in the manufacture of products in the following industries shall be denied (definitions for all listed activities can be found in subpart C of this part):

- (1) In the apparel industry:
 - (i) Rainwear;
 - (ii) Leather and sheep-lined clothing;
 - (iii) Women's apparel division of the apparel industry for the manufacture of women's, misses', and juniors' dresses;
 - (iv) Robes;
- (2) Shoe manufacturing industry; and
- (3) Men's and boys' clothing industry.

(c) No certificates will be granted authorizing the employment of learners at subminimum wage rates as homeworkers; in maintenance occupations such as guard, porter, or custodian; in office and clerical occupations in any industry; or in operations of a temporary or sporadic nature.

(d) Authorization to employ apprentices at subminimum wages will only be granted if permitted by the BAT regulations (29 CFR part 29).

§ 520.402 How do I obtain authority to employ messengers, learners, or apprentices at subminimum wages?

(a) Employers wishing to employ messengers, learners, or apprentices as defined in subpart C of this part at subminimum wages must apply for authority to do so from the Administrator at the Wage and Hour Division's Regional Office having administrative jurisdiction over the geographic area in which the employment is to take place. To obtain the address of the Regional Office which services your geographic area, please contact your local Wage and Hour Office (under "Department of Labor" in the blue pages of your local telephone book).

(b) In the case of messengers, such application may be filed by an employer or group of employers. Preferential consideration will be given to applications filed by groups or organizations which are deemed to be representative of the interests of a whole industry or branch thereof.

§ 520.403 What information is required when applying for authority to pay less than the minimum wage?

(a) A separate application must be made for each plant or establishment requesting authorization for employment of messengers and/or learners at subminimum wages, on the official form furnished by the Wage and Hour Division, containing all information required by the form including:

(1) Information concerning efforts made by the applicant to obtain experienced workers in occupation(s) for which learners are requested;

(2) The occupations/industry in which the messenger(s) and/or learner(s) are to be employed;

(3) A statement explaining why employment of messenger(s) and/or learner(s) at subminimum wages is needed to prevent curtailment of employment opportunities;

(4) The number of messengers and/or learners the applicant anticipates employing at subminimum wages under special certificate;

(5) If requesting authorization for the employment of learners at subminimum wages for a learning period greater than 240 hours, information pertinent to the extraordinary circumstances necessitating such a request. While each such request will be considered on its own merit, it is anticipated that such authorizations would be limited to occupations requiring an extended period of specialized training;

(6) The number of messengers and/or learners hired at subminimum wages during the twelve-month period prior to making application;

(7) Total number of nonsupervisory workers in the particular plant or establishment for which a certificate is requested;

(8) The number of experienced workers in the learner occupations and their straight-time average hourly earnings during the last payroll period and the corresponding payroll period in the prior year; and

(9) The type of equipment to be used by learners.

(b) For apprentices, the employer or apprenticeship committee must submit a copy of the registered apprenticeship program.

(c) Any applicant may also submit such additional information as may be pertinent. Applications which fail to provide the information required by the form may be returned to the applicant with a notation of deficiencies and without prejudice against submission of a new or revised application.

§ 520.404 What must I demonstrate in my application for a messenger, learner, or apprentice certificate to receive a favorable review?

(a) The application must demonstrate that a certificate is necessary in order to prevent the curtailment of opportunities for employment.

(b) The issuance of a messenger and/or learner certificate must not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage rates or working standards of experienced workers performing work of a like or comparable character in the industry.

(c) Abnormal labor conditions such as a strike, lock-out, or other similar condition, must not exist at the plant or establishment for which a messenger and/or learner certificate is requested.

(d) It must be shown that an adequate supply of qualified experienced workers is not available for employment in those occupations for which authorization to pay subminimum wages to learners has been requested; that the experienced workers presently employed in the plant or establishment in occupations in

which learners are requested are afforded an opportunity, to the fullest extent possible, for full-time employment upon completion of the learning period; and that learners are available for employment.

(e) Reasonable efforts must have been made to recruit workers paid at least the minimum wage in those occupations in which certificates to employ learners at subminimum wages have been requested. This includes the placement of an order with the local State or Territorial Public Employment Service Office (except in possessions where there is no such office) not more than fifteen days prior to the date of application. Written evidence from such office that the order has been placed shall be submitted by the employer with the application.

(f) The occupation or occupations in which learners are to receive training must involve a sufficient degree of skill to necessitate an appreciable learning period.

(g) An apprenticeship program must conform with or substantially conform with the standards of apprenticeship as defined in subpart C of this part.

(h) There must be no serious outstanding violations involving the employee(s) for whom a certificate is being requested nor any serious outstanding violations of a certificate previously issued, nor any serious violations of the FLSA which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

§ 520.405 Must I notify my employees that I am applying for a certificate to employ messengers and/or learners at subminimum wages?

Upon making application for a messenger and/or learner certificate or for renewal thereof, an employer shall post a copy of the first page of the completed application form in a conspicuous place in each department of the plant or establishment where he/she proposes to employ messengers and/or learners at subminimum wage rates. Such notice shall remain posted until the application is acted upon by the Administrator.

§ 520.406 What happens once I have submitted my request for authorization to pay messengers, learners, or apprentices subminimum wages?

(a) All applications submitted for authorization to pay wages lower than those required by section 6(a) of the FLSA will be considered and acted upon (issued or denied) subject to the conditions specified in §§ 520.403 and 520.404.

(b) If, in the case of messengers and/or learners, available information indicates that the requirements of this part are satisfied, the Administrator shall issue a special certificate which will be mailed to the employer. If a special certificate is denied, the employer shall be given written notice of the denial. If a messenger and/or learner certificate is denied, notice of such denial shall be without prejudice to the filing of any subsequent application.

(c) If, in the case of apprentices, the apprenticeship agreement and others available information indicate that the requirements of this part are satisfied, the Administrator shall issue a special certificate. The special certificate, if issued, shall be mailed to the employer or the apprenticeship committee and a copy shall be mailed to the apprentice. If a special certificate is denied, the employer or the apprenticeship committee, the apprentice and the recognized apprenticeship agency shall be given written notice of the denial. The employer shall pay the apprentice the minimum wage applicable under section 6(a) of the FLSA from the date of receipt of notice of such denial.

§ 520.407 What is the subminimum wage for messengers and what must I do to comply with the terms of my certificate?

(a) A messenger certificate, if issued, shall specify:

(1) The subminimum wage rate of not less than 95 percent of the applicable minimum wage required by section 6(a) of the FLSA; and

(2) The effective and expiration dates of the certificate.

(b) The employer shall post a copy of the messenger certificate during its effective period in a conspicuous place where it can be readily seen by employees.

(c) No messenger shall be hired under a messenger certificate while abnormal labor conditions such as a strike, lock-out, or other similar condition, exist.

§ 520.408 What is the subminimum wage for learners and what must I do to comply with the terms of my certificate?

(a) All learner certificates shall specify:

(1) The subminimum wage rate of not less than 95 percent of the applicable minimum wage required by section 6(a) of the FLSA;

(2) The number or proportion of learners authorized to be employed on any one day;

(3) The occupations in which learners may be employed;

(4) The authorized learning period of not more than 240 hours, except in

extraordinary situations as discussed in § 520.403; and

(5) The effective and expiration dates of the certificate.

(b) Learners properly hired prior to the date on which a learner certificate expires may be continued in employment at subminimum wage rates for the duration of their authorized learning period under the terms of the certificate, even though the certificate may expire before the learning period is completed.

(c) The employer shall post a copy of the learner certificate during its effective period and thereafter until all authorized learners have completed their learning period(s). The certificate shall be posted in a conspicuous place in each department of the plant where learners are to be employed.

(d) No learners shall be hired under a learner certificate if, at the time the employment begins, experienced workers capable of equaling the performance of a worker of minimum acceptable skill are available for employment. Before hiring learners during the effective period of the certificate, the employer shall place an order for experienced workers with the local State or Territorial Public Employment Service Office (except in possessions where there is no such office) or have such an active order on file. Written evidence that an order has been placed or is on active file shall be maintained in the employer's records.

(e) No learner shall be hired under a learner certificate while abnormal labor conditions such as a strike, lock-out, or other similar condition exist in the plant or establishment.

(f) For each individual learner, the number of hours of previous employment and hours of vocational or similar facility(ies) training must be deducted from the authorized learning period if within the past three years the learner has been employed or received vocational training in a given occupation and industry.

(g) If experienced workers are paid on a piece rate basis, learners shall be paid at least the same piece rates as experienced workers employed on similar work in the plant and shall receive earnings based on such piece rates whenever such earnings exceed the subminimum wage rates permitted in the certificate.

§ 520.409 When will authority to pay apprentices special minimum wages become effective and what is the special minimum wage rate?

(a) An apprenticeship program which has been registered with a recognized apprenticeship agency shall constitute a

temporary special certificate authorizing the employment of an apprentice at the wages and under the conditions specified in such program until a special certificate is issued or denied.

This temporary authorization is, however, conditioned on the requirement that within 90 days from the beginning date of employment of the apprentice, the employer or the apprenticeship committee shall send one copy of each apprenticeship agreement, with evidence of registration, to the appropriate Regional Office of the Wage and Hour Division.

(b) The wage rate specified by the apprenticeship program becomes the special minimum wage rate that must be paid unless the Administrator issues a certificate modifying the terms and conditions of employment of apprentices at special minimum wages.

§ 520.410 How long does a messenger, learner, or apprentice certificate remain in effect?

(a) Messenger and/or learner certificates may be issued for a period of not longer than one year.

(b) Each special apprentice certificate shall specify the conditions and limitations under which it is granted, including the periods of time during which subminimum wage rates may be paid pursuant to a registered apprenticeship program.

(c) No certificate may be issued retroactively.

(d) The Administrator may amend the provisions of a certificate when necessary to correct omissions or defects in the original certificate or reflect changes in this part.

§ 520.411 Does a certificate authorizing payment of subminimum wages to messengers and/or learners remain in effect during the renewal process?

(a) Application for renewal of a messenger and/or learner certificate shall be made on the same form as described in this section and employees shall be advised of such renewal application in the same manner as explained in § 520.405. No effective messenger and/or learner certificate shall expire until action on an application for renewal shall have been finally determined, provided that such application has been properly executed in accordance with the requirements, and filed with and received by the Administrator not less than fifteen nor more than thirty days prior to the expiration date. A final determination means either the granting of or initial denial of the application for renewal of a messenger and/or learner certificate, or withdrawal of the application. A "properly executed application" is one

which contains the complete information required on the form, and the required certification by the applicant.

(b) A renewal certificate will not be issued unless there is a clear showing that the conditions set forth in § 520.404 still prevail.

§ 520.412 What records, in addition to those required by part 516 of this chapter and § 520.203 of this part, must I keep relating to the employment of messengers, learners, or apprentices under special certificate?

(a) Each worker employed as a messenger, learner, or apprentice under a certificate shall be designated as such on the employer's payroll records. All such messengers, learners, or apprentices shall be listed together as a separate group on the payroll records, with each messenger's, learner's, or apprentice's occupation being shown.

(b) At the time learners are hired, the employer shall also obtain and keep in his/her records a statement signed by each employee showing all applicable experience which the learner had in the employer's industry, including vocational training, during the preceding three years. The statement shall contain the dates of such previous employment, names and addresses of employers, the occupation or occupations in which the learner was engaged and the types of products upon which the learner worked. The statement shall also contain information concerning pertinent training in vocational training schools or similar training facilities, including the dates of such training and the identity of the vocational school or training facility. If the learner has had no applicable experience or pertinent training, a statement to that effect signed by the learner shall likewise be kept in the employer's records.

(c) The employer shall maintain a file of all evidence and records, including any correspondence, pertaining to the filing or cancellation of job orders placed with the local State or Territorial Public Employment Service Office pertaining to job orders for occupations to be performed by learners.

(d) Every employer who employs apprentices under temporary or special certificates shall preserve for three years from the last effective date of the certificate copies of the apprenticeship program, apprenticeship agreement and special certificate under which such an apprentice is employed.

(e) Every apprenticeship committee which holds a certificate under this part shall keep the following records for each apprentice under its control and supervision:

(1) The apprenticeship program, apprenticeship agreement and special certificate under which the apprentice is employed by an employer;

(2) The cumulative amount of work experience gained by the apprentice, in order to establish the proper wage at the time of his/her assignment to an employer; and

(3) A list of the employers to whom the apprentice was assigned and the period of time he/she worked for each employer.

(f) The records required in this section, including a copy of the application(s) submitted and any special certificate(s) issued, shall be kept and made available for inspection for at least three years from the expiration date of the certificate(s).

Subpart E—Student-Learners

§ 520.500 Who is a student-learner?

The term student-learner is defined in subpart C.

§ 520.501 How do I obtain authority to employ student-learners at subminimum wages?

(a) Employers wishing to employ student-learners at subminimum wages must apply for authority to do so from the Administrator at the Wage and Hour Division's Regional Office having administrative jurisdiction over the geographic area in which the employment is to take place. To obtain the address of the Regional Office which services your geographic area, please contact your local Wage and Hour Office (under "Department of Labor" in the blue pages of your local telephone book).

(b) Application must be made on the official form furnished by the Wage and Hour Division and must be signed by the employer, the appropriate school official and the student-learner. A separate application must be filed by the employer for each student-learner the employer proposes to employ at subminimum wages.

§ 520.502 What information must an application to employ student-learners at subminimum wages contain?

Student-learner applications must contain:

(a) A statement clearly outlining the vocational training program and showing, particularly, the processes in which the student-learner will be engaged when in training on the job;

(b) A statement clearly outlining the school instruction directly related to the job;

(c) The total number of workers employed in the establishment;

(d) The number and hourly wage rates of experienced workers employed in the occupation in which the student-learner is to be trained;

(e) The hourly wage rate or progressive wage schedule which the employer proposes to pay the student-learner;

(f) The age of the student-learner;

(g) The period of employment training at subminimum wages;

(h) The number of hours of employment training a week and the number of hours of school instruction a week;

(i) A certification by the appropriate school official that the student named on the application form will be receiving instruction in an accredited school, college, or university and will be employed pursuant to a bona fide vocational training program, as defined in subpart C of this part. The certification by the school official must satisfy the following conditions:

(1) The application must be properly executed in conformance with § 520.501;

(2) The employment training must conform with the provisions of § 520.503 (a), (c), (d), and (g) and paragraphs (a) and (c) of § 520.506;

(3) The occupation must not be one for which a student-learner application was previously submitted by the employer and a special certificate was denied by the Administrator.

§ 520.503 What must I demonstrate in my application for a student-learner certificate to receive a favorable review?

Each student-learner application must demonstrate that:

(a) The training program under which the student-learner will be employed is a bona fide vocational training program as defined in subpart C of this part;

(b) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment;

(c) The student-learner is at least sixteen years of age, or at least eighteen years of age if employed in any occupation which the Secretary has declared to be particularly hazardous (see part 570, subpart E, of this chapter, but note the specific exemptions for student-learners in several of the orders);

(d) The occupation for which the student-learner is receiving preparatory training requires a sufficient degree of skill to necessitate a substantial learning period;

(e) The training is not for the purpose of acquiring manual dexterity and high

production speed in repetitive operations;

(f) The employment of a student-learner will not have the effect of displacing a worker employed in the establishment;

(g) The employment of the student-learners at subminimum wages must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character;

(h) The occupational needs of the community or industry warrant the training of student-learners;

(i) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of the FLSA by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued;

(j) The issuance of such a certificate would not tend to prevent the development of apprenticeship programs in accordance with the regulations applicable thereto (subpart D of this part) or would not impair established apprenticeship standards in the occupation or industry involved; and

(k) The number of student-learners to be employed in one establishment is not more than a small proportion of its work force.

§ 520.504 When will authority to pay student-learners subminimum wages become effective?

(a) Certification by the appropriate school official on an application for a special student-learner certificate shall constitute a temporary authorization. This temporary authorization is effective from the date such application is forwarded to the Wage and Hour Division in conformance with § 520.501.

(b) At the end of 30 days, this application shall become the permanent special student-learner certificate unless, after review, the Administrator denies the application, issues a certificate with modified terms and conditions, or expressly extends the period of review.

§ 520.505 How will I be notified that my request to employ student-learners at subminimum wages has been denied and can I appeal the denial?

(a) If, after review, an application is denied, notification of denial will be made to the appropriate school official, the employer and the student. This notification will occur within 30 days following the date such application was forwarded to the Wage and Hour Division, unless additional time for

review is considered necessary or appropriate.

(b) If additional time for review is considered necessary or appropriate, the proper school official, the employer, and the student shall be so notified. To the extent feasible, the Administrator may provide an opportunity to other interested persons to present data and views on the application before denying a special student-learner certificate.

(c) Whenever a notification of denial is mailed to the employer, such denial shall be without prejudice to any subsequent application, except under the circumstances referred to in § 520.502(i)(3).

(d) Section 520.204 describes the procedures for requesting reconsideration of a decision to grant or deny a certificate.

§ 520.506 What is the subminimum wage for student-learners and what must I do to comply with the terms of my student-learner certificate?

(a) The special minimum wage rate paid to student-learners shall be not less than 75 percent of the applicable minimum under section 6(a) of the FLSA.

(b) Compliance with items listed for favorable review of a student-learner application (§ 540.503) must be demonstrated.

(c) (1) The number of hours of employment training each week at subminimum wages pursuant to a certificate, when added to the hours of

school instruction, shall not exceed 40 hours, except that authorization may be granted by the Administrator for a greater number of hours if found to be justified by extraordinary circumstances.

(2) When school is not in session on any school day, the student-learner may work a number of hours in addition to the weekly hours of employment training authorized by the certificate; provided,

(i) The total hours worked shall not exceed 8 hours on any such day, and

(ii) A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked on such day.

(3) During the school term, when school is not in session for the entire week, the student-learner may work at his/her employment training a number of hours in the week in addition to those authorized by the certificate; provided,

(i) The total hours shall not exceed 40 hours in any such week, and

(ii) A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked in such week.

(d) A special student-learner certificate shall not constitute authorization to pay a subminimum wage rate to a student-learner in any week in which he/she is employed for a number of hours in addition to the number authorized in the certificate,

except as provided in paragraphs (c)(1), (2), and (3) of this section.

§ 520.507 How long does my certificate remain in effect?

(a) A special student-learner certificate shall be effective for a period not to exceed the length of one school year unless a longer period is found to be justified by extraordinary circumstances. These circumstances must be explained in detail at the time of application. While each such request will be considered on its own merit, it is anticipated that such authorizations would be limited to occupations requiring an extended period of specialized training;

(b) No certificate shall authorize employment training beyond the date of graduation.

(c) No special student-learner certificate may be issued retroactively.

§ 520.508 What records, in addition to those required by part 516 of this chapter and § 520.203 of this part, must I keep when student-learners are employed?

Any worker employed as a student-learner shall be identified as such on the payroll records, with each student-learner's occupation and rate of pay being shown. Notations should be made in the employer's records when additional hours are worked by reason of school not being in session.

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