

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 What does this part cover?

579.2 Definitions.

579.3 Violations for which penalty may be imposed.

579.4 [Reserved]

579.5 How is the amount of the penalty determined?

579.6-579.8 [Reserved]

AUTHORITY: 29 U.S.C. 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4-2001, 66 FR 29656; Sec. 3103, Pub. L. 101-508; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104-134, section 31001(s), 110 Stat. 1321-358, 1321-373.

### § 579.1 What does this part cover?

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989 and the Omnibus Budget Reconciliation Act of 1990, provides that—

(1) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section shall be subject to a civil penalty of not to exceed \$10,000 for each employee who was the subject of such a violation.

(2) Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a

civil penalty of not to exceed \$1,000 for each such violation.

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered.

(4) The amount of any penalty under this subsection, when finally determined, may be—

(i) Deducted from any sums owing by the United States to the person charged;

(ii) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(iii) Ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2), to be paid to the Secretary.

(5) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(6) Except for civil penalties collected for violations of section 12, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 2 of an Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a).

(7) Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.

(b) The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001(s)), requires that Federal agencies periodically adjust their civil money penalties for inflation according to a specified cost-of-living formula. This law requires each agency to make an initial inflationary adjustment for all covered civil money penalties, and to make further inflationary adjustments at least once every four years thereafter. Any increase in the civil money penalty

## Wage and Hour Division, Labor

## § 579.3

amount will apply only to violations that occur after the date the increase takes effect.

(c) This part provides for the issuance of the notice of civil penalty for any violation of section 12 of the Act relating to child labor or any regulation issued under that section; describes the violations for which a penalty may be imposed and the factors to be considered by the Secretary of Labor or the Secretary's designated representative in assessing the amount of such a penalty; outlines the procedure for an exception to the determination that the violations occurred which may be filed by the person so charged; and summarizes the methods provided for collection and recovery of the penalty.

[40 FR 25792, June 18, 1975, as amended at 56 FR 8679, Feb. 28, 1991; 66 FR 63503, Dec. 7, 2001]

### § 579.2 Definitions.

As used in this part and part 580 of this chapter:

*Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.*);

*Administrative law judge* means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the CFR, and qualified to preside at hearings under 5 U.S.C. 554-557.

*Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part and part 580 of this chapter.

*Agency* has the meaning given it by 5 U.S.C. 551.

*Chief Administrative Law Judge* means the Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001-8002.

*Department* means the U.S. Department of Labor.

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

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or an authorized representative of the Secretary.

*Solicitor of Labor* means the Solicitor, U.S. Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under this part and part 780 of this chapter.

[40 FR 25792, June 18, 1975, as amended at 40 FR 53237, Nov. 17, 1975; 56 FR 54708, Oct. 22, 1991]

### § 579.3 Violations for which penalty may be imposed.

(a) *What constitutes the violation.* Each of the following constitutes a violation of the Act and/or the Secretary's regulations for which a penalty as provided by section 16(e) of the Act and this part may be imposed, unless employment of the minor or minors referred to is shown to come within a specific exemption or exception described in paragraph (c) of this section:

(1) Each shipment or delivery for shipment in commerce by a producer, manufacturer, or dealer of any goods produced in an establishment situated in the United States in or about which, within thirty days prior to the removal of such goods therefrom, there has been employed any minor as described in paragraph (b) of this section;

(2) Each employment by an employer of any minor as described in paragraph (b) of this section, for any period in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce;

(3)-(4) [Reserved]

(5) The failure by an employer employing any minor for whom records must be kept under any provision of part 516 or part 545 of this title to maintain and preserve, as required by such provision, such records concerning the date of the minor's birth and concerning the proof of the minor's age as are specified therein; and

(6) The failure by an employer employing any minor subject to any provision of 29 CFR part 570, to take or cause to be taken such action as is necessary to assure compliance with all requirements of such provision which, by the regulations in such part, are