

## Wage and Hour Division, Labor

## § 579.5

such goods for value without notice of any such violation, shall not be deemed prohibited (see Act, section 12(a) and 29 CFR part 789);

(3) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors as described in paragraph (b)(2)(iv), a parent or person standing in place of a parent may lawfully employ his or her own child or a child in his or her custody under the age of 16 years in an occupation *other than*: (i) Manufacturing or (ii) mining or (iii) an occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or detrimental to their health or well-being, and an employer may lawfully employ a young worker between 14 and 16 years of age in an occupation permitted and under conditions prescribed by 29 CFR part 570, subpart C;

(4) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(2)(iii), a parent or person standing in place of a parent may lawfully employ on a farm owned or operated by such parent or person, his or her own child or a child in his or her custody under the age of 16 years in an occupation in agriculture found and declared by the Secretary of Labor to be particularly hazardous for the employment of children below such age;

(5) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(3)(ii), employment of minors 12 or 13 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(A) of this section and employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(B) of this section; and

(6) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(4), employment of minors under 12 years of age is lawful under the conditions prescribed in

paragraph (b)(4)(i) or (ii) of this section.

[40 FR 25792, June 18, 1975, as amended at 41 FR 26836, June 29, 1976]

### § 579.4 [Reserved]

### § 579.5 How is the amount of the penalty determined?

(a) The administrative determination of the amount of the civil penalty, of not to exceed \$10,000 for each employee who was the subject of a violation of section 12 or section 13(c)(5) of the Act relating to child labor or of any regulation issued under that section, will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violation as provided in paragraphs (b) through (d) of this section; Provided, however, that for any violation occurring on or after January 7, 2002 the civil money penalty amount will increase to not to exceed \$11,000 for each employee who was the subject of a violation.

(b) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the size of the business of the person charged with the violation or violations, taking into account the number of employees employed by that person (and if the employment is in agriculture, the man-days of hired farm labor used in pertinent calendar quarters), dollar volume of sales or business done, amount of capital investment and financial resources, and such other information as may be available relative to the size of the business of such person.

(c) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the gravity of the violation or violations, taking into account, among other things, any history of prior violations; any evidence of willfulness or failure to take reasonable precautions to avoid violations; the number of minors illegally employed; the age of the minors so employed and records of the required proof of age; the occupations in which the minors were so employed; exposure of such minors to hazards and any resultant injury to such minors;

the duration of such illegal employment; and, as appropriate, the hours of the day in which it occurred and whether such employment was during or outside school hours.

(d) Based on all the evidence available, including the investigation history of the person so charged and the degree of willfulness involved in the violation, it shall further be determined, where appropriate,

(1) Whether the evidence shows that the violation is “de minimis” and that the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act; or

(2) Whether the evidence shows that the person so charged had no previous history of child labor violations, that the violations themselves involved no intentional or heedless exposure of any minor to any obvious hazard or detriment to health or well-being and were inadvertent, and that the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act.

(e) An administrative determination of the amount of the civil money penalty for a particular violation or particular violations of section 12 relating to child labor or any regulation issued under that section shall become final 15 days after receipt of the notice of penalty by certified mail by the person so charged unless such person has, pursuant to §580.6 filed with the Secretary an exception to the determination that the violation or violations for which the penalty is imposed occurred.

(f) A determination of the penalty made in an administrative proceeding after opportunity for hearing as provided in section 16(e) of the Act and pursuant to Part 580 of this chapter shall be final.

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

§§ 579.6–579.8 [Reserved]

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**AUTHORITY:** 29 U.S.C. 9a, 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; 5 U.S.C. 500, 503, 551, 559; sec. 9, Pub. L. 101-157, 103 Stat. 938; sec. 3103, Pub. L. 101-508.

**SOURCE:** 56 FR 24991, May 31, 1991, unless otherwise noted.

**§ 580.1 Definitions.**

As used in this part:

*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,