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29 CFR Parts 570 and 579
Child Labor Regulations, Orders and Statements of Interpretation; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 570 and 579

RIN 1215–AB57
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Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division, Labor.

ACTION: Final Rule.

SUMMARY: This Final Rule revises the child labor regulations to incorporate statutory amendments to the Fair Labor Standards Act and to update and clarify the regulations that establish protections for youth employed in nonagricultural occupations. These revisions also implement specific recommendations made by the National Institute for Occupational Safety and Health in its 2002 report to the Department of Labor. The Department of Labor is revising the regulations to incorporate the 2008 amendment to section 16(e) of the Fair Labor Standards Act that substantially increased the maximum permissible civil money penalty an employer may be assessed for child labor violations that cause the death or serious injury of a young worker.

DATES: *Effective Dates:* This rule is effective July 19, 2010. The incorporation by reference of American National Standards Institute standards in the regulations is approved by the Director of the Federal Register as of July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner, Jr., Division of Enforcement Policy, Branch of Child Labor and Special Employment Enforcement, Wage and Hour Division, 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 Final Rule 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 Final Rule 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/whd/america2.htm.*

SUPPLEMENTARY INFORMATION: The revisions in this Final Rule continue the Department of Labor's tradition of fostering permissible and appropriate job opportunities for working youth that are healthy, safe, and not detrimental to their education.

The Regulatory Information Number (RIN) identified for this rulemaking changed with the publication of the 2010 Spring Regulatory Agenda due to an organizational restructuring. The old RIN was assigned to the Employment Standards Administration, which no longer exists. A new RIN has been assigned to the Wage and Hour Division.

I. 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 child labor provisions of the FLSA 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–.37). 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 and thereby brought more working youth employed in retail, food service, and gasoline service establishments within the protections of the Act.

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. A detailed discussion of the Department's review was included in the Notice of Proposed Rulemaking published in the **Federal Register** on April 17, 2007 (*see* 72 FR 19339).

Congress twice amended the child labor provisions of the FLSA in the 1990s. The Compactors and Balers Safety Standards Modernization Act, Public Law 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, Public Law 105–334, was signed into law on October 31, 1998. This legislation added section 13(c)(6) to the FLSA which prohibits minors under 17 years of age from driving automobiles and trucks on public roadways on the job and establishes the conditions and criteria for 17-year-olds to drive automobiles and trucks on public roadways on the job.

The Department published a Notice of Proposed Rulemaking (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.

In 1998, the Department provided funds to the National Institute for Occupational Safety and Health (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 child labor HOs to address them. This study was commissioned to provide the Secretary with another tool to use in her ongoing review of the child labor provisions, and of the hazardous occupations orders in particular. The report, entitled *National Institute for Occupational Safety and Health (NIOSH) 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 the limitations of the 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 child labor 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 and fatalities 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 and analysis 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 Department's 2004 Final Rule addressed six of the recommendations.

The Consolidated Appropriations Act, 2004, Public Law 108–199, § 108, which was signed into law on January 23, 2004, amended the FLSA by creating a limited exemption from the child labor 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 proposed revisions of the child labor regulations to implement the 2004 legislation, address 25 of the remaining 29 NIOSH Report recommendations dealing with existing nonagricultural hazardous occupations orders, and revise and/or clarify the permitted and prohibited occupations and industries and conditions and periods of employment established for 14- and 15-year-olds by Reg. 3, in an NPRM published in the **Federal Register** on April 17, 2007 (72 FR 19337). The NPRM also proposed to incorporate 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. In addition, the Department proposed to expand the HO that prohibits youth from operating power-driven circular saws, band saws, and guillotine shears to also prohibit the operation of power-driven chain saws, wood chippers, and reciprocating saws. Finally, the Department proposed to revise subpart G of the child labor regulations, entitled *General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended,* to incorporate all the changes adopted by the agency since this subpart was last revised in 1971.

The Genetic Information Nondiscrimination Act of 2008 (GINA) (Pub. L. 110–233) was enacted into law on May 21, 2008, after the publication of the 2007 NPRM. GINA, among other things, amended FLSA section 16(e) to provide that any person who violates the provisions of sections 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil money penalty not to exceed $11,000 for each employee who was the subject of such a violation. In addition, GINA also permits the assessment of a civil money penalty up to $50,000 with regard to each violation that caused the death or serious injury of any employee under the age of 18 years. That penalty may be doubled, up to $100,000, when such violation is determined by the Department to be a repeated or willful violation. These changes in the law became effective May 21, 2008.

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 published December 16, 2004 (*see* 69 FR 75382). The Department, in the April 17, 2007 NPRM, based on its determination that there was sufficient

data available, addressed 25 of the remaining 29 NIOSH Report recommendations dealing with the existing nonagricultural hazardous occupations orders. In an attempt to acquire additional data needed to address the remaining nonagricultural NIOSH recommendations and to pursue certain other issues not explored in the NIOSH Report, the Department also published an Advance Notice of Proposed Rulemaking (ANPRM) concurrently with the 2007 NPRM (*see* 72 FR 19328). Because very little substantive information was received, the Department withdrew the ANPRM on February 24, 2010. No proposed rule will result directly from that information collection effort, however, the topics discussed in the ANPRM may be the subject of a future rulemaking. The comments submitted in response to the ANPRM may be reviewed at the Federal eRulemaking Portal at *http://www.regulations.gov,* docket identification number WHD–2007–0001.

The NIOSH Report also made 14 recommendations that impact the current agricultural HOs and recommended the creation of 17 new HOs. The Department, in the ANPRM published on April 17, 2007, requested public comment on the feasibility of one of those recommendations regarding the creation of a new HO that would prohibit the employment of youth in construction occupations.

The Department is continuing to review all of the remaining NIOSH Report recommendations, but excluded them from immediate consideration in order to keep the size and scope of the 2007 ANPRM and NPRM 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 are not being given the same level of consideration as the recommendations addressing the current nonagricultural HOs. In that regard, the Department is nearing completion of its thorough review of the NIOSH recommendations that address the agricultural hazardous occupations orders.

II. Summary of Comments

A total of 28 comments were received and are available for review at the Federal eRulemaking Portal at *http://www.regulations.gov.* The Docket ID for the NPRM that generated these comments is WHD–2007–0002. Comments were received from trade and professional associations; advocacy and occupational health and safety organizations; employers; federal, state, and local government agencies; representatives of schools and organizations that provide vocational training to youth; and one private citizen. The one private citizen comment, which concerned the issue of door-to-door sales, was incorrectly submitted to the ANPRM docket by the commenter and was assigned a Document ID of WHD–2007–0001–0004. One commenter, the International Association of Amusement Parks and Attractions, included comments from three of its member organizations along with its submission. Four of the comments do not address any of the issues raised by the April 17, 2007 NPRM and focus solely on topics raised by the ANPRM that was published by the Department on that same day. One commenter, the National Children's Center for Rural and Agricultural Health and Safety, did not address any specific proposal but expressed concerns that the Department has not yet implemented the NIOSH Report recommendations for agricultural HOs. In regards to the nonagricultural youth provisions, it stated that "it does not appear that protection of youth workers is at the heart of some of the proposed changes, but rather the needs of industry and special interest groups."

Many of the comments concerned a single issue or a cluster of issues impacting a single industry, but two comments were quite extensive and addressed almost every proposal raised by the NPRM. These comprehensive comments were submitted by the Young Workers Health and Safety Network (YWN) and the Child Labor Coalition (CLC). The Department appreciates the time and effort all of these commenters devoted to their submissions.

The YWN is a subcommittee of the Occupational Health and Safety Section of the American Public Health Association. It described itself as an informal network of public health professionals, advocates, and government agency staff that includes individuals from academia, public health, labor law enforcement, health and safety consultation and/or enforcement, labor organizations, and educators. The YWN reported that, in formulating its comments, it tried to use the following principles: The regulations should protect youth from significant hazards; where possible, the regulations should be kept clear and consistent, limiting the number of exceptions or exemptions, thus fostering better compliance and more effective enforcement; and, the regulations should allow youth to do a broad variety of different types of potentially rewarding work.

The CLC, which has more than 30 member organizations, described itself as the largest grouping in the United States of advocates for the protection of the safety, health, and education of working children. The CLC reported that its comments are also endorsed by the following organizations: A Better World Foundation, A Minor Consideration, American Federation of Teachers, American Federation of School Administrators, Americans for Democratic Action, Association of Farmworker Opportunity Programs, Farmworker Justice, International Initiative to End Child Labor, Migrant Legal Action Program, National Association of State Directors of Migrant Education, National Consumers League, Ramsay Merriam Fund, and the United Food and Commercial Workers International Union. The CLC stated that its comments are in line with its stated mission and objectives, which include creating a network for the exchange of information about child labor, providing a forum and a unified voice on protecting working minors and ending child labor exploitation, and developing informational and educational outreach to the public and private sectors to combat child labor abuses and to promote progressive initiatives and legislation. The American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), while submitting its own comments, also endorsed those submitted by the CLC.

III. Regulatory Revisions

Many of the revisions being made by this Final Rule will result in the redesignation of several sections and subsections of the regulations. In order to prevent confusion when providing citations in this discussion, the Department will provide, when appropriate, both the current citation (the citation prior to the effective date of this Final Rule) and the new citation (the citation that will apply on and after the effective date of this Final Rule). For example, the section of Reg. 3 that prohibits 14- and 15-year-olds from employment in occupations in connection with warehousing and storage would be cited as § 570.33(f)(2)(old) or § 570.33(n)(2)(new).

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 defines *oppressive child labor* to expressly prohibit 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 work is not deemed oppressive for children between the ages of 14 and 16 appear in Reg. 3 (29 CFR 570.31–.37).

Reg. 3 identifies a number of occupations and 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) (old) and § 570.33(e) (new)). 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, prohibited 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) (old) and § 570.33(b) (new)).

As previously mentioned, Reg. 3 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 and thereby brought more working youth employed in retail, food service, and gasoline service establishments within the protections of the Act. The current § 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, cashiering, and clean-up work are authorized, whereas "all work requiring the use of ladders, scaffolds, or their substitutes" is prohibited. These special rules currently 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 the existing Reg. 3 does not 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 permitted establishments declared in Reg. 3. Because these jobs are not specifically permitted by § 570.33 (old), they are prohibited. There has been some confusion about this over the years. Some employers believe 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 is permitted to employ such youth in the occupations permitted by § 570.34(a) (old). However, when those jobs are not located in retail, food service, or gasoline service establishments, the provisions of § 570.34 (old) (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 existing Reg. 3 prohibits 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 could 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 exercised its prosecutorial discretion, as authorized by 29 U.S.C. 216(e), and declined 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 fell within the occupations authorized by Reg. 3 (§ 570.34(a) (old)) and did not involve any of the tasks or occupations prohibited by Reg. 3 (§§ 570.33 and 570.34(b) (old)). The Department enforced all the other provisions of Reg. 3, including the restrictions on hours of work, with respect to the employment of such minors.

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 indications, as reported by state and local governments and reflected in WHD enforcement findings, that when such youth are employed under the guidelines established by the enforcement position, that employment does not interfere with their schooling or with their health and well-being, and thus is in accordance with the directive of the FLSA.

Based upon the success of the above enforcement position, the Department, in the April 17, 2007 NPRM, proposed to revise and 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. The Department also proposed to remove the language that limited the application of § 570.34 to only retail, food service, and gasoline service establishments. As proposed, the revised § 570.33 detailed certain specific occupations prohibited for 14- and 15-year-olds. This revision also necessitates a change to § 570.35a(c)(3) (old) because it references §§ 570.33 and 570.34 as they pertain to Work Experience and Career Exploration Programs (WECEPs). The Department proposed to retain all the current prohibitions contained in § 570.33 but would modify the prohibition regarding the employment of 14- and 15-year-olds in manufacturing occupations to comport with the provisions of the Consolidated Appropriations Act, 2004, which enacted section 13(c)(7) of the FLSA. The NPRM proposed to continue to allow the employment of 14- and 15-year-olds in all those retail, food service, and gasoline service establishment occupations in which they are currently permitted to be employed.

The Department also proposed to apply to FLSA-covered nonagricultural employers of minors, with certain modifications, all the permitted occupations contained in § 570.34(a) (old) and all the prohibited occupations contained in § 570.34(b) (old) 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 proposed 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) (old), as referenced in § 570.34(b)(1) (old).

As mentioned, certain modifications to the existing lists of permissible and prohibited occupations were also

proposed. The traditionally prohibited occupations and industries would, after adoption of the proposal, 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, it 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 revisions contained in this Final Rule—it has developed an efficient and effective mechanism which overcomes the limitations of a definitive list. The Department firmly believes that the limited and public exercise of its prosecutorial discretion is an efficient and legal tool available to the Secretary in the administration of the child labor provisions of the FLSA.

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

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

Section 570.33(b) (old) 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. The Department has always interpreted the term *power-driven machinery* very broadly to include machines driven by electrical, mechanical, water, or other power such as steam or hydraulic. The term also includes battery-operated machines and tools, but does not apply to machines or tools driven exclusively by human hand or foot power.

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) (old) prohibits the employment of 14- and 15-year-olds in the operation of power-driven mowers or cutters and § 570.34(b)(6) (old) 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 proposed 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 of these individual pieces of equipment under Reg. 3. The Department believes that by continuing to reference certain common prohibited machinery by name, both clarity and compliance will be increased.

The Department received six comments on this proposal. The YWN, CLC, and AFL–CIO supported the proposal to consolidate those subsections of Reg. 3 dealing with power-driven machinery into a single, new subsection located at § 570.33(e) and to expand the list of prohibited machinery, with certain caveats. The YWN and the AFL–CIO recommended that 14- and 15-year-olds also be prohibited from using espresso makers because, as the YWN reported, these machines involve a potential for serious burns. They create steam at a temperature that "clearly exceeds the temperature limits established for prohibiting use of other equipment such as anything related to hot oil that exceeds a temperature of 100 degrees F." A representative of the Billings, Montana Job Service also questioned how the Department's proposal addresses the employment of youth who operate espresso machines.

The AFL–CIO and the CLC recommended that all-terrain vehicles (ATVs) be added to the list of prohibited machinery because, as the CLC reported "The serious hazards of operating ATVs have been extensively documented." Neither commenter provided any data or insight regarding how extensively ATVs are used by youth in nonagricultural employment or whether the documented hazards resulted in occupational injuries. The CLC also recommended that the proposed § 570.33 include an introductory statement reinforcing the principle detailed in § 570.32 (new) that all work that is not specifically permitted is prohibited.

The YWN also recommended that the Department specifically list "bladed blenders used to chop food items such as cookies or candy with ice cream to make ice cream desserts" as a prohibited machine in the revised § 570.33(e) as that subsection already prohibits the operating or tending of food grinders, food choppers, and cutters (*see* § 570.34(b)(6) (old)).

The National Council of Chain Restaurants (the Council), which described itself as a national trade industry group representing the interests of the nation's largest multi-unit, multi-state chain restaurant companies, requested that the proposed § 570.33(e) include additional language which would emphasize that 14- and 15-year-olds would continue to be permitted to operate all those pieces of kitchen equipment listed in § 570.34(a)(7) (old) once the Final Rule becomes effective.

The Council commented that it believes table top food processors and food mixers pose little risk of harm to the safety and well-being of 14- and 15-year-olds and questions why the Department continues to prohibit such youth from operating them (*see* § 570.34(b)(6) (old) and § 570.33(e) (new)). The Council submitted no data to substantiate this comment.

The Director of the Labor Standards and Safety Division of the Alaska State Department of Labor and Workforce

Development (DOLWD) also supported the consolidation and listing of prohibited equipment with some exceptions. The DOLWD recommended that 14- and 15-year-olds should be permitted to operate weed eaters that use monofilament line (but not weed eaters that use metal blades) provided adequate eye and hearing protection are in place. That same office recommended that such youth be permitted to operate certain small, residential-sized washing machines and dryers when all safety equipment is properly installed.

The Department has carefully reviewed the comments and has decided to adopt the proposal, as presented, with one modification. The Department will add ATVs to the list of prohibited equipment presented in the revised § 570.33(e) (new) as recommended by the AFL–CIO and CLC. As power-driven equipment, ATVs were, and continue to be, included in the broad prohibitions of this subsection. In addition, because ATVs are *motor vehicles* as defined by § 570.52(c) (old and new), 14- and 15-year-olds would be prohibited from operating such equipment under § 570.33(c) (old) and § 570.33(f) (new). But because greater clarity and protections can be realized, the Department will add ATVs to the list of named equipment.

With regard to cooking and the use of kitchen equipment, the Department notes that it implemented new rules concerning the types of cooking that may be performed by 14- and 15-year-olds in its Final Rule published in the **Federal Register** on December 16, 2004 (69 FR 75382). That Final Rule limited permitted cooking duties to cooking (1) with electric or gas grills which does not involve an open flame (*see* § 570.34(b)(5)(i) (old) and § 570.34(c) (new)), and (2) cooking 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 (*see* § 570.34(b)(5)(ii) (old) and § 570.34(c) (new)). The 2004 Final Rule, however, did not change the types of equipment and devices that 14- and 15-year-olds were permitted to, and continue to be permitted to, operate in accordance with § 570.34(a)(7) (old) and § 570.34(i) (new). The list of permitted equipment includes, but is 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, and microwave ovens that do not have the capacity to warm above 140 °F.

Although there may have been some confusion among employers, the Department has long interpreted the term *toaster* to mean that type of equipment that was generally found in snack bars and lunch counters when Reg. 3 was issued and used to toast such items as slices of bread and English muffins. This includes such equipment as the two- or four-slice "pop-up" toasters similar to those manufactured for home use and the conveyor-type bread toaster now often found at self-service breakfast buffets. Broilers, automatic broiler systems, high speed ovens, and rapid toaster machines used at both quick service and full-service restaurants to toast such items as buns, bagels, sandwiches, and muffins—all of which operate at high temperatures, often in excess of 500 °F—are not *toasters* under § 570.34(a)(7) (old) and § 570.34(i) (new) and minors generally must be at least 16 years of age to operate them.

There has also been some confusion among employers as to what constitutes a *milk shake blender* under Reg. 3. The Department has long interpreted this term to mean that type of equipment that was generally found in snack bars and lunch counters when Reg. 3 was issued and used to prepare a "to-order" milk shake for an individual customer. Such equipment required that the worker place the ice cream, milk, and flavorings in a stainless steel mixing cup that generally has a maximum capacity of 20 ounces. The cup was then positioned on the machine so that the single spindle—with an aeration disk or disks mounted at the bottom—could blend the milk shake. Some permitted milk shake blenders had more than one spindle so multiple products could be processed simultaneously. Most of these blenders were free standing counter-top models while others were incorporated into other equipment such as milk dispensers. These are the types of milk shake blenders that 14- and 15-year-olds may operate under Reg. 3.

Except as described below, other types of blenders, mixers, and "blixers"—used for a variety of food preparation operations including the blending of milk shakes—continue to be prohibited to that age group. Such prohibited equipment often have containers or mixing chambers that exceed a 20-ounce capacity—some can accommodate up to 60 quarts. In addition, some of this prohibited equipment, when used to process meat or mix batter—with or without the use of special "attachments"—may not be operated by employees under the age of 18 because of the prohibitions of HO 10 or HO 11, respectively.

The Department has also included certain countertop blenders used to make beverages such as milk shakes, fresh fruit drinks, and smoothies within the term *milk shake blender* as used in Reg. 3. Such machines generally consist of a base motor that supports a glass jar. The blending blades are attached, often permanently, to the bottom of the glass jar. Operators place the glass jar on top of the base, place the ingredients in the jar, affix the lid to the jar, press the appropriate button or switch, and blend the product. The permitted blenders are identical to models used in private homes, generally do not operate at more than 600 watts, and have jar capacities that do not exceed 8 cups (64 ounces). As with the blenders discussed above, their operation by minors under the age of 18 is prohibited under HO 10 when used to process meat.

For these reasons, the Department does not agree with the YWN's understanding that the existing regulation prohibits 14- and 15-year-olds from operating blenders that create ice cream desserts as the Department has previously opined that this equipment is a type of "milk shake blender" which has long been permitted by § 570.34(a)(7) (old) and will continue to be permitted by § 570.34(i) (new).

The Department also notes that Reg. 3 has for many years prohibited young workers from operating compact power mixers or blenders, also know as "immersible wands" and "immersion blenders," used for such tasks as liquefying soups and sauces and pureeing fruits, meats, and vegetables. Such equipment is often used in kitchens and by dietary aides at hospitals and nursing homes. The use of such equipment would also be prohibited by HO 10 when the mixer or wand is equipped with knives, blades, or cutting tools designed for use on meat and poultry.

The Department did not propose to prohibit, and the Final Rule does not prohibit, 14- and 15-year-olds from operating espresso machines as recommend by the YWN, the AFL–CIO, and the representative of the Billings, Montana Job Service. Section 570.34(a)(7) (old) specifically includes automatic coffee machines on the list of equipment that 14- and 15-year-olds may operate (*see* § 570.34(i) (new)). The Department has previously opined that espresso makers and cappuccino makers are types of automatic coffee machines and therefore 14- and 15-year-olds are permitted to operate them under the provisions of Reg. 3. The Department notes that the YWN's comment that the temperature reached by espresso makers "exceeds the temperature limits

established for prohibiting use of other equipment such as anything related to hot oil that exceeds a temperature of 100 degrees F" does not comport with either the previous or revised provisions of Reg. 3. The temperature of 100° F, when presented in § 570.34(a)(7) (old) and § 570.34(i) (new), does not apply to the operation of kitchen equipment or to such permitted activities as cooking with certain grills or deep fryers. Instead, these subsections state that the minors are permitted to "clean kitchen equipment (not otherwise prohibited), remove oil or grease, 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."

The Department has decided not to adopt the Council's recommendation to revise Reg. 3 to permit 14- and 15-year-olds to operate table top food processors and food mixers as no such proposal was contemplated by the NPRM and no data has been received that demonstrates that 14- and 15-year-olds can safely operate such equipment. The Department does, however, address the issue of older youth operating certain counter-top mixers later in this Final Rule with regard to HO 11.

The Department does not accept the DOLWD's recommendation that Reg. 3 be revised to permit 14- and 15-year-olds to operate certain weed-eaters because of the potential for injury associated with the operation of such equipment. In fact, as discussed earlier, weed-eaters are among the equipment the Department is adding as an example of power-driven machinery such youth are prohibited from operating (*see* § 570.33(e) (new)). The Department continues to be concerned about issues involving injuries to workers resulting from flying objects, burns, fuel safety, and improper ergonomics. In its Document #5108, *Weed Trimmers Can Throw Objects and Injure Eyes,* the U.S. Consumer Product Safety Commission estimated that, in 1989, there were approximately 4,600 injuries associated with power lawn trimmers or edgers that required emergency room treatment. It reported that about one-third of those injuries were to the eye. Nor does the Department accept DOLWD's recommendation to allow 14- and 15-year-olds to operate certain residential-style clothes washers and dryers. Not only is the operation of such power-driven machinery prohibited by § 570.33(b) (old) and § 570.33(e) (new), the laundering of clothes and other materials generally constitutes a "processing occupation" which is prohibited under § 570.33(a) (old and new).

Finally, the Department has determined that the Final Rule provides sufficient clarity that it is not necessary to adopt the CLC's recommended revision to the opening sentence of § 570.33 to repeat the statement contained in § 570.32 ("Employment that is not specifically permitted is prohibited."). For the same reason, the Department has decided not to accept the Council's recommendation that § 570.33(e) be revised to emphasize that youth will continue to be permitted to operate all kitchen equipment they were permitted to operate prior to the adoption of this Final Rule, as the list of permissible kitchen equipment is set forth in § 570.34(i)(new).

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) (old) 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 anywhere outside the passenger compartment of the motor vehicle. Such youth may not ride in the bed of a pick-up 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, under certain circumstances, to ride inside the enclosed passenger compartment of a motor vehicle operated by a driver whose employment complies with the conditions specified in HO 2. 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. Such work would include, for example, delivering items to a customer or assisting passengers with the loading and unloading of their luggage in conjunction with the operation of an airport shuttle van. This interpretation comports with the provision of § 570.33(f)(1) (old), 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 other persons or property does not have to be the primary reason for the trip for this prohibition to apply.

The Department proposed 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) (new). The Department also proposed to revise Reg. 3 at § 570.34(o) (new) 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. The proposal required that 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 the Drive for Teen Employment Act as contained in HO 2.

In addition, the Department's interpretation of prohibited helper services under § 570.33(c) (old), 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) (old) 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) (old) 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 have been 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 onto and unload items 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 use 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 proposed to revise Reg. 3 at new §§ 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 are not 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.

The Department received four comments addressing the proposal regarding riding on motor vehicles. The AFL–CIO and the DOLWD supported this proposal as written. The YWN supported the proposal with additional requirements. The YWN recommended that the proposed requirements that each seat occupied by a minor be equipped with a seat belt or similar restraining device and that the employer instruct the minors that such belts or other device must be used so that the employer is required to ensure that the seat belt or other device is actually used. In addition, the YWN would require that the driver of the vehicle transporting the minors have a valid driver's license. The CLC objected to the Department's proposal, stating that it did not have sufficient information on the underlying rationale for the proposed change to adequately comment on it. The CLC did, however, recommend that the seat restraining devices should "be required to be manufacturer-issued and not homemade, and the employer should be required to 'ensure,' and not just 'instruct' that the restraining devices be used by the children."

The Department received four comments concerning the loading of personal hand tools onto motor vehicles at § 570.34(k) (new). The AFL–CIO supported the proposal as written. The CLC again stated that it did not have enough information to adequately comment on the proposal. The YWN agreed with this proposal with the added requirements that "[w]ritten permission from parent or legal guardian is required to permit employer to transport 14- and 15-year-olds and a copy of written permission must be maintained by employer" and "[a] minor cannot be abandoned at worksite without adult supervision." The DOLWD supported the proposal provided adequate safety provisions were in place. The DOLWD stated that "[t]hese provisions would include that the vehicle shall not be running and must be properly secured with the wheels blocked during any loading and unloading operations."

After carefully considering all the comments, the Department has decided to adopt the proposal as originally written, with one modification and minor editorial changes. The Department noted in its 2007 NPRM that it did not interpret the Reg. 3 helper prohibitions as applying to 14- and 15-year-olds who ride inside the enclosed passenger compartment of a motor vehicle when driven by a driver whose employment complies with HO 2 under specified conditions (*see* 72 FR 19343). The Department believes this long-standing important safety-affecting interpretation requiring compliance with HO 2 should be included in the regulatory language. In addition, the Department believes that the drivers of the vehicles transporting the young workers should, as recommended by the YWN, hold valid state drivers' licenses. Accordingly, the Department has added the following sentence at the end of § 570.34(o): *In addition, each driver transporting the young workers must hold a State driver's license valid for the type of driving involved and, if the driver is under the age of 18, his or her employment must comply with the provisions of § 570.52.*

While the Department appreciates the remaining safety-affecting recommendations made by the YWN, CLC, and DOLWD, it believes the provisions of the original proposal, when coupled with other existing state and federal provisions dealing with the safe operation of motor vehicles, will provide ample protections to young workers. In addition, when drafting the proposal regarding youth riding as passive passengers in motor vehicles, the Department looked for guidance for establishing the criteria regarding the use of seat belts or other safety restraining devices. The most recent guidance came from Congress with the enactment of The Drive for Teen Employment Act, Public Law 105–334, in 1998. This legislation added section 13(c)(6) to the FLSA, which permits 17-year-olds to perform certain limited on-the-job driving under very specific conditions. One such condition is that the vehicle be equipped with a seat belt for the driver and any passengers and that the young driver's employer has instructed the youth that the seat belts must be used when driving the vehicle. The Department believes by adopting in Reg. 3 the identical language contained in HO 2 (*see* § 570.52(b)), it not only provides a high degree of protection to young workers but also avoids potential confusion.

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

Section 570.34(b)(7) (old) prohibits 14- and 15-year-olds from working in freezers and meat coolers. Since this section's inception, the Department has interpreted it 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 adopted an enforcement 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. In order to provide clarification, the Department proposed to incorporate this long-standing interpretation into the regulations at § 570.33(i) (new).

The Department received four comments on this proposal. The Council supported the proposal as written. The YWN not only disagreed with the proposal but suggested that the current prohibitions detailed at § 570.34(b)(7) (old) be expanded to include "any freezer or cooler regardless of product, including but not limited to meat, seafood, poultry or other produce." The AFL–CIO supported the proposal but suggested that employers be required to keep the door open while the minor was inside the freezer, that the freezer door be equipped with an emergency release mechanism to ensure the youth can escape if the door is mistakenly shut, and that the employer provide unobstructed entry to and egress from the freezer. The CLC also made the same three recommendations as the AFL–CIO and stated that "[e]ven if DOL's Occupational Safety and Health Administration (OSHA) has similar rules, these should be incorporated into the child labor regulations so that a DOL Wage and Hour Division inspector could assert a child labor violation rather than having the employer face two inspections, one by the Wage and Hour Division and another by OSHA."

The Department has carefully reviewed the comments and has decided to adopt the proposal as originally written with a conforming clarification in § 570.34(i). Even though, under this rule, 14- and 15-year-olds may only occasionally enter freezers momentarily to retrieve items (*see* § 570.33(i) (new) and § 570.34(i) (new)), requiring that the door be kept open while they are inside the freezer could be unnecessarily burdensome in that, for energy efficiency and food sanitation, most freezers are equipped with self-closing doors. We note, as reported by the CLC, that OSHA, which is the recognized expert in occupational safety and health issues, already has in place important safety standards addressing emergency release mechanisms, panic bars, and unobstructed paths in the workplace—and that these standards protect all workers, not just those under the age of 16. The Department believes that all these additional safety requirements, when coupled with the provisions of the revised § 570.33(i), adequately protect young workers who momentarily enter freezers. WHD and OSHA, as recommended by the CLC, will continue their partnership to leverage the education and outreach efforts and enforcement actions of each agency. Finally, the YWN's recommendation that the proposal be expanded to include specific items being stored in the freezer or cooler, such as seafood and poultry, is unnecessary because, as discussed above, § 570.33 is a non-exhaustive list that only sets forth common examples of prohibited occupations.

4. Youth Peddling

The Department proposed 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 towards 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 was not limited to just the attempt to make a sale or the actual consummation of a sale, but includes 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 fund raising efforts. In administering the FLSA, the Department does not consider 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, to be employees of the religious, charitable, or similar nonprofit corporations that receive their services. In addition, FLSA section 3(e)(4)(A) excludes from the definition of "employee" individuals who volunteer to perform services for public agencies. These provisions apply equally whether the volunteer is an adult or a minor.

The Department received five comments on this proposal. One private citizen, who submitted his comment to the electronic docket for the ANPRM published on April 17, 2007, was the only commenter to oppose the proposal. This commenter stated that through door-to-door sales "many kids learn how to be confident and build communication skills with adults."

The DOLWD supported this proposal and noted that Alaska State regulations restrict any worker under the age of 18 from working in door-to-door sales. The YWN, the AFL–CIO, and the CLC also supported this proposal and recommended that the prohibitions against youth peddling be extended to the employment of 16- and 17-year-olds.

In addition, the YWN recommended that the Department amend the first sentence of proposed § 570.33(j) to prohibit sales by youth "in front or around the outside of retail establishments" as "many youth peddle wares outside grocery stores, large chain or box stores, etc." The YWN also recommended that the Department not use the term "eleemosynary" in the regulations but replace it with "plain English words, such as 'non-profit, religious or charitable organizations' to assure understanding by all parties."

The YWN assumed that the Department's proposal would also ban the employment of 14- and 15-year-olds to perform sign waving, "including holding or carrying of any type, posing or acting as a sign not directly in front of a retail establishment, or where no direct supervision exists" (emphasis in original). The YWN recommended that such sign waving activities also be prohibited along public roads and grassy areas or median areas next to public streets or traffic. The CLC stated that it is not clear whether such sign waving activities would be prohibited under the Department's proposal.

The CLC recommended that the proposal clarify where young employees of retail establishments may legally make sales. The CLC assumed that the youth-employer's establishment "means inside or directly outside the establishment, but not away from the establishment, such as on a street corner or parking lot. This should be made more explicit by barring youth peddling 'in front or around the outside of the establishment.'" Finally, the CLC noted the Department's statement that youth peddlers performing outside sales are usually exempt from the minimum wage and overtime provisions of the FLSA and took issue with the Department's failure to ban peddling by 16- and 17-year-olds as well. The CLC commented that "DOL's approach here hardly comports with its stated desire to balance 'the benefits of employment opportunities with the necessary and appropriate safety protections' (72 FR 19337). The benefits of an employment opportunity in which the children experiencing it are 'usually' not entitled to minimum wage or overtime pay are difficult to understand."

The Department has carefully reviewed the comments and has decided to adopt the proposal with certain clarifying modifications. The Department appreciates the concerns raised by the YWN, the AFL–CIO, and the CLC regarding the scope of the term *youth-employer's establishment.* Under § 570.33(j) as originally proposed, a retail establishment that sets up an outside sales center to sell such things as garden supplies, plants, outdoor furniture, portable grills, Christmas trees, etc., that participates in a retailer association neighborhood "sidewalk sale" event, or that routinely displays its wares outside its building may question whether it could use its young sales staff in such endeavors. In order to eliminate confusion and provide clarity, the Department has added a statement to § 570.33(j) noting that the ban on youth peddling does not prohibit a young salesperson from conducting sales for his or her employer on property controlled by the employer that is out of doors but may still properly be considered part of the employer's establishment. Fourteen- and 15-year-olds may conduct sales in such employer's exterior facilities, whether temporary or permanent, as garden centers, sidewalk sales, and parking lot sales, when they are employed by that establishment.

The Department agrees with the recommendations of both the YWN and CLC that the regulatory text be revised to specifically state that 14- and 15-year-olds may not be employed as sign-wavers, promoting particular products, services, or events, except when performing the sign waving activities directly in front of an establishment providing the product, service or event. Because sign wavers and those hired to wave or hold up other products, or wear placards, sandwich boards, or costumes to attract potential customers are exposed to many of the same dangers associated with youth peddling, the following sentence has been added to § 570.33(j): Prohibited youth peddling also includes such promotion activities as the holding, wearing, or waving of signs, costumes, sandwich boards, or placards in order to attract potential customers, except when performed inside of, or directly in front of, the employer's establishment providing the product, service, or event being advertised.

The Department appreciates the concerns of those commenters who recommended that the ban on youth peddling should be extended to all youth under the age of 18 years, but considers such a change too substantive to adopt without additional rulemaking. The Department notes that the NIOSH Report, after carefully reviewing the available data, did not include youth peddling as one of the 17 occupations warranting the creation of a new Hazardous Occupations Order (HO). However, the Department appreciates the AFL–CIO's recommendation that "DOL begin gathering the necessary data to substantiate and justify the need for extension of this coverage for future proposed regulations as quickly as possible."

Finally, with regard to the CLC's comment regarding wages, the fact that youth who conduct door-to-door sales usually are exempt from the minimum wage and overtime provisions of the FLSA in no way detracts from the Department's stated 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. When Congress enacted the FLSA in 1938, it created section 13(a)(1), which provides a complete exemption from the minimum wage and overtime provisions for employees employed in the capacity of outside salesman. The definition of that term, contained in 29 CFR 541.500, applies regardless of the age of the

employee and clearly includes youth peddlers as described in § 570.33(j) (new). The FLSA, as amended, includes other exemptions from the minimum wage and overtime provisions that impact jobs often performed by young workers, such as those contained in section 13(a)(3) (involving employees employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center); section 13(a)(15) (involving any employee employed on a casual basis in domestic service employment to provide babysitting services); and section 13(d) (involving any employee engaged in the delivery of newspapers to the consumer). The Department cannot enforce a minimum wage requirement for employees whom the Congress has statutorily exempted from the minimum wage and overtime provisions of the FLSA. Nor can it ban certain employment for young workers solely because the employees engaged in such employment are exempt from the FLSA's minimum wage and/or overtime requirements. The Department notes that the exemption from minimum wage and overtime contained in section 13(a)(1) for outside salespeople does not apply to individuals employed solely to wave signs or wear placards, sandwich boards, or costumes to attract potential customers as such promotion work is not performed in conjunction with sales actually made by those individuals (*see* § 541.503).

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) (old and new). 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) (old) and § 570.33(e) (new) and the prohibition against employment in occupations in connection with the transportation of property contained in § 570.33(f)(1) (old) and § 570.33(n)(1) (new) 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 chickens—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 proposed 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).

The Department received three comments on this proposal. The YWN, AFL–CIO, and CLC all supported the proposal as written. The CLC stated that it welcomes the change as this work is plainly too hazardous for 14- and 15-year-olds to perform. The Department is adopting this proposal as written with one grammatical change.

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–.37) (old).

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 proposed 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 will be contained in § 570.34 in the Final Rule.

The Department received six comments concerning the revision of the list of permitted occupations and/or the expansion of the list to include establishments other than retail, food service, and gasoline service. Two of the commenters made recommendations that are beyond the purview of the Department as they would require changes to the statute. The DOLWD recommended that the Department focus on identifying the specific areas and occupations where work is prohibited and eliminate the specific provisions concerning where work is permitted. A representative of an educational management company called White Hat Management, LLC (White Hat) recommended that the FLSA's blanket prohibition against 14- and 15-year-old being employed in manufacturing occupations should be relaxed, stating that "in today's day and age when so many manufacturing jobs are automated and operated by computers or buttons, that a blanket prohibition for manufacturing employment hardly seems appropriate." Such recommendations do not comport with the FLSA's statutory directive that 14- and 15-year-olds may not be employed in manufacturing or mining occupations and may only hold such employment that the Secretary has determined, by regulation or order, does not constitute oppressive child labor (*see* 29 U.S.C. 203(l)).

The AFL–CIO, YWN, and CLC all expressed concern about this proposal, stating that such sweeping changes would allow 14- and 15-year-olds to work in many more industries, and they recommended that the Department conduct further analysis. They specifically mentioned and questioned the efficacy of permitting youth employment in particular industries and employment situations.

The AFL–CIO, YWN, and CLC also noted that this proposal would allow

youth to perform janitorial and clean-up work, work already permitted within retail, food service, and gasoline service establishments by § 570.34(a)(6) (old), in additional types of establishments. They stated that such employment includes the potential for exposure to hazardous and toxic chemicals or to bloodborne pathogens, particularly in medical and dental offices, hospitals and nursing homes, and when youth accept employment with professional janitorial services. There were also concerns that 14- and 15-year-olds could now become full-time janitors and spend an entire shift performing cleaning duties.

In addition, the CLC interpreted this proposal as having a major impact on messenger services. It stated that because § 570.33(d) (old) and § 570.33(m) (new) prohibit the employment of 14- and 15-year-olds by a public messenger service, adoption of this proposal implies that employment of such youth by a private messenger service would be permitted. The CLC described *private messenger services* as those that "have standing contracts with law firms, accounting firms, and other types of businesses" to deliver documents or packages. The CLC stated "[a]ny reasonable person who has seen such couriers rushing through city streets, dodging cars, pedestrians, and other cyclists to deliver important documents, would shudder to think that 14- and 15-year-olds would be able to do this work, if DOL's proposal becomes the final regulation."

The CLC stated that adoption of this proposal would allow 14- and 15-year-olds to perform office work for such employers as accounting firms, advertising agencies, mass mailing businesses, insurance companies, and many similar businesses. It expressed concerns that office equipment, such as large paper shredders and data processing machines with exposed moving parts, may present hazards to young workers. In addition, the CLC noted that such minors would be permitted to work up to eight hours a day and up to forty hours a week at computers, typing or inputting data, during non-school weeks.

Finally, a representative of the Coosa Valley Regional Development Center requested that 14- and 15-year-olds be permitted to be employed in painting activities because the "paint products in use today do not contain lead or other hazardous materials." She stated that prohibiting this age group from painting activities restricts their employment activities. She recommended that the prohibitions involving the use of ladders and scaffolds by this age group be retained.

The Department has carefully reviewed all the comments and has decided to adopt the proposal as written. The concerns of the AFL–CIO, YWN, and CLC about increased youth employment in several industries, such as dry cleaning and laundry services, treating and disposing of waste, mass mailing enterprises, and the painting of houses and automobiles, are unfounded. This is because § 570.33(a) (old and new) prohibits the employment of 14- and 15-year-olds in almost all occupations involving processing operations—which the Department has interpreted to include dry cleaning and laundering, the treating and disposing of waste, the conducting of mass mailings, and the painting of houses and automobiles. The Department does not believe it is appropriate to overturn the long-standing prohibitions against 14- and 15-year-olds being employed in construction or processing occupations by accepting the recommendation of the Coosa Valley Regional Development Center to allow such youth to perform painting activities.

In addition, § 570.33(a) (old and new) provides additional protections as it prevents the employment of such youth in work places where goods are manufactured, mined, or otherwise processed. Fourteen- and 15-year-olds could not be employed to clean such work places, even after hours, because of WHD's long-standing interpretation that a work place retains its character—and child labor continues to be prohibited—even at times when nothing is being mined, processed, or manufactured. It is also important to note that all the prohibited occupations detailed in § 570.33 (new) would be applicable to the employment of 14- and 15-year-olds, regardless of the industries in which they are employed.

The Department appreciates and understands the commenters' concerns about the potential occupational exposure of young workers to hazardous and toxic chemicals or to bloodborne pathogens. The Department believes that the standards established by OSHA to address such potential exposures, which are continually under agency review, provide vigorous protections to all workers. The WHD is also reviewing prohibitions regarding the potential exposure of young workers to ionizing radiation, as reflected in the publication of the 2007 ANPRM.

The Department would also note that, as mentioned by the CLC, 14- and 15-year-olds have been permitted to be employed by hospitals and nursing homes for many years. This is because historically such facilities, when open to the general public, have been considered to have a retail concept. The Department continues to issue full-time student subminimum wage certificates to such employers under FLSA section 14(b) because of their retail character. In addition, such youth have been permitted to be employed, and have been safely employed, as janitors at many retail and food service establishments over the years, including department stores, hotels, amusement parks, restaurants, and large discount stores.

It is important to note that the CLC is incorrect in its assumption that this proposal would permit the employment of 14- and 15-year-olds by messenger service firms that "have standing contracts with law firms, accounting firms, and other types of businesses" to deliver documents or small packages. The Department has opined, as early as 1989, that the term *public messenger service* involves that delivery service rendered to a company which takes messages, small parcels, etc. from one party for delivery to another party. The public messenger goes between two parties, neither of whom is necessarily known to the messenger. The term *public* in this context refers to the customers being served and not the nature of the ownership of the firm. Accordingly, a 16-year minimum age is required for employment in such messenger services. The CLC is correct in its interpretation that 14- and 15-year-olds are permitted under § 570.34(a)(4) (old) and § 570.34(g) (new) to perform errand and delivery work by foot, bicycle, and public transportation for their employers when their employers are not engaged in the business of providing messenger services to others.

The Department agrees with the CLC that the adoption of this proposal will allow 14- and 15-year-olds to be employed to perform office work for such employers as accounting firms, advertising agencies, and insurance companies; and that such youth could, under the proper circumstances, work as many as eight hours in a day and forty hours in a week when school is not in session. The Department, however, does not agree that such an expansion of positive youth opportunities is improper or in any way fails to comport with the requirements and spirit of FLSA section 3(l). Office work continues to be one of the safest occupations available to young workers. Moreover, this rule does not change the limitations on the number of hours per day or per week that 14- and 15-year-olds may work when school is not in session.

The Department also proposed to revise § 570.34(a)(8) (old) by clarifying that 14- and 15-year-olds may perform car cleaning, washing, and polishing, but only by hand (*see* § 570.34(n) (new)). 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 Department received three comments on this proposal. The YWN supported the proposal as written. The CLC supported this proposal but again expressed concern based on its erroneous assumption that such youth could be employed to paint automobiles. The National Automobile Dealers Association (NADA) took "*strong exception to this 'clarification'*" (emphasis in original). NADA stated that vehicle washing "anecdotally is known as *the* classic entry-level dealership employment activity * * * Vehicle cleaning, washing, and polishing activities commonly involve small portable power-washers and hand-tool buffers" (emphasis in the original). NADA stated that nowhere in the regulatory history of § 570.34(a)(8) or in the NIOSH Report has any suggestion been made that power-equipment-assisted motor vehicle cleaning, washing, and polishing activities pose "significant safety or health risks to 14- and 15-year-olds." NADA also recommended that the word car in § 570.34(a)(8) (old) be replaced with the words motor vehicles so such youth may be permitted to wash additional types of motor vehicles such as SUVs, station wagons, and vans.

The Department has considered the comments and has decided to adopt the proposal as written. The Department believes this revision to be nothing more than a clarification of its long-standing interpretation of the regulations. Contrary to NADA's statement, Reg. 3, of which § 570.34(a)(8) is a part, has clearly stated in § 570.33(b) for many years that 14- and 15-year-olds may not be employed in "occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines" (emphasis added). If employers have allowed FLSA covered and nonexempt 14- and 15-year-olds to wash or polish cars and trucks using power-driven washers or hand-tool buffers, they have done so in violation of the federal child labor provisions. The NIOSH Report did not mention the provisions of § 570.34(a)(8) because the Report dealt exclusively with HOs, which address work that is particularly hazardous or detrimental to the health and well-being of 16- and 17-year-old minors. Even if NADA had presented data supporting its statement that power-equipment-assisted motor vehicle washing and polishing poses "no significant safety or health risks to 14- and 15-year-olds," the Department notes that such a standard is considerably more lax than the FLSA section 3(l) standard the Secretary must apply when determining permissible employment opportunities for such youth. Finally, the Department does not accept NADA's recommendation to expand § 570.34(a)(8) (old) to include all motor vehicles. The Department has long interpreted the term *cars and trucks* as used in § 570.34(a)(8) to include station wagons, SUVs, and passenger vans. The term does not include larger vehicles such as buses, tractor-trailers, and heavy-construction equipment—all of which would generally be considered motor vehicles under Reg. 3 and HO 2.

The additional occupations the Department proposed to permit 14- and 15-year-olds to perform are discussed below:

1. Work of a Mental or Artistically Creative Nature

The Department has routinely received 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 involved 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 proposed to revise Reg. 3 at § 570.34(b) (new) 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 the prohibited occupation standards contained in § 570.33.

The Department received comments from the YWN and CLC on this proposal. Both commenters supported the proposal, but made additional recommendations. The YWN suggested that the Department replace the word mental with intellectual, so that the phrase in the subsection would read "work of an intellectual or artistically creative nature." The YWN recommended that, for work of an artistic nature, certain locations such as tattoo and body piercing establishments should be excluded due to the potential for exposure to bloodborne pathogens. The YWN also stated that the proposal should prohibit youth employed in artistic endeavors from performing work that would expose them to carcinogenic, toxic, or hazardous substances, or to high heat. "For example, 14- and 15-year-olds would be permitted to work on a pottery wheel, but would be prohibited from applying certain glazes and would be prohibited from any work on or around the high heats of a pottery kiln. Another example would be that 14- and 15-year-olds would be permitted to sculpt, but would be prohibited from welding and soldering or any functions that expose them to heat, or to height or other existing restrictions." Finally, the YWN believed that some artistically creative work may "push the envelope on exploitative labor and/or prove detrimental to the morals of youth."

The CLC also supported this proposal with additional comments and recommendations. The CLC noted that although the proposed § 570.34(b) contains the statement that artistically creative work is limited to work in a recognized field of artistic or creative endeavor, it does not define the term *artistic or creative endeavor.* The CLC correctly stated that another of the Department's regulations, 29 CFR 541.302(b), advises this term includes such fields as music, writing, acting, and the graphic arts. The CLC also expressed concerns that singing and the playing of musical instruments are often in demand "in bars, lounges, cabarets, and other places that 14- and 15-year-olds might best avoid. These and other settings could cause untoward effects on

such youngsters' moral health, even if not on their physical health and safety."

The Department has carefully considered the comments and has decided to adopt the proposal with one modification. The Department agrees with the YWN that the word intellectual better comports with the intent of this proposal than the word mental. Accordingly, the Department is revising the proposed § 570.34(b) to reflect this suggested change.

The Department understands the concerns of both commenters as to the types of tasks young workers would be permitted to perform under the umbrella of "artistic or creative endeavors" and notes that it will rely on 29 CFR 541.302(b)—which limits the scope of this term to such fields as music, writing, acting, and the graphic arts—for guidance. The Department wishes to address concerns raised by the YWN by stating that it does not consider tattooing or body piercing performed by employees under the age of 16 years to be artistically creative endeavors under § 541.302(b).

The Department also notes that 14- and 15-year-olds who are employed in artistic or creative endeavors will continue to be prohibited from performing any of the occupations or tasks detailed in the revised § 570.33. These prohibitions, which include work in manufacturing and processing occupations, the operation of most power-driven equipment, and any duties in work rooms or work places where goods are manufactured or processed, should alleviate many of the concerns raised by the YWN and CLC. These prohibitions would prevent a 14- or 15-year-old from working in a factory or workroom as a "molder" or "hand painter" producing mass quantities of nearly identical pottery or ceramic items, but when coupled with this Final Rule, they would permit the youth to express his or her artistic talents to shape by hand a unique clay pot or sculpt a piece of art. Likewise, a 14- or 15-year-old could be employed, with all the safeguards of §§ 570.33–.35, as a painter of portraits but not as a painter of automobiles or houses. Similarly, a youth could be employed to create unique photographs that rise to the level of art, but would be prohibited from developing those photographs and working with the chemicals and solvents commonly used in such processing activities. In addition, the hours standards provisions of § 570.35 restrict the number of hours and times of day that 14- and 15-year-olds may be employed in any FLSA-covered work, including artistic or creative endeavors.

Finally, the Department appreciates the concerns of both the YWN and CLC that under the guise of "artistic or creative endeavors" some employers have attempted to employ youth in unsafe or unsavory lines of work that, as the commenters note, jeopardize the morals of the young workers. For example, the Department has encountered a situation involving the employment of very young females as "taxi-dancers" who were recruited and paid by bars and nightclubs to dance with male patrons, often late into the evening. The Department was able to quickly put an end to this unacceptable employment by not only enforcing the child labor and minimum wage provisions of the FLSA, but by partnering with local law enforcement authorities to ensure that city and state laws addressing community standards were enforced. The Department believes that the strict enforcement of such ordinances by the appropriate authorities will continue to be important supplements to the effectiveness of the federal child labor laws.

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

The Department proposed 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 had begun 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 all traditional swimming pools regardless of who owns, operates or manages the establishments, and at those facilities of water amusement parks that constitute traditional swimming pools.

The Department proposed 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) (old) 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.

The Department received eleven comments in response to this proposal. This includes three comments that were submitted as attachments to the comments of the International Association of Amusement Parks and Attractions (IAAPA). The comments centered around the following elements of the proposal: (1) Whether 15 should be the minimum age for employment as a lifeguard at a traditional swimming pool or water amusement park; (2) whether 16 should be the minimum age for employment as a lifeguard at natural environments such as lakes, rivers, and oceanside beaches; and (3) whether 15-year-olds should be prohibited from being employed as dispatchers or attendants at the top of elevated water slides.

Some of the commenters supported the entire proposal as written or suggested only minor modifications. The IAAPA, which describes itself as the largest international trade association for permanently-situated amusement facilities worldwide, supported this proposal. The proposal was supported by the General Manager of Shipwreck Island Waterpark of Panama Beach City, Florida, whose comments were submitted by the IAAPA. A representative of Six Flags, Inc. also supported the proposal and stated that "[w]hile we still believe that 15-year-olds could safely work as dispatchers on elevated water elements, we find the proposed changes to be an acceptable compromise."

The National Recreation and Park Association (NRPA), which described itself as "a non-profit organization seeking to enhance public park facilities and expand recreation opportunities," supported the adoption of the proposed change in regulations that would revise Reg. 3 in order to "conditionally allow" 15-year-olds to be employed at traditional swimming pools and water parks. The NRPA also supported establishing a minimum age of 16 for the employment of lifeguards at natural environments. In addition, the NRPA commented that "[l]ocal park and recreation agencies have a great need to find qualified, capable, and certified lifeguards to work in their outdoor pools, indoor pools, water amusement park facilities, and natural bodies of water. In proposing these regulations, the Department will help agencies meet their needs to hire certified lifeguards by allowing lifeguards to begin work at the age of 15. Expanding the eligible age for employment as a lifeguard at traditional swimming pools could help these communities enhance pool safety by providing a wider and larger applicant pool from which to select qualified candidates, and by increasing lifeguard availability, make shorter shifts an increasingly real probability."

The American Red Cross (Red Cross), which has been developing and implementing lifeguard training and certification programs since 1914, stated that it is "comfortable" with the Department's proposal with one small change. The Red Cross objected to the Department including the task of "giving swimming instructions" in the list of duties that 15-year-olds may perform because the Red Cross lifeguard training course does not include training on how to give swimming instructions. Such training is available to 15-year-olds via a separate Red Cross Water Safety Instructor (WSI) course. The Red Cross recommended that the Department

alleviate possible public misunderstanding by deleting "giving swimming instructions" from the list of permitted lifeguard duties.

The United States Lifesaving Association (USLA), which described itself as America's nonprofit, professional association of beach lifeguards and open water rescuers, reported that it "works to reduce the incidence of death and injury in the aquatic environment through public education, promulgation of national lifeguard standards, training programs, promotion of high levels of lifeguard readiness, and other means." The USLA commented that, since 1980, it has maintained the position that lifeguards serving at natural environments, whether surf or non-surf beaches, should be at least 16 years of age. The USLA further commented that this position was also reached by participants at a national conference held in 1980 which issued a report entitled "Guidelines for Establishing Open-Water Recreational Beach Standards." Participants included representatives of the American Camping Association, Red Cross, National Safety Council, YMCA of the USA, Council for National Cooperation in Aquatics, Centers for Disease Control and Prevention, U.S. Coast Guard, Boy Scouts of America, the National Park Service, several major municipal lifeguard agencies from throughout the USA, and several medical experts. The USLA noted that the participants at this conference, which used a consensus-based process to issue its recommendations, considered such factors as the physical and cultural parameters of the natural environments to be guarded; the psychological and physiological stresses of public safety employment; the lack of physical stamina, maturity, and experience of those under 16 years of age; and the varying levels of supervision provided young lifeguards. The USLA summarized its comments by stating "people under the age of 16 should not be permitted to work as lifeguards at natural environments." It also commented that it found it difficult to construct reasons that differentiate the natural environment from the pool environment, given that many of the reasons for establishing a minimum age of 16 years for employment as a lifeguard at a natural environment facility are equally applicable at traditional pools.

The YWN and the CLC opposed this proposal and both, apparently, support the comments submitted by the USLA, although this is not clear. The YWN referred to comments of the US Lifeguarding Association and the CLC referred to comments of the Lifeguard Standards Association. The Department has not been contacted by any organizations using those names in regards to this proposal.

The YWN also stated that work as a lifeguard may entail exposure to combative individuals, bloodborne pathogens, and chemicals. It added that, for these reasons, other organizations like the YMCA do not certify lifeguards until age 16 and thus "DOL's argument that this proposal ties DOL enforcement practice to 'standards' in the industry is not accurate." The YWN also questioned the justification for adding a new and unique age cut-off for this one particular job, when all other regulations group 15-year-olds with 14-year-olds.

The CLC stated that "most distressing is the fact that DOL gives no indication of what the Red Cross training requires." It also commented that the fact that DOL would require the lifeguards to be certified by the Red Cross (or a similar certifying organization) in aquatics and water safety "in no way assures that the DOL proposal is prudent."

The World Waterpark Association (WWA) supported the proposal to permit the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks, but opposed that portion of the proposal that would prohibit such youth from working as dispatchers or attendants at the top of elevated water slides. The WWA opined that "[it] is a universally accepted position of the aquatic community that a lifeguard's first responsibility is to prevent accidents and injuries by enforcing rules and educating patrons * * *. Therefore, 15-year-olds working at the tops of waterslides are fulfilling one of the core duties of properly trained lifeguards, in a manner which places them at the least possible risk." The WWA also disagreed with the Department's position that working as a dispatcher or attendant at the top of an elevated water slide constitutes tending of power-driven machinery under the provisions of Reg. 3 where there are no mechanized conveyance systems or emergency ride controls at the top.

A representative of Morey's Pier of Wildwood, New Jersey, whose comments were submitted by the IAAPA, supported the proposal to allow the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks. She also addressed the position of water slide dispatcher, stating "we see no reason or evidence that this is a dangerous job that should be restricted." She also opined that such dispatchers are not in contact with any power-driven machinery.

A representative of the Pleasant Hill Recreation and Park District (Pleasant Hill) of Pleasant Hill, California, expressed concern about how this proposal would affect youth who volunteer in her District's "junior lifeguard program." After reviewing the list of permitted lifeguard duties presented in § 570.34(l)(2), she noted that her facility has "swim instructors who are certified by the American Red Cross as Water Safety Instructors, but are not lifeguard certified." Her facility has "cashiers who are not lifeguard certified, but who help maintain order/cleanliness in the pool area (deck, locker rooms, crowd control during emergency, etc.). She questioned whether such employees, who are not employed as lifeguards, must be at least 16 years of age or be 15 years of age with proper lifeguard certification.

The representative of Pleasant Hill also noted that youth aged 11 to 14 years of age participate in her facility's junior lifeguard program. The participants attend 8 hours of training, which follows the Red Cross's Guard Start Program, and then volunteer at the pool as aides during swim lessons. Participating youths are assigned to assist an instructor, are never left alone to teach a class, and also help during recreational swims "by checking in/out patrons bags/apparel/belongings." She noted that the junior lifeguard program is an important tool for recruiting and developing future lifeguards.

The Department has carefully considered all the comments and has decided to adopt the proposal as written, with two modifications. The Department appreciates the concerns raised by the Red Cross that certified lifeguards may not have received the proper training, and therefore the proper certification, to give swimming instruction. This same issue was mentioned by Pleasant Hill, which noted that it had swimming instructors who were properly certified by the Red Cross but were not certified as lifeguards. In order to address the concerns of the Red Cross, ensure the maximum possible safety for young workers and their charges who are learning to swim, and eliminate confusion, the Department is modifying the language in the proposed § 570.34(l)(2) to reflect that 15-year-olds may be employed as swimming instructors only when they have been certified to perform both lifeguard and swimming instruction by the Red Cross or some other recognized certifying organization. This requirement for dual certification, like the other lifeguard

requirements contained in Reg. 3, will end when the minor reaches his or her 16th birthday.

The Department received an inquiry after the publication of the NPRM asking why ponds and quarries, places where swimming often occurs, were not specifically listed as natural environment swimming facilities in § 570.34(l)(2) where the term *traditional swimming pool* is defined. In order to clarify the Final Rule, the Department has decided to add ponds and quarries to the non-exhaustive list of examples of natural environment swimming facilities that currently includes rivers, streams, lakes, reservoirs, wharfs, piers, canals, and oceanside beaches.

The Department appreciates the concerns of the YWN, CLC, and USLA about lowering the employment age for lifeguards at traditional swimming pools and certain water amusement park facilities to 15, but believes that such safeguards as proper certification in aquatics and water safety by a recognized certification organization, the prohibition against tending power-driven machinery which prevents 15-year-olds from working as dispatchers or attendants at the top of elevated water slides, the OSHA standards addressing potential exposures to bloodborne pathogens and chemicals, and the hours and times of day standards established by § 570.35 combine to provide adequate protections to these young workers. The Department does not share the YWN's concerns about adding "a new and unique age cut-off for this one particular job, when all other regulations group 15-year-olds with 14-year-olds." The Department notes that when rules are clearly written and adequately explained, public understanding and compliance follow. This was evidenced by the revisions to HO 2 published on December 16, 2004 (*see* 69 FR 75382, *see also* § 570.52(b)) necessitated by the enactment of FLSA section 13(c)(6), which permits limited on-the-job driving by 17-year-olds under certain conditions, but not by 16-year-olds.

The Department does not agree with the CLC's comment that the DOL gives no indication of what Red Cross training requires and the YWN's comment that this proposal is not "tied to standards in the industry." The Red Cross, just like other nationally recognized certifying organizations, spends a great deal of time and effort formulating, refining, disseminating, and publicizing the elements and standards of its lifeguard certification program. It is difficult to argue that the Red Cross is not the "industry standard" when it estimates that about 90% of all lifeguards in the USA have received training through its lifeguard training program.

The Department appreciates the concerns of certain commenters that 15-year-olds should be permitted to be employed as dispatchers or attendants at the top of elevated water slides, but believes that continuation of its long-held position that such employment constitutes the prohibited tending of power-driven equipment—just as it is for attendants on roller coasters, merry-go-rounds, and ski-lifts—is both prudent and proper.

Finally, the Department acknowledges the concerns of Pleasant Hill which raised the issue of "junior lifeguard programs" and the "volunteer" participation of youths between the ages of 11 and 14 in such endeavors. The Department notes that when such programs do not involve an employer-employee relationship, they fall outside the provisions of the FLSA. But when it is determined that an employer-employee relationship does exist, and the employee is engaged in work that is subject to the FLSA, the minimum age for such employment at a traditional swimming pool would be 14. Such 14-year-old employees could not be employed as lifeguards or swim instructors, but could perform such tasks as maintaining the cleanliness of the pool area and locker rooms, signing in and signing out patrons, and checking in and out such items as towels, watches, and apparel. Such youth would not be permitted to perform any of the core functions of a lifeguard nor be employed in a situation where their employers could reasonably expect them to rescue swimmers in danger of drowning. Under this Final Rule, properly certified 15-year-olds could be employed at such pools as lifeguards.

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

The provisions of the Consolidated Appropriations Act, 2004, amended the FLSA by creating a limited exemption from the child labor 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 proposed 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 proposed 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 proposed to limit the types of employers that 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 occupations of *operating* or *assisting in the operation of* and the term *power-driven woodworking machines* are well-established in the regulations, including in § 570.55. The Department proposed to revise Reg. 3 to

include definitions of these terms 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 proposed 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 such places of business as sawmills, lath mills, and shingle mills where trees, logs, and lumber would be processed. Expanding this definition thus clarifies that youth are prohibited from operating or assisting in the operation of wood-processing machinery typically found in the workplaces covered by the 2004 amendment. 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 proposed 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 proposed 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. It is important to note that this requirement of close, direct, and uninterrupted 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 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 is required to use personal protective 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 excessive 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 proposed 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.

The Department received three comments on this proposal. Although both the YWN and CLC stated that they did not support enactment of FLSA section 13(c)(7), they strongly supported the Department's efforts to ensure that the regulations provide adequate protections for youths who are now permitted to be employed inside and outside places of business where machinery is used to process wood products. Both of these commenters, along with the AFL–CIO, made additional recommendations to the proposal.

Both the YWN and the AFL–CIO recommended that the Department add a requirement to the revised § 570.34(m)(1) that all youth who come within the exemption provided by FLSA section 13(c)(7) must receive safety training or certification for the specific activities allowed under the proposal.

The CLC labeled as a "wise approach" the Department's proposal to rely on the expertise of OSHA, or the Office charged with administering an OSHA-authorized state plan where appropriate, to determine if employers are complying with certain of the safety standards established by FLSA section 13(c)(7). As an outgrowth of this proposal, it stated that "it would make sense either for the Wage and Hour Division to enforce OSHA in this context by issuing OSHA citations that assert OSHA violations, or for the Wage and Hour Division investigator to notify OSHA of an OSHA violation and direct OSHA to investigate the matter as well for OSHA violations. The reason for this recommendation that the CLC makes here is that if there are OSHA violations that give rise to child labor violations, then the adults who work with the woodworking machinery are subject to the same workplace hazards as the children."

The CLC commented that the Department's proposal that the supervision received by young workers employed under the provisions of FLSA section 13(c)(7) be close, direct, constant, and uninterrupted is essential in view of the serious hazards that such youth will face. The CLC recommended that the proposal should also require that the supervision be "one-on-one" and that the supervisors of the young workers should be required to have experience within the wood processing industry or that workplace.

The CLC also expressed concern that neither the statute nor the proposal

addresses the potential exposure of young workers to "the toxic chemicals present in adhesives and coating agents that are used in woodworking operations." The CLC noted that many of these chemicals pose risks of both short-term and long-term effects on the human body and also are extremely flammable, and hence pose significant fire and explosion hazards. CLC stated "DOL's OSHA experts are familiar with these hazards."

Finally, the CLC noted that the statute did not require woodworking establishments that employ youth under the provisions of FLSA section 13(c)(7) to report all work-related accidents and deaths of such workers to the Department. The CLC stated that even in the absence of such a reporting requirement, the Department can play an important role by publicizing not only the hazards of working in such places of business, but also the results of any child labor investigations involving woodworking machines. The CLC believed that such publicizing will remind all American youth, their parents, and their employers "of the grave dangers that these machines represent to working children."

The Department has carefully reviewed the comments of the YWN, AFL–CIO, and CLC. It has decided to adopt the proposal as written, with one clarifying modification.

Since the enactment of FLSA section 13(c)(7) on January 23, 2004, the Department's enforcement position has been that the employment of 14- and 15-year-olds employed under the provisions of that section must still be in compliance with all other provisions of Reg. 3, including the hours and time of day standards of § 570.35. Although this is evidenced by the Department's compliance and enforcement guidance and the structure of the NPRM, it was not explicitly stated in the proposed rule. The Department received an inquiry on this issue after the publication of the proposal. In order to prevent any possible confusion and to provide maximum clarity, the Department has revised the Final Rule by adding the following sentence to the end of § 570.34(m)(2): The employment of youth under this section must comply with the other sections of this subpart, including the hours and time of day standards established by § 570.35.

The Department appreciates the support and concerns of the commenters. The Department believes that the youths who will be employed under the provisions of FLSA section 13(c)(7) will receive significant workplace protections from the statute and these resulting regulations. Requiring pre-employment certification or training of youth was not envisioned by Congress, especially for a population of young workers whose formal education ends at such an early age. The Department also believes that the CLC recommendations that the ratio of supervisors to young workers should be one-to-one and that all adults supervising have experience in the workplace or the industry were not contemplated by Congress and would be viewed as excessive. Similarly, the Department believes that the CLC recommendation regarding the mandatory reporting of work-related injuries and deaths that might occur to youth employed under the provisions of FLSA section 13(c)(7) would be duplicative of the reporting requirements already established by OSHA.

The Department has long recognized the importance of, and the benefits resulting from, OSHA and WHD working together to share enforcement expertise and information, and to leverage compliance assistance initiatives. As recognized by the CLC, these two agencies have a long and productive history of partnering for the benefit of American workers and those who employ them. It is the Department's intention that this relationship will continue to grow and accommodate additional partnering opportunities as they arise. As stated in the Final Rule, WHD will continue to rely on OSHA's expertise for guidance when applying the specific occupational health and safety-affecting requirements of FLSA section 13(c)(7) (*see* § 570.34(m)(1)(iii) and (iv)) as well as when assessing the risks from potential exposures to toxic chemicals; but WHD will not itself issue citations for violations of OSHA standards. As the CLC stated, "DOL's OSHA experts are familiar with these hazards."

Finally, the Department is well aware of the importance of keeping all stakeholders informed of its compliance assistance initiatives and enforcement findings, and of serious occupational injuries involving youth. WHD, OSHA, and NIOSH have, for many years, shared information among themselves concerning occupational injuries that have contributed to the deaths of young workers as soon as one of the parties learned of the death. WHD, OSHA, and NIOSH then work together to ensure that the appropriate rules are followed and enforced and to learn from each event in the hopes that future tragedies can be prevented. This cooperation will continue after the adoption of the Final Rule.

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.

Reg. 3 was promulgated in 1939 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 advocates of children 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 did not propose to change any of these hours and time-of-day limitations, but wished 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 proposed to incorporate them into Reg. 3 to promote both clarity and compliance. The Department proposed 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 proposed 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 WHD 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 is in session.

The Department also proposed 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 upon 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 apply to the employment of youth in agricultural employment. FLSA section 13(c)(1) states, in relevant part: "The provisions of section 212 of this title 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."

Though the Department did not propose specific regulatory language regarding these terms when it published the NPRM, it did seek 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 those 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; and (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. The Department stated that, based on the comments it received, it would consider adding regulatory provisions to the Final Rule defining the terms school hours and school is in session as they apply to nonagricultural employment.

The Department received nine comments on this proposal. Two commenters, the YWN and the CLC, addressed the proposal to incorporate into § 570.35 certain long-standing departmental enforcement positions regarding the application of the hours standards. Both supported the Department's enforcement positions that school should not be considered in session for a 14- or 15-year-old youth who has graduated from high school; 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 provisions of the state school attendance law; or is subject to an order prohibiting him or her from attending school. Although the YWN supported the proposals that school should also not be considered in session for a youth who (1) has a child to support and appropriate state officers, pursuant to state law, have waived school attendance requirements for that minor, or (2) has been permanently expelled from the local public school he or she would normally attend, the CLC did not. The CLC stated that it believes it is "ill-advised to excuse 14- and 15-year-olds from compulsory school attendance on the basis of parental status. It serves the best interests of the 14- and 15-year-old parent, as well as the young parent's child, for the parent to complete his or her education, thus realizing a long-term benefit of increased and better employment in the future." The CLC stated that a child permanently expelled from public school might still be required, under state or local law or perhaps court order, to attend some other school. The CLC recommended that the Department amend its proposed revision to read "Has been permanently expelled from the local public school he or she would normally attend, unless the child is required, by state or local law or ordinance, or by court order, to attend another school."

Only the YWN and CLC commented on the Department's proposal to clarify the Reg. 3 limitation that 14- and 15-year-olds may not be employed to work more than three hours on any one day when school is in session by adding the phrase "including Fridays." Both the YWN and the CLC supported this proposal. The representative of White Hat recommended that participants in programs similar to those of the charter schools he advises should be permitted to work up to five hours on a school day.

The Department received six comments that addressed its proposal 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 proposal stated that 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.

Both the YWN and CLC supported this proposal. Four commenters, the Food Marketing Institute (FMI), Six Flags, the WWA, and the representative of Morey's Pier, opposed the proposal. The FMI described itself as a conductor of "programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies—food retailers and wholesalers—in the United States and around the world." The FMI reported that its retail membership is composed of large multi-store chains, regional firms and independent supermarkets. The FMI stated "[w]e strongly object to this change, which would create an administrative nightmare, and see no reason for it." The FMI commented that most of its members already have systems in place based on their own workweeks that automatically check hours worked to make sure minors do not exceed their allowable hours. "By requiring the use of a Sunday to Saturday midnight week, employers would be forced to check hours worked manually, making it more likely that mistakes would be made."

The WWA echoed the concerns of the FMI and asked that the proposed rule be amended to allow employers to calculate hours worked so that Saturday and Sunday hours may be included within the same workweek. Six Flags expressed the same concern regarding its ability to use its payroll tracking system as a compliance tool and recommended that the Department allow employers to use any reasonable system such as labor tracking and payroll monitoring tools that complement their record keeping systems. The representative of Morey's Pier recommended that the term *workweek* should be defined, but not necessarily by the calendar.

The Department received six comments on its enforcement position that defines the term *school in session* as applying to the normal hours of the public school system in the minor employee's district of residence. The YWN and the CLC supported using the hours of the local public school district the minor would attend if he or she attended public school when defining the term *school in session.* The YWN praised the enforcement benefits that would arise from having only one standard in each school district, thereby avoiding multiple schedules that would create unworkable and needlessly complex enforcement standards. The YWN also suggested that the Department should clearly state in the Final Rule that school is considered to be in session during any week in which school attendance is required for one or more days. The CLC commented that "[if] the school day schedules established by private schools and by parents of home-schooled children could determine when children being educated in those settings governed here, there would be nothing in the DOL child labor regulations that would prevent such a school or parent from setting a schedule that would permit children to work during the hours that the public school system is in session. Indeed, non-public schools could be established by organizations whose prime goal is to provide 14- and 15-year-old working children to employers during normal business hours in the middle of the day, rather than to make sure that the children are in school during the hours when they are most alert and receptive to classroom instruction. We do not say that there would be many such schools or home-schooling parents, but the mere fact that such outcomes could occur should be reason enough to cause DOL to reject this approach." The CLC, when commenting on the Department's inquiry regarding whether employers of working youth should be given greater flexibility, stated "[t]here is no need for DOL to bend over backwards to try to assure that children have the absolute maximum opportunity to squeeze every possible minute of the day into the three hours that they can work during a school day. This approach seems to us to give far more emphasis to work experiences for 14- and 15-year-olds than to their education."

The National Council of Chain Restaurants (Council), the representative of Morey's Pier, and the FMI supported defining the term *school in session* by following the academic schedule and attendance requirements of each minor, rather than that of the local public school. The Council noted that frequently "the academic schedule and attendance requirements followed by public schools do differ, sometimes significantly, from the schedule followed by private schools. By applying each minor's actual school schedule, rather than arbitrarily applying the local public school schedule, job opportunities would be expanded for minors subject to Child Labor Reg. 3 without adversely impacting the school work of such minors." The FMI stated that adopting the hours of the local public school when defining the term *school is in session* would "make no sense" for the many young people who do not go to public schools. The FMI found it "hard to understand why their work hours should be governed by a school system they have nothing to do with." The representative of Morey's Pier believed that each minor should be treated individually and that his or her own academic schedule and attendance requirements should be used when determining when school was in session for the minor. Barring adoption of her recommendation, she believed the Department's enforcement position to be the "second best option."

The DOLWD did not oppose this enforcement position but suggested that an "exception" from the definition of *school is in session* should be created for youth enrolled in home school or other alternative school programs based on considerations of "whether the work interferes with the individual's schooling, health or well being rather than the hours of operation for public schools." The DOLWD also suggested that the federal regulations on the number of hours that 14- and 15-year-olds may work should be amended to be consistent with the more permissive standards established in Alaska. The Council also recommended that the Department expand the number of hours that such youth may be employed to four hours on any school day; to as late as 8 p.m. on any evening between Labor Day and May 31st; and as late as 10 p.m. on any evening between June 1st and Labor Day. The YWN recommended that the Department eliminate the reference to between June 1st and Labor Day and replace it with the actual calendar of each public school, noting that an increasing number of school districts have year-round schedules.

After carefully reviewing the comments, the Department has decided to continue its long-standing enforcement position that *school hours* are defined by the hours that the local public school district where the minor resides when employed is in session, and to add this definition to § 570.35(b) to avoid confusion and to simplify both compliance and enforcement of the hours standards of Reg. 3. The Department has also included in this definition the YWN's recommended clarifying statement that school should be considered to be in session during any week when school attendance is

required for any portion of a day. The Department is also adding to that section its long-standing position that *outside school hours* means such periods as before and after school hours, holidays, summer vacations, weekends, and any other day or part of a day when the local public school district where the minor resides while employed is not in session. This section will also note that summer school sessions, held in addition to the regularly scheduled school year, are considered to be outside of school hours.

The Department appreciates the concerns of the one employer and two employer associations that recommended that an employee's own academic schedule and individual attendance requirements should be used to determine when school is in session for that minor and recognizes how such a position could be seen as a means of providing minors with more work experiences while addressing employer staffing problems. But the Department is concerned that such a system may not give the proper emphasis to obtaining an education and would make employer compliance and WHD enforcement more difficult and more complicated than necessary, given the broad variety of daily school schedules that each young employee could have.

The Department believes that the continuation and incorporation of this enforcement position brings clarity in that employers need only look to the hours of operation of the local public school where the minor resides to attain compliance. It also ensures that the consistent application of these terms for both agricultural and nonagricultural employment will continue, thereby avoiding confusion among those employers who offer both agricultural and nonagricultural employment to young workers. Finally, continuation of this enforcement position facilitates the enforcement of the Reg. 3 hours standards by establishing a single, easily determinable standard.

The Department also believes that continuation of this enforcement position is appropriate as it does not provide any minor or class of minors with an incentive to leave public school or with an unfair and improper advantage over public school youth when competing for employment. The Department notes the CLC's concerns that determining when school is in session by using each student's individual academic schedule could foster the development of nonpublic schools or home-schooling programs created primarily to provide 14- and 15-year-old working children to employers during the hours they would normally have attended public school. While the Department agrees with the CLC that it is unlikely that many such schools or home-schooling programs would materialize, it does note that the emergence of schools that were designed to allow migrant children to work on farms during the daylight hours when the local public school was in session, was an impetus for the 1949 amendment to the FLSA that codified this very same enforcement position as it relates to agricultural employment.

The Department has decided not to incorporate into Reg. 3 its long-standing enforcement position that a calendar week—12:01 a.m. Sunday through midnight Saturday—shall be the framework for determining if a 14- or 15-year-old has been employed more than 18 hours in any week when school is in session or more than 40 hours in any week when school is not is session. The Department agrees with several commenters who noted that applying the same definition of the term *week* for determining compliance with the minimum wage, overtime, and child labor provisions of the FLSA would make it much easier for employers to use their payroll systems as tools and tracking systems for implementing and maintaining compliance with the child labor requirements. Accordingly, as suggested by those commenters, the Department will define the term *week* as used in Reg. 3 to be the same workweek the employer establishes for the youth to determine overtime compensation under 29 CFR 778.105—a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods.

Finally, the Department acknowledges the recommendations of the DOLWD, the Council, and the representative of White Hat regarding the relaxation of certain of the hours and time of day restrictions of Reg. 3 to permit 14- and 15-year-olds to work more hours on a school day or in a school week, or later into the evening. As noted in the NPRM, the Department did not propose any revisions to those standards. Any such changes, therefore, would be outside the scope of this rulemaking.

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. WECEPs may, however, be tailored to meet the needs of other students as well.

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 and not more than 3 hours in any day 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 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 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, four 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 of the local public school is 55 percent.

Reg. 3, as currently written, does not allow 14- and 15-year-olds to participate in the Network's 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 proposed that Reg. 3 be revised to accommodate such programs. The Department proposed 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 workplace safety and child labor 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 child labor 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 child labor 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 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 for no more than 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).

The Department received eight comments on this proposal. The Cristo Rey Network, which described itself as "a non-profit corporation that co-ordinates twelve college prep high schools across the country," self-identified itself as the Network that the Department describes in the NPRM. The Cristo Rey Network was most supportive of the proposal and noted that its work-study program meets the statutory objective of permitting youth employment only "during periods and under conditions that will not interfere with their schooling or health and well being" as required by FLSA section 3(l). Cristo Rey stated "[m]eeting those objectives can be quantified in Cristo Rey's 97+% attendance rate and/or in its graduates' own achievements: *i.e.,* of 219 graduates in 2006, 212 were accepted into colleges including schools such as the University of California at Berkley, the University of Illinois, the University of Notre Dame, the University of Chicago, and Wellesley College; and the success continues: of 318 graduates in 2007, 313 will attend college this Fall." Cristo Rey noted that the schools in the Network provide an option for private education to children who are "predominantly Latino (63%) or African-American (25%) and who are all from economically-disadvantaged families; the average family income of these students is approximately $33,000—far too little to make private education an option absent the work-study program that the schools in the Network have pioneered."

The YWN disagreed with the proposal, stating that § 570.35a already includes provisions that allow the WHD

to grant requests for special variances from the occupation standards regarding prohibited work, and that this should be expanded to grant variances from the Reg. 3 hours standards as well. The YWN stated that this proposal benefits one single program and makes the regulations unnecessarily complex. It also raises concerns that the "host employer" might not be subject to the same restrictions and requirements as any other employer who hires youth and that students may be replacing a "regular paid employee."

The CLC noted that it had several serious concerns about this proposal. It felt that the proposal was so narrowly tailored to one specific program that it could easily bar other school systems "that have similar, but not identical, approaches" from taking advantage of the program. The CLC stated that "[w]hat is particularly troubling—and what DOL does not indicate in its preamble to the proposed regulation—is that the only school system that appears to qualify for the proposed program is a private Roman Catholic system." The CLC stated that "[t]he DOL proposal raises serious questions under the First Amendment to the United States Constitution, which forbids the government favoring one religious sect over another."

The CLC also raised concerns as to whether DOL would "be able to assure that no violations occur under this system" and of "the secrecy of the approval process that DOL would adopt." The CLC believed that the proposed approval process is not sufficiently transparent and recommended that DOL be required to publish a notice in the **Federal Register** detailing every work-study program application and invite public comment during a specified period of 30 or 60 days.

The CLC also noted that the proposal would not prohibit an employer from replacing a permanent worker at an establishment participating in the work-study program with student-workers, as prohibited under the WECEP provisions contained in § 570.35a(e). The CLC also expressed concerns that the Cristo Rey Network has been operating a work-study program for almost a decade and questioned how much of each youth's pay check goes to Cristo Rey and how much, if any, goes to the youth. Finally, the CLC also questioned, as did the YWN, if the "host employers" or the Cristo Rey High School would be considered the actual employers of the youth under the FLSA.

The Department received several comments supporting the creation of a work-study program that would allow youth to work during the hours school was in session, but opposing that such a program be limited, as the Department proposed, to students enrolled in a college preparatory curriculum. The DOLWD recommended that the program should be expanded to include pre-apprenticeship work training programs, and a representative of the New Jersey Department of Education (NJDOE) recommended that "determining the educational and eligibility requirements for such programs be left to state education agencies." The NJDOE also stated that the Department's proposal to limit participation in the work-study program "conflicts with the federal No Child Left Behind Act, the federal Carl D. Perkins Career and Technical Education Act, the federal Individuals with Disabilities Education Act, and state laws and regulations, which require state education agencies and public schools to serve all students and provide all students with comprehensive career education, including opportunities to further explore careers in work-based learning activities."

The representative of White Hat supported the creation of a work-study program but suggested that charter schools of the type he represents should not be subjected to the "bureaucratic requirements" imposed by the work-study application process proposed by the Department, "which can be prohibitive for some smaller schools and which serve to take needed resources away from educational instruction and helping more students." He also stated that limiting participation in the proposed work-study program to students enrolled in a college preparatory curriculum "can also have the unintended consequence of denying extended work hours and compensation from those who need it the most, the undereducated."

A representative of the National Association of State Directors of Career Technical Education Consortium (State Directors) apparently believed that the adoption of the proposal contained in § 570.35b would preclude anyone but a student enrolled in a college preparatory curriculum from participating in any work-study program in the future. He stated "such a rule would cripple career technical education (CTE) programs that have work-based learning opportunities embedded within the curriculum." The same assumption was made by a teacher at the Sunrise Mountain High School in Peoria, Arizona who commented "[t]hese internships provide our students valuable hands-on experiences to help connect school and careers in a meaningful way. The RIN 1215–AB44 proposal would remove this valuable learning experience from our students."

The Department has carefully reviewed the comments and has decided to implement the proposal as written with two minor modifications. The first modification involves a redesignation of the sections dealing with both WECEP and the Work Study Program as requested by the **Federal Register.** The current § 570.35a will be redesignated as § 570.36 and the proposed § 570.35b will be issued as § 570.37. The second modification clarifies the role of the teacher-coordinator.

The Department wishes to emphasize that this proposal creates a new, limited, work-study program designed to accommodate the needs of a narrowly defined population—14- and 15-year-old students enrolled in a college preparatory curriculum at a public or private school that has been granted authority to operate such a program by the Department. This new program does not in any way negate or preclude schools or employers from participating in other preexisting or future work-study programs, work experience and/or career exploration programs, internships, or apprenticeships that also comport with the provisions of the FLSA (whether with the hours standards and time of day restrictions in § 570.35 or the special WECEP rules in § 570.35a (old) and § 570.36 (new)). This proposal was developed and offered solely with the intent, as stated earlier in this section, of providing reasonable and structured accommodations within Reg. 3 so that academically oriented 14- and 15-year-olds could begin their pursuit of college educations through work-study programs. Participation in the proposed work-study program is voluntary and it in no way conflicts with other federal, state, or local programs addressing the educational needs of young workers. The concerns of the State Directors and the NJDOE are unfounded.

The Department appreciates the recommendations of several commenters that the work-study program should be extended to youth enrolled in programs other than college preparatory, such as vocational programs, internships, and apprenticeships. The Department notes that the already existing WECEP (*see* § 570.36 (new)) would provide those programs with limited exemptions from the hours standards contained in § 570.35(a) that are similar to the exemptions provided by the proposed work-study program.

The Department also disagrees with the YWN and CLC comments that the

proposed work-study program was designed to accommodate a single program—the Cristo Rey Network. Although the Cristo Rey Network work-study model was reviewed by the Department, the proposed work-study program differs considerably from that model. The Department's proposed WSP, unlike the Cristo Rey model, requires annual classroom instruction in workplace safety and state and federal child labor provisions and rules (*see* § 570.37(b)(3)(ii)), the oversight of a designated teacher-coordinator required to make visits to the students' workplaces (*see* § 570.37(b)(3)(iii)), the completion of a detailed written participation agreement (*see* § 570.37(b)(3)(iv)), and a rigorous certification process. The Department believes that these additional requirements, many of which correspond to the criteria established for operating a WECEP under § 570.36 (new), will provide adequate protections to all students who participate in an approved work-study program under the provisions of § 570.37 (new). The Department also believes that the certification process as proposed by the Department, which again is similar to that required of WECEP applicants, provides sufficient transparency without requiring publication in the **Federal Register** or public comment. In addition, pursuant to the President's commitment to openness and transparency,[1] the Department intends to publish the list of schools authorized to operate a work-study program on the WHD Web site.

The Department also notes that the proposed work-study program provides considerable flexibility to those schools that choose to participate. The limitations on the number of hours that participating students may be employed (*see* § 570.37(c) (new)), though in line with those established by the Cristo Rey Network, constitute the absolute maximum number of hours that participants may be employed. Participating schools and employers may choose to adopt some other schedule of work hours that comport with the established maxima—such as one four-hour day or one six-hour day each workweek; or two eight-hour days each weekend; or three hours a day at the end of each of three school days, as long as those hours comply with end-of-day hours standards established by § 570.35(a)(6). In addition, a school could apply and receive authorization under § 570.37 (new) to operate a work-study program for just one student, one group of students, or, as in the case of the Cristo Rey Network, the entire student body.

The Department wishes to emphasize that the development of this student-work program was never intended to advantage any single, private school system, but was proposed for the benefit of all academically motivated students enrolled in college preparatory curricula that can avail themselves of such a program of employment that clearly facilitates, rather than interferes with, their schooling. The Department, for this very reason, did not specifically identify the Cristo Rey Network in the NPRM. It did not want the public mistakenly to believe that participation in the proposed work-study program would be limited to private schools, public schools, or any particular religious or nonreligious sect. For similar reasons, the Department did not identify the municipalities that inquired about the employment of youth by state and local governments and as lifeguards, which led to the Department's enforcement positions on those topics. Since publication of the NPRM, the Department has received inquiries from public schools and private schools (not part of the Cristo Rey Network) about establishing work-study programs under § 570.37 (new).

The Department also wishes to assure both the YWN and CLC that employers participating in the work-study program authorized by § 570.37 (new) would indeed be the employer of the youth under the FLSA and held to all the Act's minimum wage, overtime, record keeping, and child labor provisions—unless subject to a specific exemption or exception—as would any other employer. In fact, depending upon the facts of each situation and the degree of control the school exercises over the employment of the participating student, it is possible that the student would be considered to be jointly employed by the host-employer and the youth's school under the FLSA (*see* 29 CFR part 791). The FLSA would require that students participating in the work-study program, if covered by the Act and not exempt from the minimum wage requirements of section 6, receive the applicable minimum wage for all hours worked. Such students may, in accordance with 29 CFR 531.40, make a voluntary assignment of their wages to a third party. The employment of students participating in the work-study program would also most likely be subject to state wage requirements and child labor provisions. When state and federal requirements differ, the FLSA does not supersede any more protective state child labor requirement and employers must normally comply with the more stringent standard.

Under § 570.37 (new), the participating school district and employers share the burden of ensuring that the employment of work-study program participants is in compliance with the FLSA. When the Department conducts an investigation of a work-study program participating employer, it will follow its normal investigation procedures to determine if the employer complied with child labor requirements. The employer will be held responsible for any violations of the FLSA or the child labor regulations. But the Department considers it appropriate that the school district sponsoring the work-study assist the employer in the both achieving and monitoring the compliance of the work-study program.

Therefore, the Department has revised the proposed regulatory language at § 570.37(b)(3)(iii) to emphasize the role of the teacher-coordinator in confirming that the employment of the work-study program participant complies with the child labor and minimum wage requirements of the FLSA. In addition, when a school system files a letter of application to renew an existing work-study program, it will be required to note that the teacher-coordinator has confirmed that the employment of students in the work-study program has been in compliance with the child labor and minimum wage provisions of the FLSA.

The Department believes that the teacher-coordinator occupies an ideal position to both help the employer attain and maintain compliance with the all the requirements of work-study program and assist the Department's enforcement efforts by confirming that compliance. In addition to the regularly scheduled visits to the workplaces the teacher-coordinator is required to make, the Department suggests that such things as frequent interactions with the work-study program students, program assessments and evaluations completed by the students and the employers, and surprise or unscheduled visits to the workplaces can all contribute to the operation of a safe, compliant, and positive work-study program. The suggested methods of confirmation are purely discretionary; no work-study participating school district will be penalized for not adopting them. The Department notes that it is not imposing any recordkeeping burdens on the employers or the school districts beyond those proposed in the 2007 NPRM, therefore no additional estimates of costs or burdens will be incurred that

[1] January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies, available at: *http://edocket.access.gpo.gov/2009/pdf/E9-1777.pdf.*

must be accounted for pursuant to the Paperwork Reduction Act and Regulatory Flexibility Act.

The Department appreciates the concerns of both the YWN and the CLC that the proposed work-study program, unlike the WECEP, does not prohibit participating employers from displacing a worker already employed in the employer's establishment with a student (*see* § 570.36(e) (new)). The Department's experience with the pilot work-study program indicates that most of the jobs occupied by the students were entry-level positions created especially for the work-study program. In addition, the pilot program reduced the number of jobs being occupied by student participants by requiring that four students share a single full-time position. The Department expects that its experiences under the new work-study program will be similar. It believes that encouraging employers to create such multiple employment opportunities for youth who qualify for participation in the work-study program warrants this flexibility.

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; and 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 or 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) (old and new), 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 occupations in the operation of sawmills, lath mills, shingle mills, or cooperage stock mills to work in offices or in repair or maintenance shops; to straighten, mark, or tally lumber on the dry chain or the dry drop sorter; pull lumber from the dry chain; to clean up the lumberyard; to pile, handle, or ship cooperage stock in yards or storage sheds other than operating of or assisting in the operation of power-driven equipment; to perform clerical work in the yards or shipping sheds, such as done by ordermen, tally-men, and shipping clerks; to perform clean-up work outside shake and shingle mills, except when the mill is in operation; to split shakes manually from precut and split blocks with a froe and mallet, except inside the mill building or cover; to 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 to 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 (*see* NIOSH Report, page 27). 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 timber cruising, forest fire fighting, 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" (*see* NIOSH Report, page 28). 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. Transportation incidents were the most common fatal event among forestry workers, accounting for 43 of the 82 deaths (*see* NIOSH Report, page 30).

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. Forestry workers also experienced fatal injuries such as those typically associated with the logging industry; in 26 of the 82 fatalities the worker was struck by a falling object (a tree in all but one instance). In addition, NIOSH also was able to identify 16 additional deaths of workers of all ages that were attributable to forest fire fighting activities (*see* NIOSH Report, page 30).

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 child labor provisions to any homeworker 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" (*see* NIOSH Report, page 27). The Department sought public comments about this issue in the ANPRM that was published concurrently with the NPRM on April 17, 2007 (72 FR 19328).

As mentioned earlier, the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), amended the FLSA by creating a limited exemption from the child labor 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 agreed with the NIOSH Report recommendation that HO 4 should be expanded to cover work in forest fire fighting and forest fire prevention because of the risks inherent in those occupations. The Department also considered adopting 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 was concerned that such youth may be able to be safely employed in certain facets or occupations within those industries. Therefore, the Department requested in the NPRM that the public provide information that would help it identify which occupations or tasks within the timber tract, tree farm, and forestry services industries are not particularly hazardous to youth.

The Department proposed to revise HO 4 to add a prohibition on the employment of youth 16 and 17 years of age in forest fire fighting 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 proposed to revise the title of HO 4 to reflect these changes.

Under the proposal, all occupations in forest fire fighting and forest fire prevention would include the controlling and extinguishing of fires, the wetting down of areas or extinguishing of spot fires, and the patrolling of burned areas to ensure the fire has been extinguished. The term would also include the following tasks when performed in conjunction with, or in support of, efforts to extinguish a fire: The piling and burning of slash; the clearing of fire trails or roads; the construction, maintenance, and patrolling of fire lines; acting as a fire lookout or fire patrolman; and tasks associated with the operation of a temporary fire fighting base camp. The proposed prohibition concerning the employment of youth in forest fire fighting and forest fire prevention would apply to all forest locations and buildings located within the forest, not just where logging or sawmilling takes place. The Department notes 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 fire fighting services to state and local governments.

The Department also proposed to incorporate into HO 4 the provisions of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), which amended the FLSA by creating a limited exemption from the child labor 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 proposed 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 proposed to add the above definition to HO 4.

The Department also proposed to revise HO 4 to include all the definitions necessitated by the incorporation of the provisions of FLSA section 13(c)(7) as discussed earlier in this document. In addition, the Department proposed to restructure all the definitions in HO 4 in an alphabetical sequence to comport with guidance provided by the **Federal Register.**

The Department decided not to address, in the NPRM, the NIOSH 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 recommended 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. In an attempt to obtain such additional information, the Department requested public comment on this subject in the 2007 ANPRM.

The Department received five comments addressing this proposal. The DOLWD stated it was in agreement with

the NIOSH recommendations, except that it believed that 16- and 17-year-olds, after completion of the ten-hour construction safety and health course certified by OSHA, could safely be employed to work in the construction of living and administrative quarters of logging camps. The DOLWD also recommended that an exception be granted allowing such youth "to be employed in logging camp support positions such as cook, janitor, etc."

The Director of Human Capital Management of the U.S. Department of Agriculture's Forest Service stated that the Forest Service applauded the Department of Labor's proposal that would prohibit 16- and 17-year-olds from performing fire fighting duties. The Forest Service did, however, recommend that the proposal be revised to permit such youth to work in forest protection-type activities, which it sees as non-hazardous, such as clearing fire trails or roads, maintaining fire fighting equipment, and acting as a fire lookout or fire patrolman. The Forest Service also noted that it "currently uses 16- and 17-year-old Job Corps employees and private contractors in our fire camps to perform such tasks as building platforms for tents, stocking commissary items, performing timekeeping activities and providing food services."

The AFL–CIO, YWN, and CLC all supported the proposed changes to prohibit the employment of young workers in forest fire fighting and forest fire prevention occupations. All three also expressed their disappointment that although the Department considered adopting 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, it did not do so. All three commenters provided rationales for adopting this NIOSH recommendation, which included examples of tasks and exposures commonly associated with such industries that they consider to be hazardous. For example, the AFL–CIO noted that "[w]orking in the forest industry can involve working at heights * * * These workers also cut the trees with a chainsaw and drag them from the cutting area to a truck and then load them on to a truck. The AFL–CIO strongly urges DOL not to permit children under 18 to do any of this work. Other forestry workers gather products which requires them to climb trees * * * children under 18 should not be able to work at heights in timber tracts or tree farms." The CLC commented that "[w]orking in the forestry industry can involve working at heights * * * using machetes and pruning shears * * * These workers also cut the trees with a chainsaw and drag them from the cutting area and then load them on to a truck. The CLC strongly urges DOL not to permit children under 18 to do any of this work, much of which is already prohibited."

Finally, the YWN, AFL–CIO, and the CLC all encouraged the Department to revise its proposal and accept the NIOSH recommendation to prohibit the employment of 16- and 17-year-olds in the constructing and repairing of living or administrative quarters of logging camps. The CLC also argued that language in the proposed HO 4 is changed from the current rule and contradicts itself in that § 570.54(a) declares all occupations in logging to be particularly hazardous; that the definition of *all occupations in logging* contained in § 570.54(b) includes the constructing, repairing, and maintaining of camps used in connection with logging; and § 570.54(a)(1)(ii) permits youth to perform such work.

The Department has carefully reviewed all the comments and has decided to adopt the proposal with certain modifications that will clarify the Final Rule. First, the Department has been persuaded by the comments of the Forest Service and the DOLWD that 16- and 17-year-olds can safely be employed in certain capacities in forest protection and in the operation of fire fighting base camps. The Department now concurs that employment at such camps, which are purposely located considerable distances from forest fires, when in compliance with all other Hazardous Occupations Orders, is not particularly hazardous or detrimental to the health or well-being of 16- and 17-year-olds. Such employment is very similar to that involved with the operation of logging camps, occupations that 16- and 17-year-olds have been permitted to perform for many years. Accordingly, the Department has revised the regulatory language in § 570.54(a)(2).

The Final Rule also provides that 16- and 17-year-olds may perform such fire prevention tasks as the clearing of fire trails or roads; the construction, maintenance, and patrolling of fire lines; the maintaining of fire fighting equipment; acting as a fire lookout or fire patrolman; and the piling and burning of slash. However, such tasks are permitted only when not performed in conjunction with extinguishing a forest fire. The Department believes the hazards associated with the activities of extinguishing a forest fire warrant this prohibition and has clarified the definition of all occupations in forest fire fighting and forest fire prevention to note that such work is prohibited not only in all forest and timber tract locations, but also in logging operations, and sawmill operations, including all buildings located within such areas.

The revisions the Department proposed to § 570.54(a)(1) (old) that removed paragraph (iii) of that subsection evidenced the Department's intention to prohibit 16- and 17-year-olds from employment in most timber tract and forestry service occupations. The previous § 570.54(a)(1)(iii) specifically excluded from the list of logging tasks deemed to be particularly hazardous to young workers who work in timber cruising, surveying or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; and work 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 look-out or fire patrolman away from the actual logging operation. By removing this subsection, the Department removes the exception for timber tract and forestry service occupations.

The Department, in its 2007 NPRM, specifically requested public comments as to which occupations or tasks within the timber tract, tree farm, and forestry service industries, if any, are not particularly hazardous or detrimental to the health and well-being of youth (*see* 72 FR 19351). It was the Department's intention to qualify in the Final Rule which occupations, if any, would be permitted for 16- and 17-year-olds after the comments were reviewed. No comments were received that identified any tasks in these industries as being safe for minors to perform.

The Department believes that despite the lack of comments, 16- and 17-year-olds can safely perform certain tasks within the timber tract, tree farm, and forestry service industries. Such youth should be permitted to perform many of the tasks that HO 4 has long permitted youth employed in logging to perform: Working in offices and in repair or maintenance shops; work in the construction, operation, repair, or maintenance of living and administrative quarters, constructing and maintaining telephone lines; and work in the feeding or care of animals. In addition, youth employed in timber tract, tree farm, and forestry service industries should be permitted to perform tasks related to forest marketing and forest economics that are not performed in a forest. Finally, as mentioned above, such youth should also be permitted to perform certain tasks related to forest fire fighting and

forest fire prevention, when not performed in conjunction with the extinguishing of a fire, such as the clearing of trails or roads; the construction, maintenance, and patrolling of fire lines; acting as a fire lookout or fire patrolman; and tasks associated with the operation of a fire fighting base camp.

The Department has revised the regulatory language proposed in the NPRM for HO 4 at § 570.54(a) to make it clear that the employment of 16- and 17-year-olds to perform most jobs in timber tract, forestry service, and tree farm operations are prohibited. The revisions also simplify the section by combining, clarifying, and condensing previous subsections. The Department notes that the use of Standard Industrial Codes by the NIOSH Report was helpful in identifying the different occupations and industries that could be impacted by the Department's HO. But because many of the occupations and tasks addressed by the Final Rule either appear in more than one code or are not included in the codes listed in the Report, the Department did not use those codes in formulating the definitions used in the Final Rule. The Department has added language to § 570.54(a) to make it clear that the limited exceptions to HO 4 listed in that paragraph do not include any work that would be prohibited by any other HO contained in subpart E. The Department also added clarifying statements to § 570.54(a)(8) regarding the types of work that 14-year-olds employed under the provisions of FLSA section 13(c)(7) may perform inside a sawmill. As discussed earlier, similar clarifying language was added to § 570.34(m)(2). The Department has also moved the definition of *portable sawmill* contained within § 570.54(a)(2) (old) to the *Definitions* section (§ 570.54(b) (new)). In addition to changing the title of HO 4 to accommodate this revision, the Department has also added definitions of the terms *all occupations in forestry services* and *all occupations in timber tracts* to § 570.54(b). The Department has also replaced the words *firefighting* and *firelines* in the Final Rule with the words *fire fighting* and *fire lines.*

All occupations in forestry services shall mean all work involved in the support of timber production, wood technology, forestry economics and marketing, and forest protection. The term includes such services as timber cruising, surveying, or logging-engineering parties; estimating timber; timber valuation; forest pest control; forest fire fighting and forest fire prevention as defined in this section; and reforestation. The term shall not include work in forest nurseries, establishments primarily engaged in growing trees for purposes of reforestation. The term shall not include the gathering of forest products such as 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.

All occupations in timber tracts means all work performed in or about establishments that cultivate, manage or sell standing timber. The term includes work performed in timber culture, timber tracts, timber-stand improvement, and forest fire fighting and fire prevention. It would also include work on tree farms, except those tree farm establishments that meet the definition of agriculture contained in 29 U.S.C. 203(f).

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's Final Rule includes 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 proposed to amend the definition of power-driven woodworking machines to include those machines that process trees, logs, and lumber. To ensure consistency, the Department proposed 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 also proposed to restructure the two definitions in this section to reflect an alphabetical sequence in accordance with guidance provided by the **Federal Register.**

The Department received three comments on this proposal. The AFL–CIO and YWN agreed with the Department's proposal to amend the definition of power-driven woodworking machines to include those machines that process trees, logs, and lumber. The YWN also recommended that the proposed definition of power-driven woodworking machines be revised to permit 16- and 17-year-olds to use small hand-held battery-operated drills that accommodate bits no larger than ⅜″ and hand-held oscillating- or vibrating-type sanders.

The CLC, YWN, and AFL–CIO expressed disappointment that the Department did not adopt NIOSH's alternative recommendation that the Department rewrite HOs 5, 8, and 12, which respectively address machines that work with wood, metal, and paper, by merging them into a single or multiple HOs which address the function of the machines rather than the material processed (*see* NIOSH Report, page 31).

After carefully reviewing the comments, the Department has decided to adopt the proposal as written. The Department did not request, nor does it possess, data regarding whether 16- and 17-year-olds can safely operate portable drills or sanders, or what requirements should be imposed to ensure their safe operation by young workers. Accordingly, it cannot adopt the recommendation of the YWN at this time. The Department notes that it is exploring the feasibility of adopting NIOSH's alternative recommendation that certain power-driven equipment be prohibited based on function rather than on the material being processed. Because of the complexity of the issue and in the hopes of obtaining additional information, the Department requested public comment on this recommendation in the ANPRM that

was published in conjunction with, and on the same day as, the NPRM.

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 NIOSH Report recommended that the Department expand HO 7 to prohibit the repairing, servicing, and 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 shows that a substantial number of deaths and injuries are associated with operating and assisting in tasks performed by power-driven hoisting apparatus, including deaths of youth (*see* NIOSH Report, page 36). 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) (old) and § 570.33(c) (new). 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 (*see* NIOSH Report, page 36). 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 (*see* NIOSH Report, page 36). 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 (*see* NIOSH Report, page 37).

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 (*see* NIOSH Report, page 36). 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" (*see* NIOSH Report, page 36).

The Department proposed 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 proposed 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 proposed 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 included 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 also proposed 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 in the current 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. In addition to affirming the Department's position that a skid loader was a "high-lift truck" within the meaning of HO 7, the court also found that the youths' operation of the equipment violated the HO even though 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)).

The Department received three comments on this proposal. The YWN, AFL–CIO, and CLC supported all elements of the proposal, with additional recommendations. The YWN and AFL–CIO suggested that HO 7 be expanded to prohibit 16- and 17-year-olds from working with hydraulic grease racks, though the YWN recommended that an exception be made to permit automotive repair students in cooperative education programs who have been properly trained and receive appropriate supervision to "work around these racks" but not to operate them. The YWN also noted that "back hoes" and "front-end-loaders" would fall within the definition of *high-lift trucks* and recommended, for the sake of clarity, that the Department specifically name them in the revised § 570.58(b).

The CLC noted that the NIOSH Report recommended that HO 7 prohibit 16- and 17-year-olds from employment that, among other things, included "assisting in tasks being performed" by the power-driven hoisting equipment. The CLC took issue with the Department's statement that assisting in tasks being performed by the machines would constitute *tending*—an activity prohibited by the proposal. The CLC recommended that the Department clarify the proposal by specifically adding "assisting in tasks being performed by the equipment" to the language of the Final Rule. The importance of this recommendation was poignantly demonstrated by the August 2008 death of a 17-year-old in Georgia who was crushed to death when a one-ton electrical inverter box fell from a fork lift. The minor was not operating the forklift at the time of his death but was serving as a "spotter" and assisting the operator of the forklift.

The Department appreciates the comments of the YWN, AFL–CIO, and CLC and has decided to adopt the proposal with slight modifications designed for clarification. The Department will add backhoes and front-end loaders to the examples of high-lift trucks contained in § 570.58(b) as recommended by the YWN. The Department will also clarify in § 570.58(a)(1) and (2) that the term *tending* includes assisting in the hoisting tasks being performed by the equipment, to add clarity as recommended by the CLC.

The Department believes additional information is needed before it can determine whether 16- and 17-year-olds who operate hydraulic grease racks are at risk and notes it requested public comment on this issue in 2007. Accordingly, adoption of the recommendations of the YWN and AFL–CIO that HO 7 also prohibit the operation of such equipment would be premature.

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. Under the existing regulation, the term 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 NIOSH 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 (*see* NIOSH Report, page 41). 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 products 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 (*see* NIOSH Report, page 43). 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 (*see* NIOSH Report, page 48).

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 proposed 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 proposed 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 proposed 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 to note that these lists are not exhaustive. The Department also proposed 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 proposed 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 proposed 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 decided not to propose implementation of 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 (*see* NIOSH Report, page 47). 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 were life threatening, most were considered to be serious and many caused the partial loss of digits and will leave some permanent scarring.

The Department also decided not to propose implementation at this time of 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 issued an ANPRM, in conjunction with and on the same day as the NPRM, to solicit public comment on this important issue.

The Department received six comments in response to this proposal. The AFL–CIO, YWN, and CLC supported the proposal to expand the scope of HO 10 to prohibit the employment of 16- and 17-year-olds in or about places where such animals as cattle, calves, hogs, poultry, sheep, lambs, goats, buffalo, deer, or horses are killed, butchered, or processed and where sausage and sausage casings are manufactured or processed. The Department received no comments opposing adoption of this portion of the proposal. The YWN also recommended that HO 10 be expanded to cover seafood processing occupations.

The AFL–CIO, YWN, CLC and Six Flags all supported the Department's decision not to accept the NIOSH

Report's recommendation to allow 16- and 17-year-olds to operate and feed power-driven meat and food slicers in retail, wholesale and service industry establishments. These four commenters also supported the Department's proposal regarding the cleaning of such equipment. The FMI and the Council both recommended that the Department reconsider and adopt the NIOSH recommendation that would allow 16- and 17-year-olds to operate and feed power-driven meat and food slicers. The Council stated "[t]he NIOSH recommendation appears well-supported" while the FMI believed the Department's position to be "surprising as the NIOSH recommendations are based on the hard data and analysis that DOL asked NIOSH to provide." Neither the Council nor the FMI commented on the Department's proposal regarding the cleaning of power-driven meat processing equipment.

Both the YWN and the CLC disagreed with the Department's decision not to implement at this time the NIOSH Report recommendation to limit the student-learner and apprentice exemption contained in HO 10 to retail, wholesale, and service industries.

After carefully reviewing the comments, the Department has decided to implement the proposal as written with the following modifications. The Department is adding poultry scissors and shears to the list of prohibited power-driven meat processing machines listed in § 570.61(a)(4) in recognition that the HO now covers poultry processing. The Department is also revising § 570.61(a)(7), which for many years has prohibited 16- and 17-year-olds from handlifting or handcarrying any carcass or half carcass of beef, pork or horse, to include carcasses or half carcasses of buffalo and deer. This revision would also expand the current prohibitions involving quarter carcasses of beef and horse to include buffalo. These revisions are necessitated by the expansion of the prohibitions of HO 10 to include the processing of such animals. Finally, the Department is adding a statement to § 570.61(a)(4) to clarify that the limited exemption to HO 11 which permits 16- and 17-year-olds to operate certain lightweight, small capacity, portable counter-top power-driven food mixers (*see* § 570.62(b)(1)) would not apply when the equipment is adapted—through the use of various attachments—to perform functions other than mixing, or to process meat or poultry products because of the prohibitions of HO 10. This modification is discussed in more detail further in the section of this preamble that addresses HO 11.

The Department appreciates the concerns of the FMI and the Council, but must reiterate that the number and severity of occupational injuries suffered by youth who operate or clean power-driven meat slicers do not justify allowing youth to operate or clean such equipment. The Department notes that, since publishing the NPRM, it has investigated the serious injuries of at least ten more young workers who operated or cleaned such equipment.

The Department also recognizes the concerns of the YWN and CLC over the Department's decision not to limit the student-learner and apprentice exemption contained in HO 10 at this time. As noted in the NPRM, the Department believes that before any changes to the existing student-learner and apprentice exemptions are made, it is important to consider and develop criteria for determining when student-learner and apprentice exemptions are appropriate. As mentioned, the Department issued an ANPRM, in conjunction with and on the same day as the NPRM, to solicit public comment on this important issue.

The Department appreciates the YWN's recommendation that HO 10 should be expanded to cover seafood processing occupations, but notes that no data was submitted regarding the level of youth employment in that industry or the injury rates experienced by that industry.

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 prohibits the employment of such youth in the occupation of setting up or adjusting a "cooky" 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 (*see* NIOSH Report, page 48). 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 (*see* NIOSH Report, page 49).

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, counter-top mixers.

The Department proposed to implement the Report's 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 held after the release of the Report with various stakeholders, including representatives of the full-service and quick-service restaurant industries, 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 proposed 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 ½ 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 (*see* § 570.33(e) (new)).

The Department also proposed to incorporate into § 570.62 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 proposed 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 also proposed to change the word *cooky* in § 570.62(a)(2) to *cookie* to reflect the more common spelling of that word.

The Department received five comments regarding this proposal. The FMI, Council, AFL–CIO, and YWN all supported adoption of the Department's enforcement position allowing 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. No comments were received opposing this proposal.

The FMI, Council, and AFL–CIO also supported the proposal to adopt the Department's long-standing enforcement position permitting 16- and 17-year-olds to operate—but not set-up, adjust, repair, oil, or clean—certain power-driven pizza dough rollers. The YWN opposed this proposal, stating "[a]bsent any concrete information on injury data, and on the specific size, make, or models under consideration as possible examples, we disagree with this proposal at this time." The YWN also endorsed the NIOSH Report recommendation that more intensive surveillance of pertinent injuries and deaths resulting from the operation of power-driven bakery machines be conducted should the Department adopt these proposals.

The CLC opposed this proposal and reiterated its concerns about the Department's use of its prosecutorial discretion to establish enforcement positions in the administration and enforcement of the child labor provisions of the FLSA.

The Department carefully considered all the comments and has decided to adopt the proposal with one clarifying modification. The Department wishes to make it clear that the exemption contained in § 570.62(b)(1) (new) that permits 16- and 17-year-olds to operate certain lightweight, small capacity, portable counter-top power-driven food mixers would not apply when the equipment is adapted—through the use of various attachments—to perform functions other than mixing, or to process meat or poultry products because of the prohibitions of HO 10 (Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering) (*see* § 570.61, old and new). It is important to note that the functions of such mixers, as well as how they are addressed by HO 10 and HO 11, change when different "attachments" are used. For example, a "mixer" as discussed in § 570.62(b)(1) would become a "grinder" prohibited by HO 10 (*see* § 570.61(a)(4)) when the grinding attachment is in use. As per the provisions of § 570.61(a)(4), it would not matter if products other than meat—such as vegetables or cheese—were being processed. The Department is including this information in both § 570.62(b)(1) and § 570.61(a)(4)) to avoid confusion and facilitate compliance.

The Department appreciates the concerns of the YWN and CLC regarding the use of certain power-driven pizza dough rollers, but again notes that its enforcement experience indicates that when employers properly apply all the provisions of the enforcement position—which have been included in the proposed limited exemption—16- and 17-year-olds can safely operate such equipment. The Department also notes, as it has stated previously in this Final Rule, that its limited and public exercise of its prosecutorial discretion is an efficient and permissible tool available to the Secretary in the administration of the child labor provisions of the FLSA.

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 Compactor and Baler Act was enacted on August 6, 1996 (Pub. L. 104–174). This legislation amended the FLSA by adding 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 these standards are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd St., Fourth Floor, New York, NY 10036. The telephone number for ANSI is (212) 642–4900 and its Web site is located at *http://www.ansi.org.* In addition, these standards are available for inspection at the National Archives and Records Administration (NARA). 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.* These standards are also available for inspection 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. The telephone number for the Occupational Safety and Health Administration's Docket Office is (202) 693–2350 and its Web site is located at *http://dockets.osha.gov.*

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. Prohibited machines include those indoor-types of power-driven trash compactors equipped with built-in carts that detach from the compactor to facilitate disposal of the compacted waste. With this type of machine, an attendant wheels the cart to the dumpster, empties the cart into the dumpster, and then wheels the cart back to the compactor where it is reattached. Also included would be "public use" waste receptacles—often found at airports and other large complexes—that include compaction equipment that allow the public to dispose of refuse and then automatically processed the waste at predetermined intervals.

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, noted that there still remained one class of balers and compactors that falls outside of the scope of HO 12—those machines that are designed or used exclusively to process materials other than paper. 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" (*see* NIOSH Report, page 50).

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 agreed with the NIOSH Report recommendation regarding the scope of the HO and proposed 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). The exemption would not apply to balers and compactors that are not designed or used to process paper or cardboard as such equipment may not be considered scrap paper balers or paper box compactors as required by the Compactor and Baler Act.

The 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.

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 included input from NIOSH, indicated 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.

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 (*see* NIOSH Report, page 50). 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, or if any other requirement of the limited exemption contained in FLSA section 13(c)(5) was not met, 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 proposed 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 issued an ANPRM, in conjunction with and on the same day as the NPRM, that requested information from the public on this issue.

The Department received three comments on this proposal. The brief comments of the AFL–CIO stated that it "strongly supports the DOL's proposal to extend prohibitions to include operating, loading and unloading balers and compactors designed or used to process materials other than paper." The YWN was equally brief, stating "[t]he Network strongly agrees with this proposed change."

The CLC "welcomed" the expansion of the prohibitions of HO 12 to include balers and compactors designed or used to process materials other than paper. It states that the Department did not address the NIOSH Report's third recommendation dealing with HO 12 regarding the importance of enforcing the requirements of FLSA section 13(c)(5) that balers and compactors being loaded by 16- and 17-year-olds meet the designated ANSI standards. The CLC also cited additional ANSI standards that touch upon equipment used in the waste disposal and recycling industries and questioned why these are not incorporated into HO 12. The CLC also was concerned that the ANSI standards are copyright-protected and that employers must either purchase them from the American National

Standards Institute or visit a designated OSHA office to view them. It also expressed concerns that employers may have difficulty interpreting the ANSI standards. Finally, the CLC disapproved of the Department's decision to not revisit the limited exemption currently contained in HO 12 for student-learners and apprentices.

No comments were received regarding 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 has carefully reviewed the comments and has decided to adopt the proposal, but with one modification concerning recently issued ANSI Standards and a revision to the section heading. The Department disagrees with the CLC's comment that it failed to address NIOSH's third recommendation and notes that the recommendation clearly reads that the Department should "continue to emphasize enforcement positions of the Compactor and Baler Act requiring balers to conform to construction and operational standards that greatly reduce exposure to hazardous energy." As noted in the NPRM and again in this Final Rule, the Department considers this statement to be an endorsement of its administration and enforcement of HO 12 and agreed to continue this important activity.

The Department notes that when the Compactor and Baler Act was enacted, Congress took considerable pains to ensure that the legislation contained appropriate safeguards that would provide young workers with necessary protections while ensuring that the employers of such youth could achieve and maintain compliance. During this process, Congress solicited input from the Department, NIOSH, employers, employer associations, and employee associations. The result was, as discussed earlier, that the Compactor and Baler Act required that before 16- and 17-year-olds could load such equipment, the scrap paper baler had to meet Standard ANSI Z245.5–1990 and the paper box compactor had to meet Standard ANSI Z245.2–1992. Congress could have chosen to include other standards—earlier versions of those ANSI standards the CLC now suggests the Department should include in HO 12—but it did not.

The Department believes Congress was aware that such standards are copyright protected and available to the public only at a cost or for reviewing at an appropriate library. The Department's enforcement experience confirms that employers have many ways of ensuring that, should they wish to take advantage of the limited exception contained in FLSA section 13(c)(5), their balers and compactors comply with the appropriate ANSI standard. Such employers can consult with the manufacturer of the equipment, the supplier of the equipment, the owner of the equipment if the equipment is leased, industry and/or employer associations, OSHA, and safety engineering consultants. No employer or employer association, when commenting on the 1999 or the 2007 NPRM, reported that it was difficult or expensive to determine that their balers and/or compactors met or failed to meet the appropriate ANSI standards.

Congress also provided the Secretary of Labor with flexibility when administering FLSA section 13(c)(5) by allowing balers and compactors to meet any additional standards adopted by ANSI if certified by the Secretary to be at least as protective of the safety of minors as the standards contained in the Compactor and Baler Act. The Department interprets this provision as permitting it to incorporate only more recent versions of Standard ANSI Z245.5–1990 and Standard ANSI Z245.2–1992—the two standards contained in the original legislation. The Department followed this interpretation when it amended HO 12 and added Standards ANSI Z245.5–1997 and ANSI Z245.2–1997 in 2004 (*see* 69 FR 75396) and again when promulgating this Final Rule.

The Department's review of Standard ANSI Z245.2–2004 has found it to be as protective of the safety of minors as Standard ANSI Z245.2–1992, and the Department's review of Standard ANSI Z245.5–2004 has found it be as protective of the safety of minors as Standard ANSI Z245.5–1990.

The NPRM notified the public that the Department intended to update HO 12 to include the 2004 ANSI standards for compactors and balers, and no comments were received as to whether the standards identified in the NPRM were as protective of minors as the standards listed in the Compactor and Baler Act. After the 2007 NPRM was published, ANSI adopted two new standards related to balers and compactors: Standard ANSI Z245.2–2008 (Stationary Compactors—Safety Requirements for Installation, Maintenance, and Operations) and Standard ANSI Z245.5–2008 (Baling Equipment—Safety Requirements for Installation, Maintenance, and Operations). The Department's review of these new Standards, which included input from NIOSH, concluded that the 2008 ANSI Standards are also as protective as those cited in the Compactor and Baler Act. Therefore, the Department has decided to also incorporate the 2008 ANSI standards into this Final Rule. The Secretary, in promulgating this Final Rule, hereby certifies that Standard ANSI Z245.2–2004 and Standard ANSI Z245.2–2008 are as protective of the safety of minors as Standard ANSI Z245.2–1992 and that Standard ANSI Z245.5–2004 and Standard ANSI Z245.5–2008 are as protective of the safety of minors as Standard ANSI Z245.5–1990. Accordingly, these four newer standards are included in the Final Rule. The Department has also decided to provide a table listing all the applicable ANSI Standards in § 570.63(c)(1)(iv)(A).

The Department has decided to revise the title of HO 12 to reflect that, under the Final Rule, it will prohibit occupations involved in the operation of all balers and compactors, including those that do not process any paper products. Accordingly, the title has been revised as follows: Occupations involved in the operation of balers, compactors, and paper-products machines (Order 12).

As noted earlier, FLSA section 13(c)(5) and § 570.63(c)(1)(iv) require that before a 16- or 17-year-old employee may load a baler or compactor subject to HO 12, his or her employer must first post a notice on the equipment stating that: (1) The baler or compactor meets the named applicable ANSI standard; (2) sixteen- and 17-year-old employees may only load the baler or compactor; and (3) any employee under the age of 18 may not operate or unload the baler or compactor. The Department recognizes the importance of these posting requirements in the administration of section 13(c)(5) and addressed this issue in detail in the preamble to the Final Rule published in the **Federal Register** on December 16, 2004 (69 FR 75382).

Since publication of the 2007 NPRM, the Department has received several inquiries regarding how these posting requirements impact employers of youth who do not own or control the baler or compactor that is available for use by their employees. In certain situations, such as at shopping malls, industrial parks, office buildings, or military bases, multiple employers may have access to and use "community" balers and compactors that the facilities manager or owner has made available to the tenants or contractors. In these situations, the Department has determined that it is not necessary for every employer (tenant) that wishes to take advantage of the loading exemption to post a notice on

the communal equipment as required by FLSA section 13(c)(5). The facilities manager or owner, or the owner of the equipment, may make the necessary postings and satisfy each employer's (tenant's) posting obligations under the exemption. But the employer (tenant) must exercise due vigilance, for should the notice be inaccurate or incomplete—*i.e.,* the baler or compactor fails to meet the appropriate ANSI standard, or the notice fails to fully identify the appropriate ANSI standard—the burden of compliance remains with the employer (tenant) of any youth who loaded the equipment. An incomplete or inaccurate posting by the facilities manager or owner will not relieve an employer from being charged with a violation of HO 12 or assessed a child labor civil money penalty. Employers that avail themselves of the provisions of the loading exemption contained in FLSA section 13(c)(5) and rely on the accuracy of notices posted by others cannot delegate their compliance obligations imposed by that exemption.

Finally, the Department notes that the CLC takes exception to the Department not taking any action on the NIOSH Report recommendation regarding the limited exemption contained in HO 12 for student-learners and apprentices. As the Report recommends that the limited exception contained in HO 12 for apprentices and student-learners be retained, the Department's decision not to address that issue is in full agreement with that recommendation.

K. Occupations Involved in the Operation of Circular Saws, Band Saws, and Guillotine Shears (Order 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 series 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 series 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 NIOSH 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 performs 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" (*see* NIOSH Report, page 56). 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; for example, abrasive cutting disks do not have visible notches or teeth, but they perform the same function. 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 involved workers under 18 years of age (*see* NIOSH Report, page 57). 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 proposed 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—devices that are almost never found on such equipment. The current § 570.65(a)(2) would be redesignated 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 also proposed 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 proposed 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.

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 proposed to take no action concerning the apprenticeship and student-learner exemptions to certain HOs at this time.

The Department received three comments on this proposal. The YWN stated that it "strongly agrees with this change." The AFL–CIO supported the proposal and suggested that "abrasive cutting discs" be added to the list of prohibited equipment. Such discs were mentioned in the NIOSH Report as cutting equipment that falls outside the prohibitions of HO 14. The CLC stated that it "welcomes" the proposed inclusion of chain saws, wood chippers, and reciprocating saws but also "sees no reason for DOL's failure to include abrasive cutting discs as well." The CLC also disagreed with the Department's decision not to address the issue of student-learners and apprentices in this Final Rule.

The Department has carefully reviewed the comments and has decided to adopt the proposal with one modification. The Department appreciates the comments of the AFL–CIO and the CLC concerning the omission of abrasive cutting discs from the list of prohibited equipment contained in HO 14. The Department notes that although NIOSH did not include injury data specific to the operation of abrasive cutting discs, NIOSH did report that the potential contact with the moving disk of an abrasive cutting tool does put operators at risk. The Department has decided to add abrasive cutting discs to the list of machines prohibited by HO 14 because it would be in keeping with the NIOSH recommendation and will provide important protections to working youth. The Department has defined *abrasive cutting disc* to mean a machine equipped with a disc embedded with abrasive materials used for cutting materials.

The Department once again notes that it has requested public comment on the issue of exemptions for student-learners and apprentices in the ANPRM that was published in conjunction with, and on the same day as, the NPRM.

L. Additional Recommendations of the Report

The NIOSH 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 accepted those recommendations and proposed 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 proposed 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 exemptions are appropriate. Accordingly, the Department issued an ANPRM, in conjunction with and on the same day as the NPRM, that sought information from the public on this and other issues.

Only the CLC commented on this proposal, expressing its disappointment that the Department has decided not to address recommendations regarding the limited exemptions provided for student-learner and apprentices at this time.

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 administrating and enforcing 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 proposed 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 the NPRM and discussed earlier in this document. The proposed revisions to subpart G were as follows:

1. Section 570.103(c) states that there are only four specific child labor exemptions contained in the FLSA, and only one of them, concerning the delivery of newspapers to the consumer, applies to the minimum wage and overtime requirements of the Act as well. Congress has created four additional exemptions to the nonagricultural 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 governs Departmental rulemaking.

The Department proposed to revise § 570.120 to reflect the 1995 change in the process for issuing and revising HOs. The Department also proposed, 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.

The Department proposed 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 was proposed to be included in §§ 570.127-.130.

6. The Department proposed 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 were 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 proposed 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 proposed 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 in 1996 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, proposed 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 proposed 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 proposed to redesignate this section as § 570.142.

No comments were received on these proposals to amend Subpart G. The Department has decided to adopt the above proposals as written, with three exceptions. The Department is slightly modifying the proposed revisions to § 570.122 so as to incorporate guidance provided by the **Federal Register.** This modification does not change the content of the Department's original proposal. In addition, the Department will not implement its proposal to reserve §§ 570.131 through 570.139, again at the direction of the **Federal Register.**

Finally, on May 21, 2008, after publication of the NPRM, the Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110–233, was signed into law. This Act, among other things, amends section 16(e) of the Fair Labor Standards Act by increasing the maximum permissible civil money penalty an employer may be assessed for child labor violations that cause the death or serious injury of a young worker. FLSA Section 16(e) now states that any person who violates the provisions of FLSA sections 12 or 13(c), relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed $11,000 for each employee who was the subject of such a violation. This same section also permits the assessment of a penalty not to exceed $50,000 with regard to each violation that causes the death or serious injury of any employee under 18 years of age. That penalty may be doubled up to $100,000 if the violation is determined to be a repeated or willful violation. Accordingly, the Department is revising the proposed § 570.140 (as redesignated as discussed in paragraph 7 above) to incorporate the provisions of GINA. The provisions of GINA and the impact they have on this rulemaking are more fully discussed later in Section O of this preamble.

N. Miscellaneous Matters, 29 CFR Part 570

The Department proposed 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).

The Department has decided to adopt this proposal as written. Only the CLC commented on this proposal, incorrectly referring to it as "correcting a typographical error." The word "operations" was the word used by the Department when HO 8 was first enacted in 1950 and its use was appropriate for the time. The Department's replacing of that word with "operation" reflects the current usage of the word.

The Department has made minor, nonsubstantive changes to the proposed § 570.119 to better explain the purpose of § 570.33. In addition, the Department has updated references made in § 570.102 and in Footnote 21, which is cited in § 570.111. These changes were necessitated by the other revisions made in subpart G. Typographical and grammatical errors in the proposed regulatory text were also corrected.

Finally, pursuant to guidance provided by the **Federal Register**, the Department is issuing the proposed §§ 570.35a and 570.35b as §§ 570.36 and 570.37 and redesignating existing §§ 570.36 and 570.37 as §§ 570.38 and 570.39, respectively.

O. Civil Money Penalties; 29 CFR Part 579

Section 16(e) of the FLSA subjects any person who violates the child labor provisions of the Act to civil money penalties. On May 21, 2008, the Genetic Information Nondiscrimination Act of 2008 (GINA) (Pub. L. 110–233) was enacted into law. GINA, among other things, amended FLSA section 16(e) so that any person who violates the provisions of sections 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil money penalty not to exceed $11,000 for each employee who was the subject of such a violation. In addition, GINA also permits the assessment of a civil money penalty not to exceed $50,000 with regard to each violation that caused the death or serious injury of any employee under the age of 18 years. That penalty may be doubled, up to $100,000, when such violation is determined by the Department to be a repeated or willful violation. These changes in the law became effective May 21, 2008.

As mentioned above, the NPRM proposed to revise § 570.127 and redesignate it as § 570.140. In addition to taking these steps, the Final Rule will incorporate the provisions of GINA into (new) § 570.140. The Final Rule will also revise those provisions of 29 CFR part 579 relevant to civil monetary penalties in order to incorporate the provisions of this recent statutory amendment into the regulations.

The Department is incorporating the child labor civil money penalty provisions of the GINA amendments into this Final Rule without prior notice and opportunity for public comment because it has for good cause found, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), that these procedural requirements are unnecessary with respect to these particular regulatory changes. The regulatory changes in (new) § 570.140 and Part 579 implement the recent legislation that revised the civil monetary penalties that may be assessed under section 16(e) of the FLSA. In bringing the regulations into conformity with the statutory amendments, the Department is not exercising any interpretative authority. Accordingly, the Department is incorporating the provisions of the statutory amendments into the Final Rule without notice and comment.

Specifically, the Department is revising § 579.1(a) to incorporate the

provisions of section 16(e) of the FLSA as revised by GINA. The Department is also revising the definitions section in § 579.2 to include the terms *serious injury, repeated violations,* and *willful violations.*

GINA amended FLSA section 16(e) to define *serious injury* as (1) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation); (2) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or (3) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

Although GINA does not define the terms *repeated violations* and *willful violations,* those terms already have been defined by the Wage and Hour Division (*see* 29 CFR 578.3(b) and (c)), and are currently applied, pursuant to section 16(e) of the Act, in the assessment of civil money penalties for repeated and willful violations of sections 6 and 7 of the FLSA. Applying those definitions to civil money penalties under 29 CFR part 579, an employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections shall be deemed to be *repeated:* (1) Where the employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or (2) where a court or other tribunal has made a finding that an employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

For purposes of the assessment of civil money penalties under 29 CFR part 579, an employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections shall be deemed to be *willful* where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful. In addition, for purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful. For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

Finally, the Department is also revising § 579.5, sections (a) and (e), to note that FLSA section 16(e) references both sections 12 and 13(c) when discussing the types of child labor violations that are subject to the assessment of civil money penalties.

IV. Paperwork Reduction Act

In accordance with requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, the Department seeks to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the agency. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule (*see* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8). The NPRM published in the **Federal Register** on April 17, 2007 (72 FR 19337) invited comments on the information collection burdens imposed by these regulations. No comments were received regarding the information paperwork burden estimates.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number (*see* 5 CFR 1320.6). The Department submitted the information collections contained in § 570.37 (previously proposed as § 570.35b) of this rule to the OMB for approval, and OMB approved them under OMB Control Number 1215–0208. The approval expires on May 31, 2013, unless extended by OMB. A copy of the information collection request can be obtained at *http://www.RegInfo.gov* or by contacting the Wage and Hour Division as shown in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Circumstances Necessitating Collection: The Department has created a new 29 CFR 570.37 that describes the conditions that 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 requires 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 periods that will not interfere with the minor's schooling and conditions that will not interfere with the minor's health and well-being.

FLSA section 11(c) requires all employers covered by the 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 Reg. 3 WSP provisions, § 570.37(b)(2) requires a local public or private school system to file with the Administrator of the Wage and Hour Division 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 regulations 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* § 570.37(b)(3)(iv)). The regulation also requires 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 regulation requires a school system operating a WSP to keep a copy of the written participation agreement for each student enrolled in the WSP at the student's school. Employers of WSP participants are also required to keep a copy of the written participation agreement for each student employed. These agreements shall be maintained for 3 years from the date of the student's

enrollment in the WSP (*see* § 570.37(b)(4)(ii)).

Purpose and Use: WSP Application: Under the regulations, a local school system shall file a letter of application requesting the Administrator of the Wage and Hour Division to approve a WSP that permits the employment of 14- and 15-year-olds under conditions that Reg. 3 would otherwise prohibit. The Department will evaluate the information to determine if the program meets the requirements specified in the regulation, in order to respond to the request.

Written Participation Agreement: The school system administering the WSP and each applicable employer shall separately maintain a copy of the written participation agreement for each student. The written agreement shall be signed by the teacher-coordinator, the employer, and the student. In addition, the student's parent or guardian shall either sign or otherwise provide consent for the participation agreement to be valid. The written participation agreement shall be 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 the Department will use these records to document the validity of the WSP and that the 14- and 15-year-old students were employed in accordance with the special WSP rules.

Information Collection Burdens

Total Number of Respondents: 1530 (30 school districts and 1500 employers).

Total Number of Responses: 3030 (30 WSP applications, 1500 school district written participation agreements, 1500 employer written participation agreements).

Total Reporting and Recordkeeping Burden Hours: 1586.

Total Dollar Cost Burden: $14.

The DOL has slightly increased the total burden hour estimate from 1585 hours to 1586 to align the data with what appears in the General Services Administration, Regulatory Information Service Center and the OMB, Office of Information and Regulatory Affairs Combined Information System (ROCIS) used to track the burdens imposed by Federal government information collections. This difference is due to differences in how initial Departmental efforts and ROCIS dealt with rounding issues. The Department has also increased the dollar cost from $13 to $14 to account for increased postage costs since publication of the NPRM.

V. Executive Order 12866; Regulatory Flexibility

This Final 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 rule. However, because this 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 PRA being imposed with the enactment of the new work-study program 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 notes 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 reports on its Web site (*see http://www.cdc.gov/niosh/topics/youth*) that in 2007, an estimated 48,600 work-related injuries and illnesses among youth 15 to 17 years of age were treated in hospital emergency departments. As an estimated one-third of work-related injuries are seen in emergency departments, it is likely that approximately 146,000 youth sustain work-related injuries and illnesses each year. 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 rule to be 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 revises the child labor regulations in response to a statutory amendment enacted by the Congress that permits certain youth between 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 the Reg. 3 occupations standards and both 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.

The implementation of revised 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 changes made by the agency since this subpart was last revised in 1971, will simply provide compliance guidance on the child labor provisions detailed in earlier subparts of 570 and therefore imposes no economic costs.

The additional changes being implemented are also expected to have little or no direct cost impact. The 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 an intellectual or creative nature, lifeguarding, and the loading of personal hand tools onto motor vehicles, are being added to the list of permitted occupations. The revision of several of the nonagricultural HOs—implementing specific recommendations made by NIOSH or that arise from the Department's enforcement experience—will, in all but one instance involving the use of certain counter-top mixers (HO 11), require employers to assign older workers to perform tasks that previously may have been performed by 16- and 17-year-olds.

Revisions resulting from the NIOSH recommendations include the expansion of HO 4 to prohibit the employment of minors in forest fire fighting and fire prevention activities and in timber tract and forestry service occupations; 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 the result of NIOSH Report recommendations. The Department's enforcement experience led it to incorporate into the regulations 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, based on its enforcement experience, amending HO 11 to incorporate the Department's long-standing position permitting 16- and 17-year-olds, under certain conditions, to operate certain pizza-dough rollers, and expanding HO 14 to prohibit the employment of minors to operate wood chippers and reciprocating saws.

The Department has incorporated certain provisions of the Genetic Information Nondiscrimination Act of 2008 (GINA) into 29 CFR parts 570 and 579 to implement the legislation, which revised the civil monetary penalties that may be assessed under section 16(e) of the FLSA. The regulatory changes that implement these statutory changes do no more than conform the previously-existing regulations to the recent statutory amendments and do not impose any economic costs on employers that are required to comply with the provisions of sections 12 and 13(c) of the FLSA. GINA, effective May 21, 2008, increased the maximum civil money penalty that may be assessed for violations that cause the death or serious injury of a minor from $11,000 to $50,000. GINA also permits a doubling of the civil money penalty up to $100,000 when such violations are determined to be willful or repeated.

The Department believes that implementation of the Final 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 creation, for example, of a limited exemption for certain work-study programs, allowing youth to be employed in work of an intellectual or creative nature, and allowing youth to be employed in those permitted occupations listed in § 570.34(a) to be performed in additional industries, rather than just in retail, food service, and gasoline service establishments.

Although, as mentioned above, some employers would need to replace younger workers with older workers, the impact would be minimal as relatively few minors are currently employed to perform these occupations. But the Department believes that these changes are important as they are essential to fulfilling its charge of keeping working youth safe by prohibiting occupations that are particularly 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 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 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 rule is not a "major rule" 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.

While the impact that these regulatory changes will have on most affected entities has already been discussed, even those entities that are most heavily impacted should each spend an average of less than $1500 to comply with the new requirements of this rule. Specifically, the Department believes school districts sponsoring a WSP will incur the greatest additional costs. An analysis of the time it will take to prepare the application and written training agreements for a WSP and the associated recordkeeping suggests these educational institutions will each spend an average of about 52.5 hours more to comply with this Final Rule than might otherwise be spent to establish a similar work-study program. The Department associates no additional costs for the workplace observation requirement to ensure compliance with the FLSA child labor provisions, because such monitoring will normally be conducted when school staff visit the workplace to see whether educational objectives are being met. Absent any specific data on compensation of the persons who will actually perform the work to ensure

compliance, the DOL has estimated hourly costs this rule will impose on WSP sponsor schools by increasing the October 2009 average annual hourly rate for production or nonsupervisory workers on educational and health services payrolls of $19.59 by 40 percent to account for the value of fringe benefits (*see* The Employment Situation: December 2009, DOL, Bureau of Labor Statistics, January 2010, Table B–3, *http://www.bls.gov/news.release/archives/empsit_01082010.pdf*). The Department then multiplied this rate, which includes fringe benefits, by 52.5 hours. Accordingly, the DOL estimates WSP sponsor school districts will incur an average of $1440 (rounded) in additional compliance costs. (52.5 hours x $19.59 hourly rate x 1.4 fringe benefits factor.) As previously noted, the Department expects 30 school districts will have a WSP.

The costs imposed by this rule should not be significant for any single entity, and they do not affect a substantial number of small entities in a way that would require an analysis under the Regulatory Flexibility Act. At the time the NPRM was published, the Department certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration (SBA). Therefore, no Initial Regulatory Flexibility Analysis was required. The Department received no comments raising concerns about the initial certification. For the reasons discussed in this preamble, the Department has similarly concluded and certified to the SBA Office of Advocacy Chief Counsel that this Final Rule is not expected to have a significant economic impact on a substantial number of small entities in a manner that would require a Final Regulatory Flexibility Analysis.

VI. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this 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

This rule does not have federalism implications as outlined in E.O. 13132 regarding federalism. The 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 rule was reviewed under the terms of E.O. 13175 and determined not to have "tribal implications." The 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 certifies that this 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 rule is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866. In addition, although this rule impacts the child labor 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 rule 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 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 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 rule 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 rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. The 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.

List of Subjects in 29 CFR Part 579

Child labor, Law enforcement, Penalties.

Signed at Washington, DC, this 10th day of May, 2010.

Nancy J. Leppink,

Deputy Administrator, Wage and Hour Division.

■ For the reasons set out in the preamble, the Department amends Title 29, parts 570 and 579, 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 is revised to read as follows:

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

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

Subpart C—Employment of Minors Between 14 and 16 Years of Age (Child Labor Reg. 3)

Sec.

§ 570.31 Secretary's determinations concerning the employment of minors 14 and 15 years of age.
§ 570.32 Effect of this subpart.
§ 570.33 Occupations that are prohibited to minors 14 and 15 years of age.
§ 570.34 Occupations that may be performed by minors 14 and 15 years of age.

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

* * * * *

§ 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, as amended. 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 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, all-terrain vehicles, 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 as permitted by § 570.34(i).

(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 and 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. Prohibited youth peddling also includes such promotion activities as the holding, wearing, or waving of signs, merchandise, costumes, sandwich boards, or placards in order to attract potential customers, except when performed inside of, or directly in front of, the employer's establishment providing the product, service, or event being advertised. This provision does not prohibit a young salesperson from conducting sales for his or her employer on property controlled by the employer that is out of doors but may properly be considered part of the employer's establishment. Youth may conduct sales in such employer exterior facilities, whether temporary or permanent, as garden centers, sidewalk sales, and parking lot sales, when employed by that establishment. 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 in 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 an intellectual 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. Minors are also permitted to occasionally enter freezers momentarily to retrieve items in conjunction with restocking or food preparation.

(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 are not 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 paragraph (l):

Permitted lifeguard duties 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 (if, in addition to being certified as a lifeguard, the 15-year-old is also properly certified as a swimming instructor by the American Red Cross or some other recognized certifying organization), 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 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, ponds, quarries, 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 eighth 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. The employment of youth under this section must comply with the other sections of this subpart, including the hours and time of day standards established by § 570.35.

(3) *Definitions.* As used in this paragraph (m):

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. In addition, each driver transporting the young workers must hold a State driver's license valid for the type of driving involved and, if the driver is under the age of 18, his or her employment must comply with the provisions of § 570.52.

§ 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) *Definitions.* As used in this section:

Outside school hours means such periods as before and after school hours, holidays, summer vacations, weekends, and any other day or part of a day when school is not in session as determined by the local public school district in which the minor resides when employed. Summer school sessions, held in addition to the regularly scheduled school year, are considered to be *outside of school hours.*

School hours refers to the hours that the local public school district where the minor resides while employed is in session during the regularly scheduled school year.

Week means a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods—that is identical to the workweek the employer establishes for the employee under § 778.105 of this title.

Week when school is in session refers to any week the local public school district where the minor resides while employed is in session and students are required to attend for at least one day or partial day.

(c) *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, unless the youth is required, by state or local law

or ordinance, or by court order, to attend another school.

(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 § 570.36.

(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 § 570.37.

§§ 570.36 and 570.37 [Redesignated as §§ 570.38 and 570.39]

■ 3. Redesignate §§ 570.36 and 570.37 as §§ 570.38 and 570.39, respectively.

§ 570.35a [Redesignated as § 570.36]

■ 4. Redesignate § 570.35a as § 570.36.

■ 5. Revise paragraph (c)(3) introductory text of newly redesignated § 570.36 to read as follows:

§ 570.36 Work experience and career exploration program.

* * * * *

(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.

* * * * *

■ 6. Add a new § 570.37 to read as follows:

§ 570.37 Work-study program.

(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 child labor 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 to confirm that minors participating in the work-study program are employed in compliance with all applicable provisions of this part and section 6 of the Fair Labor Standards Act. Such confirmation shall be noted in any letters of application filed by the superintendent of the public or private school system in accordance with paragraph (b)(2) of this section when seeking continuance of its work-study program.

(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 class-room 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 child labor 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.

(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.

(The information collection requirements contained in § 570.37 were approved by the OMB under Control No. 1215–0208.)

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

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

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

■ 8. Section 570.54 is revised to read as follows:

§ 570.54 Forest fire fighting and forest fire prevention occupations, timber tract occupations, forestry service 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 fire fighting and forest fire prevention, in timber tracts, in forestry services, 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 when not prohibited by any other section of this subpart:

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

(2) Work in the construction, operation, repair, or maintenance of living and administrative quarters, including logging camps and fire fighting base camps.

(3) Work in the repair or maintenance of roads, railroads or flumes and work in construction and maintenance of telephone lines, but only if the minors are not engaged in the operation of power-driven machinery, the handling or use of explosives, the felling or bucking of timber, the collecting or transporting of logs, or work on trestles.

(4) The following tasks in forest fire prevention *provided* none of these tasks may be performed in conjunction with or in support of efforts to extinguish a forest fire: the clearing of fire trails or roads; the construction, maintenance, and patrolling of fire lines; the piling and burning of slash; the maintaining of fire fighting equipment; and acting as a fire lookout or fire patrolman.

(5) Work related to forest marketing and forest economics when performed away from the forest.

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

(7) 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 this section.

(8) The following additional exceptions apply to the operation of a permanent sawmill or the operation of any lath mill, shingle mill, or cooperage stock mill, but not to a portable sawmill. In addition, the following exceptions do not apply to work which entails entering the sawmill building, except for those minors whose employment meets the requirements of the limited exemptions discussed in §§ 570.34(m) and 570.54(c):

(i) Straightening, marking, or tallying lumber on the dry chain or the dry drop sorter.

(ii) Pulling lumber from the dry chain, *except* minors under 16 years of age may not pull lumber from the dry chain as such youth are prohibited from operating or tending power-driven machinery by § 570.33(e) of this part.

(iii) Clean-up in the lumberyard.

(iv) Piling, handling, or shipping of cooperage stock in yards or storage sheds other than operating or assisting in the operation of power-driven equipment; *except* minors under 16 years of age may not perform shipping duties as they are prohibited from employment in occupations in connection with the transportation of property by rail, highway, air, water, pipeline, or other means by § 570.33(n)(1) of this part.

(v) Clerical work in yards or shipping sheds, such as done by ordermen, tally-men, and shipping clerks.

(vi) Clean-up work outside shake and shingle mills, except when the mill is in operation.

(vii) Splitting shakes manually from precut and split blocks with a froe and mallet, except inside the mill building or cover.

(viii) Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover.

(ix) Manual loading of 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, *except* minors under 16 years of age may not load bundles of shingles or shakes into trucks or railroad cars as they are prohibited from loading and unloading goods or property onto or from motor vehicles, railroad cars, or conveyors by § 570.33(k) of this part.

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

All occupations in forest fire fighting and forest fire prevention shall include the controlling and extinguishing of fires, the wetting down of areas or extinguishing of spot fires, and the patrolling of burned areas to assure the fire has been extinguished. The term shall also include the following tasks when performed in conjunction with, or in support of, efforts to extinguish a forest fire: the piling and burning of slash; the clearing of fire trails or roads; the construction, maintenance, and patrolling of fire lines; acting as a fire lookout or fire patrolman; and the maintaining of fire fighting equipment. The prohibition concerning the employment of youth in forest fire fighting and fire prevention applies to all forest and timber tract locations, logging operations, and sawmill operations, including all buildings located within such areas.

All occupations in forestry services shall mean all work involved in the support of timber production, wood technology, forestry economics and marketing, and forest protection. The term includes such services as timber cruising, surveying, or logging-engineering parties; estimating timber; timber valuation; forest pest control; forest fire fighting and forest fire prevention as defined in this section; and reforestation. The term shall not include work in forest nurseries, establishments primarily engaged in growing trees for purposes of reforestation. The term shall not include the gathering of forest products such as 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.

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 of 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.

All occupations in timber tracts means all work performed in or about establishments that cultivate, manage or sell standing timber. The term includes work performed in timber culture, timber tracts, timber-stand improvement, and forest fire fighting and fire prevention. It includes work on tree farms, except those tree farm establishments that meet the definition of agriculture contained in 29 U.S.C. 203(f).

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 includes 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.

Portable sawmill shall mean a sawmilling operation where no office or repair or maintenance shop is ordinarily maintained, and any lumberyard operated in conjunction with the sawmill is used only for the temporary storage of green lumber.

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 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.

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)(8) 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.

■ 9. In § 570.55, paragraph (b) is 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:

(i) 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

(ii) 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.

* * * * *

■ 10. In § 570.58, paragraphs (a) and (b) are 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. Tending such equipment includes assisting in the hoisting tasks being performed by the equipment.

(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. Tending such equipment includes assisting in the hoisting tasks being performed by the equipment.

(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, backhoes, front-end loaders, 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.

* * * * *

■ 11. In § 570.59, the section heading is revised to read as follows:

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

* * * * *

■ 12. In § 570.61, the section heading and paragraphs (a)(4), (a)(7), (b), and (c)(1) are 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, poultry scissors or shears; 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). *Except,* the provisions of this subsection shall not apply to the operation of those lightweight, small capacity, portable, countertop mixers discussed in § 570.62(b)(1) of this chapter when used as a mixer to process materials other than meat or poultry.

* * * * *

(7) All occupations involving the handlifting or handcarrying any carcass or half carcass of beef, pork, horse, deer, or buffalo, or any quarter carcass of beef, horse, or buffalo.

(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.

* * * * *

■ 13. In § 570.62, paragraph (a)(2) is revised, and a new paragraph (b) is 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. *Except,* this exception shall not apply when the mixer is used, with or without attachments, to process meat or poultry products as prohibited by § 570.61(a)(4).

(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.

■ 14. In § 570.63, the section heading and paragraphs (a)(2), (b) are revised, paragraphs (a)(3) and (4) are added, and paragraph (c)(1)(iv)(A) is revised to read as follows:

§ 570.63 Occupations involved in the operation of balers, compactors, and paper-products machines (Order 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* (ANSI S245.5–1990) 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* (ANSI Z245.2–1992) 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* (ANSI Z245.5–1997), the American National Standard Institute's Standard ANSI Z245.5–2004 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements for Installation, Maintenance and Operation* (ANSI Z245.5–2004), and the American National Standard Institute's Standard ANSI Z245.5–2008 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements* (ANSI Z245.5–2008) 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* (ANSI Z245.2–1997), the American National Standard Institute's Standard ANSI Z245.2–2004 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements for Installation, Maintenance and*

Operation (ANSI Z245.2–2004), and the American National Standard Institute's Standard ANSI Z245.2–2008 *American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements for Installation, Maintenance and Operation* (ANSI Z245.2–2008) 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 Standard 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), 25 West 43rd St., Fourth Floor, New York, NY 10036. The telephone number for ANSI is (212) 642–4900 and its Web site is located at *http://www.ansi.org.* In addition, these standards are available for inspection at the National Archives and Records Administration (NARA). 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.* These standards are also available for inspection 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. The telephone number for the Occupational Safety and Health Administration's Docket Office is (202) 693–2350 and its Web site is located at *http://dockets.osha.gov.*

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 remanufacturing or converting paper or pulp into a finished product, including preparing such materials for recycling; or 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.

(c)(1) * * *

(iv) * * *

(A)(*1*) That the scrap paper baler or compactor meets the industry safety standard applicable to the machine, as specified in paragraph (b) of this section and displayed in the following table.

In order for employers to take advantage of the limited exception discussed in this section, the *scrap paper baler* must meet one of the following ANSI Standards:	In order for employers to take advantage of the limited exception discussed in this section, the *paper box compactor* must meet one of the following ANSI Standards:
ANSI Standard Z245.5–1990	ANSI Standard Z245.2–1992.
ANSI Standard Z245.5–1997	ANSI Standard Z245.2–1997.
ANSI Standard Z245.5–2004	ANSI Standard Z245.2–2004.
ANSI Standard Z245.5–2008	ANSI Standard Z245.2–2008.

(*2*) The notice shall completely identify the appropriate ANSI standard.

* * * * *

■ 15. In § 570.65, the section heading and paragraph (a)(2) are revised, paragraph (a)(3) is added, and paragraph (b) is revised to read as follows:

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

(a) * * *

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

(i) Chain saws.

(ii) Reciprocating saws.

(iii) Wood chippers.

(iv) Abrasive cutting discs.

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

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

Abrasive cutting disc shall mean a machine equipped with a disc embedded with abrasive materials used for cutting materials.

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

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

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

■ 17. Section 570.102 is revised to read as follows:

§ 570.102. General scope of statutory provisions.

The most important of the child labor provisions are contained in sections 12(a), 12(c), and 3(l) of the Act. Section 12(a) provides that no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any goods produced in an establishment in or about which oppressive child labor was employed within 30 days before removal of the goods. The full text of this subsection is set forth in § 570.104 and its terms are discussed in §§ 570.105 to 570.111, inclusive. Section 12(c) prohibits any employer from employing oppressive child labor in interstate or foreign commerce or in the production of goods for such commerce. The text and discussion of this provision appear in §§ 570.112 and 570.113. Section 3(l) of the Act, which defines the term "oppressive child labor," is set forth in § 570.117 and its provisions are discussed in §§ 570.118 to 570.121, inclusive. It will further be noted that the Act provides various specific exemptions from the foregoing provisions which are set forth and discussed in §§ 570.122 to 570.130, inclusive.

■ 18. In § 570.103, paragraph (c) is 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.[3] Apart from 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)[4] of the Act applies to the child labor provisions as well as the wage and hours provisions.

§ 570.111 [Amended]

■ 19. In § 570.111, footnote 21 is revised to read "However, section 12(a) contains a provision relieving innocent purchasers from liability thereunder provided certain conditions are met. For a discussion of this provision, *see* § 570.141."

■ 20. Sections 570.118 through 570.120 are revised to read as follows:

* * * * *

§ 570.118 Sixteen-year minimum.

§ 570.119 Fourteen-year minimum.

§ 570.120 Eighteen-year minimum.

* * * * *

§ 570.118 Sixteen-year minimum.

The Act sets a 16-year-age minimum for employment in manufacturing or mining occupations, although 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 § 570.34 all 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, in order to provide clarity and assist employers in attaining compliance, has listed in § 570.33 certain prohibited occupations that, over the years, have been the frequent subject of questions or violations. The list of occupations in § 570.33 is not exhaustive. 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.

[3] Both of these exemptions are contained in section 13(d) of the FLSA.

[4] 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."

§ 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 the health or 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 amendment of the hazardous occupations orders have been effectuated under 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.

■ 21. Section 570.122 is revised to read as follows:

§ 570.122 General.

(a) Specific exemptions from the child labor requirements of the Act are provided for:

(1) Employment of children in agriculture outside of school hours for the school district where they live while so employed;

(2) Employment of employees engaged in the delivery of newspapers to the consumer;

(3) Employment of children as actors or performers in motion pictures or in theatrical, radio, or television productions;

(4) Employment by a parent or a person standing in a parent's place of his own child or a child in his custody under the age of sixteen years in any occupation other than manufacturing, mining, or an occupation found by the Secretary to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being.

(5) 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.

(6) 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.

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

(8) 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.

(b) When interpreting these provisions, the Secretary will be guided by the principle that such exemptions should be narrowly construed and their application limited to those employees who are plainly and unmistakably within their terms. Thus, the fact that a child's occupation involves the performance of work which is considered exempt from the child labor provisions will not relieve his employer from the requirements of section 12(c) or the producer, manufacturer, or dealer from the requirements of section 12(a) if, during the course of his employment, the child spends any part of his time doing work which is covered but not so exempt.

■ 22. The undesignated center heading preceding § 570.127 is removed.

■ 23. Section 570.127 is revised 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]

■ 24. Section 570.128 is redesignated as § 570.141 and a new § 570.128 is added to read as follows:

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

(a) Section 13(c)(5) of the FLSA provides for an exemption from the child labor 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 American National Standards Institute (ANSI) and identified in the statute, or a more recent ANSI standard that the Secretary of Labor has found, incorporated by reference (*see* § 570.63), and declared to be as protective of the safety of young workers as the ANSI standard named in the statute.

(b) These standards have been incorporated into these regulations by reference by the **Federal Register** as discussed in § 570.63. 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]

■ 25. Section 570.129 is redesignated as § 570.142

■ 26. A new § 570.129 is 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 30-mile radius of the minor's place of employment.

■ 27. A new § 570.130 is 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 limited 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.

■ 28. A new center heading and a new § 570.140 are 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 sections 12 or 13(c), relating to child labor, or any regulations issued under those sections, shall be subject to a civil penalty, not to exceed:

(1) $11,000, for each employee who was the subject of such a violation; or

(2) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is repeated or willful.

(c) 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 sections 12 or 13(c) 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 child labor 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.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 29. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 09–2009 (Nov. 16, 2009): Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division, 74 FR 58836; 104 Stat. 890 (28 U.S.C. 2461 note), as amended by 110 Stat. 1321–373 and 112 Stat. 3293.

■ 30. In § 579.1, paragraph (a) is revised to read as follows:

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989, the Omnibus Budget Reconciliation Act of 1990, the Compactor and Balers Safety Standards Modernization Act of 1996, and the Genetic Information Nondiscrimination Act of 2008, provides for the imposition of civil money penalties in the following manner:

(1)(i) Any person who violates the provisions of sections 212 or 213(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed:

(A) $11,000 for each employee who was the subject of such a violation; or

(B) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(ii) For purposes of paragraph (a)(1)(i)(B) of this section, the term "serious injury" means:

(A) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(B) Permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(C) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207 of the FLSA, relating to wages, shall be subject to a civil penalty not to exceed $1,100 for each such violation.

(3) In determining the amount of any penalty under section 216(e) of the FLSA, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under section 216(e) of the FLSA, when finally determined, may be:

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

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

(iii) Ordered by the court, in an action brought for a violation of section 215(a)(4) or a repeated or willful

violation of section 215(a)(2) of the FLSA, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under section 216(e) of the FLSA shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of the FLSA, sums collected as penalties pursuant to section 216(e) of the FLSA shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 202 of the Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes" (29 U.S.C. 9a). Civil penalties collected for violations of section 212 shall be deposited in the general fund of the Treasury.

* * * * *

■ 31. Section 579.2 is revised to read as follows:

§ 579.2 Definitions.

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

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

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

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

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

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

Department means the U.S. Department of Labor.

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

Repeated violations has two components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections shall be deemed to be *repeated* for purposes of this section:

(1) Where the employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or,

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

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

Serious injury means:

(1) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(2) Permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or,

(3) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

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

Willful violations under this section has several components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, shall be deemed to be *willful* for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful. In addition, for purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful. For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

■ 32. In § 579.5, paragraphs (a) and (e) are revised to read as follows:

§ 579.5 Determining the amount of the penalty and assessing the penalty.

(a) The administrative determination of the amount of the civil penalty for each employee who was the subject of a violation of section 12 or section 13(c) of the Act relating to child labor or of any regulation under those sections will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violations as provided in paragraphs (b) through (d) of this section. The provisions of section 16(e)(1)(A)(ii) of the Fair Labor Standards Act, regarding the assessment of civil penalties not to exceed $50,000 with regard to each violation that causes the death or serious injury of any employee under the age of 18 years, apply only to those violations that occur on or after May 21, 2008.

* * * * *

(e) An administrative determination of the amount of the civil money penalty for a particular violation or particular violations of section 12 or section 13(c) relating to child labor or any regulation issued under those sections shall become final 15 days after receipt of the notice of penalty by certified mail by the person so charged unless such person has, pursuant to § 580.6 filed with the Secretary an exception to the determination that the violation or violations for which the penalty is imposed occurred.

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