

§519.5

29 CFR Ch. V (7-1-04 Edition)

To the extent he/she deems appropriate, the authorized officer may provide an opportunity to other interested persons to present data, views, or argument on the application prior to granting or denying a certificate.

(d) Until April 30, 1976, if a certificate is issued, there shall be published in the FEDERAL REGISTER a general statement of the terms of such certificate together with a notice that, pursuant to §519.9, for 45 days following such publication any interested person may file a written request for reconsideration or review. Thereafter, applications and certificates will be available for examination in accordance with applicable regulations in Washington, DC, and in the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota, and South Dakota; the Salt Lake City, Utah Area Office for Montana, Utah, and Wyoming; and the Caribbean Office for the area it covers) for establishments in its area. A period of 60 days will be provided after certificate issuance during which any interested person may file a written request for reconsideration or review.

(e) If a certificate is denied, notice of such denial shall be sent to the employer, stating the reason or reasons for the denial. Such denial shall be without prejudice to the filing of any subsequent application.

[40 FR 6329, Feb. 11, 1975, as amended at 42 FR 58745, Nov. 11, 1977]

§519.5 Conditions governing issuance of full-time student certificates.

Certificates authorizing the employment of full-time students at subminimum wage rates shall not be issued unless the following conditions are met:

(a) Full-time students are available for employment at subminimum rates; the granting of a certificate is necessary in order to prevent curtailment of opportunities for employment.

(b) The employment of more than six full-time students by an employer will not create a substantial probability of reducing the full-time employment opportunities for persons other than those employed under such certificates.

(c) Abnormal labor conditions such as a strike or lockout do not exist at the farm or establishment for which a full-time student certificate is requested.

(d) The data given on the application are accurate and based on available records.

(e) The farms or establishments on whose experience the applicant relies meet the requirements of paragraph (h) of §519.6.

(f) There are no serious outstanding violations of the provisions of a full-time student certificate previously issued to the employer, nor have there been any serious violations of the Fair Labor Standards Act (including Child-Labor Regulation No. 3 and the Hazardous Occupations Orders published in part 570 of this chapter) which provide reasonable grounds to conclude that the terms of a certificate may not be compiled with, if issued.

(g) The subminimum wage rate(s) proposed to be paid full-time students under temporary authorization or under certificate is not less than 85 percent of the minimum wage applicable under section 6 of the Act.

(h) Certificates will not be issued where such issuance will result in a reduction of the wage rate paid to a current employee, including current student employees.

[40 FR 6329, Feb. 11, 1975, as amended at 42 FR 58745, Nov. 11, 1977]

§519.6 Terms and conditions of employment under full-time student certificates and under temporary authorization.

(a) A full-time student certificate will not be issued for a period longer than 1 year, nor will it be issued retroactively. It shall specify its effective and expiration dates. A copy of the certificate shall be posted during its effective period in a conspicuous place or places in the establishment or at the farm readily visible to all employees, for example, adjacent to the time clock or on the bulletin board used for notices to the employees. If temporary authorization is in effect under paragraph (a) of §519.4 of this subpart, a notice thereof shall be similarly posted during the effective period of such authorization.

Wage and Hour Division, Labor

§519.6

(b) Full-time students may not be employed under a certificate at less than 85 percent of the minimum wage applicable under section 6 of the Act.

(c) For retail or service establishment employers or agricultural employers, the allowable extent of full-time student employment under certificates varies depending on whether: (1) The employer proposes to employ no more than six full-time students at subminimum wages on any workday, (2) the applicant requests authority for not more than 10 percent of the total hours of all employees during any month, or (3) the applicant requests authority for more than 10 percent of the total hours during any month. (For agricultural employers, the month of full-time student certificated employment may vary somewhat from the month in a previous year on which the certificate is based, depending on seasonal factors.)

(d) *Retail or service establishment employers or agricultural employers requesting authorization to employ not more than six full-time students at subminimum wages on any workday.* An application from such an applicant provides temporary authorization for the employment of full-time students at subminimum wages: *Provided*, The conditions set forth in paragraph (a) of §519.4 of this subpart are met. Upon review of the application by the Administration or his/her authorized representative, the extent of the temporary authority may be modified.

(e) *Applicants requesting authorization for not more than 10 percent of the total hours of all employees during any month.* For such an applicant, certificates may authorize the employment of full-time student at subminimum wages for up to 10 percent of the total hours of all employees during any month, regardless of past practice of employing students. (Note: An establishment which has not previously held a certificate may be authorized 10 percent of the total hours of all employees during any month. Applicants requesting authority under this paragraph need not refer to paragraphs (f), (g), or (h) of this section.)

(f) *Applicants requesting authorization for more than 10 percent of the total monthly hours of all employees during*

any month with records of hours of employment of students and coverage by the Act prior to May 1974. For such an applicant, certificates may not authorize full-time student employment at subminimum wages in excess of the highest ratio under any of these three formulas: (1) The proportion of student hours of employment (*i.e.*, of full-time students under certificates) to total hours of all employees for the corresponding month of the preceding twelve-month period; (2) the maximum proportion of student hours of employment to total hours of all employees (in any corresponding month), applicable to the issuance of full-time student certificates before May 1974; or (3) 10 percent of the total hours of all employees, during any month. (Note: An establishment which is entitled to monthly allowances ranging from 5 to 20 percent may be authorized 10 percent for those months which were less than 10 percent and retain the higher allowances for those months above 10 percent.)

(g) *Applicants requesting authorization for more than 10 percent of the total hours of all employees during any month with records of hours of employment of students and new coverage under the 1974 Amendments.* For such an applicant, the highest permissible allowance under a certificate during any month is the highest ratio under any of these three formulas: (1) The proportion of hours of employment of full-time students to total hours of all employees during the corresponding month from May 1973 through April 1974; (2) the proportion of student hours of employment (*i.e.*, of hours of full-time students under certificates) to total hours of all employees during the corresponding month of the preceding twelve-month period (an alternative which is not applicable to all months of the year until 12 months after May 1, 1974); or (3) 10 percent of the total hours of all employees, during any month. (See notes under paragraphs (e) and (f) of this section.)

(h) *Applicants requesting authorization for more than 10 percent of the total hours of all employees during any month without records of student hours worked.* For such an applicant, the permissible proportion under certificate of full-time student hours at subminimum wages to

§519.7

29 CFR Ch. V (7-1-04 Edition)

total hours of all employees is based on the “practice” during the preceding twelve-month period of: (1) Similar establishments of the same employer in the same general metropolitan areas in which such establishment is located; (2) similar establishments in the same or nearby communities if such establishment is not in a metropolitan area; or (3) other establishments of the same general character operating in the community or the nearest comparable community. (“Practice” means either the certificate allowances or the proportion between the actual student hours of employment to the total hours of all employees.)

(i) An overestimate of total hours of employment of all employees for a current month resulting in the employment of the full-time students in excess of the hours authorized in paragraph (e), (f), (g), or (h) of this section may be corrected by compensating them for the difference between the subminimum wages actually paid and the applicable minimum under section 6 of the Act for the excess hours. Similarly, if an agricultural employer or a retail or service establishment employer has authorization to employ no more than six full-time students at subminimum wages on any workday but exceeds that number, the excess may be corrected by compensating the additional full-time students for the difference between the subminimum wages actually paid and the applicable minimum under section 6 of the Act. This additional compensation shall be paid on the regular payday next after the end of the period.

(j) Full-time students shall not be permitted to work at subminimum wages for more than 8 hours a day, nor for more than 40 hours a week when school is not in session, nor more than 20 hours a week when school is in session (apart from a full-time student’s summer vacation), except that when a full-day school holiday occurs on a day when the establishment is open for business, the weekly limitation on the maximum number of hours which may be worked shall be increased by 8 hours for each such holiday but in no event shall the 40-hour limitation be exceeded. (Note: School is considered to be in session for a student attending summer

school.) Whenever a full-time student is employed for more than 20 hours in any workweek in conformance with this paragraph, the employer shall note in his/her payroll records that school was not in session during all or part of that workweek or the student was in his/her summer vacation.

(k) Neither oppressive child labor as defined in section 3(1) of the Act and regulations issued under the Act nor any other employment in violation of a Federal, State or local child labor law or ordinance shall come within the terms of any certificate issued under this subpart.

(l) Full-time students shall be employed at subminimum wages under this subpart only outside of their school hours, *i.e.*, only outside of the scheduled hours of instruction of the individual student, or, in the case of agriculture, only outside of school hours for the school district where the employee is living while so employed, if the employee is under 16 years of age.

(m) No full-time student shall be hired under a full-time student certificate while abnormal labor conditions, such as a strike or lockout, exist at the establishment or farm.

(n) No provision of any full-time student certificate shall excuse non-compliance with higher standards applicable to full-time students which may be established under the Walsh-Healey Public Contracts Act or any other Federal law, State law, local ordinance, or union or other agreement. Thus, certificates issued under this law have no application to employment under the Service Contract Act.

(o) No full-time student certificate shall apply to any employee to whom a certificate issued under section 14 (a) or (c) of the Act has application.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975, as amended at 42 FR 58745, Nov. 11, 1977]

§519.7 Records to be kept.

(a) The employer shall designate each worker employed as a full-time student under a full-time student certificate at subminimum wages, as provided under part 516 of this chapter.

(b)(1) In addition to the records required under part 516 of this chapter and this subpart, the employer shall