

## § 575.1

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

55913; Employment Standards Order No. 2-75, 40 FR 56743.

SOURCE: 43 FR 26562, June 21, 1978, unless otherwise noted.

### § 575.1 Purpose and scope.

(a) Section 13(c)(4) was added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1977. This section provides that:

(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment for not more than 8 weeks in any calendar year of individuals who are less than 12 years of age, but not less than 10 years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that:

(i) The crop to be harvested is one with a particularly short harvesting season and the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) The employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) The level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) Individuals age 12 and above are not available for such employment; and

(v) The industry of such employer or group of employers has traditionally and substantially employed individuals under 12 years of age without displacing substantial job opportunities for individuals over 16 years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that:

(i) The individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) Such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) Such individuals be employed under such waiver (I) for not more than 8 weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(b) The child labor provisions of the Fair Labor Standards Act, section 12,

require the following age standards for employment in agriculture:

(1) 16 years of age in any occupation at any time;

(2) 14 and 15 years of age outside of school hours except in occupations found and declared by the Secretary to be particularly hazardous for the employment of minors under 16 years of age (subpart E-1, 29 CFR 570.70, *et seq.*);

(3) 12 and 13 years of age in nonhazardous occupations outside of school hours if:

(i) Such employment is with the written consent of a parent or person standing in the place of a parent of such minor, or

(ii) Such employment is on the same farm where such parent or person is also employed;

(4) Under 12 years of age in nonhazardous occupations outside of school hours if such employment is with the written consent of a parent or person standing in place of a parent of such minor, on a farm where, because of the provisions of section 13(a)(6)(A) of the Act, none of the employees are required to be paid at the wage rate prescribed by section 6(a)(5) of the Act;

(5) 10 and 11 years of age in nonhazardous occupations outside of school hours employed to hand-harvest short season crop or crops under a waiver issued pursuant to section 13(c)(4) of the Act and this part:

(6) Minors of any age may be employed by their parents or persons standing in place of their parents at any time in any occupation on a farm owned or operated by their parents or persons standing in place of their parents.

(c) This part provides the procedures to be used under section 13(c)(4) of the Act. This part describes the information and defines the supporting data that the employer or group of employers must submit when applying for a waiver of the child labor provisions for the employment of 10 and 11 year old minors as hand-harvest laborers in an agricultural operation. It further explains the specific requirements imposed by the statute for employment under a waiver and specifies the conditions prescribed by the Secretary for employment under a waiver.