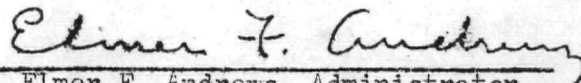


TITLE 29 - LABOR  
CHAPTER V - WAGE AND HOUR DIVISION

PART 522 - REGULATIONS APPLICABLE TO THE EMPLOYMENT OF  
LEARNERS PURSUANT TO SECTION 14 OF THE FAIR  
LABOR STANDARDS ACT OF 1938

The following Regulations - Part 522, as amended - (Regulations Applicable to the Employment of Learners Pursuant to Section 14 of the Fair Labor Standards Act of 1938) is hereby issued. These regulations repeal and supercede all regulations previously issued applicable to the employment of learners and shall become effective upon my signing the original and upon the publication thereof in the Federal Register, and shall be in force and effect until repealed by regulations hereafter made and published.

Signed at New York, New York, this 20th day of May, 1939.



Elmer F. Andrews, Administrator  
Wage and Hour Division  
Department of Labor

SECTION 522.1 - APPLICATION FOR LEARNERS

Application may be made by any employer to the Administrator of the Wage and Hour Division, Department of Labor, Washington, D. C. to employ learners in a specified plant at a wage lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act, whenever employment of learners at such lower rate is believed necessary to prevent curtailment of employment opportunities in such plant. Separate applications must be made with respect to each plant in which the applicant desires to employ learners at a wage lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act.

SECTION 522.2 - APPLICATIONS ON OFFICIAL FORMS

All applications must be made upon official forms furnished on request by the Wage and Hour Division and must contain all information required by such form. Any application which fails to present the information required by the form will not be considered by the Administrator or his authorized representative but will be returned to the applicant with a notation of deficiencies and without prejudice against submission of a new application. Any applicant may also submit such additional information as he may believe to be pertinent.

SECTION 522.3 - POSTING NOTICE OF APPLICATION IN PLANT

At the time of filing an application, the applicant must post a notice thereof on a form supplied by the Wage and Hour Division in a conspicuous place in each department of his plant where he proposes to employ learners at wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act. Such notice must contain all the information

required therein and shall remain posted until such time as the application shall have been acted upon by the Administrator or his authorized representative.

SECTION 522.4 -- INDUSTRY HEARING

The Administrator or his authorized representative may, if he deems it advisable, prior to granting any application, hold a hearing for an industry or branch thereof to determine the occupation or occupations which require a learning period, to determine the factors which may have a bearing upon curtailment of opportunities for employment within the industry and to determine under what limitation as to wages, time, number, proportion and length of service special certificates may be issued to employers for any such occupation or occupations in the industry. Such a hearing may be called upon one or more applications in accordance with subparagraph c of Section 522.5 or upon request of any person or group of persons representing an industry or branch thereof.

SECTION 522.5 -- PROCEDURE UPON APPLICATION FOR SPECIAL CERTIFICATE

Upon consideration of the facts and reasons stated in the application, the Administrator or his authorized representative, with or without requesting the applicant to furnish further information, shall

- a. Deny the application on the ground that it fails to show
  - (1) that the occupation or occupations specified therein require such skill as to necessitate a learning period.

or

  - (2) that such denial will result in the curtailment of opportunities for employment; or

(1171)

b. Issue immediately a Special Certificate upon the facts shown in the application and publish in the Federal Register and by general press release a statement of the terms of the Special Certificate and a notice that for fifteen days following such publication the Administrator will receive written objections to such Special Certificate and requests for hearing from any persons interested, including but not limited to, employees, employee groups, and labor organizations. A Special Certificate so issued shall, to the extent stated in the certificate, operate as an exemption from Section 6 of the Act unless it is subsequently cancelled as provided in this paragraph. Upon receipt of written objection and request for hearing, if adequate and detailed grounds for objection are set forth, the Administrator or his authorized representative will set the question of the affirmance or the cancellation of the Special Certificate for hearing, or will make other provisions affording the applicant and any other interested persons an opportunity to present evidence or argument and, as a result thereof, shall either (1) affirm the Special Certificate as issued, or (2) cancel the same as of the date of its issuance, whereupon no employee shall be deemed to have been employed under a Special Certificate issued under Section 14 of the Act and reimbursement of all persons employed pursuant to the terms of the cancelled Special Certificate must be made in an amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

(1171)



No such order, either affirming or cancelling a Special Certificate, shall become effective until after the expiration of the time allowed for the filing of a petition for review under Section 522.13, and, if a petition for review is filed thereunder, the effective date of the order affirming or cancelling the Special Certificate shall be postponed until final action is taken on such petition.

or

- C. Hold a hearing or make other provision affording interested parties an opportunity to present evidence or argument upon the application or upon a group of applications filed by persons in the same industry presenting related issues of law or fact, and as a result thereof issue or deny Special Certificate to any or all of the applicants involved. In the event that a Special Certificate is granted pursuant to such hearing, it shall become effective, in the discretion of the Administrator or his authorized representative, either (1) immediately upon publication, in which case, if, after review pursuant to the provisions set forth in Section 522.13, the Special Certificate is found to have been erroneously issued, the Special Certificate shall cease to be effective as of the date of publication of the cancellation, or (2) after the expiration of the time allowed for the filing of a petition for review under Section 522.13, and if a petition for review is filed thereunder, the effective date of the Special Certificate shall be postponed until final action is taken on such petition.

SECTION 522.6 -- PROCEDURE FOR HEARINGS.

Any hearing held pursuant to these regulations will be conducted by the Administrator or an authorized representative. A notice of the time, place and scope of such a hearing will be published in the Federal Register and made public by a general press release at least five days before the date of the hearing. The applicant shall in all cases be given notice by registered mail of any hearings to be held for the purpose of determining whether any special certificate shall be cancelled. All persons interested, including employees, employee groups, labor organizations, employers, employer groups and trade associations will be afforded an opportunity to present evidence and to be heard. The Administrator or his authorized representative may cause to be brought before him at such hearing any witness whose testimony he deems material to the matters in issue.

SECTION 522.7 --DESIGNATION OF LEARNERS IN EMPLOYER'S RECORDS

Each worker employed as a learner under a Special Certificate shall be designated as such in the payroll records kept by the employer. All persons so employed shall be listed together in a separate group in the payroll records kept by such employer.

SECTION 522.8 -- PROHIBITION --**FALSE** EVIDENCE

1. No employer shall employ any employee under a Special Certificate in violation of any of the terms thereof.

2. A Special Certificate shall be null and void if the applicant shall have set forth any fact or facts in his application which he knew or had reasonable cause to believe to be false.

SECTION 522.9 -- TERMS OF SPECIAL CERTIFICATES

No Special Certificate shall be applicable to more than one plant. Each Special Certificate shall specify the number of learners who may be employed under the certificate, the learning period, the time when and the wage rate at which such persons may be employed.

SECTION 522.10 -- NOTICE OF ISSUANCE OR CANCELLATION OF SPECIAL CERTIFICATES.

Notice of the issuance or cancellation of each Special Certificate pursuant to these regulations shall be published in the Federal Register.

SECTION 522.11 -- POSTING OF SPECIAL CERTIFICATE OR CANCELLATION THEREOF.

The employer shall post a copy of any Special Certificate issued to him in a conspicuous place in each department of the plant where learners are to be employed and shall also post a copy of any cancellation thereof.

SECTION 522.12 -- COMPLETION OF LEARNING PERIOD.

When any worker has been employed as a learner under a Special Certificate for the length of time authorized by such Special Certificate, the employer shall execute in triplicate a statement to that effect on forms to be obtained from the Wage and Hour Division. The original thereof shall be given to the worker, one copy shall be retained by the employer in his records and one copy shall be forwarded to the Wage and Hour Division.



SECTION 522.13 --PETITION FOR REVIEW

Any person aggrieved by the action of an authorized representative of the Administrator following an industry hearing under Section 522.4, or by way of denying or granting a special certificate under subparagraph A or C, of Section 522.5, or by way of affirming or cancelling a special certificate under paragraph b of Section 522.5 may, within fifteen days after publication of such action, file a petition for review thereof. The petition for review will be examined by the Administrator or an authorized representative who has taken no part in the action which is the subject of review. If this petition is granted, all interested parties will be afforded an opportunity to present their views either in support of or in opposition to the matters prayed for in the petition and the Administrator or an authorized representative who has taken no part in the action under review may hold a hearing thereon. Action taken upon such review shall be final and shall take effect immediately upon publication.



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

May 19, 1939

EXPLANATION OF  
REGULATIONS APPLICABLE TO EMPLOYMENT  
OF LEARNERS

Section 14 of the Fair Labor Standards Act provides that the Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall issue special certificates permitting the employment of learners at wages lower than the minimum wage applicable under the Act. Pursuant to this section the Administrator, prior to October 24, 1938, issued regulations setting forth a procedure whereby applications could be made for the issuance of such certificates. These regulations are contained in Title 29, Chapter V of the Code of Federal Regulations, Part 522. Experience under the original regulations has indicated the advisability of certain changes therein and the accompanying regulations are therefore substituted for the original regulations. The new regulations provide official forms upon which applications for learners' certificates must be filed. These forms will be furnished by the Wage and Hour Division upon request.

In order to eliminate as far as possible the filing of applications which are plainly not justified on the facts presented, the Wage and Hour Division has prepared this explanation of the purposes and use of the new regulations and the official forms with emphasis upon certain basic requirements which must necessarily be met by any applicant before a learners' certificate can issue. It is suggested therefore that applicants for learners' certificates should consult carefully the following explanation.

I. LEARNERS' APPLICATIONS FILED PRIOR TO ADOPTION OF  
ACCOMPANYING REGULATIONS

The amended regulations, Part 522, and the official forms become

effective upon publication. Persons who have made or hereafter make application for learners' certificates on any form other than an official form are required by the accompanying regulations to resubmit their applications upon the appropriate official form; and unless applications received before the issuance of these regulations are resubmitted before June 15, 1939, on an official form, the Wage and Hour Division will assume that the application has been allowed to lapse and that a learners' certificate is no longer sought. Of course, even after June 15, 1939, any person can make application for a ~~learners'~~ certificate upon the appropriate official form.

II. LEARNERS' CERTIFICATES CANNOT BE RETROACTIVE

The act permits employment of learners at a wage lower than the minimum only under a special certificate issued by the Wage and Hour Division. Under Section 14 of the Act, the employment of learners at such lower wage when no special certificate has been issued cannot be made lawful by the subsequent issuance of a special certificate. Consequently it is a violation of the Act to employ any employee at less than the minimum wage when no special certificate has been issued even though a proper application for a special certificate has been made.

III. SUBJECT OF AN APPLICATION - LEARNERS

The Administrator can only entertain applications for special certificates for the employment of persons who are "learners" within the meaning of the Act. The term "learners", as used in the Act, means beginners at a skilled occupation. Unless an occupation demands of the worker training and skill, which is normally evidenced in higher earnings for experienced workers, a beginner at that occupation will not be deemed a "learner". It follows that an application should be made only for the employment of inexperienced workers at a skilled occupation and that the application must describe in detail the

factors which are believed to make the occupation a skilled occupation.

IV. THE LEARNER'S WAGE

The minimum wage for learners will be fixed by the Wage and Hour Division, but an application for the employment of learners must state the wage lower than the statutory minimum at which it is sought to employ the learners. In the event that the Administrator or his authorized representative, after a public hearing for the industry, has determined for the applicant's industry the wage at which learners may be employed in the occupation for which the applicant is seeking learners, the learner's wage sought must not be lower than that determined by the Administrator or his authorized representative.<sup>1/</sup> In any event the wage requested by the applicant should not be lower than that necessary to prevent curtailment of opportunities for employment. It was not the purpose of the Act to make the employment of learners more advantageous to the employer than the employment of experienced workers. Consequently if experienced workers at the occupation for which learners are sought are paid by the applicant on a piece work basis, the learners must be paid at the same piece rate as the experienced workers with an additional guarantee of the minimum hourly wage provided in the special certificate.

V. LEARNING PERIOD

The length of the learning period will be fixed by the Wage and Hour Division, but an application must state the length of time during which the learner is sought to be employed at a wage less than the statutory minimum. In the event that the Administrator or his authorized representative, after a public hearing for the industry, has determined for the applicant's industry the length of the learning period for the occupation in which the applicant is seeking to employ learners, the learning period sought must not be longer than

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<sup>1/</sup> If in doubt whether an industry hearing has been held, address an inquiry to the Wage and Hour Division, Department of Labor, Washington, D.C.



the period determined by the Administrator or his authorized representative.<sup>1/</sup> With respect to piece workers the learning period sought should not be longer than the time required by the learner to develop sufficient skill and dexterity to earn the statutory minimum wage when paid at a rate equal to the rate regularly paid by the applicant to experienced workers. If this period of time is shorter than four weeks, only exceptional circumstances could establish that the employment of learners at a wage lower than the statutory minimum is necessary to prevent curtailment of opportunities for employment.

VI. CURTAILMENT OF OPPORTUNITIES FOR EMPLOYMENT

The Administrator is authorized to provide for the employment of learners at a wage lower than the statutory minimum wage only upon proof that such employment is necessary to prevent curtailment of opportunities for employment. No application will be deemed to set forth a necessity to prevent curtailment of such opportunities unless both of the following points are clearly established. An application must, therefore, contain full statements with respect to both of these points with reference to the plant involved in the application. Otherwise, the Administrator will deny the application for failure to allege facts sufficient to support a finding that both of the following points have been established.

Point number one.

The application must show that experienced workers are not available to do the work for which learners are requested. The employment of inexperienced labor where experienced labor is available cannot be shown to be "necessary to prevent curtailment of opportunities for employment." An applicant's allegation that experienced workers are not available should be supported by a full statement

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<sup>1/</sup>. See preceding footnote.



of all efforts made by the applicant to secure experienced workers. Wherever possible, corroborative evidence should be submitted.

Point number two.

The applicant must establish that the employment at the wage established pursuant to the Fair Labor Standards Act of the number of persons sought to be employed as learners will so increase his cost of production (a) that a reasonable employer in the circumstances of the applicant would not ordinarily hire the additional inexperienced employees for operation of new plants, expansion of plant or rehabilitation of idle plant capacity, or (b) that the applicant would be so **unreasonably** burdened by hiring the additional inexperienced employees to replace normal plant labor turnover as to make probable a resultant curtailment of opportunities for employment. This showing may be made in the accounting or statistical terms used by the applicant in his business enterprise on the appropriate form, but if practicable, all cost data should be stated in terms of cost per unit of product. The unit of product in which such showing is made should be the one customarily used in the applicant's business. The application, thus, should show applicant's need for a certificate in terms of labor, material cost, and other costs per unit of product.

VII. PROCEDURE UPON LEARNER'S APPLICATION

The procedure adopted by the Wage and Hour Division for consideration of applications for the employment of learners and the issuance of certificates is contained in the accompanying regulations. This procedure provides that applications may be acted upon individually or considered jointly where the applications concern plants similarly situated. In addition, the Division may, prior to granting an application, call an industry hearing to consider questions of fact common to an industry.