

specific types of hazardous construction, as discussed above, construction work accounts for a substantial number of young worker deaths. In addition, the Report states that construction work is also associated with adverse health effects from exposure to hazardous substances and from musculoskeletal disorders. According to NIOSH, some construction occupations that have relatively low fatal injury rates are associated with exposure to other agents that may have long-term health effects. Examples provided include the exposure to asbestos among insulation workers, the exposure to lead and solvents among painters, and the exposure to silica among plasterers and drywall installers. NIOSH also states that because construction sites frequently include hazards outside the control of individual workers or contractors, an apprentice and student-learner exemption is not recommended.

The Department is aware that the construction industry has for many years provided both temporary and career exploration employment opportunities for many youth. The Department's Bureau of Labor Statistics (BLS) reports that in 2004 there were approximately 286,000 youth between the ages of 16 and 19 employed in the construction industry. In addition, the construction industry has traditionally been one of the higher-paying industries in the U.S., with average hourly earnings of \$20.40 reported by BLS in October 2006.

The construction industry has many components, including residential, building (non-residential), highway, and heavy sectors. In addition, demolition, maintenance, repair, and redecorating work often fall within the general classification of construction. Before the Department can address the Report recommendations concerning construction occupations, it is requesting information from the public regarding the appropriateness and feasibility of implementing such a comprehensive and industry-wide prohibition. Can 16- and 17-year-olds, under specific conditions, be safely employed in certain sectors of the construction industry? If so, under what conditions?

The Department is also interested in obtaining information about existing strategies that make certain construction jobs safe for minors to perform. Can apprenticeship and student-learner programs be designed and delivered to better protect young workers and keep them safe on the job? If so, should the written standards or requirements of student-learner and apprenticeship

programs addressing construction occupations have a greater emphasis on safety training than similar programs covering other industries?

#### *F. Hydraulic Grease Racks*

HO 7 (Occupations involved in the operation of power-driven hoisting apparatus) generally prohibits 16- and 17-year-olds from employment in occupations that involve the work of: (1) Operating an elevator, crane, derrick, hoist, or high-lift truck, except that such youth may operate unattended automatic operation passenger elevators and electric or air operated hoists not exceeding one ton capacity; (2) riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator; and (3) assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

Over the years, the Department has received inquiries as to whether HO 7 would permit the employment of 16- and 17-year-olds to operate hydraulic grease racks—apparatus usually found in gasoline service stations and automobile repair shops and used to raise and to lower vehicles from ground level for servicing the vehicles. The Department has been consistent in its response to such inquiries; because the original study that led to the promulgation of HO 7 did not include the operation of such grease racks, HO 7 does not prohibit the operation of such equipment. Although correct, this position does not take into consideration whether such grease racks can be safely operated by 16- and 17-year-olds. Reg. 3, which details the occupations 14- and 15-year-olds may and may not perform, specifically prohibits such youth from the operation or tending of any hoisting apparatus (see § 570.33(b)).

Accordingly, the Department is seeking information from the public as to whether such grease racks can be safely operated by 16- and 17-year-olds. Is the safe operation of such equipment affected by the size and lifting capacities of such equipment? In keeping with Item A of this ANPRM, if the operation of such grease racks should be prohibited, would a student-learner or apprenticeship exemption be warranted?

#### *G. General*

In soliciting comments on the above aspects of the child labor regulations, the Department is specifically interested in data, reports, cost-benefit analyses, studies, and other documentation addressing the positions taken or

otherwise relating to the Department's objective to develop updated, realistic health and safety standards for today's young workers that are consistent with the established national policy of balancing the benefits of employment opportunities for youth with the necessary and appropriate safety protections.

This document was prepared under the direction and control of Paul DeCamp, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

#### **List of Subjects in 29 CFR Part 570**

Child labor, Child labor occupations, Employment, Government, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

Signed at Washington, DC, on this 10th day of April, 2007.

**Victoria A. Lipnic,**

*Assistant Secretary, Employment Standards Administration.*

**Paul DeCamp,**

*Administrator, Wage and Hour Division.*

[FR Doc. E7-7052 Filed 4-16-07; 8:45 am]

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## **DEPARTMENT OF LABOR**

### **Wage and Hour Division**

#### **29 CFR Part 570**

#### **RIN 1215-AB57**

#### **Child Labor Regulations, Orders and Statements of Interpretation**

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Department of Labor (Department or DOL) is proposing to revise the child labor regulations in order to implement an amendment to the Fair Labor Standards Act's child labor provisions, contained in the Department of Labor Appropriations Act, 2004 (Pub. L. 108-199), which authorizes under specified conditions the employment of certain youth between the ages of 14 and 18 years inside and outside of places of business that use machinery to process wood products.

The Department is proposing to revise Child Labor Regulation No. 3, subpart C of 29 CFR part 570, which governs the employment of 14- and 15-year-olds in nonagricultural occupations by revising the lists of occupations and industries

in which such youth may and may not be employed. The Department is also proposing to clarify, but not change, the standards addressing the permitted periods and conditions under which such youth may be employed and to create a limited exemption from those standards for certain academically motivated youth enrolled in work-study programs.

The Department is also proposing to revise several of the nonagricultural Hazardous Occupations Orders (HOs) to implement specific recommendations made by the National Institute for Occupational Safety and Health in its 2002 report entitled National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders. The HOs affected by this proposal concern occupations involved with logging and sawmilling; meat processing; and the operation of power-driven hoisting equipment, bakery equipment, compacting and baling equipment, and certain cutting, shearing, and guillotining equipment.

In addition, the Department is proposing to provide clarity by incorporating into the regulations three long-standing enforcement positions regarding the cleaning of power-driven meat processing equipment, the operation of certain power-driven pizza-dough rollers, and the definition of high-lift trucks. The Department is also proposing to expand the HO that prohibits youth from operating power-driven circular saws, band saws, and guillotine shears to include prohibitions concerning the operation of power-driven chain saws, wood chippers, and reciprocating saws.

Finally, the Department proposes to revise subpart G of the child labor regulations, which is entitled General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended. The proposal would incorporate into this subpart all the regulatory changes made since this subpart was last revised in 1971.

**DATES:** Comments are due on or before July 16, 2007.

**ADDRESSES:** You may submit comments, identified by RIN 1215-AB57, by either one of the following methods:

- *Electronic comments, through the Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210.

**Instructions:** Please submit one copy of your comments by only one method. All submissions received must include the agency name and Regulatory Information Number (RIN) identified above for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> or to submit them by mail early. For additional information on submitting comments and the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-0072 (this is not a toll free number). Copies of this notice of proposed rulemaking may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693-0023. TTY/TDD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the Wage and Hour Division's toll-free help line at (866) 4US-WAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's Web site for a nationwide listing of Wage and Hour District and Area Offices at: <http://www.dol.gov/esa/contacts/whd/america2.htm>.

#### SUPPLEMENTARY INFORMATION:

##### I. Electronic Access and Filing Comments

**Public Participation:** This notice of proposed rulemaking is available through the **Federal Register** and the <http://www.regulations.gov> Web site.

You may also access this document via the WHD home page at <http://www.wagehour.dol.gov>. To comment electronically on federal rulemakings, go to the Federal eRulemaking Portal at <http://www.regulations.gov>, which will allow you to find, review, and submit comments on federal documents that are open for comment and published in the **Federal Register**. Please identify all comments submitted in electronic form by the RIN docket number (1215-AB57). Because of delays in receiving mail in the Washington, DC area, commenters should transmit their comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>, or submit them by mail early to ensure timely receipt prior to the close of the comment period. Submit one copy of your comments by only one method.

##### II. Background

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 16 years for employment in nonagricultural occupations, but the Secretary of Labor is authorized to provide by regulation for 14- and 15-year-olds to work in suitable occupations other than manufacturing or mining, and during periods and under conditions that will not interfere with their schooling or health and well-being. The FLSA provisions permit 16- and 17-year-olds to work in the nonagricultural sector without hours or time limitations, except in certain occupations found and declared by the Secretary to be particularly hazardous, or detrimental to the health or well-being of such workers.

The regulations for 14- and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of part 570 (29 CFR 570.31-.38). Reg. 3 limits the hours and times of day that such minors may work and identifies occupations that are either permitted or prohibited for such minors. Under Reg. 3, 14- and 15-year-olds may work in certain occupations in retail, food service, and gasoline service establishments, but are not permitted to work in certain other occupations (including all occupations found by the Secretary to be particularly hazardous for 16- and 17-year-olds). Reg. 3, originally promulgated in 1939, was revised to reflect the 1961 amendments to the FLSA, which extended the Act's coverage to include enterprises engaged in commerce or the production of goods for commerce. Because of the statutory amendments, the FLSA's child labor protections became applicable to additional areas of employment for

young workers in retail, food service, and gasoline service establishments.

The regulations concerning nonagricultural hazardous occupations are contained in subpart E of 29 CFR part 570 (29 CFR 570.50–.68). These Hazardous Occupations Orders (HOs) apply on either an industry basis, specifying the occupations in a particular industry that are prohibited, or an occupational basis, irrespective of the industry in which the work is performed. The seventeen HOs were adopted individually during the period of 1939 through 1963. Some of the HOs, specifically HOs 5, 8, 10, 12, 14, 16, and 17, contain limited exemptions that permit the employment of 16- and 17-year-old apprentices and student-learners under particular conditions to perform work otherwise prohibited to that age group. The terms and conditions for employing such apprentices and student-learners are detailed in § 570.50(b) and (c).

Because of changes in the workplace, the introduction of new processes and technologies, the emergence of new types of businesses where young workers may find employment opportunities, the existence of differing federal and state standards, and divergent views on how best to balance scholastic requirements and work experiences, the Department has long been reviewing the criteria for permissible child labor employment. In this review, the Department published a Notice of Proposed Rulemaking (NPRM) in 1982, an NPRM in 1990, a Final Rule in 1991, both an Advance Notice of Proposed Rulemaking (ANPRM) and an NPRM in 1994, a Final Rule in 1995, an NPRM in 1999, and a Final Rule in 2004.

On July 16, 1982, an NPRM was published in the **Federal Register** (47 FR 31254) which proposed to revise several elements of Reg. 3, including the permissible hours and times of employment for 14- and 15-year-olds and the types of cooking operations those minors would be permitted to perform. The NPRM generated considerable public interest, mostly relating to the expansion of the hours and times of work for this age group. The Department subsequently suspended the proposal from further consideration and no final rule was implemented.

The Department continued to receive suggestions from the public that certain changes should be made to the child labor regulations on a number of issues. In 1987, the Department established a Child Labor Advisory Committee (CLAC) composed of 21 members representing employers, education,

labor, child guidance professionals, civic groups, child advocacy groups, state officials, and safety groups. The mission of the CLAC was to give advice and guidance in developing possible proposals to change existing standards. After reviewing a number of issues, the CLAC proposed making certain changes to the child labor regulations. The Department considered the CLAC's suggestions, as well as suggestions received from the public as noted above, and published an NPRM in October 1990, proposing changes to three HOs (55 FR 42612). In December 1991, the Department promulgated a Final Rule which revised the three HOs (56 FR 58626).

The Department continued to review the child labor regulations and on May 13, 1994, in an effort to accumulate data concerning all aspects of the provisions, published both an NPRM (59 FR 25164) and an ANPRM (59 FR 25167). The NPRM proposed to exempt 14- and 15-year-olds from Reg. 3 hours standards when employed under certain restrictions as sports attendants for professional sports teams, to standardize the Reg. 3 process for issuing occupational variances for Work Experience and Career Exploration Program (WECEP) participants, to remove an outdated exemption for enrollees in certain work training programs, and to revise the process by which HOs are promulgated. A Final Rule on these issues was published April 17, 1995 (60 FR 19336).

The 1994 ANPRM requested public comment on several specific topics as well as all aspects of the child labor provisions. Several individuals and organizations submitted comments. The National Institute for Occupational Safety and Health (NIOSH) provided the Department with epidemiological data on a number of issues related to both Reg. 3 and the HOs. NIOSH also provided the Department with statistics regarding occupational injuries and made several recommendations. A number of child guidance professionals, educators, unions, employer associations, and child labor advocates also commented and made various recommendations.

Congress has amended the child labor provisions of the FLSA three times since 1996. The Compactors and Balers Safety Standards Modernization Act, Pub. L. 104–174 (Compactor and Baler Act), was signed into law on August 6, 1996. This legislation added section 13(c)(5) to the FLSA, permitting minors 16 and 17 years of age to load, but not operate or unload, certain scrap paper balers and paper box compactors when certain requirements are met. The Drive for

Teen Employment Act, Pub. L. 105–334, was signed into law on October 31, 1998. This legislation added section 13(c)(6) to the FLSA, prohibiting minors under 17 years of age from driving automobiles and trucks on public roadways on-the-job and establishing the conditions and criteria for 17-year-olds to drive automobiles and trucks on public roadways on-the-job. The Department of Labor Appropriations Act, 2004, Pub. L. 108–199, amended the FLSA by creating a limited exemption from the youth employment provisions for minors 14 to 18 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained in section 13(c)(7) of the FLSA, allows eligible youth, under specific conditions, to be employed inside and outside of places of business that use machinery to process wood products, but does not allow such youth to operate or assist in operating power-driven woodworking machines. This exemption overrides the FLSA's formerly complete prohibition on the employment of 14- and 15-year-olds in manufacturing occupations contained in section 3(l).

The Department published an NPRM in the **Federal Register** on November 30, 1999 (64 FR 67130), inviting comments on revisions of regulations to implement the 1996 and 1998 amendments and to update certain regulatory standards. The Compactor and Baler Act affected the HO 12 standards (Occupations involved in the operation of paper-products machines) (29 CFR 570.63) and certain other related regulations; amendments of those regulations were proposed. The Drive for Teen Employment Act affected the HO 2 standards (Occupations of motor-vehicle driver and outside helper) (29 CFR 570.52); an amendment of that regulation was proposed. As a result of its ongoing review of the child labor provisions, the Department also proposed changes to HO 1 (Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components) (29 CFR 570.51), HO 16 (Occupations in roofing operations) (29 CFR 570.67), the Reg. 3 limitations on cooking (29 CFR 570.34), and 29 CFR 570.6(b)(1) which deals with the disposition of a Certificate of Age when the named individual's employment ends. A Final Rule, addressing the above issues and implementing procedural changes dealing with administrative hearings and appeals of child labor civil money penalties, was issued on December 16, 2004 (69 FR 75382).

In 1998, the Department provided funds to NIOSH to conduct a comprehensive review of scientific literature and available data in order to assess current workplace hazards and the adequacy of the current youth employment HOs to address them. This study was commissioned to provide the Secretary with another tool to use in her ongoing review of the youth employment provisions, and of the hazardous occupations orders in particular. The report, entitled National Institute for Occupational Safety and Health Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders (hereinafter referred to as the NIOSH Report or the Report), was issued in July of 2002. The Report, which makes 35 recommendations concerning the existing nonagricultural HOs and recommends the creation of 17 new HOs, also incorporated the comments NIOSH submitted in response to the 1999 NPRM. The report is available for review on the Department's YouthRules! Web site at <http://www.youthrules.dol.gov/resources.htm>.

The Department recognizes NIOSH's extensive research efforts in compiling and reviewing this data. However, it has cautioned readers about reaching conclusions and expecting revisions to the existing HOs based solely on the information in the Report. In the Report, NIOSH itself recognized the confines of its methodology and included appropriate caveats about limitations in available data and gaps in research. Of those limitations, the following are worth noting. The NIOSH Report recommendations are driven by information on high-risk activities for all workers, not just patterns of fatalities and serious injuries among young workers. There is little occupational injury, illness, and fatality data available regarding minors less than 16 years of age. In addition, such data for youth 16 and 17 years of age tend to be mixed with that of older workers whose employment is not subject to the youth employment provisions of the FLSA. Also, available occupational injury, illness, fatality, and employment data on the specific operations in the specific industries covered by the NIOSH Report recommendations tend to be combined with data on other operations and/or industries. In some cases, this may result in a diminution of the risk by including less risky operations and industries in the employment estimates. In other cases, the risk may be exaggerated by including more dangerous operations/industries in the injury, illness, or fatality estimates.

In addition, as NIOSH was tasked with examining issues within the framework of the current HOs only, the Report did not consider the extent to which fatalities occur despite existing HOs, Occupational Safety and Health Administration (OSHA) standards, or state laws prohibiting the activity. If fatalities result from recognized illegal activities, such as working with fireworks or a power-driven circular saw, the best strategy for preventing future injuries may not be to revise the regulations but to increase compliance with existing laws through public awareness initiatives, targeted compliance assistance efforts, and stepped-up enforcement activities. The Report also did not consider potential approaches for decreasing workplace injuries that provide an alternative to a complete ban on employment, such as safety training, increased supervision, the use of effective personal protective equipment, and strict adherence to recognized safe working practices.

Though cognizant of the limitations of the Report, the Department places great value on the information provided by NIOSH. Since receiving the Report, the Department has conducted a detailed review and has met with various stakeholders to evaluate and prioritize each recommendation for possible regulatory action consistent with the established national policy of balancing the benefits of employment opportunities for youth with the necessary and appropriate safety protections. The 2004 Final Rule addressed six of the recommendations.

As an adjunct to its review of these issues the Department contracted with a private consulting firm, SiloSmashers, Inc., to construct a model that, using quantitative analysis, would help determine the costs and benefits associated with implementing, or not implementing, each of the Report's recommendations. The SiloSmashers report, *Determination of the Costs and Benefits of Implementing NIOSH Recommendations Relating to Child Labor Hazardous Orders*, was completed in November 2004 and covers 34 of the NIOSH HO recommendations in agricultural and nonagricultural occupations, as well as several occupations or activities not presently addressed by an existing HO.

The methodology used by SiloSmashers was to compare the direct costs and benefits of implementing or revising an HO, as recommended by NIOSH, with the costs and benefits of not implementing or revising the HO based on the NIOSH recommendations. Each SiloSmashers analysis was conducted on a mutually exclusive basis

to yield a net present value (NPV). SiloSmashers defines NPV as "the discounted dollar value of an investment across the expected planning horizon. As a dollar figure, NPV is presented at the full value level for each implementation approach (implementing versus not implementing) as well as at the incremental approach (the difference between implementing versus not implementing). As a comparison tool and under the incremental approach, the higher the NPV, the higher the expected value of implementation." The NPVs reported by SiloSmashers for each of the NIOSH recommendations addressing the current nonagricultural HOs range from a negative \$9,537,000 to a positive \$113,556,000.

Although the SiloSmashers report includes both a quantitative analysis and a qualitative analysis of each NIOSH recommendation, the Department is concerned that some readers might try to rank each recommendation solely on the basis of the quantitative results (i.e., on the basis of the NPVs) listed in the HO Comprehensive Summary. This simplistic ranking would not be appropriate due to several constraints inherent in the methodology adopted by SiloSmashers, especially the lack of reliable and pertinent data.

In addition, not only was the methodology used by SiloSmashers to generate the NPVs subject to the same data limitations faced by NIOSH regarding the employment, fatality, and injury rates of young workers, but it also raises additional concerns. First, if SiloSmashers were unable to identify any minors who were fatally injured while performing work that was the subject of the NIOSH recommendation being examined, even if many adult workers were killed while performing that exact same work, the analysis would reflect that implementation of the recommendation would have no benefit in reducing occupational hazards to youth. Such an assumption is contrary to the Department's long-held position that work which is dangerous for adults is inherently dangerous for youth. For example, because SiloSmashers found no deaths of youth resulting from the operation of chainsaws, it concluded that implementation of the NIOSH recommendation to expand HO 14 to prohibit the operation of chainsaws on all materials, and not just on wood and wood products as currently prohibited by HOs 4 and 5, would have no impact on the number of occupational fatalities suffered by 16- and 17-year-olds. The Department strongly disagrees with this conclusion. NIOSH based its

recommendation on data that demonstrate that chainsaws continue to be the source of substantial numbers of fatalities as well as nonfatal injuries which may be unusually severe. Accordingly, the Department believes that the operation of chainsaws is inherently dangerous for young workers, regardless of the lack of youth-specific injury and fatality data. The Department agrees with NIOSH that the prudent course of action is to prohibit the use of chainsaws by all workers under the age of 18.

Secondly, when youth fatalities were identified, the values the SiloSmashers report placed on the lives saved and injuries prevented under the various NIOSH Report recommendations are based on estimates published in economic literature that are based on adult populations. Applying those estimates to children may result in an underestimate of the risk to children because the susceptibility of a developing child's body to illness, injury, or death will most likely differ from that of the fully developed body of an adult. These differences are important in any such analysis, as society tends to place a higher value on the lives of children compared to adults. By their very nature, child labor laws are intended to protect children from situations that are permissible for adults. Thus, even without some of the other data limitations discussed above, the estimates presented in the SiloSmashers report consistently understate the benefits of implementing the NIOSH recommendations. Because of the data limitations and flaws in methodology, the Department does not consider the individual analysis prepared by SiloSmashers to be influential for rulemaking purposes.

It was the Department's intention that the SiloSmashers analysis would help in identifying and defining the scope of each recommendation and provide additional information to consider after the decision was made to implement or not to implement a particular recommendation. This is in keeping with the ultimate recommendation made in the SiloSmashers report that the Department consider both quantitative and qualitative factors, as well as other internal and external factors—such as budget constraints, priorities established by the Department or Administration, additional stakeholder input, etc.—when determining which NIOSH Report recommendations to implement. The entire report provided to the Department by SiloSmashers can be viewed on the Internet at [http://www.youthrules.dol.gov/clri/Final\\_Report.pdf](http://www.youthrules.dol.gov/clri/Final_Report.pdf).

[www.youthrules.dol.gov/clri/Final\\_Report.pdf](http://www.youthrules.dol.gov/clri/Final_Report.pdf).

As mentioned, the NIOSH Report made 35 recommendations concerning the existing nonagricultural HOs. The Department addressed six of those recommendations in the 2004 Final Rule (see 69 FR 75382; Dec. 16, 2004). The Department has decided that, in this first proposal since the dissemination of the NIOSH Report, it will address 25 of the remaining 29 Report recommendations dealing with existing nonagricultural hazardous occupations orders. The Department believes there is sufficient data to support implementing its proposals. In an attempt to acquire additional data in order to address the remaining nonagricultural NIOSH recommendations, as well as pursue items not explored in the NIOSH Report, the Department is publishing an ANPRM concurrently with this NPRM.

The NIOSH Report also makes 11 recommendations that impact the current agricultural HOs as well as 17 recommendations that urge the creation of new HOs. The Department, in the ANPRM being published on the same day as this NPRM, is requesting public comment on the feasibility of one of those recommendations regarding the creation of an HO that would prohibit the employment of youth in construction occupations. The Department is continuing to review the remaining recommendations, but for administrative reasons excluded them from its consideration of the NIOSH proposals covered in this phase to keep the size and scope manageable. Their absence from this current round of rulemaking is not an indication that the Department believes them to be of less importance or that they will not be given the same level of consideration as the recommendations addressing the current nonagricultural HOs.

### III. Proposed Regulatory Revisions

#### *A. Occupations That Are Prohibited for the Employment of Minors Between the Ages of 14 and 16 Years of Age (29 CFR 570.31–.34)*

Section 3(l) of the FLSA, defining *oppressive child labor*, expressly prohibits children under the age of 16 from performing any work other than that which the Secretary of Labor permits, by order or regulation, upon finding that it does not interfere with their schooling or health and well-being (see 29 U.S.C. 203(l), see also 29 CFR 570.117–.119). Before 14- and 15-year-olds may legally perform work covered by the FLSA, the Act requires that the work itself be exempt, or that the

Secretary determines that the work to be performed does not constitute oppressive child labor. The Secretary's declarations of what forms of labor are not deemed oppressive for children between the ages of 14 and 16 appear in Reg. 3 (29 CFR 570.31–.38).

Reg. 3 identifies a number of occupations or activities that are specifically prohibited for these minors without regard to the industry or the type of business in which their employer is engaged (e.g., operating or tending any power-driven machinery other than office machines, see § 570.33(b)). Reg. 3 also incorporates by reference all of the prohibitions contained in the Hazardous Occupations Orders (29 CFR 570.50–.68), which identify occupations that are “particularly hazardous” and, therefore, banned for 16- and 17-year-olds (e.g., occupations involved in the operation of power-driven metal forming, punching, and shearing machines, see § 570.33(e)).

As previously mentioned, Reg. 3 was revised to reflect the 1961 amendments to the FLSA, which by extending the Act's coverage to include enterprises engaged in commerce or the production of goods for commerce, brought more working youth employed in retail, food service, and gasoline service establishments within the protections of the Act. Section 570.34(a) expressly authorizes the performance of certain activities by 14- and 15-year-olds in retail, food service, and gasoline service establishments, while § 570.34(b) details those activities that 14- and 15-year-olds are expressly prohibited from performing in such establishments. For example, clerical work, cashing, and clean-up work are authorized, whereas “all work requiring the use of ladders, scaffolds, or their substitutes” is prohibited. These special rules apply only in the designated types of business.

Since 1961, new, positive, and safe employment opportunities have opened up for youth in industries other than retail, food service, and gasoline service that Reg. 3 does not currently specifically address. Jobs in such areas as state and local governments, banks, insurance companies, advertising agencies, and information technology firms all normally fall outside of the declarations made in Reg. 3. Because these jobs are not specifically permitted by § 570.33, they are prohibited. There has been some confusion about this over the years. Some employers have believed that 14- and 15-year-olds are permitted to be employed in any industry or occupations not expressly prohibited by Reg. 3, or that any employer in any industry may employ such youth in the occupations permitted

by § 570.34(a). However, where these jobs are not located in retail, food service, or gasoline service establishments, the provisions of § 570.34 (both authorizations and prohibitions) do not apply to the employment of 14- and 15-year-olds. The exception to this rule is where there is some discrete operation or division that could legitimately be characterized as such an establishment and therefore would be subject to these rules (e.g., minors employed in a food service operation at a city park or a publicly owned sports stadium). The Department's interpretation of Reg. 3 would prohibit employers such as state and local governments, banks, insurance companies, advertising agencies, and information technology firms from employing 14- and 15-year-old workers in any jobs other than those that occur in those discrete operations or divisions that may be characterized as retail, food service, or gasoline service establishments.

In 2004, in recognition of the importance of youth employment programs operated by public sector employers that provide safe and meaningful developmental opportunities for young people, and in response to specific requests received from two municipalities, the Department adopted an enforcement position that permits state and local governments to employ 14- and 15-year-old minors under certain conditions. Consistent with its enforcement position, the Department has exercised its prosecutorial discretion, as authorized by 29 U.S.C. 216(e), in declining to cite Reg. 3 occupations violations for the employment of 14- and 15-year-olds by state and local governments as long as that employment falls within the occupations authorized by Reg. 3 (§ 570.34(a)) and does not involve any of the tasks or occupations prohibited by Reg. 3 (§§ 570.33 and 570.34(b)). The other provisions of Reg. 3, including the restrictions on hours of work, remain fully applicable to the employment of such minors and continue to be enforced.

The Department's administration of this enforcement position permitting the employment of 14- and 15-year-olds by state and local governments has had extremely positive results. There are strong indications that when such youth are employed under the guidelines established by this enforcement position, the employment does not interfere with their schooling or with their health and well-being, and thus accords with the FLSA.

Based upon the success of the above enforcement position, the Department is proposing to revise and to reorganize §§ 570.33 and 570.34 to clarify and to expand the list of jobs that are either permitted or prohibited for minors who are 14 and 15 years of age and to remove the language that limits the application of § 570.34 to only retail, food service, and gasoline service establishments. The revised § 570.33 would detail certain specific occupations that are prohibited for 14- and 15-year-olds. This revision also necessitates a change to § 570.35a(c)(3), which references the current §§ 570.33 and 570.34 as they pertain to WECEPs. The Department proposes to retain all the current prohibitions contained in § 570.33 but will modify the prohibition regarding the employment of 14- and 15-year-olds in manufacturing occupations to comport with the provisions of the Department of Labor Appropriations Act, 2004, which enacted section 13(c)(7) of the FLSA. Fourteen- and 15-year-olds would continue to be permitted to be employed in all those retail, food service, and gasoline service establishment occupations in which they may currently be employed.

The Department also proposes to apply to FLSA-covered nonagricultural employers of minors, with certain modifications, all the permitted occupations contained in § 570.34(a) and all the prohibited occupations contained in § 570.34(b) that currently apply only to retail, food service, and gasoline service establishments. This proposal would be accomplished by revising § 570.34 to identify permitted occupations. The Department also proposes to continue to permit youth 14- and 15-years of age to perform those occupations involving processing, operating of machines, and working in rooms where processing and manufacturing take place, that are currently permitted under § 570.34(a), as referenced in § 570.34(b)(1).

As mentioned, certain modifications to the existing lists of permissible and prohibited occupations are being proposed. The traditionally prohibited occupations and industries would be contained in a revised § 570.33, and all the permitted occupations and industries would be contained in a revised § 570.34. The Department is aware that, given the FLSA's mandate that before 14- or 15-year-olds may legally be employed to perform any covered work the Secretary of Labor must first determine that the work to be performed does not constitute oppressive child labor, it could choose to publish only a list of permissible occupations and industries, and not

provide a list of certain commonly arising prohibited occupations and industries. However, the Department believes that by continuing the long-standing Reg. 3 tradition of publishing lists of those occupations and industries in which such youth may be employed as well as detailed examples of those industries and occupations in which the employment of such youth is prohibited, it can greatly enhance the public's understanding of these important provisions. The list of prohibited industries and occupations helps to define and to provide clarity to the list of permitted industries and occupations. However, the list of prohibited occupations is not intended to identify every prohibited occupation, but rather only to provide examples of those prohibited occupations that have historically been the most common sources of violations or concern. As previously explained, any job not specifically permitted is prohibited.

The Department also understands that, given the constant development and changes occurring in the modern workplace, in continuing to provide a definitive list of permitted occupations and industries, the Department may unintentionally discourage the creation of positive and safe employment opportunities for young workers. But the Department believes that, by continuing its past practice of carefully reviewing inquiries regarding individual occupations or industries not currently addressed by Reg. 3 and then exercising its prosecutorial discretion and issuing enforcement positions that may eventually lead to rulemaking—as evidenced by certain proposals contained in this NPRM—it has developed an efficient and effective mechanism which overcomes the limitations of a definitive list.

The proposed modifications to the list of prohibited occupations are as follows:

1. Prohibited Machinery (§§ 570.33–.34)

Section 570.33(b) prohibits youth 14 and 15 years of age from employment in occupations involving the operation or tending of any power-driven machinery other than office equipment. Even though this prohibition is clear and quite broad, other sections of Reg. 3 have traditionally named certain pieces of power-driven machinery so as to eliminate any doubt or confusion as to their prohibited status. For example, § 570.34(a)(6) prohibits the employment of 14- and 15-year-olds in the operation of power-driven mowers or cutters and § 570.34(b)(6) prohibits the employment of such minors in occupations that involve operating, setting up, adjusting, cleaning, oiling, or repairing power-

driven food slicers, grinders, choppers, and cutters, and bakery-type mixers.

The Department proposes to combine §§ 570.33(b), 570.34(a)(6), and 570.34(b)(6)—all of which address power-driven machinery—into a single paragraph located at § 570.33(e) and expand the list of examples of prohibited equipment to include power-driven trimmers, weed-eaters, edgers, golf carts, food processors, and food mixers. Even though Reg. 3 for many years has prohibited the employment of 14- and 15-year-olds to operate any power-driven equipment other than office machines, the Department routinely receives inquiries as to the status under Reg. 3 of these individual pieces of equipment. The Department believes that by continuing to reference certain common prohibited machinery by name, both clarity and compliance will be increased.

## 2. Loading of Personal Hand Tools Onto Motor Vehicles and Riding on Motor Vehicles (§§ 570.33(f) and 570.34(b)(8))

Section 570.33(c) prohibits the employment of 14- and 15-year-olds in the operation of motor vehicles or service as helpers on such vehicles. The term *motor vehicle* is defined in § 570.52(c)(1). The Department has interpreted the Reg. 3 prohibition regarding service as helpers on a motor vehicle to preclude youth under the age of 16 from riding outside the passenger compartment of the motor vehicle. Such youth may not ride in the bed of a pickup truck, on the running board of a van, or on the bumper of a refuse truck. This interpretation dates back to at least the 1940 enactment of HO 2 which prohibits 16- and 17-year-olds from serving as outside helpers on motor vehicles.

The Department does not interpret the helper prohibition as applying to 14- and 15-year-olds who simply ride inside a motor vehicle as passengers and, thus, Reg. 3 permits a 14- or 15-year-old to ride inside the enclosed passenger compartment of a motor vehicle when driven by a driver whose employment complies with HO 2 under certain circumstances. For example, a minor may ride in a motor vehicle to reach another work site where he or she will perform work, to receive special training or instructions while riding, or to meet other employees or customers of the employer. While a 14- or 15-year old may be a passive passenger in a vehicle, that same minor is not permitted to ride in a motor vehicle when a significant reason for the minor being a passenger is for the purpose of performing work in connection with the transporting—or assisting in the transporting—of other

persons or property. This interpretation comports with the provision of § 570.33(f)(1), which prohibits the employment of 14- and 15-year-olds in occupations in connection with the transportation of persons or property by highway. Performing work in connection with the transportation of the other persons or property does not have to be the primary reason for the trip for this prohibition to apply.

The Department is proposing to include its long-standing interpretation that prohibits 14- and 15-year-olds riding outside of motor vehicles in Reg. 3 at § 570.33(f). The Department is also proposing to revise Reg. 3 at § 570.34(o) to permit 14- and 15-year-olds to ride in the enclosed passenger compartments of motor vehicles, except when a significant reason for the minors being passengers in the vehicle is for the purpose of performing work in connection with the transporting—or assisting in the transporting—of other persons or property. Each minor must have his or her own seat in the passenger compartment, each seat must be equipped with a seat belt or similar restraining device, and the employer must instruct the minors that such belts or other devices must be used. These provisions mirror the requirements of Drive for Teen Employment Act as contained in HO 2.

In addition, the Department's interpretation of prohibited helper services under § 570.33(c), since at least the mid-1950s, has included the loading and unloading of materials from motor vehicles when the purpose of the operation of the vehicle is the transportation of such materials. Section 570.33(f)(1) furthers this prohibition by banning the employment of minors in occupations in connection with the transportation of property by highway. Section 570.34(b)(8) prohibits the employment of such youth by retail, food service, and gasoline service establishments to load or unload goods to and from trucks, railroad cars, or conveyors. These prohibitions are designed to protect young workers from the hazards associated with loading docks, motor vehicles, and receiving departments; strains from lifting and moving heavy items; and falls and falling items. Accordingly, 14- and 15-year-olds generally are prohibited from loading and unloading any property (not just "goods") onto and from motor vehicles, including the light personal hand tools they use in performing their duties.

In 2000, the Department was requested by a municipality (the City) to review certain aspects of the prohibitions against employing 14- and

15-year-olds to load and unload items onto and from motor vehicles. The City advised the Department that, even with the adoption of the enforcement position that permits state and local governments to employ minors under certain conditions, it was being forced to abandon a youth-employment program that provided 14- and 15-year-olds with certain jobs because of the prohibition against loading materials into vehicles. The City specifically requested permission to allow such minors to load and unload, onto and from motor vehicles, the light, non-power-driven tools each youth would personally use as part of his or her employment. The Department carefully considered this request and, again using its prosecutorial discretion, decided that it would not assert a violation of the child labor provisions when 14- and 15-year-old employees of state and local governments loaded and unloaded the light non-power-driven hand tools—such as rakes, hand-held clippers, and spades—that they personally use as part of their employment. The City was advised that this enforcement policy did not extend to other prohibited transportation-related work such as the loading or unloading of materials other than the light hand tools the minors may encounter on-the-job, such as trash or garbage, or power-driven equipment such as lawn mowers, edgers, and weed trimmers—the use of which by this age group is prohibited under Reg. 3.

The Department proposes to revise Reg. 3 at §§ 570.33(f) and (k) and 570.34(k) to incorporate the enforcement position that allows 14- and 15-year-olds to be employed to load onto and unload from motor vehicles the light non-power-driven personal hand tools they use as part of their employment and to make it available to all covered employers, not just state and local governments. Such light non-power-driven hand tools would include, but not be limited to, rakes, hand-held clippers, shovels, and brooms, but would not include items like lawn mowers or other power-driven lawn maintenance equipment. In addition, such minors would be permitted to load onto and unload from motor vehicles any personal protective equipment they themselves will use at the work site and any personal items such as backpacks, lunch boxes, and coats their employers allow them to take to the work site. Such minors would not be permitted to load or unload such jobsite-related equipment as barriers, cones or signage.

### 3. Work in Meat Coolers and Freezers (§ 570.34(b)(7))

Section 570.34(b)(7) prohibits 14- and 15-year-olds from working in freezers and meat coolers. Since its inception, the Department has interpreted this section to mean that such youth are prohibited from working as dairy stock clerks, meat clerks, deli clerks, produce clerks, or frozen-food stock clerks where their duties would require them to enter and remain in the freezer or meat cooler for prolonged periods. Inventory and cleanup work, involving prolonged stays in freezers or meat coolers, are also prohibited. On the other hand, the Department has taken the position since at least 1981 that counter workers in quick service establishments or cashiers in grocery stores whose duties require them to occasionally enter freezers only momentarily to retrieve items are not considered to be working in the freezers for enforcement purposes. In order to provide clarification, the Department is proposing to incorporate this long-standing interpretation into the regulations at § 570.33(i).

### 4. Youth Peddling

The Department is proposing to amend Reg. 3 and create § 570.33(j) to ban the employment of 14- and 15-year-old minors in occupations involving youth peddling, also referred to as “door-to-door sales” and “street sales.” Controversies regarding young children conducting commercial sales of items, often on a “door-to-door” basis, are not new. The Department has over the years documented reports of minors, many as young as 10 or 11 years of age, working as part of mobile sales crews, selling such items as candy, calendars, and greeting cards for profit-making companies. Injuries, and even deaths, have occurred as the result of young children engaging in youth peddling activities. The door-to-door sales industry employing these minors generally is composed of a number of crew leaders who, during the course of a year, operate in many different states. The crew leaders, who often have ties to regional or national businesses, mistakenly claim that they and their young sales crews are independent contractors. Typically, a crew leader attempts to saturate a particular area with sales crews, make as many sales as possible, and then quickly move to a new location. Crews often work from late afternoon to late at night as that is when most of the potential customers are likely to be at home. Because youth peddlers typically qualify as outside sales employees under FLSA section 13(a)(1), they are usually exempt from

the minimum wage and overtime requirements of the FLSA (see 29 CFR 541.500).

Congressional hearings and the Department’s enforcement experience have shown that the problems associated with children performing door-to-door sales and street sales are numerous. These youth are often transported by crew leaders in vans, which fail to meet proper safety and insurance requirements, to areas quite distant from their home neighborhoods. They are often required to work many hours on school nights and late into the evening. These minors are frequently placed by employers, without adult supervision, at subway entrances, outside large office buildings, at high-traffic street corners, and on median strips at busy intersections where they can attract potential customers. Reports of children being abandoned, suffering injuries from violence and motor vehicle crashes, and being exposed to the elements have been substantiated. Youth have been injured and have died as a result of these activities. Intimidation by crew leaders is commonly reported.

In 1987, the permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the United States Senate held hearings on the Exploitation of Young Adults in Door-to-Door Sales. The hearings included a staff study that documented many abuses that had occurred in this industry, including indentured servitude, physical and sexual abuse, and criminal activity. In 1998, the Interstate Labor Standards Association created a subcommittee to work toward ending door-to-door sales by children and recommended that the Department of Labor act as a national clearinghouse regarding information concerning door-to-door sales operations. In response to the 1994 ANPRM issued by the Department, calls for banning door-to-door sales by those under 18 years of age were received from the National Consumers League, the Defense for Children International, USA, and the Food and Allied Service Trades Department, AFL–CIO. At least 17 states have rules prohibiting or regulating door-to-door sales by minors.

The Department’s proposal to prohibit youth peddling would not be limited to just the attempt to make a sale or the actual consummation of a sale, but would include such activities normally associated with and conducted as part of the individual youth peddler’s sales activities, such as the loading and unloading of vans or other motor vehicles, the stocking and restocking of sales kits and trays, the exchanging of

cash and checks, and the transportation of minors to and from the various sales areas by the employer.

As used here, the terms youth peddling, door-to-door-sales, and street sales do not include legitimate fund-raising activities by eleemosynary organizations such as cookie sales conducted by the Girl Scouts of America or school fund-raising events where the students are truly volunteers and are not promised compensation for the sales they make. The term compensation would not include the small prizes, trophies, or other awards of minimal value that the eleemosynary organization may give a volunteer in recognition of his or her efforts. In administering the FLSA, the Department considers such individuals, who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, without contemplation of pay, not to be employees of the religious, charitable, or similar nonprofit corporations that receive their services. In addition, FLSA section 3(e)(4) excludes from the definition of “employee” individuals who volunteer to public agencies. These provisions apply equally whether the volunteer is an adult or a minor.

### 5. Poultry Catching and Cooping

The Department has long taken the position that 14- and 15-year-olds may not be employed to catch and coop poultry in preparation for transportation or for market because it is a “processing” occupation prohibited by § 570.33(a). Such employees are often referred to as “chicken catchers or poultry catchers.” In addition, the prohibitions against operating or tending power-driven equipment contained in § 570.33(b) and the prohibition against employment in occupations in connection with the transportation of property contained in § 570.33(f)(1) generally preclude the employment of such youth as poultry catchers. These activities are normally performed in environments and under conditions that present risks of injury and illness to young workers. Working in the dark, with the only illumination provided by “red lights” which the fowl cannot see, and in poorly ventilated rooms, is not uncommon. The risks associated with poultry catching also occur in the catching and cooping of poultry other than chicken—for example, processors of turkeys and Cornish game hens employ similar methods of moving their products to slaughter.

Despite the Department’s consistent interpretation that 14- and 15-year-olds

may not be employed as poultry catchers, employers still have questions concerning how the regulations address such work, and violations still occur. For example, the Department investigated the death of a 15-year-old male in 1999 who was employed as a poultry catcher, working in the dark and under red lighting, in Arkansas. The youth was electrocuted shortly after midnight when he bumped into a fan while performing his "catching" duties. In order to remove any confusion and increase employer compliance, the Department is therefore proposing to amend Reg. 3 and create § 570.33(l) to specifically prohibit the employment of 14- and 15-year-old minors in occupations involving the catching and cooping of poultry for preparation for transport or for market. The prohibition would include the catching and cooping of all poultry, not just chickens.

It is important to note that in those rare instances when the catching activities would be agricultural in nature, such as where poultry catchers are employed solely by a farmer on a farm to catch poultry raised by that farmer, the catchers would be subject to the agricultural child labor provisions contained in FLSA sections 13(c)(1) and (2).

*B. Occupations That Are Permitted for Minors Between 14 and 16 Years of Age (29 CFR §§ 570.33–.34)*

As mentioned, section 3(l) of the FLSA expressly prohibits children under the age of 16 from performing any work other than that which the Secretary of Labor permits, by order or regulation, upon finding that it does not interfere with their schooling or health and well-being (see 29 U.S.C. 203(l)). Before a 14- or 15-year-old may legally perform work covered by the FLSA, the Act requires that the work itself be exempt, or that the Secretary of Labor has determined that the work to be performed does not constitute oppressive child labor. The Secretary's declarations of what forms of labor are not deemed oppressive for children between the ages of 14 and 16 appear in Reg. 3 (29 CFR 570.31–.38).

Reg. 3 identifies a number of occupations or activities that are specifically permitted for the employment of youth 14 and 15 years of age in retail, food service, and gasoline service establishments. As mentioned, the Department proposes to revise this list of permitted occupations by clarifying it, adding to it, and extending its application to all employment covered by the FLSA, except those employers engaged in mining or manufacturing, or any industry or

occupation prohibited by the proposed § 570.33. This revised list would be contained in § 570.34.

The Department also proposes to revise § 570.34(a)(8) by clarifying that 14- and 15-year-olds may perform car cleaning, washing, and polishing, but only by hand. Such youth are prohibited from operating or tending any power-driven machinery, other than office equipment, and this prohibition has always included automatic car washers, power-washers, and power-driven scrubbers and buffers. The Department believes this clarification will provide guidance to employers.

The additional occupations the Department is proposing to permit 14- and 15-year-olds to perform are discussed below.

**1. Work of a Mental or Artistically Creative Nature**

The Department routinely receives inquiries asking whether 14- and 15-year-old youth may be employed to perform certain mental or artistically creative activities in industries not specifically permitted by Reg. 3. The inquiries have concerned such jobs as a computer programmer and computer applications demonstrator for a college, print and runway model, and musical director at a church or school. Often, these inquiries concern students who are especially gifted or career oriented in a particular field. A strict adherence to Reg. 3 requirements would not permit the employment of a 14- or 15-year-old in any of these scenarios, even though talented and motivated youth could safely and successfully perform these tasks without interfering with their schooling or health and well-being.

The Department is proposing to revise Reg. 3 at § 570.34(b) to permit the employment of 14- and 15-year-olds to perform work of a mental or artistically creative nature such as computer programming, the writing of software, teaching or performing as a tutor, serving as a peer counselor or teacher's assistant, singing, playing a musical instrument, and drawing. Permitted work of a mental nature would be limited to work that is similar to that performed in an office setting and not involving the use of any power-driven equipment other than office machines. Artistically creative work would be limited to work in a recognized field of artistic or creative endeavor. The employment would be permitted in any industry other than those prohibited by Reg. 3 and would also be subject to all the applicable hours and times standards established in § 570.35 and occupation standards contained in § 570.33.

**2. The Employment of 15-Year-Olds (But Not 14-Year-Olds) as Lifeguards**

The Department is proposing to revise Reg. 3 at § 570.34(l) to permit the employment of 15-year-olds as lifeguards at swimming pools and water amusement parks under certain conditions. A local chapter of the American Red Cross (Chapter) first raised this issue in 2000. The Chapter advised the Department that the Red Cross had revised its own rules and was now certifying 15-year-olds as lifeguards. Prior to 2000, according to the Chapter, 16 years was generally the minimum age at which the Red Cross would provide such certification. The Chapter inquired as to whether Reg. 3 would permit the employment of 15-year-olds as lifeguards. Also in 2000, a municipality contacted the Department inquiring whether it could legally employ such youth as lifeguards at its city-owned swimming pools.

The occupation of lifeguard is not specifically authorized in Reg. 3 as an occupation that 14- and 15-year-olds may perform. In response to the inquiries, the Department adopted an enforcement policy in 2000 that allowed 15-year-olds (but not 14-year-olds) to be employed at swimming pools owned and operated by state and local governments or private-sector retail establishments under certain conditions. Those conditions included that the youth be trained and certified in aquatics and water safety by the Red Cross, or by some similarly recognized certifying organization, and that the youth work under conditions acceptable to the Red Cross, or some similarly recognized certifying organization. This enforcement position permitted such employment at swimming pools operated by hotels, amusement parks, cities, and state-owned universities, but did not permit such employment at pools operated by non-public and non-retail establishments such as apartment houses, country clubs, private schools, home-owner associations, and private health clubs. In early 2005, the Department, after reviewing additional information, extended this enforcement position to permit the employment of 15-year-olds as lifeguards at (1) all traditional swimming pools regardless of who owns, operates or manages the establishments, and (2) those facilities of water amusement parks that constitute traditional swimming pools.

The Department proposes to revise Reg. 3 by creating § 570.34(l) to incorporate portions of the current enforcement position. The revision would permit 15-year-olds, but not 14-year-olds, to be employed as lifeguards,

performing lifeguard duties, at traditional swimming pools and certain areas of amusement water parks operated by all types of employers, if the minors have been trained and certified by the Red Cross or a similarly recognized certifying organization.

The occupation of lifeguard, as used in this subpart, entails the duties of rescuing swimmers in danger of drowning, the monitoring of activities at a swimming pool to prevent accidents, the teaching of water safety, and assisting patrons. Lifeguards may also help to maintain order and cleanliness in the pool and pool areas, give swimming instructions, conduct or officiate at swimming meets, and administer first aid. Additional ancillary lifeguard duties may include checking in and out such items as towels, rings, watches and apparel. Permitted duties for 15-year-olds would include the use of a ladder to access and descend from the lifeguard chair; the use of hand tools to clean the pool and pool area; and the testing and recording of water quality for temperature and/or pH levels, using all of the tools of the testing process including adding chemicals to the test water sample. Fifteen-year-olds employed as lifeguards would, however, be prohibited from entering or working in any mechanical rooms or chemical storage areas, including any areas where the filtration and chlorinating systems are housed. The other provisions of Reg. 3, including the restrictions on hours of work contained at § 570.35(a), would continue to apply to the employment of 15-year-old lifeguards.

Under the proposed rule, no youth under 15 years of age, whether properly certified or not, could legally perform any portion of the lifeguard duties detailed above as part of his or her FLSA covered employment. The core and defining duty of a lifeguard is the rescuing of swimmers in danger of drowning, often by entering the water and physically bringing the swimmer to safety. Under the Department's proposal, any employee under the age of 16 whose duties include this core duty—such as a “junior lifeguard” or a “swim-teacher aide”—or whose employment could place him or her in a situation where the employer would reasonably expect him or her to perform such rescue duties, would be performing the duties of a lifeguard while working in such a position. For such employment to comply with Reg. 3, the employee would have to be at least 15 years of age and be properly certified.

A *traditional swimming pool*, as used in this subpart, would mean a water-tight structure of concrete, masonry, or

other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith. A *water amusement park* means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at most of these water park features.

Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches.

It is important to note that § 570.33(b) prohibits the employment of 14- and 15-year-olds in occupations involving the operation or tending of power-driven machinery, except office machines. This prohibition has always encompassed the operation or tending of all power-driven amusement park and recreation establishment rides—including elevated slides found at water amusement parks. Such slides, which often reach heights of over 40 feet, rely on power-driven machinery that pump water to the top of the slides which facilitates the descents of the riders to the “splash-down” areas at the base of the slides. Minors less than 16 years of age may not be employed as dispatchers or attendants at the top of elevated water slides—employees who maintain order, direct patrons as to when to depart the top of the slide, and ensure that patrons have safely begun their ride—because such work constitutes “tending” as used in Reg. 3. In addition, when serving as dispatchers or attendants at the top of an elevated water slide, minors under 16 years of age are not performing, nor can they reasonably be expected to perform, the core lifeguard duty of rescuing swimmers because they are so far removed from the splash-down area of the slide. Accordingly, even if 15-year-old minors have been certified as lifeguards, the provisions of § 570.34(l) would not apply to the time spent as dispatchers or attendants at an elevated water slide. Properly certified 15-year-old lifeguards, however, may be stationed at the “splashdown pools” located at the bottom of the elevated water slides to perform traditional lifeguard duties.

The Department is aware that permitting 15-year-olds to be employed

as lifeguards at such water amusement park facilities as lazy rivers, wave pools, and the splashdown pools of elevated slides could be construed as allowing these youth to tend power-driven machinery. But the Department believes that the overall predominance of their responsibility to perform the core life-saving duty of rescuing patrons who are in the water, which they have been properly trained and certified to perform, outweighs the minimum, isolated, and sporadic amount of tending such lifeguards may potentially be called upon to do when stationed at wave pools, lazy rivers, and splashdown pools.

### 3. The Employment of Certain Youth by Places of Business Where Machinery Is Used To Process Wood Products

The provisions of the Department of Labor Appropriations Act, 2004, amended the FLSA by creating a limited exemption from the youth employment provisions for certain minors 14 through 17 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained at section 13(c)(7) of the FLSA, allows eligible youth to work inside and outside of places of businesses that use machinery to process wood products, subject to specified limitations. The Department is incorporating the new requirements of this amendment into its regulations. The Department is proposing to incorporate the amendment into Reg. 3 at § 570.34(m), and into § 570.54, Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill (Order 4).

Section 13(c)(7) overrides the heretofore complete prohibition on the employment of 14- and 15-year-olds in manufacturing occupations contained in section 3(l) of the FLSA. Accordingly, to meet the requirements of this legislation, the Department is proposing to revise Reg. 3 to permit the employment of qualifying 14- and 15-year-olds inside and outside of places of business where manufacturing (the processing of wood products by machinery) takes place, subject to specified conditions and limitations.

The Department proposes to limit the types of employers who may employ such minors, as well as the worksites at which such minors may be employed, to those contemplated by the language of the statute and mentioned by the sponsors of the legislation and the interested parties that testified at the hearings held by Congress prior to the enactment of the legislation (see, e.g., Testimony Before Senate Labor, Health

and Human Services, and Education Subcommittee of the Committee on Appropriations, The Employment Needs of Amish Youth, 107th Cong. 2 (2001)). The term *places of business where machinery is used to process wood products* shall mean such permanent workplaces as sawmills, lath mills, shingle mills, cooperage stock mills, furniture and cabinet making shops, gazebo and shed making shops, toy manufacturing shops, and pallet shops. The term shall not include construction sites, portable sawmills, areas where logging is being performed, or mining operations. The term *inside or outside places of business* refers to the distinct physical place of the business, i.e., the buildings and the immediate grounds necessary for the operation of the business. This exemption would not apply to tasks performed at locations other than inside or outside the place of business of the employer such as the delivery of items to customers or the installation of items at customers' establishments or residences.

Although section 13(c)(7) permits the employment of certain youth inside and outside of places of business where machinery is used to process wood products, it does so only if the youth do not operate or assist in the operation of power-driven woodworking machines. The terms *operate or assist in the operation* and *power-driven woodworking machines* are well-established in 29 CFR 570.55, and the Department proposes to revise Reg. 3 to include these definitions along with the specific prohibition against operating or assisting in the operation of power-driven woodworking machines. Section 570.55 lists, when discussing the prohibited occupations involved in the operation of power-driven woodworking machines, such activities as supervising or controlling the operation of the machines, feeding materials into such machines, and helping the operator feed material into such machines. The list also includes the occupations of setting up, adjusting, repairing, oiling, or cleaning the machines. That same section defines *power-driven woodworking machines* to mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer. The Department is proposing to amend the definition of *power-driven woodworking machines* to include those machines that process trees, logs, and lumber in recognition that section 13(c)(7) now permits certain youth 14

through 17 years of age to work in sawmills where trees, logs, and lumber would be processed. This revised definition of *power-driven woodworking machines* would be included in § 570.34(m) of Reg. 3 and both § 570.54 (HO 4) and § 570.55 (HO 5).

The limited exemption contained in section 13(c)(7) applies only to certain youth—new entrants into the workforce—and only when certain additional criteria are met. Section 13(c)(7) defines a *new entrant into the workforce* as an individual who is under the age of 18 and at least the age of 14, and, by statute or judicial order, is exempt from compulsory school attendance beyond the eighth grade.

In addition, in order to be employed inside or outside of places of business where machinery is used to process wood products, the new entrant must be supervised by an adult relative or an adult member of the same religious sect or division as the entrant. The term *supervised* refers to the requirement that the youth's on-the-job activities be directed, monitored, overseen, and controlled by a specified named adult. Although the statute does not define the terms *adult* and *relative*, the Department proposes that, for purpose of this exemption, a relative would include a parent (or person standing in place of a parent), a grandparent, an aunt, an uncle, and a sibling; and an adult would be someone who has reached his or her eighteenth birthday. The Department also proposes that the term *adult member of the same religious sect or division as the youth* would mean an adult who professes membership in the same religious sect or division to which the youth professes membership. The Department believes that in order to ensure these youth receive the degree of protection from injury Congress intended, the supervision of the minors must be close, direct, and uninterrupted. No other provision of the federal nonagricultural youth employment rules requires such a specific level of supervision. It is important to note that this requirement of supervision, just like the requirement that youth not operate or assist in the operation of power-driven woodworking machinery, applies to the employment of 16- and 17-year-olds as well as 14- and 15-year-olds.

Furthermore, section 13(c)(7) permits the employment of a new entrant inside or outside places of business where machinery is used to process wood products only if the youth is (1) protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying

debris or by maintaining a sufficient distance from machinery in operation, and (2) required to use personal protecting equipment to prevent exposure to excessive levels of noise and saw dust. It is the Department's position that section 13(c)(7)'s prerequisite that the youth is "required to use personal protective equipment to prevent exposure to excess levels of noise and saw dust" includes the youth's actual use of such equipment and not just the employer's obligation to mandate such use.

The Wage and Hour Division has consulted with representatives of the Department's Occupational Safety and Health Administration (OSHA) and will defer to that agency's expertise and guidance when determining whether an employer is in compliance with the safety provisions of this exemption—i.e., whether a workplace barrier is appropriate to the potential hazard, whether a sufficient distance has been maintained from machinery in operation, and whether the youth is exposed to excessive levels of noise and saw dust. The Department proposes that compliance with the safety and health provisions discussed in the previous paragraph will be accomplished when the employer is in compliance with the requirements of the applicable governing standards issued by OSHA or, in those areas where OSHA has authorized the state to operate its own Occupational Safety and Health Plan, the applicable standards issued by the Office charged with administering the State Occupational Safety and Health Plan.

### C. Periods and Conditions of Employment (29 CFR § 570.35)

FLSA section 3(l) authorizes the Secretary of Labor to provide by regulation for the employment of young workers 14 and 15 years of age in suitable nonagricultural occupations and during periods and under conditions that will not interfere with their schooling or with their health and well-being. In enacting FLSA section 3(l), Congress intended to assure the health and educational opportunities of 14- and 15-year-olds, while allowing them limited employment opportunities.

In 1939, Reg. 3 was promulgated under the direction of the Chief of the Children's Bureau, in whom Congress vested the original delegation of authority to issue child labor regulations. The record on which Reg. 3 was based included hearings where child labor advocates expressed concern over the need for children to avoid fatigue, so as not to deplete the energy

required for their school work. Similarly, witnesses stressed that early morning and late evening work hours, which interfered with sleep and often fostered exhaustion, were unhealthful for children and also diminished the time that children should have spent with the family (see *In the Matter of Proposed Regulation Relating to the Employment of Minors Between 14 and 16 Years of Age Under the Fair Labor Standards Act*, Official Report of the Proceedings Before the Children's Bureau, February 15, 1939, at 19, 21, 34, 82). Reg. 3 limits the hours that 14- and 15-year-olds may work to:

- (1) Outside school hours;
- (2) Not more than 40 hours in any 1 week when school is not in session;
- (3) Not more than 18 hours in any 1 week when school is in session;
- (4) Not more than 8 hours in any 1 day when school is not in session;
- (5) Not more than 3 hours in any 1 day when school is in session; and
- (6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

The Department is not proposing to change any of these hours and time-of-day limitations, but wishes to foster both understanding of, and compliance with, these provisions by incorporating into the regulations certain long-standing Departmental enforcement positions and interpretations. For example, the Department has developed long-standing enforcement positions regarding the application of certain of the hours standards limitations to minors, who for differing reasons, no longer attend or are unable to attend school. Some of these positions have been in place since the 1970s and all have been detailed in the Wage and Hour Division's Field Operations Handbook since 1993. The Department proposes to incorporate them into Reg. 3 to promote both clarity and compliance. The Department proposes to amend § 570.35 to reflect that school would not be considered to be in session for a 14- or 15-year-old minor who has graduated from high school; or has been excused from compulsory school attendance by the state or other jurisdiction once he or she has completed the eighth grade and his or her employment complies with all the requirements of the state school attendance law; or has a child to support and appropriate state officers, pursuant to state law, have waived school attendance requirements for this minor; or is subject to an order of a state or federal court prohibiting him or her from attending school; or has been permanently expelled from the local

public school he or she would normally attend. Such minors would be exempt from the "when school is in session" hours standards limitations contained in §§ 570.35(a)(1), (a)(3) and (a)(5). The employment of such minors would still be governed by the remaining provisions of Reg. 3, including the daily, weekly, morning, and evening hours standards limitations contained in §§ 570.35(a)(2), (a)(4), and (a)(6).

The Department also proposes to clarify the hours restriction contained in § 570.35(a)(5), which limits the employment of 14- and 15-year-olds in nonagricultural employment to no more than 3 hours on a day when school is in session, by adding a statement that this restriction also applies to Fridays. The Wage and Hour Division occasionally receives requests for clarification from employers seeking to lengthen the work shifts of younger employees on nights that do not precede a school day. As the stated purposes of the hours standards limitations include the protection of young workers from exhaustion and the preservation of time for rest and family relations, no more than 3 hours of work is permitted on any day when school was in session.

The Department also proposes to incorporate into Reg. 3 its long standing position that the term week as used in Reg. 3 means a standard calendar week of 12:01 a.m. Sunday through midnight Saturday, not an employer's workweek as defined in 29 CFR § 778.105. The calendar week would continue to serve as the timeframe for determining whether a minor worked in excess of 18 hours during any week when school was in session or in excess of 40 hours in any week when school was not in session.

Finally, as noted above, Reg. 3 limits the employment of 14- and 15-year-olds to periods that are outside of school hours and to designated hours depending whether or not school is in session. Although neither the FLSA nor Reg. 3 defines the terms *school hours* and *school is in session* as they apply to nonagricultural employment, the Department has developed and applied a long-standing enforcement position that these terms refer to the normal hours of the public school system in the child's district of residence. This enforcement position mirrors the provisions of FLSA section 13(c)(1), which Congress added in 1949, to clarify how these terms applied to the employment of youth in agricultural employment. FLSA section 13(c)(1) states, in relevant part: "The provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for

the school district where such employee is living while he is so employed, if such employee \* \* \* (c) is fourteen years of age or older."

The Department, though not proposing specific regulatory language regarding these terms at this time, is seeking information from the public regarding whether such regulatory provisions would be appropriate including whether: (1) The Department should continue to use the hours of operation of the local public school where a minor resides to determine when he or she may legally be employed, even when that minor does not attend that local public school or, for whatever reason, may actually have attendance requirements that differ from that of the rest of the students attending that local school; (2) the FLSA's requirement that such a minor only be employed under conditions and during periods that will not interfere with his or her schooling or health and well-being would be equally or better served if it were based on the minor's own actual academic schedule; (3) using the academic schedule and attendance requirements of each minor when determining when school was in session for that minor would provide working youths greater opportunities and flexibility when seeking safe, positive and legal employment. Based on comments received, the Department will consider adding a regulatory provision defining the terms school hours and school is in session, as they apply to nonagricultural employment.

#### D. Work-Study Programs

Effective November 5, 1969, Reg. 3 was amended to provide a variance from some of the provisions of § 570.35 for the employment of minors 14 and 15 years of age enrolled in and employed pursuant to a school-supervised and administered Work Experience and Career Exploration Program (WECEP). Although originally proposed as an experimental program, Reg. 3 was amended to make the WECEP a permanent exception.

WECEP was created to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youth who can benefit from a career oriented educational program designed especially to meet the participants' needs, interests, and abilities. The program was, and continues to be, specifically geared to helping dropout-prone youth become reoriented and motivated toward education and to prepare for the world of work.

Section 570.35a establishes the criteria that must be met in order for

states to apply for and receive authorization to operate a WECEP. This same section details the terms, conditions, and responsibilities participating states agree to assume upon receiving authorization to operate a WECEP.

As mentioned, certain provisions of § 570.35 relating to the Reg. 3 hours standards are varied for youth enrolled in and employed pursuant to an approved WECEP. Such youth may work up to 23 hours in any one week when school is in session, any portion of which may be during school hours. The other provisions of § 570.35 (limiting employment to no more than 3 hours on any one day school is in session, no more than 8 hours a day on any one day school is not in session, and no more than 40 hours in any one week when school is not in session) remain applicable to the employment of WECEP participants. Section 570.35a also includes provisions that allow the Administrator of the Wage and Hour Division discretion to grant requests for special variances from the occupation standards established by §§ 570.33 and 570.34.

Several states have advised the Department that WECEP serves its targeted audience well, helping dropout-prone students, especially those who are not academically oriented, stay in school and complete their high school educations. However, WECEP, by design, does little to help those students who wish to use work experience, and the wages such experiences generate, as a means to realize their academic potential and acquire a college education.

In 2003, the Department became aware of a non-profit network of private schools, hereafter referred to as the Network, that was operating a corporate work-study program for its students. The Network is an association of private, not-for-profit college preparatory high schools that strive to meet the educational needs of people in many economically challenged areas throughout the country. The work-study program was implemented to help students offset the costs of a quality college preparatory education and develop important work experience and socialization skills that will allow them to assume leadership roles as adults.

Under the Network's model, five students share a single, full-time clerical position with a private employer at a work place screened and selected by the school. Each youth works five full days per four-week period for the employer at the work place—one eight hour-day once a week for three weeks, and two eight-hour days every fourth week. The

academic schedules of the students are carefully coordinated so that students do not miss any classes on the days they work and the school year has been extended beyond the standard academic schedule of the local public school to compensate for the time the students spend at work. These accommodations ensure that students complete a fully accredited, college preparatory curriculum that exceeds both state and accrediting agency requirements. Under the Network model, students do not work more than eight hours a day, before 7 a.m. or after 7 p.m., and are transported to and from their jobs by the school. The students receive at least the applicable federal and state minimum wages, and applicable taxes are withheld and reported by their respective employers. The Network envisioned the work-study program as an integral part of the academic program, yielding benefits on many different levels. Students, their parents, and the work-study director sign an agreement defining performance expectations and program support structures. Participating employers are also required to sign an agreement defining job duties and expectations. All students are required to participate in the work-study program, beginning with their freshman year and ending at graduation.

The Network provided information that its model is achieving its stated aims. It advised the Department that 100 percent of the students of the 2003 graduating class of one of its schools were accepted into college. The school is located in a neighborhood where 20 percent of those attending the local public school drop out annually and the high school graduation rate is 55 percent.

Reg. 3, as currently written, does not allow 14- and 15-year-olds to participate in such work-study programs. Such youth may not work during the hours school is in session—unless participating in a state sponsored WECEP—and may not work more than three hours on a day the local public school is in session.

Because the Department believes that the health, well-being, and educational opportunities of 14- and 15-year-olds who are academically oriented are not placed at risk by participation in structured work-study programs such as the Network's model- and are in fact enhanced by such participation-it is proposing that Reg. 3 be revised to accommodate such programs. The Department proposes to allow public and private school districts or systems to apply to the Administrator of the Wage and Hour Division for approval to

operate a work-study program that would permit certain 14- and 15-year-olds to work during school hours and up to eight hours on a school day under specific circumstances. An individual private school that was not part of a network, district, or system would also be able to apply to participate in a work study program.

The youth would have to be enrolled in a college preparatory curriculum and must receive, every year they participate in the work-study program, at least the minimum number of hours of class room instruction required by the applicable state educational agency responsible for establishing such standards. Participating youth would also be required to receive annual classroom instruction in work place safety and youth employment provisions. Home-schooled youth would be able to participate in work-study programs operated by local public schools in the same manner many currently participate in team sports programs, band, and other extracurricular activities.

Each participating school would be required to name a teacher-coordinator to supervise the work-study program, make regularly scheduled visits to the students' work sites, and ensure that participants are employed in compliance with the minimum wage and youth employment provisions of the FLSA. In addition, the teacher-coordinator, the employer and the student would be required to sign a written participation agreement that details the objectives of the work-study program, describes the specific job duties to be performed by the student, and the number of hours and times of day that the student would be employed each week. The agreement, which must also be signed or otherwise consented to by the student's parent or guardian, would also affirm that the student will receive the minimum number of hours of class room instruction as required by the state educational agency for the completion of a fully-accredited college preparatory curriculum and that the employment will comply with the applicable youth employment and minimum wage provisions of the FLSA.

Students participating in a valid work-study program would be permitted to work up to eighteen hours a week, a portion of which may be during school hours, in accordance with the following formula that is based upon a continuous four-week cycle. In three of the four weeks, the participant would be permitted to work during school hours on only one day per week, and for no more than for eight hours on that day. During the remaining week of the four-

week cycle, such minor would be permitted to work during school hours on no more than two days, and no more than for eight hours on each of those two days. The employment of such minors would still be subject to the time of day and number of hours standards contained in §§ 570.35(a)(2), (a)(3), (a)(4), and (a)(6).

*E. Logging Occupations and Occupations in the Operation of Any Sawmill, Lath Mill, Shingle Mill, or Cooperage Stock Mill (Order 4) (29 CFR 570.54)*

HO 4 generally prohibits minors 16 and 17 years of age from being employed in most occupations in logging and in the operation of a sawmill, lath mill, shingle mill or cooperage stock mill. The HO was created because of the extremely high numbers of occupational fatalities and injuries that were experienced by workers of all ages in these industries.

HO 4 currently provides exemptions that allow 16- and 17-year-olds to perform some occupations within the logging industries. Such minors may perform work in offices or repair or maintenance shops. They may work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps. They may work in the peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by HO 4. They may work in the feeding and care of animals. Finally, they may work in timber cruising, surveying, or logging engineering parties; in the repair or maintenance of roads, railroads, or flumes; in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining fire-fighting equipment, constructing and maintaining telephone lines, or acting as fire lookouts or fire patrolman away from the actual logging operations—but only if such tasks do not involve the felling and bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and working on trestles.

HO 4 also provides exemptions at § 570.54(a)(2), permitting 16- and 17-year-olds to be employed in certain sawmill, lath mill, shingle mill, or cooperage stock mill occupations. These exemptions, which do not apply to work performed in a portable sawmill or that entails the young worker entering the sawmill building, permit 16- and 17-year-olds employed in sawmills, lath mills, shingle mills, or cooperage stock

mills to work in offices or in repair or maintenance shops; straighten, mark, or tally lumber on the dry chain or the dry drop sorter; pull lumber from the dry chain; clean up the lumberyard; pile, handle, or ship cooperage stock in yards or storage sheds other than operating of or assisting in the operation of power-driven equipment; clerical work in the yards or shipping sheds, such as done by ordermen, tally-men, and shipping clerks; clean-up work outside shake and shingle mills, except when the mill is in operation; split shakes manually from precut and split blocks with a fore and mallet, except inside the mill building or cover; pack shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover; and manually load bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury to himself.

The NIOSH Report recommends that the Department not only retain HO 4, but expand its coverage to include work in the operation of timber tracts (Standard Industrial Classification (SIC) 081) and forestry services (SIC 085) because of the high number of fatalities occurring in such operations. The SIC industry group of timber tracts encompasses establishments primarily engaged in the operation of timber tracts or tree farms for the purpose of selling standing timber, including those establishments that grow Christmas trees. The SIC industry group of forestry services encompasses establishments primarily engaged in performing, on a contract or fee basis, services related to timber production, wood technology, forestry economics and marketing, as well as other forestry services not contained in another SIC such as cruising timber, forest firefighting, and reforestation. Establishments that perform timber estimation and valuation and forest fire prevention and pest control are also included in SIC 085.

The Report states “The logging industry \* \* \* had the highest lifetime risk of fatal injury of any industry, at 47 deaths per 1,000 workers based on an analysis of National Traumatic Occupational Fatality Surveillance System data for 1990 and 1991. Sawmills, planing mills, and millwork \* \* \* had the 14th highest lifetime risk of 5.8 deaths per 1,000 workers.” The Report also documents that the forestry industry has a high fatality rate as well, and workers face injury risks similar to those of logging workers. Citing data from the Census of Fatal Occupational

Injuries (CFOI), the Report identified 82 fatalities of workers between 1992 and 1997 employed in the forestry industry as a whole, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries and those providing related forest service activities such as cruising and estimating timber, reforestation, fire prevention and fire fighting, pest control, timber valuation, and the gathering of forest products.

Although the Report notes that there was almost no data specific to workers 16 and 17 years of age, the CFOI identifies 35 deaths in timber tract operations for all age groups between 1992 and 1997 and 39 deaths in forestry service operations for all age groups during the same period. In addition, NIOSH also was able to identify 16 additional deaths of workers of all ages that were clearly attributable to forest firefighting activities. These are indeed occupations that experience high rates of fatalities.

NIOSH notes that work in SIC 083, forest nurseries and gathering of forest products, is associated with very small numbers of fatalities and should not be prohibited by HO 4. SIC 083 encompasses those establishments primarily engaged in growing trees for purposes of reforestation or in gathering forest products. The concentration or distillation of these products, when carried out in the forest, is also included in this industry. Examples of industries or activities included in SIC 083 are the gathering of balsam needles, ginseng, huckleberry greens, maple sap, moss, Spanish moss, sphagnum moss, teaberries, and tree seeds; the distillation of gum, turpentine, and rosin if carried on at the gum farm; and the extraction of pine gum. It should also be noted that section 13(d) of the FLSA already provides an exemption from the Act’s minimum wage, overtime, and youth employment provisions to any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

The Report also recommends that the Department remove the current exemption that permits 16- and 17-year-olds to work in the construction of living and administrative quarters of logging camps. The Report states: “Construction work has high risks for fatal and nonfatal injuries and should not be exempted in the construction of living or administrative quarters at logging sites or mills.” The Department is seeking public comments about this

issue in the ANPRM that is being published concurrently with this NPRM.

As mentioned earlier, the Department of Labor Appropriations Act, 2004 (Pub. L. 108–199), amended the FLSA by creating a limited exemption from the youth employment provisions for minors 14 to 18 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained in section 13(c)(7) of the FLSA, allows eligible youth, under specific conditions, to be employed by businesses that use machinery to process wood products, but does not allow such youth to operate or assist in operating power-driven woodworking machines. This exemption necessitates that the Department revise both Reg. 3 and HO 4.

The Department agrees with the Report recommendation that HO 4 should be expanded to cover work in forest firefighting and forest fire prevention because of the risks inherent in those occupations. The Department is also inclined to adopt NIOSH's recommendation that the employment of 16- and 17-year-olds be prohibited in the operation of timber tracts, tree farms and forestry services, but is concerned that such youth may be able to be safely employed in certain facets or occupations within those industries without jeopardizing their health or well-being. Therefore, the Department is asking, in this NPRM, for information from the public that will help it identify which occupations or tasks within the timber tract, tree farm, and forestry services industries, if any, are not particularly hazardous or detrimental to the health and well-being of youth.

The Department is proposing to revise HO 4 to add a prohibition on the employment of youth 16 and 17 years of age in forest firefighting and forest fire prevention occupations to the current prohibitions on logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill. The Department proposes to revise the title of HO 4 to reflect these changes.

Under this proposal, all occupations in forest firefighting and forest fire prevention shall include the controlling and extinguishing of fires, the wetting down of areas or extinguishing of spot fires, the patrolling of burned areas to assure the fire has been extinguished, and the piling and burning of slash. The term shall also include the following tasks when performed in conjunction with, or in support of, efforts to extinguish an actual fire: The clearing of fire trails or roads; the construction,

maintenance, and patrolling of firelines; acting as a fire lookout or fire patrolman; and tasks associated with the operation of a temporary firefighting base camp. The prohibition concerning the employment of youth in forest firefighting and forest fire prevention would apply to all forest locations and buildings located within the forest, not just where logging or sawmilling takes place. We note that, because the FLSA does not cover individuals who volunteer to perform services for state or local government agencies when the provisions in section 3(e)(4) are met, this proposal would not prohibit 16- and 17-year-old volunteers from donating their forest firefighting services to state and local governments.

The Department is also proposing to incorporate into HO 4 the provisions of the Department of Labor Appropriations Act, 2004 (Pub. L. 108–199), which amended the FLSA by creating a limited exemption from the youth employment provisions for certain minors 14 through 17 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained at section 13(c)(7) of the FLSA, overrides the HO 4 prohibition against 16- and 17-year-olds performing any work in the sawmill industry that entails entering the sawmill building by permitting certain youth to be employed inside and outside of places of business where machinery is used to process wood products. The Department proposes to revise HO 4 to incorporate the provisions of section 13(c)(7) in the same manner, and using the same definitions and interpretations, as it proposed when discussing revisions to Reg. 3, above.

The term *all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill*, as defined by HO 4, specifically excludes work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill. Although not defined in the regulations, the Department has, since at least 1942, considered the term *remanufacturing departments* to mean those departments of a sawmill where lumber products such as boxes, lawn furniture, and the like are remanufactured from previously cut lumber. The kind of work performed in such departments is similar to that done in planing mill departments in that rough lumber is surfaced or made into other finished products. The term is not intended to denote those operations in sawmills where rough lumber is cut to dimensions. Because the Department has, over the years,

received requests for clarification as to the meaning of *remanufacturing departments*, it proposes to add the above definition to HO 4.

The Department is also proposing to revise HO 4 to include the above definition of *remanufacturing departments*, as well as the all definitions necessitated by the incorporation of the provisions of FLSA section 13(c)(7) and discussed earlier in this document. The Department also proposes to restructure all the definitions in HO 4 in an alphabetical sequence to comport with guidance provided by the **Federal Register**.

The Department has decided not to address, in this NPRM, the Report recommendation to remove the HO 4 exemption that permits 16- and 17-year-olds to work in the construction of living and administrative quarters of logging camps. This is because the Report also recommends the creation of a new HO that would prohibit all work in construction occupations which, if adopted, would impact the provisions of not only HO 4 but several other HOs. The Department believes additional information is needed before it can address such a broad recommendation that would impact all construction occupations. Accordingly, the Department is issuing an ANPRM, in conjunction with and on the same day as this NPRM, that requests public comment on this issue.

#### *F. Occupations Involved in the Operation of Power-Driven Wood Working Machines (Order 5) (29 CFR 570.55)*

HO 5 generally prohibits the employment of 16- and 17-year-olds in occupations involving the operating, setting up, adjusting, repairing, oiling, or cleaning of power-driven woodworking machines. It also prohibits the occupations of off-bearing from circular saws and from guillotine-action veneer clippers. As previously mentioned, FLSA section 13(c)(7) now permits certain minors who are at least 14 years of age and under the age of 18 years to be employed inside and outside of places of business where machinery is used to process wood products, but does not allow such youth to operate or assist in operating power-driven woodworking machines.

The term *power-driven woodworking machines* has long been defined in § 570.55(b) to mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer. Although FLSA section

13(c)(7) does not impact the prohibitions of HO 5 because eligible youth are still prevented from operating power-driven woodworking machinery, it does expand the types of workplaces where certain youth may be employed to include sawmills, lath mills, shingle mills, and cooperage stock mills as well as other workplaces the Department is proposing to include under Reg. 3 and HO 4. Employees at these newly permitted work sites routinely use power-driven equipment that process materials that may not be included in the current definition of *power-driven woodworking machines* contained in HO 5, such as trees, logs, and lumber. Accordingly, the Department is proposing to amend the definition of power-driven woodworking machines to include those machines that process trees, logs, and lumber. To ensure consistency, the Department is proposing that this single definition of *power-driven woodworking machines* be included in § 570.34(m) (Reg. 3), § 570.54 (HO 4), and § 570.55 (HO 5).

The Department is also proposing to restructure the two definitions in this section to reflect an alphabetical sequence in accordance with guidance provided by the **Federal Register**.

*G. Occupations Involved in the Operation of Power-Driven Hoisting Apparatus (Order 7) (29 CFR 570.58)*

HO 7 generally prohibits 16- and 17-year-olds from employment in occupations that involve the work of: (1) Operating an elevator, crane, derrick, hoist, or high-lift truck except such youth may operate unattended automatic operation passenger elevators and electric or air operated hoists not exceeding one ton capacity; (2) riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator; and (3) assisting in the operation of a crane, derrick or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

The Report recommends that the Department expand HO 7 to prohibit the repairing, servicing, disassembling of the machines and assisting in tasks being performed by the machines named in the HO. Assisting in tasks being performed by the machines would be tending the machines. The Report reflects substantial numbers of deaths and injuries are associated with operating and assisting in tasks performed by power-driven hoisting apparatus, including deaths of youth. Additionally, a considerable number of deaths were associated with activities not directly related to operation of the hoisting apparatus, notably servicing,

repairing, and disassembling. Currently, the work of repairing, servicing, disassembling, and tending the machines covered by HO 7 is prohibited to 14- and 15-year-olds under Reg. 3 at § 570.33(b). Under HO 7, 16- and 17-year-olds may currently perform such work, except they may not assist in the operation of a crane, derrick, or hoist as defined by the HO.

The Report also recommends that HO 7 be expanded to prohibit youth from riding on any part of a forklift as a passenger (including the forks) and from working from forks, platforms, buckets, or cages attached to a moving or stationary forklift. The Report notes that substantial numbers of fatalities occur among workers who are passengers on forklifts, riding on the forks, or working from the raised forklift attachments. Currently, 14- and 15-year-olds are prohibited from riding on forklifts because Reg. 3 prohibits such youth from operating or tending hoisting apparatus and any power-driven machines other than office equipment. The Department has long interpreted tending to include riding upon the power-driven equipment. HO 7, however, prohibits older youth only from operating high-lift trucks such as forklifts. Since 1999, the WHD has investigated at least three incidents where youth under 18 years of age were seriously injured while riding on forklifts being operated by other employees. One 16-year-old who was riding on the tines of a forklift suffered especially serious injuries to his liver and pancreas as a result of being pinned against a wall when the driver was unable to stop the forklift.

The Report also recommends that HO 7 be expanded to prohibit work from truck-mounted bucket or basket hoists commonly termed "bucket trucks" or "cherry pickers" because worker fatalities are associated with work from such equipment. The Report specifically notes the risk of falls and electrocution being linked with such equipment. The Report, citing CFOI data, reflects that there were 99 worker deaths associated with truck mounted bucket or basket hoists between 1992 and 1997.

In addition, the Report recommends that HO 7 be expanded to prohibit 16- and 17-year-olds from employment involving certain commonly used manlifts—especially aerial platforms—that do not meet the current definition of *manlift* contained in the HO. The Report contends that such manlifts appear to pose more significant injury risk than those traditionally prohibited by HO 7. HO 7 defines a *manlift* as a device intended for the conveyance of persons that consists of platforms or

brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom. The Report is correct that this current definition of *manlift* does not include, and therefore does not prohibit, 16- and 17-year-olds from operating or tending aerial platforms and other manlifts such as scissor lifts, boom-type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks.

The Report also recommends that HO 7 be revised to eliminate the exemption that permits 16- and 17-year-olds to operate an electric or air-operated hoist not exceeding one-ton capacity. The Report states that current injury and fatality surveillance systems do not provide sufficient detail to justify this exemption. "A hoisted load weighing less than one ton has the potential to cause injury or death as a result of falling, or being improperly rigged or handled. Hoist-related fatalities of young workers have been reported, including a recent case in which a youth was killed while operating a half-ton capacity hoist."

The Department is proposing to implement all five of the Report recommendations concerning HO 7. Sections 570.58(a)(1) and (a)(2) would be revised to reflect that in addition to work involved with operating the named equipment, the work of tending, riding upon, working from, servicing, repairing or disassembling such equipment would also be prohibited. Section 570.58(a)(3) would be eliminated because its provisions would now be contained in the revised § 570.58(a)(1); the work of assisting in the operation of a crane, derrick, or hoist would be prohibited because such tasks fall within the scope of tending of equipment. The exemption contained in § 570.58(a)(1) permitting youth to operate and ride inside passenger elevators would be retained, but the exemption that currently allows 16- and 17-year-olds to operate an electric or air-operated hoist not exceeding one ton capacity would be eliminated as per the Report recommendation.

The Department also proposes to reformat the definitions section contained in HO 7 to reflect an alphabetical sequence in accordance with guidance provided by the **Federal Register**. In addition, the Department proposes to revise the definition of *manlift* so that, as recommended by the Report, it incorporates those pieces of equipment that perform the same

functions as manlifts but that do not currently fall within the prohibitions of the HO. The proposed definition includes a statement that the term *manlift* shall also include truck-or equipment-mounted aerial platforms commonly referred to as scissor lifts, boom-type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks.

The Department is also proposing to revise the definition of *high-lift truck* to incorporate a long-standing enforcement position that industrial trucks such as skid loaders, skid-steer loaders, and Bobcat loaders are *high-lift trucks* as defined by HO 7. Although not specifically named as high-lift trucks by HO 7, such equipment meets the definition of high-lift trucks because each is "a power-driven industrial type of truck equipped with a power-operated lifting device \* \* \* capable of tiering loaded pallets or skids one above the other." The Department has opined on this matter, in writing, since at least 1993. By adding skid loaders, skid-steer loaders, and Bobcat loaders to the definition of high-lift trucks, the Department believes it will clarify the requirements for compliance with HO 7. The Department has successfully defended this enforcement position, most recently in a case where minors were employed to operate a skid-steer loader to clean trailers used to haul livestock. The Department prevailed despite the fact that the youth did not operate or utilize the loader's hoisting device but used the skid-steer loader as a "scraper" (see *Lynnville Transport, Inc. v. Chao*, 316 F. Supp. 2d 790 (S.D. Iowa 2004)).

*H. Occupations in the Operation of Power-Driven Meat-Processing Machines and Occupations Involving Slaughtering, Meat Packing or Processing, or Rendering (Order 10) (29 CFR 570.61)*

HO 10 generally prohibits 16- and 17-year-olds from being employed in all occupations in or about slaughtering, meat packing or processing establishments, and rendering plants. The HO also prevents such minors from performing all occupations involved in the operation or feeding of several power-driven meat processing machines when performed in slaughtering and meat packing establishments, as well as in wholesale, retail, or service establishments. The term *slaughtering and meat packing establishments* is defined in HO 10 to mean places in which cattle, calves, hogs, sheep, lambs, goats, or horses are killed, butchered, or processed. The term also includes

establishments that manufacture or process meat products or sausage casing from such animals. The term currently does not include establishments that process only poultry, rabbits, or small game. The term *retail/wholesale or service establishments*, as defined in HO 10, includes establishments where meat or meat products are processed or handled, such as butcher shops, grocery stores, restaurants, quick service establishments, hotels, delicatessens, and meat locker (freezer-locker) companies, and establishments where any food product is prepared or processed for serving to customers using machines prohibited by the HO. Included on the list of prohibited power-driven meat processing machines are meat patty forming machines, meat and bone cutting saws, meat slicers, knives (except bacon-slicing machines), headsplitters, and guillotine cutters; snoutpullers and jawpullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping, and finishing machines; grinding, mixing, chopping, and hashing machines; and presses (except belly-rolling machines). The term *operation* includes setting-up, adjusting, repairing, oiling, or cleaning such machines, regardless of the product being processed by the machine. For example, HO 10 prohibits a minor from operating a meat slicer in a restaurant to cut cheese or vegetables. In addition, the Department has, as early as 1991, interpreted the prohibition on cleaning such machines as precluding 16- and 17-year-olds from performing the hand or machine washing of parts of and attachments to power-driven meat processing machines, even when the machine was disassembled and reassembled by an adult. This provision is designed to prevent such youth from being injured by contact with the machines' sharp blades and cutting surfaces. HO 10 provides a limited exemption that permits the employment of apprentices and student-learners under the conditions prescribed in § 570.50(b) and (c).

The Report recommends that HO 10 be expanded to prohibit work in all meat products manufacturing industries including those engaged in the processing of sausages and/or other prepared meat products and those engaged in poultry slaughtering and/or processing. The rationale for this recommendation is that although injury fatality rates in meat products manufacturing industries are relatively low, rates of disorders due to repeated trauma are extremely high. This is also true for poultry processing which is not

encompassed in the existing HO. In addition, there are a number of diverse and serious health hazards associated with the slaughtering of animals and manufacturing of meat products, including exposure to infectious agents and respiratory hazards. The Report notes that in 1997 there were an estimated 13,646 occupational injuries and illnesses resulting in days away from work among employees in the meat product manufacturing industry. Although the greatest number of these injuries and illnesses occurred in meat packing plants (5,526), establishments that produce sausages and prepared meats experienced 4,147 injuries and illnesses, and poultry slaughtering and processing establishments experienced 3,937 that same year. In 1999, the Department investigated the death of a young poultry processing worker in Arkansas and the serious injury of a similarly employed minor in Missouri who injured both of his legs when he slipped and fell into an auger. The minor also suffered severe nerve damage and second degree burns.

The Report also recommends that HO 10 be revised to allow 16- and 17-year-olds to operate and feed power-driven meat and food slicers in retail, wholesale and service industry establishments. This is one of the few recommendations the Report makes that would relax current prohibitions, and it is made with the rationale that "although data show high numbers of injuries associated with power-driven slicers, the injuries appear to be relatively minor." NIOSH includes the caveat that if this recommendation is implemented "it should be accompanied by a mandatory reporting period in which all serious youth injuries and deaths resulting from previously prohibited activities are promptly reported to the U.S. Department of Labor." Such a reporting plan would allow an assessment as to whether the revision should be rescinded or further refined to best protect working youth.

Finally, the Report recommends that the apprenticeship and student-learner exemption contained in HO 10 be restricted to apply only to 16- and 17-year-olds employed in retail, wholesale, and service industries. The Report recommends that this exemption no longer be applicable to the employment of such minors in meat products manufacturing industries.

The Department proposes to implement the Report recommendation to expand the application of HO 10 to prohibit the employment of 16- and 17-year-olds in all meat products manufacturing industries, including

those engaged in the processing of sausages and/or other prepared meat products and those engaged in poultry slaughtering and/or processing. The Department proposes to revise the term *slaughtering and meat packing establishments* contained in § 570.61(b) so that the term also includes places where poultry are killed, butchered, or processed. This term would also include establishments that manufacture or process meat products, including poultry, sausage, or sausage casings. The Department also proposes to add buffalo and deer to the lists of animals contained in the definitions of the terms *killing floor* and *slaughtering and meat packing establishments* and note that these lists are not exhaustive. The Department also proposes to revise the title of HO 10 to reflect its expansion to the slaughtering of poultry, and the processing, packing, and rendering of poultry and poultry products. The current HO 10 exemption permitting the killing and processing of rabbits or small game in areas physically separated from the killing floor would not be changed.

The Department also proposes to revise § 570.61(a)(4) to incorporate its interpretation that the prohibition against 16- and 17-year-olds cleaning power-driven meat processing machines extends to washing the machine's parts and attachments, even if the machine is disassembled and reassembled by an adult. This proposal, however, would not prevent a 16- or 17-year-old from operating a commercial dishwasher to run a self-contained rack containing parts of or attachments to a power-driven meat processing machine through the dishwasher so long as the youth does not actually handle or touch the machine parts or attachments.

The Department also proposes to reformat, in an alphabetical sequence, all the definitions found in § 570.61(b) to comport with guidance provided by the **Federal Register**.

The Department has decided not to implement the Report recommendation that would allow 16- and 17-year-olds to operate and feed power-driven meat and food slicers in retail, wholesale and service industry establishments. Both the Report and the Department's enforcement experience reflect that meat slicers are responsible for many occupational injuries. The Report notes that the Survey of Occupational Injuries and Illnesses reports that in 1997, food and beverage processing machinery were responsible for 11,737 nonfatal injuries and illness that resulted in days away from work. Over sixty percent of that number, 7,280 injuries and illnesses, were caused by food slicers.

The median number of days away from work for workers who suffered food slicer related injuries or illnesses was four days, not an insignificant number. Since October 1999, the Department has investigated at least 36 injuries of young workers that were caused by operating or cleaning power-driven meat slicers. Although none of these injuries was life threatening, most were considered to be serious and many caused the partial loss of digits and will leave some permanent scarring.

The Department has also decided not to implement at this time the Report recommendation concerning limiting the current apprenticeship and student-learner exemption contained in HO 10 to retail, wholesale and service industries. The apprenticeship and student learner exemptions contained in certain HOs were developed relatively independently of each other as each HO was adopted. The issue of allowing certain training exemptions from the HOs first arose in the early 1940s, after the enactment of the first six HOs. HO 5 was amended to permit the employment of student learners and apprentices, but HOs 1 through 4 were not. Each committee convened thereafter to study, draft, and implement a new HO developed its own criteria for determining the appropriateness of including apprentice and student-learner exemptions and was not restricted by the determinations made by previous committees. The Report makes several recommendations concerning the establishment, revision, and elimination of apprenticeship and student-learner exemptions, but the rationale for each recommendation either is vague or is not provided. The Department believes that before any changes to the existing exemptions are made, it is important to consider and develop criteria for determining when apprenticeship and student-learner exemptions are appropriate. Such criteria, which must be consistent with the established national policy of balancing the benefits of employment opportunities for youth with the necessary and most effective safety protections, will also be of value as the Department considers creating new HOs. Accordingly, the Department is issuing an ANPRM, in conjunction with and on the same day as this NPRM, to solicit public comment on this important issue.

*I. Occupations Involved in the Operation of Bakery Machines (Order 11) (29 CFR 570.62)*

HO 11 generally prohibits the employment of 16- and 17-year-olds in occupations involved in the operation of

power-driven bakery machines. Prohibited activities include operating, assisting to operate, setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machine; or cake cutting band saw. The HO also prevents the employment of such youth in the occupation of setting up or adjusting a cooky (sic) or cracker machine. The prohibitions of the HO do not differentiate between portable and non-portable equipment, and models designed for use in the home versus those solely designed for industrial applications. Therefore, the prohibitions of HO 11 include the employment of 16- and 17-year-olds to operate even the smallest of counter top vertical mixers.

In response to information presented by several restaurants and employer associations, the Department adopted an enforcement position in 1990 that it would not assert a violation of HO 11 when a 16- or 17-year-old employee operated a pizza-dough roller, a type of dough sheeter, when the machine: (1) Is constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers; (2) has gears that are completely enclosed; and (3) has microswitches that disengage the machinery if the backs or sides of the rollers are removed. This enforcement position applies only when all the safeguards detailed above are present on the machine, are operational, and have not been overridden. In addition, this enforcement position applies only to the operation of the machine. HO 11 still prohibits 16- and 17-year-olds from being employed in occupations involving the setting up, adjusting, repairing, oiling, or cleaning of such pizza-dough rollers. The Department has restated this position numerous times in response to written requests and has included this position in its Field Operations Handbook since at least 1992.

The Report recommends that HO 11 be relaxed to allow the operation of counter-top models of power-driven bakery machines, comparable to those intended for household use. The Report's rationale for this recommendation is that available data suggest that there were no fatalities involving such counter-top power-driven machines, and nonfatal injuries requiring time away from work are of moderate severity. Although, as noted, the HO prohibits the use of several different power-driven bakery machines, the thrust of the Report's

recommendation involves food mixers. The Report notes that there were 712 non-fatal injuries and illnesses in 1997, with a median of 11 days away from work, associated with work with mixers, blenders, and whippers.

The Department's enforcement experience includes situations where employers have questioned why 16- and 17-year-olds were not permitted to use small mixers to process such things as cheese dip and batter for seafood when such machines generally appeared to present no risks to such minors. Recently, the Department adopted an enforcement policy that it would not assert violations of HO 11 when 16- and 17-year-olds operate, assist to operate, setup, adjust, repair, oil, or clean certain small, lightweight, countertop mixers.

The Department proposes to implement this recommendation by creating a new § 570.62(b)(1) that would include an exemption allowing the employment of 16- and 17-year-olds to operate—including setting-up, adjusting, repairing, oiling, and cleaning—lightweight, small capacity, portable counter-top power-driven food mixers that are, or are comparable to, those models intended for household use. The Department, during its meetings with various stakeholders held after the release of the Report, sought to identify which types of mixers could be operated safely in the workplace by 16- and 17-year-olds. The information provided, which also echoed the Department's enforcement experiences, indicated that such factors as bowl capacity, the horsepower of the motor, the portability of the machine (light weight and not permanently wired or "hardwired" into the establishment's electrical power source), and similarity to equipment designed exclusively for home use were all important criteria. For purposes of this exemption, the Department proposes that a lightweight, small capacity mixer is one that is not hardwired into the establishment's power source, is equipped with a motor that operates at no more than  $\frac{1}{2}$  horsepower, and whose bowl capacity does not exceed five quarts. Minors 14- and 15-years of age would still be prohibited from operating or assisting in the operation of such mixers under the provisions of Reg. 3.

The Department is also proposing to incorporate into part 570 its long-standing enforcement position regarding the operation of certain pizza-dough rollers by 16- and 17-year-old workers. The Department's enforcement experience indicates that when employers properly apply this limited enforcement position, 16- and 17-year-olds can safely operate pizza-dough

rollers. Accordingly, the Department is proposing to create a new § 570.62(b)(2) that will permit such youth to operate—but not set-up, adjust, repair, oil, or clean—those power-driven pizza-dough rollers that: (1) Are constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers; (2) have gears that are completely enclosed; and (3) have microswitches that disengage the machinery if the backs or sides of the rollers are removed. The exception in § 570.62(b)(2) would apply only when all the safeguards detailed above are present on the machines, are operational, and have not been overridden.

The Department is also proposing to change the word *cookie* in § 570.62(a)(2) to *cookie* to reflect the more common spelling of that word.

*J. Occupations Involved in the Operation of Paper-Products Machines, Scrap Paper Balers, and Paper Box Compactors (Order 12) (29 CFR 570.63)*

Hazardous Occupations Order No. 12 generally prohibits minors under 18 years of age from working in occupations involving the operation of paper-products machines. The HO prohibits, with certain exceptions discussed below, the loading, operating, and unloading of scrap paper balers, including paper box balers and compacting machines, and other power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. When HO 12 was promulgated in 1954, the dangers specifically associated with the operation of scrap paper balers involved being caught in the plungers during the compression process and suffering strains and other injuries while moving the compressed bales.

The Department has consistently interpreted HO 12 to apply to any establishments that use such paper-products machines, including retail stores. The Department had long interpreted the regulation as applying to paper box compactors (which generally perform the same function, utilize the same processes of compacting, and present the same dangers as scrap paper balers) although paper box compactors were not specifically named in the HO until 2005. Prior to 2005, the prohibitions of HO 12 applied only to equipment used exclusively to process paper products, even though machines used to process other materials, in addition to paper products, share the identical machine designs, operation methods, and potential risks.

As a result of reports received in the 1980s of injuries to minors employed in retail stores involving paper balers, the Department conducted a review of HO 12 in 1990–91 as it applied to grocery stores and other retail operations. Through a Proposed Rule (55 FR 42812), followed by a Final Rule (56 FR 58626), HO 12 was amended in December 1991. The regulation was clarified as applying where the baled paper products were recycled, as well as where they were disposed of as trash. Further, the regulation's prohibition on "operation" was clarified so as not to include (i.e., to permit) the stacking of materials in areas adjacent to the machine. Finally, the regulation was revised to state explicitly that HO 12 applied to all covered establishments that used such machines, consistent with long-established Departmental interpretation.

The Department published an ANPRM in 1994 (59 FR 25167), seeking the public's views on possible changes in the child labor regulations, including the Hazardous Occupations Orders. Although HO 12 was not specifically mentioned in the ANPRM, the Department received comments from representatives of the grocery industry asserting that recent technological changes have rendered certain new balers and compactors safe for minors to load. The Food and Allied Service Trades Department, AFL–CIO, opposed any relaxation of the prohibitions contained in HO 12. The Child Labor Coalition also opposed any relaxation of HO 12 and suggested that it should be expanded to include all compactors.

The Compactor and Baler Act was enacted on August 6, 1996 (Pub. L. 104–174). This legislation amended the FLSA by adding a new subsection 13(c)(5) which permits 16- and 17-year-olds to load, but not operate or unload, certain scrap paper balers and paper box compactors only when certain conditions are met. One such condition is that the equipment must meet specific standards issued for balers or for compactors by the American National Standard Institute (ANSI). ANSI is a national organization that coordinates the development of voluntary, consensus standards in a wide range of areas, including product and worker safety.

When enacting the Compactor and Baler Act, Congress explicitly applied certain industry standards for the determination of which balers and/or compactors are safe for minors to load: ANSI Standard ANSI Z245.5–1990 for scrap paper balers or Standard ANSI Z245.2–1992 for paper box compactors. Congress has used ANSI standards in other contexts as expressions of the best

available technology in the safety area. For example, the Occupational Safety and Health Act of 1970 directed the Department of Labor to adopt the then-existing ANSI standards, rather than delay any activity until the agency promulgated particular occupational safety and health standards (see section 6(a) of the Occupational Safety and Health Act, 29 U.S.C. 655(a)). The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. The Compactor and Baler Act also provides that any new standard(s) adopted by ANSI would also be sufficient for the safety of the scrap paper balers and paper box compactors, if the Secretary of Labor certifies the new standard(s) to be at least as protective of the safety of minors as the two standards specified in the Act. In the Final Rule issued in 2004, the Department stated that it would publish a Notice in the **Federal Register** when the Secretary made any such certifications.

Because these ANSI standards are copyright-protected, the Department cannot include them in the regulations or reproduce them for distribution to the public. Copies of the applicable ANSI standards are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20408, at the Occupational Safety and Health Administration Docket Office at Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and at any of the OSHA regional offices. Copies of these standards are available for purchase at the American National Standards Institute, 11 West 42nd Street, New York, New York 10036.

The Department issued a Final Rule on December 16, 2004 (69 FR 75382), which revised HO 12 to incorporate the provisions of the Compactor and Baler Act. The final rule became effective on February 14, 2005. As supported by the provisions of the Compactor and Baler Act, the Final Rule expanded the coverage of HO 12 to include those balers and paper box compactors that process other materials in addition to paper products. The final rule also included the Secretary's certification, as permitted by the Compactor and Baler Act, that the new Standard ANSI Z245.5-1997 is as protective of the safety of minors as Standard ANSI-S245.5-1990 and that the new Standard ANSI Z245.2-1997 is as protective of the safety of minors as Standard ANSI Z245.2-1992. Accordingly, these newer

standards were incorporated into HO 12.

The Department, when issuing the 2004 Final Rule (69 FR 75397, December 16, 2004), noted that there still remained one class of balers and compactors that falls outside of the scope of HO 12—those machines that process anything and everything but paper products. The Report, in recognition of this gap in coverage, recommends that HO 12 be revised to include such machines because “balers and compactors used to process other scrap materials such as plastic and aluminum cans pose similar risk of injury from crushing or amputation.”

The Report notes that baler and compactor related deaths are not limited to those in which paper or cardboard is being processed. Many machines are adaptable for the baling and compacting of a wide variety of materials, including paper, aluminum cans, plastic milk jugs, and general refuse. Other machines are intended specifically for processing a single product, such as metals. These specialized metal balers and compactors, which process such items as cars, radiators, and siding, may share similar designs and operating procedures with those compactors and balers that process only paper products or process other materials in addition to paper products. However, these specialized metal balers also include large industrial machines that feature shear blades that are not normally present on lighter-duty type balers. The Report notes that while these large specialized balers are generally found in facilities that specialize in processing scrap and waste materials, smaller general-purpose portable machines that serve the same functions are marketed for use in businesses such as grocery stores, hotels, restaurants, and hospitals. These smaller general-purpose machines operate in essentially the same manner as the larger machines and present similar risks of injury.

In addition, the Report recommends that the Department continue to emphasize enforcement of portions of the Compactor and Baler Act requiring that balers and compactors conform to construction and operations standards that greatly reduce exposure to hazardous energy. The Report notes that investigations of baler-related incidents show that failure to maintain machinery in safe operating condition contributes to fatalities and serious injuries and that neither adult supervisors nor young workers may fully appreciate the risks posed by uncontrolled hazardous energy. The Report also recommends that the Department retain the limited exemption contained in § 570.63(c)(2)

that permits apprentices and student-learners to perform, under specific guidelines, tasks that would otherwise be prohibited by HO 12.

The Department agrees with the NIOSH Report recommendation regarding the scope of the HO and is proposing to revise HO 12 to prohibit 16- and 17-year-olds from operating, loading, and unloading, with limited exceptions, all balers and compactors, regardless of the materials being processed. Both NIOSH occupational injury data and the Department's enforcement experience reflect that injuries occur when youth operate balers and compactors that are designed and used to process materials other than paper. For example, the Department investigated the employment of a 17-year-old who had both legs amputated in a large industrial baler machine at a recycling center. The machine was the only baler at the center and, therefore, was used to process a wide variety of items. In a different investigation, another 17-year-old lost his right index finger while putting recyclables into an industrial waste compactor by hand.

The limited exemption provided by FLSA section 13(c)(5) and contained in § 570.63(c)(1), which allows 16- and 17-year-old workers, under specific conditions, to load but not operate or unload certain scrap paper balers and paper box compactors, would remain. This exemption, as detailed in the Compactor and Baler Act, would apply only to certain scrap paper balers and paper box compactors, as currently defined in § 570.63(b), and would not apply to those balers and compactors that are not designed or used to process paper or cardboard.

This proposed revision would be accomplished by adding new subsections to § 570.63 that would prohibit 16- and 17-year-olds from performing the occupations of operating or assisting to operate any baler or compactor that is designed or used to process materials other than paper. A *baler that is designed or used to process materials other than paper* would be defined in § 570.63(b) to mean a powered machine designed or used to compress materials other than paper or cardboard boxes, with or without binding, to a density or form that will support handling and transportation as a material unit without requiring a disposable or reusable container. A *compactor that is designed or used to process materials other than paper* would be defined in § 570.63(b) to mean a powered machine that remains stationary during operation, designed or used to compact refuse other than paper or cardboard boxes, into a detachable or

integral container or into a transfer vehicle. The occasional processing of paper or a cardboard box by a machine designed to process other materials would not bring the loading of such machines within the limited exemption provided by section 13(c)(5).

The prohibition against such youth setting up, adjusting, repairing, oiling, or cleaning any of the machines currently listed in HO 12 would be extended to include compactors and balers that are designed to process materials other than paper.

As previously noted, the Compactor and Baler Act provides that any new standard(s) adopted by ANSI would also be sufficient for the determination of the safety of the scrap paper balers and paper box compactors, if the Secretary of Labor certifies the new standard(s) to be at least as protective of the safety of minors as the two standards specified in the Act. In the 2004 Final Rule, the Secretary certified that Standard ANSI Z245.5–1997 is as protective of the safety of minors as Standard ANSI–S245.5–1990 and that Standard ANSI Z245.2–1997 is as protective of the safety of minors as Standard ANSI Z245.2–1992. Accordingly, the newer standards were incorporated into HO 12.

The Department has learned that in 2004 ANSI adopted Standard ANSI Z245.2–2004 (Stationary Compactors—Safety Requirements for Installation, Maintenance, and Operations) and Standard ANSI Z245.5–2004 (Baling Equipment—Safety Requirements for Installation, Maintenance, and Operations). The Department's preliminary review of these new Standards, which includes input from NIOSH, indicates that the Standards are as protective as those cited in the Compactor and Baler Act and should be included in HO 12 along with the older Standards should a Final Rule be implemented. The public is invited to provide comment on whether Standard ANSI Z245.5–2004 is as protective of the safety of minors as Standard ANSI Z245.5–1990 and whether Standard ANSI Z245.2–2004 is as protective of the safety of minors as Standard ANSI Z245.2–1992.

The Department appreciates the Report's recommendation to continue emphasizing enforcement of portions of the Compactor and Baler Act requiring that balers and compactors conform to construction and operations standards that greatly reduce exposure to hazardous energy. The Report notes that investigations of baler-related incidents show that failure to maintain machinery in safe operating condition contributes to fatalities and serious injuries and that

neither adult supervisors nor young workers may fully appreciate the risks posed by uncontrolled hazardous energy. The Department's enforcement experience supports these findings. Most recently, the Department investigated the death of a 16-year-old grocery store worker in New York who was crushed to death by a baler that had been jerry-rigged to operate while the door to the loading chamber was open. This over-riding of an important safety device required by each of the ANSI Standards was done to speed up the loading process. As discussed previously, in order for an employer to avail itself of the limited exemption contained in § 570.63(c)(1) that permits 16- and 17-year-olds under certain conditions to load, but not operate or unload, certain scrap paper balers and paper box compactors, the employer must determine that the equipment meets an appropriate ANSI Standard listed in HO 12. The employer must also post a notice on the machine that states, among other things, which applicable ANSI Standard the machine meets. The appropriate ANSI Standards govern not only the manufacture and modification of the equipment, but the operation and maintenance of the equipment, and employee training as well. During enforcement actions involving employers who avail themselves of the limited exemption contained in § 570.63(c)(1), the Department routinely confirms whether the scrap paper baler or paper box compactor being loaded by 16- or 17-year-olds meets the requirements of the applicable ANSI Standard as determined and declared by the employer. If the equipment does not meet the requirements of an applicable ANSI Standard or if the employer failed to make such a determination, the provisions of the limited exemption have not been met and a violation of HO 12 has most likely occurred. The Department will carry on these efforts and will continue to work with both NIOSH and OSHA to better educate employers, employees, and enforcement personnel about the requirements of the ANSI Standards. Such efforts impact the safety of all workers, not just those under the age of 18.

Finally, the Department proposes to take no action concerning the NIOSH Report recommendation concerning the apprenticeship and student-learner exemption to HO 12 at this time. As previously discussed, the Department is issuing an ANPRM, in conjunction with and on the same day as this NPRM, that requests information from the public on this issue.

#### *K. Occupations Involved in the Operation of Circular Saws, Band Saws, and Guillotine Shears (HO 14) (29 CFR 570.65)*

HO 14 generally prohibits the employment of 16- and 17-year-olds in the occupations of operator or helper on power-driven circular saws, band saws, and guillotine shears, except those that are properly guarded and equipped with devices for full automatic feeding and ejection. The prohibitions of HO 14 are based on the equipment and apply regardless of the materials being processed. Section 570.65(b)(4) defines the term *circular saw* to mean a machine equipped with a thin steel disc having a continuous serious of notches or teeth on the periphery, mounted on shafting, and used for sawing materials. The term *band saw* is defined in § 570.65(b)(5) to mean a machine equipped with an endless steel band having a continuous serious of notches or teeth, running over wheels or pulleys, and used for sawing materials. Section 570.65(b)(6) defines the term *guillotine shear* to mean a machine equipped with a moveable blade operated vertically and used to shear materials. The term does not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears. HO 14 also prohibits such minors from setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

The original report that led to the issuance of HO 14 in 1960 noted that these machines had already been found and declared to be particularly hazardous for 16- and 17-year-old employees when used to process certain materials. Circular saws and band saws were already covered under HO 5 when used on wood, HO 10 when used on meat, and HO 12 when used on paper products. Band saws were also covered under HO 11 when used to cut sheet cakes to desired sizes and shapes. Guillotine shears are covered under HOs 5, 8, 10 and 12 when used on wood, metal, meat, and paper products, respectively. Reports showing that minors were being injured when operating these machines on materials not covered by an existing HO led the Department to issue the all-encompassing HO 14.

The Report recommends that HO 14 be expanded to cover other machines, such as chain saws, that perform cutting and sawing functions through direct contact between the cutting surfaces and the materials. The Report also recommends, alternatively, that the Department consider developing a new HO that would prohibit all sawing

machinery that perform cutting and sawing functions through direct contact of the cutting surface and the material being processed. The Report states: "Stationary saws and hand-held saws, including chain saws, continue to be the source of substantial numbers of fatalities as well as nonfatal injuries which may be unusually severe." The Report observes that not all machines that perform cutting and sawing functions fit into HO 14's definitions of circular saw, band saw, or guillotine shears. The Report notes that available data demonstrate that chainsaws specifically contributed to 70 worker deaths between 1992 and 1997 and over 1,600 lost workday injuries. Some of these fatalities and deaths involved workers under 18 years of age. The Report also recommends that the Department retain the exemption contained in HO 14 that permits 16- and 17-year-old apprentices and student learners to perform work that would be otherwise prohibited by the HO.

The Department has long taken the position that HO 4 (Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill) prohibits 16- and 17-year-olds from operating chain saws in logging operations because the HO prohibits all work "in connection with the felling of timber." Likewise, the Department has consistently taken the position, starting as early as 1959, that HO 5 (Occupations involved in the operation of power-driven woodworking machines) prohibits these same minors from using chain saws to cut wood and wood products, including trees and branches. Over the last ten years, the Department has investigated the serious injuries of several youth that resulted from the use of chain saws to cut branches and trees, charged violations under HO 5, and assessed and collected civil money penalties because of those violations. However, as the Report implies, the use of chain saws by 16- and 17-year-olds would not be prohibited when cutting other materials such as metal, concrete, stone, and ice.

The Department has also long taken the position that HO 5 prohibits the employment of 16- and 17-year-olds to operate wood chippers to grind tree limbs, branches, and trunks into chips, mulch, or debris. Some questions have recently been raised concerning the appropriateness of this position, but the Department has been consistent in its application when the equipment is used to process wood and trees. Young workers have been killed or seriously injured while operating wood chippers. In 2000, the Department investigated the death of a 14-year-old member of a tree-

trimming crew who was dismembered when he became entangled in branches he was feeding into a drum-type wood chipper. In 2001, the Department investigated the serious injury of a 17-year-old who suffered a fractured skull when the wood chipper he was feeding "spit out" a 12-inch long, 4-inch diameter, piece of a tree branch. Three titanium plates were permanently implanted into the minor's skull. The Department charged the employer of this youth with a violation of HO 5, and assessed and collected a civil money penalty because of the violation.

Just like in 1960 when HO 14 was first issued, the Department is receiving reports of injuries and deaths, such as the ones described in the preceding paragraphs, of youth operating power-driven machines that may be prohibited when used to process certain types of materials and not prohibited when processing other types of materials. Reciprocating saws constitute another example of such a machine. HO 5 prohibits the employment of 16- and 17-year-olds to operate reciprocating saws that are used or designed for cutting wood, but the same piece of equipment is permitted when used or designed exclusively to cut materials other than wood, such as metal. The Department has learned of occupational injuries to workers operating reciprocating saws to cut materials other than wood. The Department is aware of the death of an adult plumber in Minnesota in 2002 who was killed when the blade of the reciprocating saw he was using to rough-in plumbing entered his head near his eye. The U.S. Department of Energy has also reported that in 2002 an adult worker injured his larynx when the reciprocating saw he was operating kicked back and cut him in his lower throat. The American Journal of Forensic Medicine and Pathology (Volume 28, No. 4, December 2001) reports on the death of a 32-year-old male who lost his balance and fell on the blade of an electric reciprocating saw he was using to trim branches. The blade perforated his anterior chest wall, right lung, heart and aorta. The Journal noted that the victim had been drinking beer while trimming the branches. Finally, in 2004, the Department investigated the death of a 17-year-old worker who was employed to operate a reciprocating saw to salvage automobile catalytic converters for recycling. While operating the saw, the vehicle upon which he was using the saw fell on him and crushed him to death.

The Department is proposing to revise the prohibitions of HO 14 to include chain saws, wood chippers, and reciprocating saws. The prohibition

would not depend on the material or materials being processed and would encompass the occupations of setting-up, adjusting, repairing, oiling, or cleaning such machines. This revision would be accomplished by revising § 570.65(a)(2) to prohibit the employment of minors in the occupations of operator of or helper on power-driven chain saws, wood chippers, and reciprocating saws, whether the machines are fixed or portable. Unlike the machines currently listed in § 570.65(a)(1), the prohibition would not be lifted if the chain saws, wood chippers, or reciprocating saws were equipped with full automatic feed and ejection-devices that are almost never found on such equipment. The current § 570.65(a)(2) would be renumbered as § 570.65(a)(3) and revised to reflect that 16- and 17-year-olds could not be employed in occupations involving the setting-up, adjusting, repairing, oiling, or cleaning of any of the equipment covered by the HO. The Department is also proposing to revise the title of HO 14 to reflect its application to the additional pieces of machinery and to change the word operations to operation. Finally, the Department proposes to restructure the definitions section contained at § 570.65(b) in an alphabetical sequence to comport with guidance provided by the **Federal Register** and to include definitions of the terms *chain saw*, *wood chipper*, and *reciprocating saw*. The term *chain saw* would mean a machine that has teeth linked together to form an endless chain used for cutting materials. The term *wood chipper* would mean a machine equipped with a feed mechanism, knives mounted on a rotating chipper disc or drum, and a power plant used to reduce to chips or shred such materials as tree branches, trunk segments, landscape waste, and other materials. The term *reciprocating saw* would mean a machine equipped with a moving blade that alternately changes direction on a linear cutting axis used for sawing materials.

The Department is evaluating the alternative recommendation made by the Report that it consider developing a new HO that combines the sawing machinery covered under HO 14 with other specialized machinery that performs cutting and sawing functions through direct contact of the cutting surface and the material. Similar alternative recommendations were made regarding HO 5 (Occupations involved in the operation of power-driven woodworking machines) and HO 8 (Occupations involved in the operation of power-driven metal forming,

punching, and shearing machines). The Department will continue to study these recommendations and, in an ANPRM, issued in conjunction with and on the same day as this NPRM, is requesting information from the public on these recommendations.

Finally, the Report also recommended that the Department retain the limited exemption contained in § 570.65(c) that permits apprentices and student-learners to perform, under specific guidelines, tasks that would otherwise be prohibited by HO 14. As discussed previously in the sections dealing with HOs 10 and 12, the Department proposes to take no action concerning the apprenticeship and student-learner exemptions to certain HOs at this time. The Department is issuing an ANPRM, in conjunction with and on the same day as this NPRM, that requests information from the public on this issue.

#### *L. Additional Recommendations of the Report*

The Report recommends that the Department retain, as currently issued, HO 3 (Coal mining occupations), HO 13 (Occupations involved in the manufacture of brick, tile, and kindred products), HO 15 (Occupations involved in wrecking, demolition, and shipbreaking occupations), and HO 17 (Occupations in excavation operations). The Department accepts these recommendations and proposes no revisions to these HOs. The Report also recommends that the Department remove the limited exemption for apprentices and student-learners contained in HO 16 (Occupations in roofing operations and on or about a roof) and HO 17, and retain the same exemption as it applies to HO 5 (Occupations involved in the operation of power-driven woodworking machines) and HO 8 (Occupations involved in the operation of power-driven metal forming, punching, and shearing machines). As discussed previously in the sections dealing with HOs 10, 12, and 14 of this preamble, the Department proposes to take no action concerning the apprenticeship and student-learner exemptions to any of the HOs at this time. The Department believes that before any changes to the existing exemptions are made, it is important to first consider and develop criteria for determining when apprenticeship and student-learners are appropriate. Accordingly, the Department is issuing an ANPRM, in conjunction with and on the same day as this NPRM, that seeks information from the public on this and other issues.

#### *M. Subpart G—General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended (29 CFR 570.101–570.129)*

Subpart G discusses the meaning and scope of the child labor provisions of the FLSA. The interpretations of the Secretary of Labor contained in subpart G indicate the construction of the law that guides the Secretary in administering and enforcing of the Act. Since the last revision of subpart G in 1971, Congress has passed several amendments to the FLSA and the Department has revised other subparts of 29 CFR part 570 that are not currently reflected in subpart G. The Department proposes to revise subpart G to accommodate not only the statutory and regulatory changes that have occurred, but to reflect the proposed revisions to part 570 made by this NPRM and discussed earlier in this document. The proposed revisions to subpart G are as follows:

1. Section 570.103(c) states that there are only four specific child labor exemptions contained in the FLSA, and that only one of them applies to the minimum wage and overtime requirements of the Act as well. Congress has created four additional exemptions to the child labor provisions of the FLSA that are not currently reflected in subpart G (the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens by homeworkers; the loading of certain scrap paper balers and paper box compactors by 16- and 17-year-olds; the limited driving of certain automobiles and trucks by 17-year-olds; and the employment of certain youth between the ages of 14 and 18 years inside and outside of places of business that use power-driven machinery to process wood products). The exemption concerning the employment of homeworkers who make wreaths, contained in FLSA section 13(d), is an exemption from the minimum wage and overtime provisions of the Act as well as its child labor provisions. The Department is proposing to revise § 570.103(c) to reflect that the FLSA now contains eight exemptions from the child labor provisions and that two of these exemptions are also exemptions from the Act's minimum wage and overtime requirements.

This same subsection cites FLSA section 3(d), which defines the term employer and then, in footnote 4, discusses that definition. FLSA section 3(d) was amended in 1966, and the provisions of that amendment are not reflected in subpart G. The Department

proposes to revise footnote 4 of § 570.101(c) to include the more recent definition of the term *employer* and to correct an erroneous reference to FLSA section 13(d).

2. Section 570.118 notes that the FLSA sets a minimum age of 16 years for employment in manufacturing or mining, but does not take into account the effects of the 2004 enactment of FLSA section 13(c)(7). Section 13(c)(7) allows the employment of certain 14- and 15-year-olds inside and outside of places of business that use power-driven machinery to process wood products as discussed above. The Department is proposing to revise § 570.118 to incorporate the provisions of FLSA section 13(c)(7).

3. Section 570.119 discusses those occupations in which 14- and 15-year-old minors may and may not be employed under Reg. 3. The Department proposes to revise this section to incorporate the changes necessitated by the adoption of FLSA section 13(c)(7) and to reflect the proposed revisions to §§ 570.33 and 570.34 as discussed above. For the sake of both brevity and clarity, the Department proposes not to repeat in § 570.119 the lists of all the occupations contained in §§ 570.33 and 570.34, but rather to refer readers to those sections.

The proposed revision to § 570.119 would contain the general prohibition against the employment of minors under 14 years of age under any circumstances that is currently included at the end of § 570.119.

4. Section 570.120 describes the authority and process by which HOs are adopted, and lists those occupations the Secretary has found and declared to be particularly hazardous or detrimental to the health or well-being of minors 16 and 17 years of age. Since subpart G was last revised, not only have several HOs been amended, but the process for promulgating and revising the HOs has also changed. Before 1995, the process for promulgating and amending HOs included public hearings and advice from committees composed of representatives of employers and employees of the impacted industry and the public, in accordance with the procedures established by subpart D of this part. The Department issued a Final Rule on April 17, 1995 (60 FR 19336) that deleted subpart D and placed the process of promulgating and revising HOs solely under the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, which control Departmental rulemaking.

The Department proposes to revise § 570.120 to reflect the 1995 change in the process for issuing and revising

HOs. The Department is also proposing, for the sake of brevity and clarity, not to repeat the list of individual HOs as they are already listed in subpart E of 29 CFR part 570.

5. Section 570.122 lists the four exemptions from the FLSA child labor provisions that existed when subpart G was last revised. As discussed earlier, Congress has added four more exemptions that are not included in the current subpart G. Section 13(d) exempts from the FLSA minimum wage, overtime, and child labor provisions the employment of homeworkers engaged in the making of wreaths composed principally of evergreens. Section 13(c)(5) authorizes the employment of 16- and 17-year-olds to load, but not operate or unload, certain scrap paper balers and paper box compactors under specific conditions. Section 13(c)(6) permits the employment of 17-year-olds to drive on an occasional and incidental basis, during daylight hours, certain automobiles and trucks under specified conditions. Section 13(c)(7) permits the employment of certain youth between the ages of 14 and 18 years, under certain conditions, inside and outside of places of business that use power-driven machinery to process wood products.

The Department proposes to revise § 570.122 by creating new subsections (e), (f), (g), and (h), which will list the exemptions from the child labor provisions contained in FLSA sections 13(d), 13(c)(5), 13(c)(6), and 13(c)(7), respectively. A more thorough discussion of each of these exemptions is proposed to be included in §§ 570.127–.130.

6. The Department proposes to revise §§ 570.127, .128, and .129, and create a new § 570.130 to present detailed discussions of the exemptions from the child labor provisions contained in FLSA sections 13(d), 13(c)(5), 13(c)(6), and 13(c)(7). These proposed provisions are structured similarly to those already contained in subpart G that address the earlier FLSA exemptions concerning employment of youth in agriculture (§ 570.123), in the delivery of newspapers (§ 570.124), as actors and performers (§ 570.125), and by one's parents (§ 570.126). The Department also proposes to revise and redesignate the sections of subpart G currently dealing with general enforcement (§ 570.127), good faith defense (§ 570.128), and the relation of the child labor provisions to other laws (§ 570.129). These sections would be redesignated as § 570.140, § 570.141, and § 570.142, respectively. The Department proposes to reserve §§ 570.131 through 570.139 to accommodate any additional statutory

amendments to the FLSA child labor provisions that may be enacted.

7. Section 570.127 contains a general discussion of the enforcement of the FLSA child labor provisions. Since that last revision of subpart G, Congress has amended the FLSA at section 16(e) so that any person who violates the provisions of section 12 or section 13(c)(5) relating to child labor, or any regulation issued under section 12 or section 13(c)(5), shall be subject to a civil money penalty, currently not to exceed \$11,000, for each employee who was the subject of such a violation. The Department, as discussed above, proposes to redesignate this section as § 570.140 and to revise it to include the Department's authority to assess civil money penalties against persons who violate the child labor provisions of the Act.

8. Section 570.128 deals with a provision of FLSA section 12(a) that relieves from liability a purchaser who ships or delivers for shipment in commerce goods acquired in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with section 12 and that were acquired for value without notice of any violation. The Department proposes to redesignate this section as § 570.141.

9. Section 570.129 discusses the relationship of the child labor provisions of the FLSA to other laws. The Department proposes to redesignate this section as § 570.142.

#### *N. Miscellaneous Matters*

The Department proposes to change the name of HO 8 from Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8) to Occupations involved in the operation of power-driven metal forming, punching, and shearing machines (Order 8).

#### **IV. Paperwork Reduction Act**

*Circumstances Necessitating Collection:* DOL proposes to revise its regulations about youth employment and create a new 29 CFR 570.35b that would contain the requirements describing the criteria for use, occupations permitted, and conditions of employment that would allow the employment of 14- and 15-year-olds—pursuant to a school-supervised and school-administered Work-Study Program (WSP)—under conditions Reg. 3 otherwise prohibits. The new regulation would require the implementation of a new paperwork burden with regard to a WSP.

FLSA section 3(l) establishes a minimum age of 16 years for most nonagricultural employment but allows the employment of 14- and 15-year-olds in occupations other than manufacturing and mining, if the Secretary of Labor determines such employment is confined to (1) periods that will not interfere with the minor's schooling and (2) conditions that will not interfere with the minor's health and well-being.

FLSA section 11(c) requires all employers covered by FLSA to make, keep, and preserve records of their employees' wages, hours, and other conditions and practices of employment. Section 11(c) also authorizes the Secretary of Labor to prescribe the recordkeeping and reporting requirements for these records. Reg. 3 sets forth the employment standards for 14- and 15-year-olds.

*Reporting Requirements: WSP Application:* In order to utilize the proposed Reg. 3 WSP provisions, § 570.35(b) would require a local public or private school system to file with the Administrator of the Wage and Hour Division (WHD) of DOL an application for approval of a WSP as one that does not interfere with the schooling or health and well-being of the minors involved.

*Written Participation Agreement:* The proposed regulations would require preparation of a written participation agreement for each student participating in a WSP and that the teacher-coordinator, employer, and student each sign that agreement. See proposed § 570.35b(b)(3)(iv). The proposed regulation would also require that the student's parent or guardian sign the training agreement, or otherwise give consent to the agreement, in order for it to be valid.

*Recordkeeping Requirements:* The proposed regulation would require a school system operating a WSP to keep a copy of the written participation agreement for each student enrolled in the WSP. Employers of WSP participants would also be required to keep a copy of the written participation agreement for each student employed. These agreements would be maintained for 3 years from the date of the student's enrollment in the WSP.

*Purpose and Use: WSP Application:* Under the proposal, a local school system would file a letter of application requesting the Administrator of WHD to approve a WSP that permits the employment of 14- and 15-year-olds under conditions that Reg. 3 would otherwise prohibit. WHD would evaluate the information to determine if

the program meets the requirements specified in the proposed regulation, in order to respond to the request.

**Written Participation Agreement:** The school system administering the WSP and each applicable employer would separately maintain a copy of the written participation agreement for each student. The written agreement would be signed by the teacher-coordinator, the employer, and the student. In addition, the student's parent or guardian would either sign or otherwise provide consent for the participation agreement to be valid. The proposed written participation agreement is structured to ensure that the quality of the student's education, as well as his or her safety and well-being, are not compromised. School systems, employers, and WHD would use these records to document the validity of the WSP.

**Information Technology:** The proposed regulation prescribes no particular form for the application, provided the applicant submits all required information. DOL also does not intend to require a particular format for the written participation agreement. In accordance with the Government Paperwork Elimination Act, WHD would accept electronic submission by e-mail or fax. See 44 U.S.C. 3504(a)(1)(B)(vi). DOL expects to receive only 30 WSP applications per year under the proposal. The costs to develop and maintain an on-line application system would not be justified for such a small information collection. DOL would accept the parties electronically submitting the written participation agreement between each other, provided the copies contain the required information and signatures. As the written participation agreements are third party disclosures requiring multiple signatures, DOL development of an on-line submission option is not practical.

The proposed regulations prescribe no particular order or form of records. Under existing regulations, WHD would accept records preserved in such forms as microfilm or automated word or data processing, provided the school systems and employers make adequate facilities available for their inspection and transcription by DOL representatives. See 29 CFR 516.1.

**Minimizing Duplication:** Federal rules regulating youth employment are unique to WHD, and the agency is not aware of any duplicative effort to collect this information. This information is not already collected under existing authorities, such as the general FLSA recordkeeping requirements under 29 CFR part 516 (See OMB controls 1215–

0006, 1215–0016, and 1215–0017) or other sections of the youth employment regulations under 29 CFR part 570 (See OMB controls 1215–0083 and 1215–0121). The requested information would not be available from any other source.

**Small Entities:** This proposed information collection would not have a significant economic impact on a substantial number of small entities. The information DOL proposes to require in the application letter is the minimum necessary to determine if the WSP would meet the proposed regulatory requirements for approval. The written participation agreement would be necessary to document the validity of a WSP. Without this information, small businesses would have no way of documenting their participation in a WSP.

**Agency Need:** Without this proposed information collection, WHD would have no means to determine if a WSP meets the regulatory requirements of the Reg. 3 modification under consideration. The proposed regulations would allow the Administrator of WHD to approve a WSP for a period of up to two years. Less frequent application would not allow WHD to ensure that approved programs do not interfere with the schooling of the minors or with their health and well-being. It would be difficult or impossible for WHD to determine the legal employment of 14- and 15-year-olds during school hours, were records relating to the participation of minors in a WSP under the proposed plan not maintained.

**Special Circumstances:** There are no special circumstances involved in this information collection request.

**Payments or Gifts:** DOL would offer no payments or gifts to respondents.

**Confidentiality:** DOL would offer no assurances of confidentiality in association with this information collection. As a practical matter, WHD would only disclose information submitted in connection with an approval request or contained in records an educational agency or employer must maintain in accordance with the provisions of the Freedom of Information Act (5 U.S.C 552), the Privacy Act (5 U.S.C. 552a), and their attendant regulations, 29 CFR parts 70 and 71.

**Sensitive Questions:** This information collection would contain no sensitive information.

**Hour Burden: Reporting Burdens:** WSP Application: DOL estimates it would take approximately 2 hours for a school system to prepare the letter applying for WSP approval. DOL estimates that approximately 30 school

systems would apply each year, for an annual burden of 60 hours.

**Written Participation Agreement:** DOL estimates each written participation agreement between the teacher-coordinator, employer, student, and parent or guardian of the student would take approximately one hour to complete. DOL estimates 50 students would participate under each WSP each year, and three parties (employers, students, and parents or guardians) would have no reporting burden because they would merely sign the document. 50 written agreements  $\times$  one hour = 50 hours per WSP. 50 hours per WSP  $\times$  30 WSPs = 1500 hours annual burden. 60 hours for WSP applications + 1500 hours for written participation agreements = 1560 annual reporting burden hours.

**Recordkeeping Burdens:** DOL estimates it would take participating school systems one-half minute to file each WSP application and participating school systems and employers each would need approximately one-half minute to file each WSP written participation agreement, for a total annual burden of 25.25 hours [(30 applications  $\times$  (1500 written participation agreements  $\times$  2 recordkeepers]  $\times$  .5 minutes = 25.25 hours). 30 school systems + 1500 employers = 1530 respondents.

**Total Annual Reporting and Recordkeeping Burden—1583.25 Hours.**

DOL bases these burden estimates on experience garnered while administering WECEP.

Absent any specific data on compensation of respondents in these educational institutions and participating employers, DOL has used the April 2006 average annual hourly rate for production or nonsupervisory workers on educational and health services payrolls of \$17.22 to estimate respondent costs. See The Employment Situation, DOL, Bureau of Labor Statistics, July 2006, Table B–3, [http://www.bls.gov/news.release/archives/empsit\\_08042006.pdf](http://www.bls.gov/news.release/archives/empsit_08042006.pdf). Accordingly, DOL estimates annual respondent costs would be \$27,263.57 (1583.25 hours  $\times$  \$17.22).

**Cost Burden:** DOL estimates the annual mailing and postage cost for 30 applications would be \$12.60 (30 applications  $\times$  [\$ .39 postage + \$.03 per envelope]).

**Federal Costs:** WHD estimates it would receive 30 applications per year and processing each application would take approximately 2 hours of analyst time and 1 hour of clerical time. The estimate includes analysis of each application and preparation of the letter granting or denying approval.

*Analyzing-Processing:* \$29.47 (GS 11/5, Washington, DC) × 2 hours × 30 applications = \$1768.20.

*Clerical:* \$17.92 (GS 6/5, Washington, DC) × 1 hour × 30 applications = \$537.60.

*Total Estimated Annual Federal Cost*—\$2305.80.

*Burden Changes:* The proposed regulation would result in a program change with an estimated increased public burden of 1583 hours. This is a new collection that would be required by a proposed revision of 29 CFR part 570.

*Publication:* DOL would not publish this information.

*Displaying OMB Expiration Date:* DOL plans to use no forms on which to place an expiration date for this proposed information collection.

*Certification Requirements:* DOL does not seek any exceptions to the certification requirements.

*Request for comments:* The public is invited to provide comments on this information collection requirement so that the Department may:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, U.S. Department of Labor, Washington, DC 20503.

## V. Executive Order 12866; Small Business Regulatory Enforcement Fairness Act; Regulatory Flexibility

This proposed rule is being treated as a "significant regulatory action" within the meaning of E.O. 12866 because of its importance to the public and the Department's priorities. Therefore, the Office of Management and Budget has reviewed this proposed rule. However,

because this proposed rule is not "economically significant" as defined in section 3(f)(1) of E.O. 12866, it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order.

The new information collection, recordkeeping, and reporting requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) that would be imposed should the proposed work-study program be enacted are discussed above.

It is well established that several characteristics of youth place adolescent workers at increased risk of injury and death. Lack of experience in the work place and in assessing risks, and developmental factors—physical, cognitive, and psychological—all contribute to the higher rates of occupational injuries and deaths experienced by young workers. CFOI data reflect that during the period of 1994–2004, 15-year-olds experienced an occupational fatality rate of 4.7 fatalities per 100,000 workers—a rate that was greater than that experienced by all workers aged 15 and older. Older working youth share similar risks. The NIOSH Report noted that the fatality rate for adolescents aged 16 and 17 was 5.1 per 100,000 full-time equivalent workers for the 10-year period 1980–89 [Castillo *et al.* 1994], while the rate for adults aged 18 and older was 6.1. As NIOSH stated, "[t]his relatively small difference in rates is cause for concern because youth under age 18 are employed less frequently in especially hazardous jobs." NIOSH also estimates that youth work injuries exceed 200,000 each year, and of that number, 77,000 are serious enough to warrant treatment in hospital emergency rooms. The NIOSH statistics show that, despite the fact that workers aged 15 through 17 are generally restricted from employment in hazardous occupations such as mining, motor-vehicle driving, logging, sawmilling, and construction, they have a higher rate of injuries requiring emergency room treatment than any other age group except 18- and 19-year-olds (who are not restricted from performing such work). The economic and social costs associated with the deaths and serious injuries of young workers are substantial.

The Department considers the issuance of this proposed rule as an important and necessary step in its ongoing review of the criteria for permissible child labor employment, a review which strives to balance the potential benefits of transitional, staged employment opportunities for youth with the necessary protections for their education, health and safety. Because youth often overcome the effects of

those characteristics that initially place them at increased risk of injury and death in the workplace only through the maturation process, it is believed that requiring older workers to perform those tasks that present greater risks to younger workers actually eliminates injuries and deaths—rather than delaying them or transferring them to the older workers.

Additionally, this document proposes to revise the child labor regulations in response to a statutory amendment enacted by the Congress that permits certain youth between the ages of 14 and 18 years of age who are excused from compulsory school attendance beyond the eighth grade to be employed under specific conditions inside and outside places of business that use machinery to process wood products. Affecting both the Reg. 3 occupations standards and HOs 4 and 5, this statutory provision would be available to a very small number of minors and therefore is expected to have little or no economic impact. The Department believes that only a few minors have obtained employment in such occupations since the amendment was enacted and doubts that the number will increase. Moreover, the amendment's strong safety—affecting requirements that such youth not operate or assist in the operation of power-driven woodworking machines, use personal protective equipment to prevent exposure to excessive levels of noise and sawdust, and be protected from wood particles and other flying debris within the workplace, should significantly reduce potential costs resulting from accidents and injuries to minors on the job.

Implementing the Department's proposal to revise subpart G of the child labor regulations, General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended, to incorporate all the regulatory changes made since this subpart was last revised in 1971, would simply provide compliance guidance on the youth employment provisions detailed in earlier subparts of 570 and therefore imposes no economic costs.

The additional changes being proposed are also expected to have little or no direct cost impact. The proposed changes affecting the types of occupations and industries in which 14- and 15-year-olds may or may not be employed, as well as the periods and conditions of such employment (Reg. 3 occupations and hours standards), are largely clarifications of existing provisions or enforcement positions, though new occupations involving work

of a mental or creative nature, lifeguarding, and the loading of personal hand tools onto motor vehicles, would be added to the list of permitted occupations. The proposals to revise several of the nonagricultural HOs—to implement specific recommendations made by NIOSH or that arise from the Department's enforcement experience—would, in all but one instance involving the use of certain countertop mixers (HO 11), require employers to assign older workers to perform tasks that may currently be performed by 16- and 17-year-olds.

Proposals resulting from the NIOSH recommendations include the expansion of HO 4 to prohibit the employment of minors in forest firefighting and fire prevention activities; the revision of HO 7 to prohibit the employment of minors in the tending, servicing, and repairing of hoisting equipment and the addition of such equipment as cherry pickers, scissor lifts, bucket trucks, aerial platforms, and hoists of less than one ton capacity to the list of prohibited equipment; and the expansion of HO 10 to prohibit the employment of minors in poultry slaughtering and processing occupations. Revisions to HO 12 to prohibit the employment of minors in the operation of balers and compactors not currently covered by the HO, and the expansion of HO 14 to add additional power-driven equipment to the list of equipment minors may not operate, are also being proposed as a result of the NIOSH Report recommendations. The Department's enforcement experience has led it to propose to incorporate certain long-standing enforcement positions involving the definitions of remanufacturing departments of sawmills (HO 4), high-lift trucks (HO 7), and the cleaning of power-driven meat processing equipment (HO 10). The Department is also proposing, based on its enforcement experience, that HO 11 be amended to incorporate the Department's long-standing position permitting 16- and 17-year-olds, under certain conditions, to operate certain pizza-dough rollers, and that HO 14 be expanded to prohibit the employment of minors to operate reciprocating saws.

The Department believes that implementation of the proposed rule would not reduce the overall number of safe, positive, and legal employment opportunities available to young workers. In fact, employment opportunities for 14- and 15-year-olds would increase with implementation of the proposals to (1) create a limited exemption for certain work-study programs and (2) allow those permitted

occupations listed in § 570.34(a) to be performed in certain industries in addition to retail, food service, and gasoline service establishments.

Although, as mentioned above, some employers would be required in most cases to replace younger workers with older workers were the Department's proposals implemented, the impact would be minimal as relatively few minors are currently employed to perform these occupations. But the Department believes that adoption of these proposals is important as they are essential to fulfilling its charge of keeping working youth safe by prohibiting occupations that are particular hazardous or detrimental to their health or well-being. Any costs that might result from using older employees to perform the previously permitted tasks would be more than offset by reduced health and productivity costs resulting from accidents and injuries to minors on the job. Rules that limit permissible job activities for working youth to those that are safe do not, by themselves, impose significant added costs on employers, in our view. In fact, ensuring that permissible job opportunities for working youth are safe, healthy, and not detrimental to their education, as required by the statute, produces many positive benefits in addition to fewer occupational injuries and deaths, including reduced health and productivity costs that employers may otherwise incur because of higher accident and injury rates to young and inexperienced workers. In any event, the direct, incremental costs that would be imposed by this proposed rule are expected to be minimal. Collectively, they would not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy or its individual sectors, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Therefore, this proposed rule is not "economically significant" and no regulatory impact analysis has been prepared.

The Department has similarly concluded for the same reasons noted above that this proposed rule is not a "major rule" requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It would not likely result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule is also not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act for the reasons discussed above. The Department has certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Therefore, no Regulatory Flexibility Analysis is required.

#### **VI. Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this proposed rule does not include any federal mandate that may result in excess of \$100 million in expenditures by state, local and tribal governments in the aggregate or by the private sector.

#### **VII. Executive Order 13132 (Federalism)**

The proposed rule does not have federalism implications as outlined in E.O. 13132 regarding federalism. The proposed rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### **VIII. Executive Order 13175, Indian Tribal Governments**

This proposed rule was reviewed under the terms of E.O. 13175 and determined not to have "tribal implications." The proposed rule does not have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes." As a result, no tribal summary impact statement has been prepared.

#### **IX. Effects on Families**

The undersigned hereby certify that this proposed rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

#### **X. Executive Order 13045, Protection of Children**

E.O. 13045, dated April 23, 1997 (62 FR 19885), applies to any rule that (1) is determined to be "economically significant" as defined in E.O. 12866,

and (2) concerns an environmental health or safety risk that the promulgating agency has reason to believe may have a disproportionate effect on children. This proposal is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866. In addition, although this proposed rule impacts the youth employment provisions of the FLSA and the employment of adolescents and young adults, it does not impact the environmental health or safety risks of children.

#### **XI. Environmental Impact Assessment**

A review of this proposal in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.*; and the Departmental NEPA procedures, 29 CFR part 11, indicates that the proposed rule will not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

#### **XII. Executive Order 13211, Energy Supply**

This proposed rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution or use of energy.

#### **XIII. Executive Order 12630, Constitutionally Protected Property Rights**

This proposal is not subject to E.O. 12630, because it does not involve implementation of a policy "that has takings implications" or that could impose limitations on private property use.

#### **XIV. Executive Order 12988, Civil Justice Reform Analysis**

This proposed rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. The proposed rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

#### **List of Subjects in 29 CFR Part 570**

Child labor, Child Labor occupations, Employment, Government, Incorporation by reference, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

Signed at Washington, DC this 10th day of April, 2007.

**Victoria A. Lipnic,**

*Assistant Secretary, Employment Standards Administration.*

**Paul DeCamp,**

*Administrator, Wage and Hour Division.*

For the reasons set out in the preamble, the DOL proposes to amend Title 29, part 570, of the Code of Federal Regulations as follows:

#### **PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION**

1. The authority citation for part 570 subpart C continues to read as follows:

**Authority:** 29 U.S.C. 203(l), 212, 213(c)(7).

2. Sections 570.31 through 570.35 are proposed to be revised to read as follows:

##### **§ 570.31 Secretary's determinations concerning the employment of minors 14 and 15 years of age.**

The employment of minors between 14 and 16 years of age in the occupations, for the periods, and under the conditions specified in § 570.34 and § 570.35, does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child labor.

##### **§ 570.32 Effect of this subpart.**

This subpart concerns the employment of youth between 14 and 16 years of age in nonagricultural occupations; standards for the employment of minors in agricultural occupations are detailed in subpart E—1. The employment (including suffering or permitting to work) by an employer of minors 14 and 15 years of age in occupations detailed in § 570.34, for the periods and under the conditions specified in § 570.35, shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938. Employment that is not specifically permitted is prohibited.

##### **§ 570.33 Occupations that are prohibited to minors 14 and 15 years of age.**

The following occupations, which is not an exhaustive list, constitute oppressive child labor within the meaning of the Fair Labor Standards Act of 1938 when performed by minors who are 14 and 15 years of age:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined or otherwise processed, except as permitted in § 570.34 of this subpart.

(b) Occupations that the Secretary of Labor may, pursuant to section 3(l) of the Fair Labor Standards Act, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being.

(c) Occupations that involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing hoisting apparatus.

(d) Work performed in or about boiler or engine rooms or in connection with the maintenance or repair of the establishment, machines, or equipment.

(e) Occupations that involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing any power-driven machinery, including but not limited to lawn mowers, golf carts, trimmers, cutters, weed-eaters, edgers, food slicers, food grinders, food choppers, food processors, food cutters, and food mixers. Youth 14 and 15 years of age may, however, operate office equipment pursuant to § 570.34(a) and vacuum cleaners and floor waxers pursuant to § 570.34(h).

(f) The operation of motor vehicles; the service as helpers on such vehicles except those tasks permitted by § 570.34(k); and the riding on a motor vehicle, inside or outside of an enclosed passenger compartment, except as permitted by § 570.34(o).

(g) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes.

(h) All baking and cooking activities except that cooking which is permitted by § 570.34(c).

(i) Work in freezers and meat coolers and all work in the preparation of meats for sale except as permitted by § 570.34(j). This section, however, does not prohibit the employment of 14- and 15-year-olds whose duties require them to occasionally enter freezers only momentarily to retrieve items.

(j) Youth peddling, which entails the selling of goods or services to customers at locations other than the youth-employer's establishment, such as the customers' residences or places of business, or public places such as street corners or public transportation stations. Prohibited activities associated with youth peddling not only include the attempt to make a sale or the actual consummation of a sale, but also the preparatory and concluding tasks normally performed by a youth peddler in conjunction with his or her sales such as the loading and unloading of vans or other motor vehicles, the stocking and restocking of sales kits and trays, the exchanging of cash and checks with the employer, and the

transportation of minors to and from the various sales areas by the employer. Youth peddling does not include the activities of persons who, as volunteers and without compensation, sell goods or services on behalf of eleemosynary organizations or public agencies.

(k) Loading and unloading of goods or property onto or from motor vehicles, railroad cars, or conveyors, except the loading and unloading of personal non-power-driven hand tools, personal protective equipment, and personal items to and from motor vehicles as permitted by § 570.34(k).

(l) Catching and cooping of poultry for preparation for transport or for market.

(m) Public messenger service.

(n) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including demolition and repair); except such office work (including ticket office) or sales work in connection with paragraphs (n)(1), (2), (3), and (4) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

**§ 570.34 Occupations that may be performed by minors 14 and 15 years of age.**

This subpart authorizes only the following occupations in which the employment of minors 14 and 15 years of age is permitted when performed for periods and under conditions authorized by § 570.35 and not involving occupations prohibited by § 570.33 or performed in areas or industries prohibited by § 570.33.

(a) Office and clerical work, including the operation of office machines.

(b) Work of a mental or artistically creative nature such as, but not limited to, computer programming, the writing of software, teaching or performing as a tutor, serving as a peer counselor or teacher's assistant, singing, the playing of a musical instrument, and drawing, as long as such employment complies with all the other provisions contained in §§ 570.33, 570.34, and 570.35. Artistically creative work is limited to work in a recognized field of artistic or creative endeavor.

(c) Cooking with electric or gas grills which does not involve cooking over an open flame (**Note:** This provision does not authorize cooking with equipment such as rotisseries, broilers, pressurized equipment including fryolators, and

cooking devices that operate at extremely high temperatures such as "Neico broilers"). Cooking is also permitted with deep fryers that are equipped with and utilize a device which automatically lowers the baskets into the hot oil or grease and automatically raises the baskets from the hot oil or grease.

(d) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.

(e) Price marking and tagging by hand or machine, assembling orders, packing, and shelving.

(f) Bagging and carrying out customers' orders.

(g) Errand and delivery work by foot, bicycle, and public transportation.

(h) Clean up work, including the use of vacuum cleaners and floor waxers, and the maintenance of grounds, but not including the use of power-driven mowers, cutters, trimmers, edgers, or similar equipment.

(i) Kitchen work and other work involved in preparing and serving food and beverages, including operating machines and devices used in performing such work. Examples of permitted machines and devices include, but are not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, coffee grinders, automatic coffee machines, devices used to maintain the temperature of prepared foods (such as warmers, steam tables, and heat lamps), and microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F. Minors are permitted to clean kitchen equipment (not otherwise prohibited), remove oil or grease filters, pour oil or grease through filters, and move receptacles containing hot grease or hot oil, but only when the equipment, surfaces, containers and liquids do not exceed a temperature of 100 °F.

(j) Cleaning vegetables and fruits, and the wrapping, sealing, labeling, weighing, pricing, and stocking of items, including vegetables, fruits, and meats, when performed in areas physically separate from a freezer or meat cooler.

(k) The loading onto motor vehicles and the unloading from motor vehicles of the light, non-power-driven, hand tools and personal protective equipment that the minor will use as part of his or her employment at the work site; and the loading onto motor vehicles and the unloading from motor vehicles of personal items such as a back pack, a lunch box, or a coat that the minor is permitted to take to the work site. Such light tools would include, but not be limited to, rakes, hand-held clippers,

shovels, and brooms. Such light tools would not include items like trash, sales kits, promotion items or items for sale, lawn mowers, or other power-driven lawn maintenance equipment. Such minors would not be permitted to load or unload safety equipment such as barriers, cones, or signage.

(l)(1) *Lifeguard.* The employment of 15-year-olds (but not 14-year-olds) to perform permitted lifeguard duties at traditional swimming pools and water amusement parks (including such water park facilities as wave pools, lazy rivers, specialized activity areas that may include water falls and sprinkler areas, and baby pools; but not including the elevated areas of power-driven water slides) when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety.

(2) *Definitions.* As used in this section:

*Permitted lifeguard duties*, as used in this subpart, include the rescuing of swimmers in danger of drowning, the monitoring of activities at poolside to prevent accidents, the teaching of water safety, and providing assistance to patrons. Lifeguards may also help to maintain order and cleanliness in the pool and pool areas, give swimming instructions, conduct or officiate at swimming meets, and administer first aid. Additional lifeguard duties may include checking in and out items such as towels and personal items such as rings, watches and apparel. Permitted duties for 15-year-olds include the use of a ladder to access and descend from the lifeguard chair; the use of hand tools to clean the pool and pool area; and the testing and recording of water quality for temperature and/or pH levels, using all of the tools of the testing process including adding chemicals to the test water sample. Fifteen-year-olds employed as lifeguards are, however, prohibited from entering or working in any mechanical room or chemical storage areas, including any areas where the filtration and chlorinating systems are housed. The term *permitted lifeguard duties* does not include the operation or tending of power-driven equipment including power-driven elevated water slides often found at water amusement parks and some swimming pools. Minors under 16 years of age may not be employed as *dispatchers* or *attendants* at the top of elevated water slides performing such tasks as maintaining order, directing patrons as to when to depart the top of the slide, and ensuring that patrons have begun their "ride" safely. Properly certified 15-year-old lifeguards may,

however, be stationed at the "splashdown pools" located at the bottom of the elevated water slides to perform those permitted duties listed in this subsection.

*Traditional swimming pool*, as used in this subpart, means a water tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith, excluding elevated "water slides." Not included in the definition of a *traditional swimming pool* would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches.

*Water amusement park* means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Not included in the definition of a *water amusement park* would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches.

(m)(1) *Employment inside and outside of places of business where machinery is used to process wood products.* The employment of a 14- or 15-year-old who by statute or judicial order is exempt from compulsory school attendance beyond the eight grade inside or outside places of business where machinery is used to process wood products if:

(i) The youth is supervised by an adult relative of the youth or is supervised by an adult member of the same religious sect or division as the youth;

(ii) The youth does not operate or assist in the operation of power-driven woodworking machines;

(iii) The youth is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) The youth is required to use, and uses, personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

(2) *Compliance.* Compliance with the provisions of paragraphs (m)(1)(iii) and (m)(1)(iv) of this section will be accomplished when the employer is in compliance with the requirements of the applicable governing standards issued

by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) or, in those areas where OSHA has authorized the state to operate its own Occupational Safety and Health Plan, the applicable standards issued by the Office charged with administering the State Occupational Safety and Health Plan.

(3) *Definitions.* As used in this section:

*Inside or outside places of business* shall mean the actual physical location of the establishment employing the youth, including the buildings and surrounding land necessary to the business operations of that establishment.

*Operate or assist in the operation of power-driven woodworking machines* shall mean the operating of such machines, including supervising or controlling the operation of such machines, feeding material into such machines, helping the operator feed material into such machines, unloading materials from such machines, and helping the operator unload materials from such machines. The term also includes the occupations of setting-up, adjusting, repairing, oiling, or cleaning such machines.

*Places of business where machinery is used to process wood products* shall mean such permanent workplaces as sawmills, lath mills, shingle mills, cooperage stock mills, furniture and cabinet making shops, gazebo and shed making shops, toy manufacturing shops, and pallet shops. The term shall not include construction sites, portable sawmills, areas where logging is being performed, or mining operations.

*Power-driven woodworking machines* shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing, or printing wood, veneer, trees, logs, or lumber.

*Supervised by an adult relative or is supervised by an adult member of the same religious sect or division as the youth* has several components.

*Supervised* means that the youth's on-the-job activities must be directed, monitored, overseen, and controlled by certain named adults. Such supervision must be close, direct, constant, and uninterrupted. An *adult* shall mean an individual who is at least eighteen years of age. A relative shall mean the parent (or someone standing in the place of a parent), grandparent, sibling, uncle, or aunt of the young worker. A *member of the same religious sect or division as the youth* refers to an individual who professes membership in the same

religious sect or division to which the youth professes membership.

(n) Work in connection with cars and trucks if confined to the following: dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing by hand; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

(o) Work in connection with riding inside passenger compartments of motor vehicles except as prohibited by §§ 570.33(f) or 570.33(j), or when a significant reason for the minor being a passenger in the vehicle is for the purpose of performing work in connection with the transporting-or assisting in the transporting-of other persons or property. The transportation of the persons or property does not have to be the primary reason for the trip for this exception to apply. Each minor riding as a passenger in a motor vehicle must have his or her own seat in the passenger compartment; each seat must be equipped with a seat belt or similar restraining device; and the employer must instruct the minors that such belts or other devices must be used.

#### **§ 570.35 Hours of work and conditions of employment permitted for minors 14 and 15 years of age.**

(a) *Hours standards.* Except as provided in paragraph (c) of this section, employment in any of the permissible occupations to which this subpart is applicable shall be confined to the following periods:

(1) Outside of school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session, including Fridays;

(6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

(b) *Definition.* As used in this section:

*Week* as used in this subpart means a standard calendar week of 12:01 a.m. Sunday through midnight Saturday, not an *employee's workweek* as defined in § 778.105 of this title.

*Exceptions.* (1) School is not considered to be in session, and exceptions from the hours limitations standards listed in paragraphs (a)(1), (3), and (5) of this section are provided, for any youth 14 or 15 years of age who:

(i) Has graduated from high school;  
 (ii) Has been excused from compulsory school attendance by the state or other jurisdiction once he or she has completed the eighth grade and his or her employment complies with all the requirements of the state school attendance law;

(iii) Has a child to support and appropriate state officers, pursuant to state law, have waived school attendance requirements for this minor;

(iv) Is subject to an order of a state or federal court prohibiting him or her from attending school; or

(v) Has been permanently expelled from the local public school he or she would normally attend.

(2) In the case of minors 14 and 15 years of age who are employed to perform sports-attending services at professional sporting events, i.e., baseball, basketball, football, soccer, tennis, etc., the requirements of paragraphs (a)(2) through (a)(6) of this section shall not apply, provided that the duties of the sports-attendant occupation consist of pre- and post-game or practice setup of balls, items and equipment; supplying and retrieving balls, items and equipment during a sporting event; clearing the field or court of debris, moisture, etc., during play; providing ice, drinks, towels, etc., to players during play; running errands for trainers, managers, coaches, and players before, during, and after a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, etc.; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts or similar facilities; loading and unloading balls, items and equipment from team vehicles before and after a sporting event; doing laundry; and working in concession stands or other selling and promotional activities.

(3) Exceptions from certain of the hours standards contained in paragraphs (a)(1) and (a)(3) of this section are provided for the employment of minors who are enrolled in and employed pursuant to a school-supervised work-experience and career exploration program as detailed in § 570.35a.

(4) Exceptions from certain of the hours standards contained in paragraphs (a)(1) and (a)(5) of this section are provided for the employment of minors who are

participating in a work-study program designed as described in § 570.35b.

3. In § 570.35a paragraph (c)(3) is proposed to be revised to read as follows:

**§ 570.35a Work experience and career exploration programs.**

\* \* \* \* \*

(c) \* \* \*

(3) Occupations other than those permitted under § 570.34, except upon approval of a variation by the Administrator of the Wage and Hour Division in acting on the program application of the State Educational Agency. The Administrator shall have discretion to grant requests for special variations if the applicant demonstrates that the activity will be performed under adequate supervision and training (including safety precautions) and that the terms and conditions of the proposed employment will not interfere with the health or well-being or schooling of the minor enrolled in an approved program. The granting of a special variation is determined on a case-by-case basis.

\* \* \* \* \*

4. A new § 570.35b is proposed to be added and to read as follows:

**§ 570.35b Work-study programs.**

(a) This section varies the provisions contained in § 570.35(a)(1) and (a)(5) for the employment of minors 14 and 15 years of age who are enrolled in and employed pursuant to a school-supervised and school-administered work-study program that meets the requirements of paragraph (b) of this section, in the occupations permitted by § 570.34, and for the periods and under the conditions specified in paragraph (c) of this section. With these safeguards, such employment is found not to interfere with the schooling of the minors or with their health and well-being and therefore is not deemed to be oppressive child labor.

(b)(1) A school-supervised and school-administered work-study program shall meet the educational standards established and approved by the State Educational Agency in the respective state.

(2) The superintendent of the public or private school system supervising and administering the work-study program shall file with the Administrator of the Wage and Hour Division a letter of application for approval of the work-study program as one not interfering with schooling or with the health and well-being of the minors involved and therefore not constituting oppressive child labor. The application shall be filed at least sixty

days before the start of the school year and must include information concerning the criteria listed in paragraph (b)(3) of this section. The Administrator of the Wage and Hour Division shall approve the application, or give prompt notice of any denial and the reasons therefor.

(3) The criteria to be used in consideration of applications under this section are the following:

(i) *Eligibility.* Any student 14 or 15 years of age, enrolled in a college preparatory curriculum, whom authoritative personnel from the school attended by the youth identify as being able to benefit from the program shall be able to participate.

(ii) *Instructional schedule.* Every youth shall receive, every school year he or she participates in the work-study program, at least the minimum number of hours of classroom instruction, as required by the State Educational Agency responsible for establishing such standards, to complete a fully-accredited college preparatory curriculum. Such classroom instruction shall include, every year the youth participates in the work-study program, training in workplace safety and state and federal youth employment provisions and rules.

(iii) *Teacher-coordinator.* Each school participating in a work-study program shall designate a teacher-coordinator under whose supervision the program will operate. The teacher-coordinator shall generally supervise and coordinate the work and educational aspects of the program and make regularly scheduled visits to the workplaces of the participating students. The teacher-coordinator shall ensure that minors participating in a work-study program are employed in compliance with all applicable provisions of this part and section 6 of the Fair Labor Standards Act.

(iv) *Written participation agreement.* No student shall participate in the work-study program until there has been made a written agreement signed by the teacher-coordinator, the employer, and the student. The agreement shall also be signed or otherwise consented to by the student's parent or guardian. The agreement shall detail the objectives of the work-study program; describe the specific job duties to be performed by the participating minor as well as the number of hours and times of day that the minor will be employed each week; affirm that the participant will receive the minimum number of hours of classroom instruction as required by the State Educational Agency for the completion of a fully-accredited college preparatory curriculum; and affirm that

the employment of the minor will be in compliance with the youth employment provisions of both this part and the laws of the state where the work will be performed, and the applicable minimum wage provisions contained in section 6 of the FLSA.

(v) *Other provisions.* Any other provisions of the program providing safeguards ensuring that the employment permitted under this section will not interfere with the schooling of the minors or with their health and well-being may also be submitted for use in considering the application.

(4) Every public or private school district having students in a work-study program approved pursuant to these requirements, and every employer employing students in a work-study program approved pursuant to these requirements, shall comply with the following:

(i) *Permissible occupations.* No student shall be assigned to work in any occupation other than one permitted under § 570.34 of this chapter.

(ii) *Records and reports.* A copy of the written agreement for each student participating in the work-study program shall be kept by both the employer and the school supervising and administering the program for a period of three years from the date of the student's enrollment in the program. Such agreements shall be made available upon request to the representatives of the Administrator of the Wage and Hour Division for inspection, transcription, and/or photocopying.

(c) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be confined to not more than 18 hours in any one week when school is in session, a portion of which may be during school hours, in accordance with the following formula that is based upon a continuous four-week cycle. In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day. During the remaining week of the four-week cycle, such minor is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days. The employment of such minors would still be subject to the time of day and number of hours standards contained in §§ 570.35(a)(2), (a)(3), (a)(4), and (a)(6). To the extent that these provisions are inconsistent with the provisions of § 570.35, this section shall be controlling.

(d) Programs shall be in force and effect for a period to be determined by the Administrator of the Wage and Hour Division, but in no case shall be in effect for longer than two school years from the date of their approval by the Administrator of the Wage and Hour Division. A new application for approval must be filed at the end of that period. Failure to meet the requirements of this section may result in withdrawal of the approval.

#### **Subpart E—Occupations Particularly Hazardous for the Employment of Minors Between 16 and 18 Years of Age or Detrimental to Their Health or Well-Being**

5. The authority citation for subpart E continues to read as follows:

**Authority:** 29 U.S.C. 203(l), 212, 213(c).

6. In § 570.54, the section heading and paragraphs (a) introductory text, (a)(1), (a)(2) introductory text, and (b) are proposed to be revised, and a new paragraph (c) is proposed to be added, to read as follows:

#### **§ 570.54 Forest firefighting and forest fire prevention occupations, logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill (Order 4).**

(a) *Finding and declarations of fact.* All occupations in forest firefighting and forest fire prevention, logging, and the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill are particularly hazardous for the employment of minors between 16 and 18 years of age, except the following:

(1) Exceptions applying to logging:

(i) Work in offices or in repair or maintenance shops.

(ii) Work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps.

(iii) Peeling of fence posts, pulpwood, chemicalwood, excelsior wood, cordwood, or similar products when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by this section.

(iv) Work in the feeding or care of animals.

(2) Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage stock mill: *Provided*, That these exceptions do not apply to a portable sawmill the lumber yard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained: *And further provided*, That

these exceptions do not apply to work which entails entering the sawmill building, except for minors who meet the requirements of the limited exemption discussed in §§ 570.34(m) and 570.54(c):

\* \* \* \* \*

(b) *Definitions.* As used in this section:

*All occupations in forest firefighting and forest fire prevention* shall include the controlling and extinguishing of fires, the wetting down of areas or extinguishing of spot fires, the patrolling of burned areas to assure the fire has been extinguished, and the piling and burning of slash. The term shall also include the following tasks when performed in conjunction with, or in support of, efforts to extinguish an actual fire: the clearing of fire trails or roads; the construction, maintenance, and patrolling of firelines; acting as a fire lookout or fire patrolman; and tasks associated with the operation of a temporary firefighting base camp. The prohibition concerning the employment of youth in forest firefighting and fire prevention would apply to all forest locations and buildings located within the forest, not just where logging or sawmilling takes place.

*All occupations in logging* shall mean all work performed in connection with the felling of timber; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting and unloading of such products in connection with logging; the constructing, repairing, and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging.

*All occupations in the operation on any sawmill, lath mill, shingle mill, or cooperage-stock mill* shall mean all work performed in or about any such mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, lathers, shingles, or cooperage stock; storing drying, and shipping lumber, laths, shingles, cooperage stock, or other products of such mills; and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill or remanufacturing plant not a part of a sawmill.

*Inside or outside places of business* shall mean the actual physical location of the establishment employing the youth, including the buildings and surrounding land necessary to the business operations of that establishment.

*Operate or assist in the operation of power-driven woodworking machines* shall mean operating such machines, including supervising or controlling the operation of such machines, feeding material into such machines, helping the operator feed material into such machines, unloading materials from such machines, and helping the operator unload materials from such machines. The term also includes the occupations of setting-up, adjusting, repairing, oiling, or cleaning such machines.

*Places of business where machinery is used to process wood products* shall mean such permanent workplaces as sawmills, lath mills, shingle mills, cooperage stock mills, furniture and cabinet making shops, gazebo and shed making shops, toy manufacturing shops, and pallet shops. The term shall not include construction sites, portable sawmills, areas where logging is being performed, or mining operations.

*Power-driven woodworking machines* shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing, or printing wood, veneer, trees, logs, or lumber.

*Remanufacturing department* shall mean those departments of a sawmill where lumber products such as boxes, lawn furniture, and the like are remanufactured from previously cut lumber. The kind of work performed in such departments is similar to that done in planning mill departments in that rough lumber is surfaced or made into other finished products. The term is not intended to denote those operations in sawmills where rough lumber is cut to dimensions.

*Supervised by an adult relative or is supervised by an adult member of the same religious sect or division as the youth*, as a term, has several components. *Supervised* refers to the requirement that the youth's on-the-job activities be directed, monitored, and controlled by certain named adults. Such supervision must be close, direct, constant, and uninterrupted. An *adult* shall mean an individual who is at least eighteen years of age. A *relative* shall mean the parent (or someone standing in place of a parent), grandparent, sibling, uncle, or aunt of the young worker. A *member of the same religious*

*sect or division as the youth* refers to an individual who professes membership in the same religious sect or division to which the youth professes membership.

(c) *Exemptions.* (1) The provisions contained in paragraph (a)(2) of this section that prohibit youth between 16 and 18 years of age from performing any work that entails entering the sawmill building do not apply to the employment of a youth who is at least 14 years of age and less than 18 years of age and who by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade, if:

(i) The youth is supervised by an adult relative or by an adult member of the same religious sect or division as the youth;

(ii) The youth does not operate or assist in the operation of power-driven woodworking machines;

(iii) The youth is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) The youth is required to use, and uses, personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

(2) Compliance with the provisions of paragraphs (c)(1)(iii) and (iv) of this section will be accomplished when the employer is in compliance with the requirements of the applicable governing standards issued by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) or, in those areas where OSHA has authorized the state to operate its own Occupational Safety and Health Plan, the applicable standards issued by the Office charged with administering the State Occupational Safety and Health Plan.

7. In § 570.55, paragraph (b) is proposed to be revised to read as follows:

**§ 570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5).**

\* \* \* \* \*

(b) *Definitions.* As used in this section:

*Off-bearing* shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include:

(1) The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical

means such as a moving belt or expulsion roller; and

(2) The following operations when they do not involve the removal of materials or refuse directly from a saw table or point of operation: The carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

*Power-driven woodworking machines* shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing or printing wood, veneer, trees, logs, or lumber.

\* \* \* \* \*

8. In § 570.58, paragraphs (a) introductory text, (a)(1), (a)(2), and (b) are proposed to be revised to read as follows:

**§ 570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7).**

(a) *Findings and declaration of fact.* The following occupations involved in the operation of power-driven hoisting apparatus are particularly hazardous for minors between 16 and 18 years of age:

(1) Work of operating, tending, riding upon, working from, repairing, servicing, or disassembling an elevator, crane, derrick, hoist, or high-lift truck, except operating or riding inside an unattended automatic operation passenger elevator.

(2) Work of operating, tending, riding upon, working from, repairing, servicing, or disassembling a manlift or freight elevator, except 16- and 17-year-olds may ride upon a freight elevator operated by an assigned operator.

\* \* \* \* \*

(b) *Definitions.* As used in this section:

*Crane* shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot pouring, jib, locomotive, motor-truck, overhead traveling, pillar jib, pintle, portal, semi-gantry, semi-portal, storage bridge, tower, walking jib, and wall cranes.

*Derrick* shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term shall include

all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy, and stiff-leg derrick.

*Elevator* shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators (including portable elevators or tiering machines), but shall not include dumbwaiters.

*High-lift truck* shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or a platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include highlift trucks known under such names as fork lifts, fork trucks, fork lift trucks, tiering trucks, skid loaders, skid-steer loaders, Bobcat loaders, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of but not the tiering of materials.

*Hoist* shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum, and trolley suspension hoists.

*Manlift* shall mean a device intended for the conveyance of persons that consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; with such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom. The term shall also include truck- or equipment-mounted aerial platforms commonly referred to as scissor lifts, boom-type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks.

\* \* \* \* \*

9. In § 570.59, the section heading is proposed to be revised to read as follows:

**§ 570.59 Occupations involved in the operation of power-driven metal forming, punching, and shearing machines (Order 8).**

\* \* \* \* \*

10. In § 570.61, the section heading and paragraphs (a)(4), (b), and (c)(1) are proposed to be revised to read as follows:

**§ 570.61 Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering (Order 10).**

(a) \* \* \*

(4) All occupations involved in the operation or feeding of the following power-driven machines, including setting-up, adjusting, repairing, or oiling such machines or the cleaning of such machines or the individual parts or attachments of such machines, regardless of the product being processed by these machines (including, for example, the slicing in a retail delicatessen of meat, poultry, seafood, bread, vegetables, or cheese, etc.): meat patty forming machines, meat and bone cutting saws, meat slicers, knives (except bacon-slicing machines), headsplitters, and guillotine cutters; snoutpullers and jawpullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping, and finishing machines; grinding, mixing, chopping, and hashing machines; and presses (except belly-rolling machines).

\* \* \* \* \*

(b) *Definitions.* As used in this section:

*Boning occupations* means the removal of bones from meat cuts. It does not include work that involves cutting, scraping, or trimming meat from cuts containing bones.

*Curing cellar* includes a workroom or workplace which is primarily devoted to the preservation and flavoring of meat, including poultry, by curing materials. It does not include a workroom or workplace solely where meats are smoked.

*Hide cellar* includes a workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

*Killing floor* includes a workroom, workplace where such animals as cattle, calves, hogs, poultry, sheep, lambs, goats, buffalo, deer, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

*Retail/wholesale or service establishments* include establishments where meat or meat products, including poultry, are processed or handled, such as butcher shops, grocery stores, restaurants and quick service food establishments, hotels, delicatessens, and meat locker (freezer-locker) companies, and establishments where any food product is prepared or

processed for serving to customers using machines prohibited by paragraph (a) of this section.

*Rendering plants* means establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

*Slaughtering and meat packing establishments* means places in or about which such animals as cattle, calves, hogs, poultry, sheep, lambs, goats, buffalo, deer, or horses are killed, butchered, or processed. The term also includes establishments which manufacture or process meat or poultry products, including sausage or sausage casings from such animals.

(c) \* \* \*

(1) The killing and processing of rabbits or small game in areas physically separated from the killing floor.

\* \* \* \* \*

11. In § 570.62, paragraph (a)(2) is proposed to be revised, and a new paragraph (b) is proposed to be added, to read as follows:

**§ 570.62 Occupations involved in the operation of bakery machines (Order 11).**

(a) \* \* \*

(2) The occupation of setting up or adjusting a cookie or cracker machine.

(b) *Exceptions.* (1) This section shall not apply to the operation, including the setting up, adjusting, repairing, oiling and cleaning, of lightweight, small capacity, portable counter-top power-driven food mixers that are, or are comparable to, models intended for household use. For purposes of this exemption, a lightweight, small capacity mixer is one that is not hardwired into the establishment's power source, is equipped with a motor that operates at no more than ½ horsepower, and is equipped with a bowl with a capacity of no more than five quarts.

(2) This section shall not apply to the operation of pizza-dough rollers, a type of dough sheeter, that: have been constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers; have gears that are completely enclosed; and have microswitches that disengage the machinery if the backs or sides of the rollers are removed. This exception applies only when all the safeguards detailed in this paragraph are present on the machine, are operational, and have not been overridden. This exception does not apply to the setting up, adjusting, repairing, oiling or cleaning of such pizza-dough rollers.

12. In § 570.63, the section heading and paragraphs (a)(2) and (b) are proposed to be revised, and new paragraphs (a)(3) and (a)(4) are proposed to be added, to read as follows:

**§ 570.63 Occupations involved in the operation of paper-products machines, balers, and compactors (HO 12).**

(a) \* \* \*

(2) The occupations of operation or assisting to operate any baler that is designed or used to process materials other than paper.

(3) The occupations of operation or assisting to operate any compactor that is designed or used to process materials other than paper.

(4) The occupations of setting up, adjusting, repairing, oiling, or cleaning any of the machines listed in paragraphs (a)(1), (2), and (3) of this section.

(b) *Definitions.* As used in this section:

*Applicable ANSI Standard* means the American National Standard Institute's Standard ANSI Z245.5-1990

("American National Standard for Refuse Collection, Processing, and Disposal—Baling Equipment—Safety Requirements") for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2-1992

("American National Standard for Refuse Collection, Processing, and Disposal Equipment—Stationary Compactors—Safety Requirements") for paper box compactors. Additional applicable standards are the American National Standard Institute's Standard ANSI Z245.5-1997

("American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements") for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2-1997

("American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements") for paper box compactors, which the Secretary has certified to be at least as protective of the safety of minors as

Standard ANSI Z245.5-1990 for scrap paper balers or ANSI Z245.2-1992 for paper box compactors. The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. These ANSI standards are incorporated by reference in this paragraph and have the same force and effect as other standards in this part. Only the mandatory provisions (i.e., provisions containing

the word "shall" or other mandatory language) of these standards are adopted as standards under this part. These standards are incorporated by reference as they exist on the date of the approval; if any changes are made in these standards which the Secretary finds to be as protective of the safety of minors as the current standards, the Secretary will publish a Notice of the change of standards in the **Federal Register**. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards are available for purchase from the American National Standards Institute (ANSI), 23 West 43rd St., Fourth Floor, New York, NY 10036. In addition, these standards are available for inspection at the National Archives and Records Administration (NARA) and at the Occupational Safety and Health Administration's Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or any of its regional offices. For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*Baler that is designed or used to process materials other than paper* means a powered machine designed or used to compress materials other than paper and cardboard boxes, with or without binding, to a density or form that will support handling and transportation as a material unit without requiring a disposable or reusable container.

*Compactor that is designed or used to process materials other than paper* means a powered machine that remains stationary during operation, designed or used to compact refuse other than paper or cardboard boxes into a detachable or integral container or into a transfer vehicle.

*Operating or assisting to operate* means all work that involves starting or stopping a machine covered by this section, placing materials into or removing materials from a machine, including clearing a machine of jammed materials, paper, or cardboard, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

*Paper box compactor* means a powered machine that remains stationary during operation, used to

compact refuse, including paper boxes, into a detachable or integral container or into a transfer vehicle.

*Paper products machine* means all power-driven machines used in (1) remanufacturing or converting paper or pulp into a finished product, including preparing such materials for recycling; or (2) preparing such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment. The term also applies to those machines which, in addition to paper products, process other material for disposal.

*Scrap paper baler* means a powered machine used to compress paper and possibly other solid waste, with or without binding, to a density or form that will support handling and transportation as a material unit without requiring a disposable or reusable container.

\* \* \* \* \*

13. In § 570.65, the section heading and paragraphs (a)(2) and (b) are proposed to be revised, and a new paragraph (a)(3) is proposed to be added, to read as follows:

**§ 570.65 Occupations involving the operation of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, and wood chippers (Order 14).**

(a) \* \* \*

(2) The occupations of operator or helper on the following power-driven fixed or portable machines:

(i) Chain saws.

(ii) Wood chippers.

(iii) Reciprocating saws.

(3) The occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, guillotine shears, chain saws, wood chippers, and reciprocating saws.

(b) *Definitions.* As used in this section:

*Band saw* shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

*Chain saw* shall mean a machine that has teeth linked together to form an endless chain used for cutting materials.

*Circular saw* shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

*Guillotine shear* shall mean a machine equipped with a moveable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using

a different form of shearing action, such as alligator shears or circular shears.

*Helper* shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

*Operator* shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

*Reciprocating saw* shall mean a machine equipped with a moving blade that alternately changes direction on a linear cutting axis used for sawing materials.

*Wood chipper* shall mean a machine equipped with a feed mechanism, knives mounted on a rotating chipper disc or drum, and a power plant used to reduce to chips or shred such materials as tree branches, trunk segments, landscape waste, and other materials.

\* \* \* \* \*

#### Subpart G—General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended

14. The authority citation for subpart G continues to read as follows:

**Authority:** 52 Stat. 1060–1069 as amended; 29 U.S.C. 201–219.

15. In § 570.103, paragraph (c) is proposed to be revised to read as follows:

#### § 570.103 Comparison with wage and hour provisions.

\* \* \* \* \*

(c) Another distinction is that the exemptions provided by the Act from the minimum wage and/or overtime provisions are more numerous and differ from the exemptions granted from the child labor provisions. There are only eight specific child labor exemptions of which only two apply to the minimum wage and overtime pay requirements as well. These are the exemptions for employees engaged in the delivery of newspapers to the consumer and homeworkers engaged in the making of wreaths composed principally of evergreens.<sup>3</sup> With these two exceptions, none of the specific exemptions from the minimum wage and/or overtime pay requirements applies to the child labor provisions. However, it should be noted that the

exclusion of certain employers by section 3(d)<sup>4</sup> of the Act applies to the child labor provisions as well as the wage and hours provisions.

16. Sections 570.118 through 570.120 are proposed to be revised to read as follows:

#### § 570.118 Sixteen-year minimum.

The Act sets a 16-year-age minimum for employment in manufacturing or mining occupations, though under FLSA section 13(c)(7), certain youth between the ages of 14 and 18 may, under specific conditions, be employed inside and outside of places of business that use power-driven machinery to process wood products. Furthermore, the 16-year-age minimum for employment is applicable to employment in all other occupations unless otherwise provided by regulation or order issued by the Secretary.

#### § 570.119 Fourteen-year minimum.

With respect to employment in occupations other than manufacturing and mining and in accordance with the provisions of FLSA section 13(c)(7), the Secretary is authorized to issue regulations or orders lowering the age minimum to 14 years where he or she finds that such employment is confined to periods that will not interfere with the minors' schooling and to conditions that will not interfere with their health and well-being. Pursuant to this authority, the Secretary has detailed in § 570.33 the most commonly asked about occupations in which the employment of 14- and 15-year-olds is not permitted and in § 570.34 those occupations in which 14- and 15-year-olds may be employed when the work is performed outside school hours and is confined to other specified limits. The Secretary has also set forth, in § 570.35, additional conditions that limit the periods during which 14- and 15-year-olds may be employed. The employment of minors under 14 years of age is not permissible under any circumstances if the employment is covered by the child labor provisions and not specifically exempt.

#### § 570.120 Eighteen-year minimum.

To protect young workers from hazardous employment, the FLSA provides for a minimum age of 18 years in occupations found and declared by the Secretary to be particularly hazardous or detrimental to health or

<sup>4</sup> Section 3(d) defines 'employer' as including "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

well-being for minors 16 and 17 years of age. Hazardous occupations orders are the means through which occupations are declared to be particularly hazardous for minors. Since 1995, the promulgation and amending of the hazardous occupations orders has been placed solely within the purview of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The effect of these orders is to raise the minimum age for employment to 18 years in the occupations covered. Seventeen orders, published in subpart E of this part, have thus far been issued under the FLSA and are now in effect.

17. In § 570.122, it is proposed to add new paragraphs (e), (f), (g), and (h) that are proposed to read as follows:

#### § 570.122 General.

\* \* \* \* \*

(e) Employment of homeworkers engaged in the making of evergreen wreaths, including the harvesting of the evergreens or other forest products used in making such wreaths.

(f) Employment of 16- and 17-year-olds to load, but not operate or unload, certain scrap paper balers and paper box compactors under specified conditions.

(g) Employment of 17-year-olds to perform limited driving of cars and trucks during daylight hours under specified conditions.

(h) Employment of youths between the ages of 14 and 18 years who, by statute or judicial order, are excused from compulsory school attendance beyond the eighth grade, under specified conditions, in places of business that use power-driven machinery to process wood products.

18. It is proposed to remove the center heading "Enforcement" and revise § 570.127 to read as follows:

#### § 570.127 Homeworkers engaged in the making of evergreen wreaths.

FLSA section 13(d) provides an exemption from the child labor provisions, as well as the minimum wage and overtime provisions, for homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

#### § 570.128 [Redesignated as § 570.141]

19. Section 570.128 is proposed to be redesignated as § 570.141 and a new § 570.128 is proposed to be added to read as follows:

#### § 570.128 Loading of certain scrap paper balers and paper box compactors.

Section 13(c)(5) of the FLSA provides for an exemption from the child labor

<sup>3</sup> Both of these exemptions are contained in section 13(d) of the FLSA.

provisions for the employment of 16- and 17-year-olds to load, but not operate or unload, certain power-driven scrap paper balers and paper box compactors under certain conditions. The provisions of this exemption, which are contained in HO 12 (§ 570.63), include that the scrap paper baler or compactor meet an applicable standard established by the ANSI identified in the statute, or a more recent ANSI standard that the Secretary of Labor has found and declared to be as protective of the safety of young workers as the ANSI standard named in the statute. In addition, the scrap paper baler or paper box compactor must include an on-off switch incorporating a key-lock or other system and the control of the system must be maintained in the custody of employees who are at least 18 years of age. The on-off switch of the scrap paper baler or paper box compactor must be maintained in an off position when the machine is not in operation. Furthermore, the employer must also post a notice on the scrap paper baler or paper box compactor that conveys certain information, including the identification of the applicable ANSI standard that the equipment meets, that 16- and 17-year-old employees may only load the scrap paper baler or paper box compactor, and that no employee under the age of 18 may operate or unload the scrap paper baler or paper box compactor.

#### **§ 570.129 [Redesignated as § 570.142]**

20. Section 570.129 is proposed to be redesignated as § 570.142 and a new § 570.129 is proposed to be added to read as follows:

#### **§ 570.129 Limited driving of automobiles and trucks by 17-year-olds.**

Section 13(c)(6) of the FLSA provides an exemption for 17-year-olds, but not 16-year-olds, who, as part of their employment, perform the occasional and incidental driving of automobiles and trucks on public highways under specified conditions. These specific conditions, which are contained in HO 2 (§ 570.52), include that the automobile or truck may not exceed 6,000 pounds gross vehicle weight, the driving must be restricted to daylight hours, the vehicle must be equipped with a seat belt or similar restraining device for the driver and for any passengers, and the employer must instruct the employee that such belts or other devices must be used. In addition, the 17-year-old must hold a State license valid for the type of driving involved in the job, have successfully completed a State-approved driver education course, and have no records of any moving

violations at the time of his or her hire. The exemption also prohibits the minor from performing any driving involving the towing of vehicles; route deliveries or route sales; the transportation for hire of property, goods, or passengers; urgent, time-sensitive deliveries; or the transporting of more than three passengers at any one time. The exemption also places limitations on the number of trips the 17-year-old may make each day and restricts the driving to a thirty mile radius of the minor's place of employment.

21. It is proposed that a new § 570.130 be added to read as follows:

#### **§ 570.130 Employment of certain youth inside and outside of places of business that use power-driven machinery to process wood products.**

Section 13(c)(7) of the FLSA provides a limit exemption from the child labor provisions for certain youths between the ages of 14 and 18 years who, by statute or judicial order, are excused from compulsory school attendance beyond the eighth grade, that permits their employment inside and outside of places of business that use power-driven machinery to process wood products. The provisions of this exemption are contained in subpart C of this part (§ 570.34(m)) and HO 4 (§ 570.54). Although the exemption allows certain youths between the ages of 14 and 18 years to be employed inside and outside of places of business that use power-driven machines to process wood products, it does so only if such youths do not operate or assist in the operation of power-driven woodworking machines. The exemption also requires that the youth be supervised by an adult relative or by an adult member of the same religious sect as the youth. The youth must also be protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation. For the exemption to apply, the youth must also be required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust.

22. It is proposed that new §§ 570.131 through 570.139 be added and reserved.

#### **§§ 570.131 through 570.139 (Reserved).**

23. It is proposed that a center heading and new § 570.140 be added to read as follows:

#### **Enforcement**

#### **§ 570.140 General.**

(a) Section 15(a)(4) of the Act makes any violation of the provisions of

sections 12(a) or 12(c) unlawful. Any such unlawful act or practice may be enjoined by the United States District Courts under section 17 upon court action, filed by the Secretary pursuant to section 12(b) and, if willful will subject the offender to the criminal penalties provided in section 16(a) of the Act. Section 16(a) provides that any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) In addition, FLSA section 16(e) states that any person who violates the provisions of FLSA section 12, relating to child labor, or any regulations issued under that section, shall be subject to a civil penalty, currently not to exceed \$11,000 for each employee who was the subject of such a violation. Part 579 of this chapter, *Child Labor Violations—Civil Money Penalties*, provides for the issuance of the notice of civil money penalties for any violation of FLSA section 12 relating to child labor. Part 580 of this chapter, *Civil Money Penalties—Procedures for Assessing and Contesting Penalties*, describes the administrative process for assessment and resolution of the civil money penalties. When a civil money penalty is assessed against an employer for a youth employment violation, the employer has the right, within 15 days after receipt of the notice of such penalty, to file an exception to the determination that the violation or violations occurred. When such an exception is filed with the office making the assessment, the matter is referred to the Chief Administrative Law Judge, and a formal hearing is scheduled. At such a hearing, the employer or an attorney retained by the employer may present such witnesses, introduce such evidence and establish such facts as the employer believes will support the exception. The determination of the amount of any civil money penalty becomes final if no exception is taken to the administrative assessment thereof, or if no exception is filed to the decision and order of the administrative law judge.

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