

that employment not be in "close proximity" to machinery or equipment.

(g) An employer or group of employers granted such a waiver who owns, operates, or causes to be operated any vehicle for the transportation of such minors shall be responsible for assuring that:

(1) Every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations issued by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation;

(2) Every such vehicle be designed for transporting passengers and be operated by a lawfully licensed driver; and

(3) A vehicle liability insurance policy provides insurance in an amount not less than the amounts applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act and its regulations. These amounts currently are as follows:

INSURANCE REQUIRED FOR PASSENGER EQUIPMENT		
	12 or less passengers	More than 12 passengers
Limit for bodily injuries to or death of 1 person	\$100,000	\$100,000
Limit for bodily injuries to or death of all persons injured or killed in any 1 accident (subject to a maximum of \$100,000 for bodily injuries to or death of 1 person)	300,000	500,000
Limit for loss or damage in any 1 accident to property of others (excluding cargo)	50,000	50,000

(h) A copy of the waiver shall be posted or readily available at the site or sites of such employment of such minors during the entire period.

(i) The employer or group of employers shall maintain and preserve a record of the name, address, and occupation of each minor employed under the waiver in accordance with §516.33(b) of this chapter. In addition, the record shall also include the date of birth, the name and address of the school in which the minor is enrolled, and the number of hours worked each day and each week of the designated period. Each employer required to maintain records under this part shall preserve them for a period of at least 2 years.

(j) A waiver shall be effective for the period designated therein with no provision for amendment

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

§ 575.9 Failure to comply with the terms and conditions of the waiver.

If the employer or group of employers granted a waiver pursuant to section 13(c)(4) of the Act and this part do not comply with the terms and conditions set forth in the waiver and this part, the waiver shall be null and void and the employer or group of employers will be subject to civil money penalties under section 16(e) of the Act.

PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

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AUTHORITY: Sec. 9, Pub. L. 101-157, 103 Stat. 938, sec. 3103, Pub. L. 101-508, 104 Stat. 1388-29 (29 U.S.C. 216(e)).

SOURCE: 57 FR 49129, Oct. 29, 1992, unless otherwise noted.

§ 578.1 Purpose and scope.

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to subject any person who repeatedly or willfully violates section 6 or section 7 of the Act to a civil money penalty not to exceed \$1,000 for each such violation. This part defines terms necessary for administration of the civil money penalty provisions, describes the violations for which a penalty may be imposed, and describes criteria for determining the amount of penalty to be assessed. The procedural requirements for assessment and contest of such penalties are set forth in 29 CFR part 580.

§ 578.2 Definitions.

- (a) *Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060 (29 U.S.C. 201 et seq.));
- (b) *Administrator* means the Administrator of the Wage and Hour Division,

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Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division who is authorized by the Administrator to perform any of the functions of the Administrator under this part.

(c) *Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

§ 578.3 Violations for which penalty may be assessed.

(a) A penalty of up to \$1,000 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. The amount of the penalty shall be determined by application of the criteria in § 578.4.

(b) *Repeated violations.* An employer's violation of section 6 or section 7 of the Act shall be deemed to be "repeated" for purposes of this section:

(1) Where the employer has previously violated section 6 or 7 of the Act, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 6 or 7 of the Act, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

(c) *Willful violations.* (1) An employer's violation of section 6 or section 7 of the Act shall be deemed to be "willful" for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.

(2) For purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour

Division to the effect that the conduct in question is not lawful.

(3) For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

[57 FR 49129, Oct. 29, 1992; 57 FR 57280, Dec. 3, 1992]

§ 578.4 Determination of penalty.

(a) In determining the amount of penalty to be assessed for any repeated or willful violation of section 6 or section 7 of the Act, the Administrator shall consider the seriousness of the violations and the size of the employer's business.

(b) Where appropriate, the Administrator may also consider other relevant factors in assessing the penalty, including but not limited to the following:

(1) Whether the employer has made efforts in good faith to comply with the provisions of the Act and this part;

(2) The employer's explanation for the violations, including whether the violations were the result of a bona fide dispute of doubtful legal certainty;

(3) The previous history of violations, including whether the employer is subject to injunction against violations of the Act;

(4) The employer's commitment to future compliance;

(5) The interval between violations;

(6) The number of employees affected; and

(7) Whether there is any pattern to the violations.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

Sec.

579.1 Purpose and scope.

579.2 Definitions.

579.3 Violations for which penalty may be imposed.

579.4 [Reserved]

579.5 Assessing the penalty.

579.6–579.8 [Reserved]

579.9 Effective date.