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Work period (days)	Maximum hours standards	
	Fire protection	Law enforcement
7	53	43

§ 553.231 Compensatory time off.

(a) Law enforcement and fire protection employees who are subject to the section 7(k) exemption may receive compensatory time off in lieu of overtime pay for hours worked in excess of the maximum for their work period as set forth in § 553.230. The rules for compensatory time off are set forth in §§ 553.20 through 553.28 of this part.

(b) Section 7(k) permits public agencies to balance the hours of work over an entire work period for law enforcement and fire protection employees. For example, if a firefighter's work period is 28 consecutive days, and he or she works 80 hours in each of the first two weeks, but only 52 hours in the third week, and does not work in the fourth week, no overtime compensation (in cash wages or compensatory time) would be required since the total hours worked do not exceed 212 for the work period. If the same firefighter had a work period of only 14 days, overtime compensation or compensatory time off would be due for 54 hours (160 minus 106 hours) in the first 14 day work period.

§ 553.232 Overtime pay requirements.

If a public agency pays employees subject to section 7(k) for overtime hours worked in cash wages rather than compensatory time off, such wages must be paid at one and one-half times the employees' regular rates of pay. In addition, employees who have accrued the maximum 480 hours of compensatory time must be paid cash wages of time and one-half their regular rates of pay for overtime hours in excess of the maximum for the work period set forth in § 553.230.

§ 553.233 "Regular rate" defined.

The rules for computing an employee's "regular rate", for purposes of the Act's overtime pay requirements, are set forth in part 778 of this title. These rules are applicable to employees for whom the section 7(k) exemption is

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claimed when overtime compensation is provided in cash wages. However, wherever the word "workweek" is used in part 778, the words "work period" should be substituted.

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

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SOURCE: 16 FR 7008, July 20, 1951, unless otherwise noted. Redesignated at 28 FR 1634, Feb. 21, 1963, and further redesignated and amended at 36 FR 25156, Dec. 29, 1971.

Subpart A—General

AUTHORITY: Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212.

SOURCE: 41 FR 26834, June 29, 1976, unless otherwise noted.

§ 570.1 Definitions.

As used in this part:

(a) *Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201-219).

(b) *Oppressive child labor* means employment of a minor in an occupation for which he does not meet the minimum age standards of the Act, as set forth in § 570.2 of this subpart.

(c) *Oppressive child labor age* means an age below the minimum age established under the Act for the occupation in which a minor is employed or in which his employment is contemplated.

(d) A *certificate of age* means a certificate as provided in § 570.5(b) (1) or (2) of this part.

(e) [Reserved]

(f) *Secretary* or *Secretary of Labor* means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(g) *Wage and Hour Division* means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

(h) *Administrator* means the Administrator of the Wage and Hour Division or his authorized representative.

(i) *State agency* means any officer, executive department, board, bureau or commission of a State or any division or unit thereof authorized to take action with respect to the application of laws relating to minors.

§ 570.2 Minimum age standards.

(a) *All occupations except in agriculture.* (1) The Act, in section 3(1), sets a general 16-year minimum age which applies to all employment subject to its child labor provisions in any occupation other than in agriculture, with the following exceptions:

(i) The Act authorizes the Secretary of Labor to provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufac-

turing and mining shall not be deemed to constitute oppressive child labor, if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being (see subpart C of this part); and

(ii) The Act sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being (see subpart E of this part).

(2) The Act exempts from its minimum age requirements the employment by a parent of his own child, or by a person standing in place of a parent of a child in his custody, except in occupations to which the 18-year age minimum applies and in manufacturing and mining occupations.

(b) *Occupations in agriculture.* The Act sets a 16-year age minimum for employment in agriculture during school hours for the school district in which the employed minor is living at the time, and also for employment in any occupation in agriculture that the Secretary of Labor finds and declares to be particularly hazardous except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person (see Subpart E-1 of this part). There is a minimum age requirement of 14 years generally for employment in agriculture outside school hours for the school district where such employee is living while so employed. However, (1) a minor 12 or 13 years of age may be so employed with written consent of his parent or person standing in place of his parent, or may work on a farm where such parent or person is also employed, and (2) a minor under 12 years of age may be employed by his parent or by a person standing in place of his parent on a farm owned or operated by such parent or person, or may be employed with consent of such parent or person on a farm where all employees are exempt from the minimum wage provisions by virtue of section 13(a) (6) (A) of the Act.

Subpart B—Certificates of Age

AUTHORITY: 29 U.S.C. 203(l), 211, 212.

SOURCE: 41 FR 26835, June 29, 1976, unless otherwise noted.

§ 570.5 Certificates of age and their effect.

(a) To protect an employer from unwitting violation of the minimum age standards under the Act, section 3(l) of the Act provides that "oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age." The provisions of this subpart provide for age certificates based on the best available documentary evidence of age. Certificates issued and effective pursuant to this subpart furnish an employer with proof of the age of a minor employee upon which he may rely in determining whether the minor is at least the minimum age for the occupation in which he is to be employed.

(b) The employment of any minor shall not be deemed to constitute oppressive child labor under the Act if his employer shall have on file an unexpired certificate, issued and held in accordance with this subpart, which shall be either:

(1) A Federal certificate of age, issued by a person authorized by the Administrator of the Wage and Hour Division, showing that such minor is above the oppressive child-labor age applicable to the occupation in which he is employed, or

(2) A State certificate, which may be in the form of and known as an age, employment, or working certificate or permit, issued by or under the supervision of a State agency in a State which has been designated for this purpose by the Administrator showing that such minor is above the oppressive child-labor age applicable to the occupation in which the minor is employed. States so designated are listed in § 570.9(a). Any such certificate shall have the force and effect specified in § 570.9.

(c) The prospective employer of a minor, in order to protect himself from unwitting violation of the Act, should obtain a certificate (as specified in paragraphs (b) (1) and (2) of this section) for the minor if there is any reason to believe that the minor's age may be below the applicable minimum for the occupation in which he is to be employed. Such certificate should always be obtained where the minor claims to be only 1 or 2 years above the applicable minimum age for the occupation in which he is to be employed. It should also be obtained for every minor claiming to be older than 2 years above the applicable minimum age if his physical appearance indicates that this may not be true.

§ 570.6 Contents and disposition of certificates of age.

(a) Except as provided in §§ 570.9 and 570.10, a certificate of age which shall have the effect specified in § 570.5 shall contain the following information:

- (1) Name and address of minor.
- (2) Place and date of birth of minor, together with a statement indicating the evidence on which this is based. The place of birth need not appear on the certificate if it is obtained and kept on file by the person issuing the certificate.
- (3) Sex of minor.
- (4) Signature of minor.
- (5) Name and address of minor's parent or person standing in place of parent. This information need not appear on the certificate if it is obtained and kept on file by the person issuing the certificate.
- (6) Name and address of employer, if minor is under 18.
- (7) Industry of employer, if minor is under 18.
- (8) Occupation of minor, if minor is under 18.
- (9) Signature of issuing officer.
- (10) Date and place of issuance.

(b)(1) We will send a certificate of age for a minor under 18 years of age to the prospective employer of the minor. That employer must keep the certificate on file at the minor's workplace. When the minor terminates employment, the employer must give the certificate to the minor. The minor may

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then present the previously issued certificate to future employers as proof of age as described in § 570.5.

(2) Whenever a certificate of age is issued for a minor 18 or 19 years of age it may be given to the minor by the person issuing the certificate. Every minor 18 or 19 years of age shall, upon entering employment, deliver his certificate of age to his employer for filing and upon the termination of the employment, the employer shall return the certificate to the minor.

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1215-0083)

[41 FR 26835, June 29, 1976, as amended at 49 FR 18294, Apr. 30, 1984; 69 FR 75402, Dec. 16, 2004]

§ 570.7 Documentary evidence required for issuance of a certificate of age.

(a) Except as otherwise provided in §§ 570.9 and 570.10, a certificate of age which shall have the effect specified in § 570.5 shall be issued only upon application of the minor desiring employment or of the prospective employer to the person authorized to issue such certificate and only after acceptable documentary evidence of age has been received, examined, and approved. Such evidence shall consist of one of the following to be required in the order of preference herein designated:

(1) A birth certificate or attested transcript thereof or a signed statement of the recorded date and place of birth, issued by a registrar of vital statistics or other officer charged with the duty of recording births.

(2) A record of baptism or attested transcript thereof showing the date and place of birth and date and place of baptism of the minor, or a bona fide contemporary record of the date and place of the minor's birth kept in the Bible in which the records of the births in the family of the minor are preserved, or other documentary evidence satisfactory to the Administrator, such as a passport showing the age of the minor, or a certificate of arrival in the United States issued by the United States immigration office and showing the age of the minor, or a life-insurance policy: *Provided*, That such other

documentary evidence has been in existence at least 1 year prior to the time it is offered as evidence: *And provided further*, That a school record of age or an affidavit of a parent or a person standing in place of a parent, or other written statement of age shall not be accepted except as specified in paragraph (a) (3) of this section;

(3) The school record or the school-census record of the age of the minor, together with the sworn statement of a parent or person standing in place of a parent as to the age of the minor and also a certificate signed by a physician specifying what in his opinion is the physical age of the minor. Such certificate shall show the height and weight of the minor and other facts concerning his physical development which were revealed by such examination and upon which the opinion of the physician as to the physical age of the minor is based. If the school or school-census record of age is not obtainable, the sworn statement of the parent or person standing in place of a parent as to the date of birth of the minor, together with a physician's certificate of age as hereinbefore specified, may be accepted as evidence of age.

(b) The officer issuing a certificate of age for a minor shall require the evidence of age specified in paragraph (a)(1) of this section in preference to that specified in paragraphs (a)(2) and (3) of this section, and shall not accept the evidence of age permitted by either subsequent paragraph unless he shall receive and file evidence that reasonable efforts have been made to obtain the preferred evidence required by the preceding paragraph or paragraphs before accepting any subsequently named evidence: *Provided*, That to avoid undue delay in the issuance of certificates, evidence specified in paragraph (a)(2) of this section may be accepted, or if such evidence is not available, evidence specified in paragraph (a)(3) of this section may be accepted if a verification of birth has been requested but has not been received from the appropriate bureau of vital statistics.

§ 570.8 Issuance of a Federal certificate of age.

A Federal certificate of age which shall have the effect specified in § 570.5

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shall be issued by a person authorized by the Administrator of the Wage and Hour Division and shall be issued in accordance with the provisions of §§ 570.6 and 570.7.

§ 570.9 States in which State certificates of age are accepted.

(a) The States in which age, employment, or working certificates or permits have been found by the Administrator to be issued by or under the supervision of a State agency substantially in accordance with the provisions of §§ 570.6 and 570.7 and which are designated as States in which certificates so issued shall have the force and effect specified in § 570.5, except as individual certificates may be revoked in accordance with § 570.11 of this subpart, are:

Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

(b) State certificates requiring conditions or restrictions additional to those required by this subpart shall not be deemed to be inconsistent herewith.

(c) The designation of a State under this section shall have force and effect indefinitely unless withdrawal of such designation is deemed desirable for the effective administration of the Act. No withdrawal of the designation of a State under this section shall make any certificate invalid if it was issued by or under the supervision of a State agency as herein provided prior to such withdrawal.

§ 570.10 Rules for certificates of age in the State of Alaska and the Territory of Guam.

The State of Alaska and the Territory of Guam are designated as States in which any of the following documents shall have the same effect as Federal certificates of age as specified in § 570.5:

(a) A birth certificate or attested transcript thereof, or a signed state-

ment of the recorded date and place of birth issued by a registrar of vital statistics or other officer charged with the duty of recording births, or

(b) A record of baptism or attested transcript thereof showing the date of birth of the minor, or

(c) With respect to the State of Alaska, a statement on the census records of the Bureau of Indian Affairs and signed by an administrative representative thereof showing the name, date of birth, and place of birth of the minor.

§ 570.11 Continued acceptability of certificates of age.

(a) Whenever a person duly authorized to make investigations under this Act shall obtain substantial evidence that the age of the minor as given on a certificate held by an employer subject to this Act is incorrect, he shall inform the employer and the minor of such evidence and of his intention to request through the appropriate channels that action be taken to establish the correct age of the minor and to determine the continued acceptability of the certificate as proof of age under the Act. The said authorized person shall request in writing through the appropriate channels that action be taken on the acceptability of the certificate as proof of age under the Fair Labor Standards Act and shall state the evidence of age of the minor which he has obtained and the reasons for such request. A copy of this request shall be sent to the Administrator of the Wage and Hour Division for further handling through the State agency responsible for the issuance of certificates, except that in those States where Federal certificates of age are issued, action necessary to establish the correct age of the minor and to revoke the certificate if it is found that the minor is under age shall be taken by the Administrator of the Wage and Hour Division or his designated representative.

(b) The Administrator shall have final authority in those States in which State certificates are accepted as proof of age under the Act for determining the continued acceptability of the certificate, and shall have final authority for such determination in those States in which Federal certificates of

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age are issued. When such determination has been made in any case, notice thereof shall be given to the employer and the minor. In those cases involving the continued acceptability of State certificates, the appropriate State agency and the official who issued the certificate shall also be notified.

§ 570.12 Revoked certificates of age.

A certificate which has been revoked as proof of age under the Act shall be of no force and effect under the Act after notice of such revocation.

PROVISIONS OF OTHER LAWS

§ 570.25 Effect on laws other than the Federal child labor standards.

No provision of this subpart shall under any circumstances justify or be construed to permit noncompliance with the provisions of any other Federal law or of any State law or municipal ordinance establishing higher standards than those established under this subpart.

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

AUTHORITY: 29 U.S.C. 203(l), 212.

§ 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 hereafter specified 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 subpart C.

In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees between 14 and 16 years of age 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.

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§ 570.33 Prohibited occupations for minors 14 and 15 years of age.

This subpart shall apply to all occupations other than the following:

(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;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations which the Secretary of Labor may, pursuant to section 3(1) of the Fair Labor Standards Act and Reorganization Plan No. 2, issued pursuant to the Reorganization Act of 1945, 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;

(f) 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 (including ticket office) work, or sales work, in connection with paragraphs (f)(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 minors 14 and 15 years of age are permitted to perform in retail, food service, and gasoline service establishments.

(a) This subpart shall apply to the following permitted occupations for minors between the ages of 14 and 16 employed by retail, food service, and gasoline service establishments.

(1) Office and clerical work, including the operation of office machines;

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

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(3) Price marking and tagging by hand or by machine, assembling orders, packing and shelving;

(4) Bagging and carrying out customers' orders;

(5) Errand and delivery work by foot, bicycle, and public transportation;

(6) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers, or cutters;

(7) 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;

(8) Work in connection with cars and trucks if confined to the following: Dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing; 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.

(9) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from those where the work described in paragraph (b)(7) of this section is performed;

(b) Paragraph (a) of this section shall not be construed to permit the application of this subpart to any of the following occupations in retail, food serv-

ice, and gasoline service establishments:

(1) All occupations listed in § 570.33 except occupations involving processing, operation of machines and work in rooms where processing and manufacturing take place which are permitted by paragraph (a) of this section;

(2) Work performed in or about boiler or engine rooms;

(3) Work in connection with maintenance or repair of the establishment, machines or equipment;

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

(5) Baking and cooking are prohibited except:

(i) Cooking is permitted with electric or gas grilles 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"); and

(ii) Cooking is 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;

(6) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers;

(7) Work in freezers and meat coolers and all work in the preparation of meats for sale except as described in paragraph (a)(9) of this section;

(8) Loading and unloading goods to and from trucks, railroad cars, or conveyors;

(9) All occupations in warehouses except office and clerical work.

[27 FR 4165, May 2, 1962. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971; 69 FR 75402, Dec. 16, 2004]

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

(a) Except as provided in paragraph (b) of this section, employment in any

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of the occupations to which this subpart is applicable shall be confined to the following periods:

- (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;
- (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) 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.

[32 FR 15478, Nov. 8, 1967. Redesignated and amended at 36 FR 25156, Dec. 29, 1971; 37 FR 5246, Mar. 11, 1972; 60 FR 19339, Apr. 17, 1995]

§ 570.35a Work experience and career exploration program.

(a) This section varies some provisions of this subpart for the employment of minors between 14 and 16 years of age who are enrolled in and employed pursuant to a school-supervised and school-administered work-experience and career exploration program which meets the requirements of paragraph (b) of this section, in the occupations permitted under paragraph (c) of this section, and for the periods and under the conditions specified in paragraph (d) 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-experience and career exploration program shall meet the educational standards established and approved by the State Educational Agency in the respective State.

(2) The State Educational Agency shall file with the Administrator of the Wage and Hour Division a letter of application for approval of a State 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 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 are the following:

(i) *Eligibility.* Any student aged 14 or 15 years who authoritative local school personnel identify as being able to benefit from the program shall be eligible to participate.

(ii) *Credits.* Students shall receive school credits for both in-school related instruction and on-the-job experience.

(iii) *Size.* Each program unit shall be a reasonable size. A unit of 12 to 25 students to one teacher-coordinator would be generally considered reasonable. Whether other sizes are reasonable

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would depend upon the individual facts and circumstances involved.

(iv) *Instructional schedule.* There shall be (a) allotted time for the required classroom instruction in those subjects necessary for graduation under the State's standards and (b) regularly scheduled classroom periods of instruction devoted to job-related and to employability skill instruction.

(v) *Teacher-coordinator.* Each program unit shall be under the supervision of a school official to be designated for the purpose of the program as a teacher-coordinator, who shall generally supervise the program and coordinate the work and education aspects of the program and make regularly scheduled visits to the work stations.

(vi) *Written training agreement.* No student shall participate in the program until there has been made a written training 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.

(vii) *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 consideration of the application.

(4) Every State Educational Agency having students in a program approved pursuant to the requirements of this section shall comply with the following:

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

(ii) *Records and reports.* The names and addresses of each school enrolling work experience and career exploration program students and the number of enrollees in each unit shall be kept at the State Educational Agency office. A copy of the written training agreement for each student participating in the program shall be kept in the State Educational Agency office or in the local educational office. The records required for this paragraph shall be kept for a period of 3 years from the date of enrollment in the program and shall be made available for inspection

or transcription to the representatives of the Administrator of the Wage and Hour Division.

(c) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be permitted in all occupations except the following:

(1) Manufacturing and mining.

(2) Occupations declared to be hazardous for the employment of minors between 16 and 18 years of age in subpart E of this part, and occupations in agriculture declared to be hazardous for employment of minors below the age of 16 in subpart E-1 of this part.

(3) Occupations other than those permitted under §§ 570.33 and 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.

(i) The Administrator's decision on whether to grant a special variation will be based on information provided in the application filed by the State Educational Agency, and/or any supplemental information that may be requested by the Administrator.

(ii) The Administrator's decision shall be in writing, and may designate specific equipment safeguards or other terms and conditions governing the work-activity approved by variation. If the request is denied, in whole or part, the reason(s) for the decision will be provided to the applicant, who may request reconsideration.

(iii) A special variation will be valid only during the period covered by an approved program, and must be renewed with the filing of a new program application.

(iv) The Administrator shall revoke or deny a special variation, in whole or

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in part, where there is reason to believe that program participants have been or will be employed contrary to terms and conditions specified for the variation, or these regulations, other provisions of the Fair Labor Standards Act, or otherwise in conditions detrimental to their health or well-being or schooling.

(v) Requests for special variations and related documentation will be available for examination in the Branch of Child Labor and Polygraph Standards, Wage and Hour Division, Room S3510, 200 Constitution Avenue, NW., Washington, DC 20210. Any interested person may oppose the granting of a special variation or may request reconsideration or revocation of a special variation. Such requests shall set forth reasons why the special variation should be denied or revoked.

(d) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be confined to not more than 23 hours in any 1 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. Insofar as these provisions are inconsistent with the provisions of § 570.35, this section shall be controlling.

(e) The employment of a minor enrolled in a program pursuant to the requirements of this section must not have the effect of displacing a worker employed in the establishment of the employer.

(f) Programs shall be in force and effect for a period of two (2) 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 approval.

(The information collection requirements contained in paragraphs (b)(3)(vi) and (4) were approved by the Office of Management and Budget under control number 1215-0121)

[40 FR 40801, Sept. 4, 1975; 40 FR 44130, Sept. 25, 1975; 47 FR 145, Jan. 5, 1982; 47 FR 28095, June 29, 1982, as amended at 49 FR 18294, Apr. 30, 1984; 60 FR 19339, Apr. 17, 1995]

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§ 570.36 Effect of a certificate of age under this subpart.

The employment of any minor in any of the occupations to which this subpart is applicable, if confined to the periods specified in § 570.35, shall not be deemed to constitute oppressive child labor within the meaning of the act if the employer shall have on file an unexpired certificate, issued in substantially the same manner as that provided for the issuance of certificates in subpart A of this part relating to certificates of age, certifying that such minor is of an age between 14 and 16 years.

[16 FR 7008, July 20, 1951. Redesignated at 27 FR 4165, May 2, 1962, and 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.37 Effect of this subpart on other laws.

No provision of this subpart shall under any circumstances justify or be construed to permit noncompliance with the wage and hour provisions of the act or with the provisions of any other Federal law or of any State law or municipal ordinance establishing higher standards than those established under this subpart.

[16 FR 7008, July 20, 1951. Redesignated at 27 FR 4165, May 2, 1962, and 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

Subpart D [Reserved]

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

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

NOTE: The provisions of this subpart declaring certain occupations to be particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being do not apply to employment in agriculture.

§ 570.50 General.

(a) *Higher standards.* Nothing in this subpart shall authorize non-compliance

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with any Federal or State law, regulation, or municipal ordinance establishing a higher standard. If more than one standard within this subpart applies to a single activity the higher standard shall be applicable.

(b) *Apprentices.* Some sections in this subpart contain an exemption for the employment of apprentices. Such an exemption shall apply only when: (1) The apprentice is employed in a craft recognized as an apprenticeable trade; (2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Bureau of Apprenticeship and Training of the United States Department of Labor as employed in accordance with the standards established by that Bureau, or is registered by a State agency as employed in accordance with the standards of the State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of labor to conform substantially with such Federal or State standards.

(c) *Student-learners.* Some sections in this subpart contain an exemption for the employment of student-learners. Such an exemption shall apply when:

(1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school and;

(2) Such student-learner is employed under a written agreement which provides:

(i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training;

(ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and

(iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

Each such written agreement shall contain the name of student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner, even though he is not yet 18 years of age.

[28 FR 3449, Apr. 9, 1963, as amended at 33 FR 12777, Sept. 10, 1968. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1).

(a) *Finding and declaration of fact.* The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components are particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being:

(1) All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in paragraph (a)(2) of this section) manufacturing or storing explosives or articles containing explosive components except where the occupation is performed in a "nonexplosives area" as defined in paragraph (b)(3) of this section.

(2) The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps

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when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

- (i) All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.
- (ii) All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.
- (iii) All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.
- (iv) All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.
- (v) All occupations involved in the loading, inspecting, packing, shipping and storage of blasting caps.

(b) *Definitions.* For the purpose of this section:

(1) The term *plant or establishment manufacturing or storing explosives or articles containing explosive component* means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

(2) The terms *explosives* and *articles containing explosive components* mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and explosives and explosive materials as defined in 18 U.S.C. 841(c)-(f) and the implementing regulations at 27 CFR part 555. The terms include any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, as well as all goods identified in the most recent list of explosive materials published by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice. This list is not intended to be all-inclusive and is updated and published annually in the FEDERAL REGISTER pursuant

to 18 U.S.C. 841(d). A copy of the most recent version of the list may be found through the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Web site at <http://www.atf.gov>.

(3) An area meeting all of the criteria in paragraphs (b)(3) (i) through (iv) of this section shall be deemed a "non-explosives area":

- (i) None of the work performed in the area involves the handling or use of explosives;
- (ii) The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;
- (iii) The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and
- (iv) Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria of paragraphs (b)(3) (i) through (iii) of this section.

[17 FR 4324, May 13, 1952. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971; 69 FR 75403, Dec. 16, 2004]

§ 570.52 Occupations of motor-vehicle driver and outside helper (Order 2).

(a) *Findings and declaration of fact.* Except as provided in paragraph (b) of this section, the occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in § 570.68(a) are particularly hazardous for the employment of minors between 16 and 18 years of age.

(b) *Exemption—Incidental and occasional driving by 17-year-olds.* Minors who are at least 17 years of age may drive automobiles and trucks on public roadways when all the following criteria are met:

- (1) The automobile or truck does not exceed 6,000 pounds gross vehicle weight, and the vehicle is equipped with a seat belt or similar restraining

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device for the driver and for any passengers and the employer has instructed the employee that such belts or other devices must be used;

(2) The driving is restricted to daylight hours;

(3) The minor holds a State license valid for the type of driving involved in the job performed and has no records of any moving violations at the time of hire;

(4) The minor has successfully completed a State-approved driver education course;

(5) The driving does not involve: 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 at any one time of more than three passengers, including the employees of the employer;

(6) The driving performed by the minor does not involve more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the minor's employer to a customer (except urgent, time-sensitive deliveries which are completely banned in paragraph (b)(5) of this section);

(7) The driving performed by the minor does not involve more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than the employees of the employer);

(8) The driving takes place within a thirty (30) mile radius of the minor's place of employment; and,

(9) The driving is only occasional and incidental to the employee's employment.

(c) *Definitions.* For the purpose of this section:

(1) The term *motor vehicle* shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.

(2) The term *driver* shall mean any individual who, in the course of employment, drives a motor vehicle at any time.

(3) The term *outside helper* shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.

(4) The term *gross vehicle weight* includes the truck chassis with lubricants, water and a full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload.

(5) The term *occasional and incidental* means no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

(6) The term *urgent, time-sensitive deliveries* means trips which, because of such factors as customer satisfaction, the rapid deterioration of the quality or change in temperature of the product, and/or economic incentives, are subject to time-lines, schedules, and/or turn-around times which might impel the driver to hurry in the completion of the delivery. Prohibited trips would include, but are not limited to, the delivery of pizzas and prepared foods to the customer; the delivery of materials under a deadline (such as deposits to a bank at closing); and the shuttling of passengers to and from transportation depots to meet transport schedules. *Urgent, time-sensitive deliveries* would not depend on the delivery's points of origin and termination, and would include the delivery of people and things to the employer's place of business as well as from that business to some other location.

[56 FR 58630, Nov. 20, 1991, as amended at 69 FR 75403, Dec. 16, 2004]

§ 570.53 Coal-mine occupations (Order 3).

(a) *Finding and declaration of fact.* All occupations in or about any coal mine, except the occupation of slate or other refuse picking at a picking table or picking chute in a tipple or breaker and occupations requiring the performance of duties solely in offices or in repair or maintenance shops located in the surface part of any coal-mining plant, are particularly hazardous for the employment of minors between 16 and 18 years of age.

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(b) *Definitions.* For the purpose of this section:

(1) The term *coal* shall mean any rank of coal including lignite, bituminous, and the anthracite coals.

(2) The term *all occupations in or about any coal mine* shall mean all types of work performed in any underground working, open-pit, or surface part of any coal-mining plant, that contribute to the extraction, grading, cleaning, or other handling of coal.

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.54 Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill (Order 4).

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

(1) Exceptions applying to logging:

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

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

(iii) Work in timber cruising, surveying, or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; 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 lookout or fire patrolman away from the actual logging operations: *Provided*, That the provisions of this paragraph shall not apply to the felling of bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles.

(iv) Peeling of fence posts, pulpwood, chemicalwood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging

occupations declared hazardous by this section.

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

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

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

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

(iii) Pulling lumber from the dry chain.

(iv) Clean-up in the lumberyard.

(v) Piling, handling, or shipping of cooperage stock in yards or storage sheds other than operating or assisting in the operation of power-driven equipment.

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

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

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

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

(x) 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.

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

(1) The term *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,

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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. The term shall not apply to work performed in timber culture, timber-stand improvement, or in emergency fire-fighting.

(2) The term *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, laths, 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 re-manufacturing departments of any sawmill, or in any planing mill or re-manufacturing plant not a part of a sawmill.

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963; 32 FR 6024, Apr. 15, 1967. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

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

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

(1) The occupation of operating power-driven woodworking machines, including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines but not including the placing of material on a moving chain

or in a hopper or slide for automatic feeding.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.

(3) The occupations of off-bearing from circular saws and from guillotine-action veneer clippers.

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

(1) The term *power-driven wood-working 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 or veneer.

(2) The term *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 material or refuse directly from a saw table or from the 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.

(c) *Exemptions.* This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.57 Exposure to radioactive substances and to ionizing radiations (Order 6).

(a) *Finding and declaration of fact.* The following occupations involving exposure to radioactive substances and to ionizing radiations are particularly hazardous and detrimental to health

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for minors between 16 and 18 years of age:

(1) Any work in any workroom in which (i) radium is stored or used in the manufacture of self-luminous compound, (ii) self-luminous compound is made, processed, or packaged, (iii) self-luminous compound is stored, used, or worked upon, (iv) incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged, (v) other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of table one of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," issued June 5, 1959.

(2) Any other work which involves exposure to ionizing radiations in excess of 0.5 rem per year.

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

(1) The term *self-luminous compound* shall mean any mixture of phosphorescent material and radium, mesothorium, or other radioactive element;

(2) The term *workroom* shall include the entire area bounded by walls of solid material and extending from floor to ceiling;

(3) The term *ionizing radiations* shall mean alpha and beta particles, electrons, protons, neutrons, gamma and X-ray and all other radiations which produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and X-ray.

[22 FR 3657, May 24, 1957, as amended at 26 FR 8885, Sept. 21, 1961. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

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

(a) *Finding 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 an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one ton capacity.

(2) Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

(3) Work of assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

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

(1) The term *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.

(2) The term *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.

(3) The term *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.

(4) The term *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.

(5) The term *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 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, 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 material.

(6) The term *manlift* shall mean a device intended for the conveyance of persons which 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.

(c) *Exception.* (1) This section shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over travel by the car.

(2) For the purpose of this exception the term *automatic elevator* shall mean

a passenger elevator, a freight elevator, or a combination passenger-freight elevator, the operation of which is controlled by pushbuttons in such a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

(3) For the purpose of this exception, the term *automatic signal operation elevator* shall mean an elevator which is started in response to the operation of a switch (such as a lever or pushbutton) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

[16 FR 7008, July 20, 1951, as amended at 20 FR 6386, Aug. 31, 1955. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963; 32 FR 15479, Nov. 7, 1967. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

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

(a) *Finding and declaration of fact.* The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines:

(i) All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

(ii) All pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

(iii) All bending machines, such as apron brakes and press brakes.

(iv) All hammering machines, such as drop hammers and power hammers.

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(v) All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

(b) *Definitions.* (1) The term *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.

(2) The term *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.

(3) The term *forming, punching, and shearing machines* shall mean power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching, and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

(c) *Exemptions.* This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

[16 FR 7008, July 20, 1951, as amended at 25 FR 9848, Oct. 14, 1960. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963. Redesignated at 36 FR 25156, Dec. 29, 1971]

§ 570.60 Occupations in connection with mining, other than coal (Order 9).

(a) *Finding and declaration of fact.* All occupations in connection with mining, other than coal, are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being and employment in such occupations is therefore prohibited under section 12 of the Fair Labor Standards Act, as amended, except the following:

(1) Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or

maintenance shops not located underground.

(2) Work in the operation and maintenance of living quarters.

(3) Work outside the mine in surveying, in the repair and maintenance of roads, and in general clean-up about the mine property such as clearing brush and digging drainage ditches.

(4) Work of track crews in the building and maintaining of sections of railroad track located in those areas of open-cut metal mines where mining and haulage activities are not being conducted at the time and place that such building and maintenance work is being done.

(5) Work in or about surface placer mining operations other than placer dredging operations and hydraulic placer mining operations.

(6) The following work in metal mills other than in mercury-recovery mills or mills using the cyanide process:

(i) Work involving the operation of jigs, sludge tables, flotation cells, or drier-filters;

(ii) Work of hand-sorting at picking table or picking belt;

(iii) General clean-up work:

Provided, however, That nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupations order issued by the Secretary of Labor.

(b) *Definitions.* As used in this section: The term *all occupations in connection with mining, other than coal* shall mean all work performed underground in mines and quarries; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing or cleaning operations performed upon the extracted minerals except where such operations are performed as a part of a manufacturing process. The term shall not include work performed in

subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries reduction plants, cement mills, plants where quarried stone is cut, sanded and further processed, or plants manufacturing clay glass or ceramic products. Neither shall the term include work performed in connection with coal mining, in petroleum production, in natural-gas production, nor in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes.

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963. Redesignated at 36 FR 25156, Dec. 29, 1971]

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

(a) *Findings and declaration of fact.* The following occupations in or about slaughtering and meat packing establishments, rendering plants, or wholesale, retail or service establishments are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being:

(1) All occupations on the killing floor, in curing cellars, and in hide cellars, except the work of messengers, runners, handtruckers, and similar occupations which require entering such workrooms or workplaces infrequently and for short periods of time.

(2) All occupations involved in the recovery of lard and oils, except packing and shipping of such products and the operation of lard-roll machines.

(3) All occupations involved in tanning or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

(4) All occupations involved in the operation or feeding of the following power-driven machines, including setting-up, adjusting, repairing, oiling, or cleaning such machines, regardless of the product being processed by these machines (including, for example, the

slicing in a retail delicatessen of meat, poultry, seafood, bread, vegetables, or cheese, etc.): Meat patty forming machines, meat and bone cutting saws, meat slicers, knives (except bacon-slicing machines), headsplitters, and guilotine 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).

(5) All boning occupations.

(6) All occupations that involve the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.

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

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

(1) The term *slaughtering and meat packing establishments* means places in or about which cattle, calves, hogs, sheep, lambs, goats, or horses are killed, butchered, or processed. The term also includes establishments which manufacture or process meat products or sausage casings from such animals.

(2) The term *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.

(3) The term *killing floor* includes a workroom, workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

(4) The term *curing cellar* includes a workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include a workroom or workplace solely where meats are smoked.

(5) The term *hide cellar* includes a workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

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(6) The term *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.

(7) The term *retail/wholesale or service establishments* includes establishments where meat or meat products are processed or handled, such as butcher shops, grocery stores, restaurants/fast-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 section (a) of this Order.

(c) *Exemptions.* This section shall not apply to:

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

(2) The employment of apprentices or student-learners under the conditions prescribed in § 570.50(b) and (c).

[56 FR 58631, Nov. 20, 1991]

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

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

(1) The occupations of operating, assisting to operate, or 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.

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

[17 FR 5610, June 21, 1952, as amended at 25 FR 9849, Oct. 14, 1960. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3449, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

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

(a) *Findings and declaration of fact.* The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operation or assisting to operate any of the following power-driven paper products machines:

(i) Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitring machine, corrugating and single-or-double facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap paper baler, paper box compactor, or vertical slotter.

(ii) Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those which do not involve hand feeding.

(b) *Definitions.* *Applicable ANSI Standard* means the American National Standard Institute's Standard ANSI Z245.5-1990 ("American National Standard for Refuse Collection, Processing, and Disposal—Baling Equipment—Safety Requirements") for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2-1992 ("American National Standard for Refuse Collection, Processing, and Disposal Equipment—Stationary Compactors—Safety Requirements") for paper box compactors. Additional applicable standards are the American National Standard Institute's Standard ANSI Z245.5-1997 ("American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements") for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2-1997 ("American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements") for paper box compactors, which the Secretary has certified

to be at least as protective of the safety of minors as Standard ANSI Z245.5-1990 for scrap paper balers or ANSI Z245.2-1992 for paper box compactors. The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. These ANSI standards are incorporated by reference in this paragraph and have the same force and effect as other standards in this part. Only the mandatory provisions (i.e., provisions containing the word "shall" or other mandatory language) of these standards are adopted as standards under this part. These standards are incorporated by reference as they exist on the date of the approval; if any changes are made in these standards which the Secretary finds to be as protective of the safety of minors as the current standards, the Secretary will publish a Notice of the change of standards in the FEDERAL REGISTER. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards are available for purchase from the American National Standards Institute (ANSI), 23 West 43rd St., Fourth Floor, New York, NY, 10036. In addition, these standards are available for inspection at the National Archives and Records Administration (NARA) and at the Occupational Safety and Health Administration's Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210, or any of its regional offices. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Operating or assisting to operate means all work which 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 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:

(1) All power-driven machines used in—(i) Remanufacturing or converting paper or pulp into a finished product, including preparing such materials for recycling; or

(ii) Preparing such materials for disposal.

(2) 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) *Exemptions.* (1) Sixteen- and 17-year-olds minors may load materials into, but not operate or unload, those scrap paper balers and paper box compactors that are safe for 16- and 17-year-old employees to load and cannot be operated while being loaded. For the purpose of this exemption, a scrap paper baler or a paper box compactor is considered to be safe for 16- and 17-year-old to load only if all of the following conditions are met:

(i) The scrap paper baler or paper box compactor meets the applicable ANSI standard (the employer must initially determine if the equipment meets the applicable ANSI standard, and the Administrator or his/her designee may make a determination when conducting an investigation of the employer);

(ii) The scrap paper baler or paper box compactor includes an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of

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employees who are 18 years of age or older;

(iii) The on-off switch of the scrap paper baler or paper box compactor is maintained in an off position when the machine is not in operation; and

(iv) The employer posts a notice on the scrap paper baler or paper box compactor (in a prominent position and easily visible to any person loading, operating, or unloading the machine) that includes and conveys all of the following information:

(A) That the scrap paper baler or compactor meets the industry safety standard applicable to the machine, as specified in paragraph (b)(5) of this section. The notice shall completely identify the appropriate ANSI standard.

(B) That sixteen- and 17-year-old employees may only load the scrap paper baler or paper box compactor.

(C) That no employee under the age of 18 may operate or unload the scrap paper baler or paper box compactor.

(2) This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

[56 FR 58632, Nov. 20, 1991, as amended at 69 FR 75403, Dec. 16, 2004]

§ 570.64 Occupations involved in the manufacture of brick, tile, and kindred products (Order 13).

(a) *Findings and declaration of fact.* The following occupations involved in the manufacture of clay construction products and of silica refractory products are particularly hazardous for the employment of minors between 16 and 18 years of age, and detrimental to their health and well-being.

(1) All work in or about establishments in which clay construction products are manufactured, except (i) work in storage and shipping; (ii) work in offices, laboratories, and storerooms; and (iii) work in the drying departments of plants manufacturing sewer pipe.

(2) All work in or about establishments in which silica brick or other silica refractories are manufactured, except work in offices.

(3) Nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupations order issued by the Secretary of Labor.

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(b) *Definitions.* (1) The term *clay construction products* shall mean the following clay products: Brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. The term shall not include the following non-structural-bearing clay products: Ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor shall the term include non-clay construction products such as sand-lime brick, glass brick, or non-clay refractories.

(2) The term *silica brick or other silica refractories* shall mean refractory products produced from raw materials containing free silica as their main constituent.

[21 FR 5773, Aug. 2, 1956, as amended at 23 FR 6240, Aug. 14, 1958. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3450, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14).

(a) *Findings and declaration of fact.* The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator or helper on the following power-driven fixed or portable machines except machines equipped with full automatic feed and ejection:

- (i) Circular saws.
- (ii) Band saws.
- (iii) Guillotine shears.

(2) The occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

(b) *Definitions.* (1) The term *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.

(2) The term *helper* shall mean a person who assists in the operation of a

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machine covered by this section by helping place materials into or remove them from the machine.

(3) The term *machines equipped with full automatic feed and ejection* shall mean machines covered by this Order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.

(4) The term *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.

(5) The term *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.

(6) The term *guillotine shear* shall mean a machine equipped with a movable 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.

(c) *Exemptions.* This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

[25 FR 9849, Oct. 14, 1960. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3450, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.66 Occupations involved in wrecking, demolition, and shipbreaking operations (Order 15).

(a) *Finding and declaration of fact.* All occupations in wrecking, demolition, and shipbreaking operations are particularly hazardous for the employment of minors between 16 and 18 years of age and detrimental to their health and well-being.

(b) *Definition.* The term *wrecking, demolition, and shipbreaking operations* shall mean all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building,

bridge, steeple, tower, chimney, other structure, ship or other vessel.

[25 FR 9850, Oct. 14, 1960. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3450, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.67 Occupations in roofing operations and on or about a roof (Order 16).

(a) *Finding and declaration of fact.* All occupations in roofing operations and all occupations on or about a roof are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health.

(b) *Definitions. On or about a roof* includes all work performed upon or in close proximity to a roof, including carpentry and metal work, alterations, additions, maintenance and repair, including painting and coating of existing roofs; the construction of the sheathing or base of roofs (wood or metal), including roof trusses or joists; gutter and downspout work; the installation and servicing of television and communication equipment such as cable and satellite dishes; the installation and servicing of heating, ventilation and air conditioning equipment or similar appliances attached to roofs; and any similar work that is required to be performed on or about roofs.

Roofing operations means all work performed in connection with the installation of roofs, including related metal work such as flashing, and applying weatherproofing materials and substances (such as waterproof membranes, tar, slag or pitch, asphalt prepared paper, tile, composite roofing materials, slate, metal, translucent materials, and shingles of asbestos, asphalt, wood or other materials) to roofs of buildings or other structures. The term also includes all jobs on the ground related to roofing operations such as roofing laborer, roofing helper, materials handler and tending a tar heater.

(c) *Exemptions.* This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

[27 FR 102, Jan. 5, 1962. Redesignated at 28 FR 1634, Feb. 21, 1963, and amended at 28 FR 3450, Apr. 9, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971; 69 FR 57404, Dec. 16, 2004]

§ 570.68 Occupations in excavation operations (Order 17).

(a) *Finding and declaration of fact.* The following occupations in excavation operations are particularly hazardous for the employment of persons between 16 and 18 years of age:

(1) Excavating, working in, or backfilling (refilling) trenches, except (i) manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or (ii) working in trenches that do not exceed four feet in depth at any point.

(2) Excavating for buildings or other structures or working in such excavations, except: (i) Manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or (ii) working in an excavation not exceeding such depth, or (iii) working in an excavation where the side walls are shored or sloped to the angle of repose.

(3) Working within tunnels prior to the completion of all driving and shoring operations.

(4) Working within shafts prior to the completion of all sinking and shoring operations.

(b) *Exemptions.* This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

[28 FR 3449, Apr. 9, 1963. Redesignated at 36 FR 25156, Dec. 29, 1971]

Subpart E-1—Occupations in Agriculture Particularly Hazardous for the Employment of Children Below the Age of 16

AUTHORITY: Secs. 12, 13, 18, 52 Stat. 1067, 1069, as amended; 29 U.S.C. 212, 213, 218.

§ 570.70 Purpose and scope.

(a) *Purpose.* Section 13(c)(2) of the Fair Labor Standards Act of 1938, as

amended (29 U.S.C. 213(c)(2)) states that the “provisions of section 12 [of the Act] relating to child labor shall apply to an employee below the age of 16 employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of 16, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.” The purpose of this subpart is to apply this statutory provision.

(b) *Exception.* This subpart shall not apply to the employment of a child below the age of 16 by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(c) *Statutory definitions.* As used in this subpart, the terms *agriculture*, *employer*, and *employ* have the same meanings as the identical terms contained in section 3 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203), which are as follows:

(1) *Agriculture* includes farming in all its branches and among other things includes the cultivation and tillage of soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(2) *Employer* includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State (except with respect to employees of a State or a political subdivision thereof, employed:

(i) In a hospital, institution, or school referred to in the last sentence of section (r) of the Act, or

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(ii) In the operation of a railway or carrier referred to in such sentence), or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(iii) *Employ* includes to suffer or permit to work.

[35 FR 221, Jan. 7, 1970, as amended at 35 FR 2822, Feb. 11, 1970. Redesignated at 36 FR 25156, Dec. 29, 1971]

§ 570.71 Occupations involved in agriculture.

(a) *Findings and declarations of fact as to specific occupations.* The following occupations in agriculture are particularly hazardous for the employment of children below the age of 16:

(1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(2) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

(iii) Power post-hole digger, power post driver, or nonwalking type rotary tiller.

(3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Trencher or earthmoving equipment;

(ii) Fork lift;

(iii) Potato combine; or

(iv) Power-driven circular, band, or chain saw.

(4) Working on a farm in a yard, pen, or stall occupied by a:

(i) Bull, boar, or stud horse maintained for breeding purposes; or

(ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)

(5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.

(6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.

(7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

(8) Working inside:

(i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

(ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(iii) A manure pit; or

(iv) A horizontal silo while operating a tractor for packing purposes.

(9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label;

(10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or

(11) Transporting, transferring, or applying anhydrous ammonia.

(b) *Occupational definitions.* In applying machinery, equipment, or facility terms used in paragraph (a) of this section, the Wage and Hour Division will be guided by the definitions contained in the current edition of *Agricultural Engineering*, a dictionary and handbook, Interstate Printers and Publishers, Danville, Ill. Copies of this dictionary and handbook are available for examination in Regional Offices of the Wage and Hour Division, U.S. Department of Labor.

[35 FR 221, Jan. 7, 1970. Redesignated at 36 FR 25156, Dec. 29, 1971]

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§ 570.72 Exemptions.

(a) *Student-learners.* The findings and declarations of fact in § 570.71(a) shall not apply to the employment of any child as vocational agriculture student-learner in any of the occupations described in paragraph (1), (2), (3), (4), (5), or (6) of § 570.71(a) when each of the following requirements are met:

(1) The student-learner is enrolled in a vocational education training program in agriculture under a recognized State or local educational authority, or in a substantially similar program conducted by a private school;

(2) Such student-learner is employed under a written agreement which provides; (i) that the work of the student-learner is incidental to his training; (ii) that such work shall be intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person; (iii) that safety instruction shall be given by the school and correlated by the employer with on-the-job training; and (iv) that a schedule of organized and progressive work processes to be performed on the job have been prepared;

(3) Such written agreement contains the name of the student-learner, and is signed by the employer and by a person authorized to represent the educational authority or school; and

(4) Copies of each such agreement are kept on file by both the educational authority or school and by the employer.

(b) *Federal Extension Service.* The findings and declarations of fact in § 570.71(a) shall not apply to the employment of a child under 16 years of age in those occupations in which he has successfully completed one or more training programs described in paragraph (b) (1), (2), or (3) of this section provided he has been instructed by his employer on safe and proper operation of the specific equipment he is to use; is continuously and closely supervised by the employer where feasible; or, where not feasible, in work such as cultivating, his safety is checked by the employer at least at midmorning, noon, and midafternoon.

(1) *4-H tractor operation program.* The child is qualified to be employed in an

occupation described in § 570.71(a)(1) provided:

(i) He is a 4-H member;

(ii) He is 14 years of age, or older;

(iii) He is familiar with the normal working hazards in agriculture;

(iv) He has completed a 10-hour training program which includes the following units from the manuals of the 4-H tractor program conducted by, or in accordance with the requirements of, the Cooperative Extension Service of a land grant university:

(a) *First-year Manual:*

Unit 1—Learning How to be Safe;

Unit 4—The Instrument Panel;

Unit 5—Controls for Your Tractor;

Unit 6—Daily Maintenance and Safety Check; and

Unit 7—Starting and Stopping Your Tractor;

(b) *Second-year Manual:*

Unit 1—Tractor Safety on the Farm;

(c) *Third-year Manual:*

Unit 1—Tractor Safety on the Highway;

Unit 3—Hitches, Power-take-off, and Hydraulic Controls;

(v) He has passed a written examination on tractor safety and has demonstrated his ability to operate a tractor safely with a two-wheeled trailed implement on a course similar to one of the 4-H Tractor Operator's Contest Courses; and

(vi) His employer has on file with the child's records kept pursuant to part 516 of this title (basically, name, address, and date of birth) a copy of a certificate acceptable by the Wage and Hour Division, signed by the leader who conducted the training program and by an Extension Agent of the Cooperative Extension Service of a land grant university to the effect that the child has completed all the requirements specified in paragraphs (b)(1) (i) through (v) of this section.

(2) *4-H machine operation program.* The child is qualified to be employed in an occupation described in § 570.71(a)(2) providing:

(i) He satisfies all the requirements specified in paragraphs (b)(2)(i) through (v) of this section;

(ii) He has completed an additional 10-hour training program on farm machinery safety, including 4-H Fourth-

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Year Manual, Unit 1, Safe Use of Farm Machinery;

(iii) He has passed a written and practical examination on safe machinery operation; and

(iv) His employer has on file with the child's records kept pursuant to part 516 of this title (basically, name, address, and date of birth) a copy of a certificate acceptable by the Wage and Hour Division, signed by the leader who conducted the training program and by an Extension Agent of the Cooperative Extension Service of a land grant university, to the effect that the child has completed all of the requirements specified in paragraphs (b)(2) (i) through (iii) of this section.

(3) *Tractor and machine operation program.* The child is qualified to be employed in an occupation described in §570.71(a) (1) and (2) providing:

(i) He is 14 years of age, or older;

(ii) He has completed a 4-hour orientation course familiarizing him with the normal working hazards in agriculture;

(iii) He has completed a 20-hour training program on safe operation of tractors and farm machinery, which covers all material specified in paragraphs (b) (1)(iv) and (2)(ii) of this section.

(iv) He has passed a written examination on tractor and farm machinery safety, and has demonstrated his ability to operate a tractor with a two-wheeled trailed implement on a course similar to a 4-H Tractor Operator's Contest Course, and to operate farm machinery safely.

(v) His employer has on file with the child's records kept pursuant to part 516 of this title (basically, name, address and date of birth) a copy of a certificate acceptable by the Wage and Hour Division, signed by the volunteer leader who conducted the training program and by an Extension Agent of the Cooperative Extension Service of a land grant university, to the effect that all of the requirements of paragraphs (b)(2) (i) through (iv) of this section have been met.

(c) *Vocational agriculture training.* The findings and declarations of fact in §570.71(a) shall not apply to the employment of a vocational agriculture student under 16 years of age in those

occupations in which he has successfully completed one or more training programs described in paragraph (c)(1) or (2) of this section and who has been instructed by his employer in the safe and proper operation of the specific equipment he is to use, who is continuously and closely supervised by his employer where feasible or, where not feasible, in work such as cultivating, whose safety is checked by the employer at least at midmorning, noon, and midafternoon, and who also satisfies whichever of the following program requirements are pertinent:

(1) *Tractor operation program.* The student is qualified to be employed in an occupation described in §570.71(a)(1) provided:

(i) He is 14 years of age, or older;

(ii) He is familiar with the normal working hazards in agriculture;

(iii) He has completed a 15-hour training program which includes the required units specified in the Vocational Agriculture Training Program in Safe Tractor Operation, outlined by the Office of Education, U.S. Department of Health, Education, and Welfare and acceptable by the U.S. Department of Labor. The training program is outlined in Special Paper No. 8, April 1969, prepared at Michigan State University, East Lansing, Mich., for the Office of Education. Copies of this training program outline are available for examination in the Regional Offices of the Wage and Hour Division, U.S. Department of Labor, and a copy may be obtained from the Office of Education, U.S. Department of Health, Education, and Welfare, Washington, DC 20202.

(iv) He has passed both a written test and a practical test on tractor safety including a demonstration of his ability to operate safely a tractor with a two-wheeled trailed implement on a test course similar to that described in the Vocational Agriculture Training Program in Safe Tractor Operation, outlined by the Office of Education, U.S. Department of Health, Education, and Welfare; and

(v) His employer has on file with the child's records kept pursuant to part 516 of this title (basically, name, address, and date of birth) a copy of a certificate acceptable by the Wage and

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Hour Division, signed by the Vocational Agriculture teacher who conducted the program to the effect that the student has completed all the requirements specified in paragraphs (c)(1)(i) through (iv) of this section.

(2) *Machinery operation program.* The student is qualified to be employed in an occupation described in paragraph (2) of § 570.71(a) provided he has completed the Tractor Operation Program described in paragraph (c)(1) of this section and:

(i) He has completed an additional 10-hour training program which includes the required units specified in the Vocational Agriculture Training Program in Safe Farm Machinery Operation, outlined by the Office of Education, U.S. Department of Health, Education, and Welfare and approved by the U.S. Department of Labor;

(ii) He has passed both a written test and a practical test on safe machinery operation similar to that described in the Vocational Agriculture Training Program in Safe Farm Machinery Operation, outlined by the Office of Education, U.S. Department of Health, Education, and Welfare; and

(iii) His employer has on file with the child's records kept pursuant to part 516 of this title (basically, name, address and date of birth) a copy of a certificate acceptable by the Wage and Hour Division, signed by the Vocational Agriculture teacher who conducted the program to the effect that student has completed all the requirements specified in paragraphs (c)(2)(i) and (ii) of this section.

(d) *Agency review.* The provisions of paragraphs (a), (b), and (c) of this section will be reviewed and reevaluated before January 1, 1972. In addition, determinations will be made as to whether the use of protective frames, crush resistant cabs, and other personal protective devices should be made a condition of these exemptions.

[35 FR 221, Jan. 7, 1970. Redesignated at 36 FR 25156, Dec. 29, 1971]

Subpart F [Reserved]

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

AUTHORITY: 52 Stat. 1060-1069, as amended; 29 U.S.C. 201-219.

GENERAL

§ 570.101 Introductory statement.

(a) This subpart discusses the meaning and scope of the child labor provisions contained in the Fair Labor Standards Act, as amended (hereinafter referred to as the Act). These provisions seek to protect the safety, health, well-being, and opportunities for schooling of youthful workers and authorize the Secretary of Labor to issue legally binding orders or regulations in certain instances and under certain conditions. The child labor provisions are found in sections 3(1), 11(b), 12, 13 (c) and (d), 15(a)(4), 16(a), and 18 of the Act. They are administered and enforced by the Secretary of Labor who has delegated to the Wage and Hour Division the duty of making investigations to obtain compliance, and of developing standards for the issuance of regulations and orders relating to: (1) Hazardous occupations, (2) employment of 14- and 15-year-old children, and (3) age certificates.

(b) The interpretations of the Secretary contained in this subpart indicate the construction of the law which will guide him in performing his duties until he is directed otherwise by authoritative rulings of the courts or until he shall subsequently decide that his prior interpretation is incorrect.

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 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 570.126, inclusive.

§ 570.103 Comparison with wage and hour provisions.

A comparison of the child labor provisions with the so-called wage and hours provisions contained in the Act discloses some important distinctions which should be mentioned.

(a) The child labor provisions contain no requirements in regard to wages. The wage and hours provisions, on the other hand, provide for minimum rates of pay for straight time and overtime pay at a rate not less than one and one-half times the regular rate of pay for overtime hours worked. Except as provided in certain exemptions contained in the Act, these rates are required to be paid all employees subject to the wage and hours provisions, regardless of their age or sex. The fact therefore, that the employment of a particular child is prohibited by the child labor provisions or that certain shipments or deliveries may be proscribed on account of such employment, does not relieve the employer of the duties imposed by the wage and hours provisions to compensate the child in accordance with those requirements.

(b) There are important differences between the child labor provisions and the wage and hours provisions with respect to their general coverage. As pointed out in § 570.114, two separate and basically different coverage provisions are contained in section 12 relating to child labor. One of these provi-

sions (section 12(c)), which applies to the employment by an employer of oppressive child labor in commerce or in the production of goods for commerce, is similar to the wage and hours coverage provisions, which include employees engaged in commerce or in the production of goods for commerce or employed in enterprises having employees so engaged. The other provision (section 12(a)), however, differs fundamentally in its basic concepts of coverage from the wage and hours provisions, as will be explained in §§ 570.104 to 570.111.

(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 four specific child labor exemptions of which only one applies to the minimum wage and overtime pay requirements as well. This is the exemption for employees engaged in the delivery of newspapers to the consumer.³ With this exception, 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.

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

COVERAGE OF SECTION 12(a)

§ 570.104 General.

Section 12(a) of the Act provides as follows:

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which

³Section 13(d) of the Act.

⁴Section 13(d) defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization".

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within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

In determining the applicability of this provision, consideration of the meaning of the terms used is necessary. These terms are discussed in §§ 570.105 to 570.111, inclusive.

§ 570.105 “Producer, manufacturer, or dealer”.

It will be observed that the prohibition of section 12(a) with respect to certain shipments or deliveries for shipment is confined to those made by producers, manufacturers, and dealers. The terms “producer, manufacturer, or dealer” used in this provision are not expressly defined by the statute. However, in view of the definition of “produced” in section 3(j), for purposes of this section a “producer” is considered to be one who engages in producing, manufacturing, handling or in any other manner working on goods in any State.⁵ Since manufacturing is considered a specialized form of production, the word “manufacturer” does not have as broad an application as the word “producer.” Manufacturing generally involves the transformation of raw materials or semifinished goods into new or different articles. A person may be considered a “manufacturer” even though his goods are made by hand, as is often true of products made by homeworkers. Moreover, it is immaterial whether manufacturing is his sole or main business. Thus, the term includes retailers who, in addition to

⁵For a discussion of the definition of “produced” as it relates to section 12(a), see § 570.108.

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retail selling, engage in such manufacturing activities as the making of slip-covers or curtains, the baking of bread, the making of candy, or the making of window frames. The word “dealer” refers to anyone who deals in goods (as defined in section 3(i) of the Act),⁶ including persons engaged in buying, selling, trading, distributing, delivering, etc. It includes middlemen, factors, brokers, commission merchants, wholesalers, retailers and the like.

§ 570.106 “Ship or deliver for shipment in commerce”.

(a) Section 12(a) forbids producers, manufacturers, and dealers to “ship or deliver for shipment in commerce” the goods referred to therein. A producer, manufacturer, or dealer may “ship” goods in commerce either by moving them himself in interstate or foreign commerce or by causing them to so move, as by delivery to a carrier.⁷ Thus, a baker “ships” his bread in commerce whether he carries it in his own truck across State lines or sends it by contract or common carrier to his customers in other States. The word “ship” must be applied in its ordinary meaning. For example, it does not apply to the transmission of telegraphic messages.⁸

(b) To “deliver for shipment in commerce” means to surrender the custody of goods to another under such circumstances that the person surrendering the goods knows or has reason to believe that the goods will later be shipped in commerce.⁹ Typical is the

⁶See § 570.107.

⁷Section 3(b) of the Act defines “commerce” to mean “trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.”

⁸*Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490.

⁹*Tobin v. Grant*, N. D. Calif., 79 Sup. 975 which was a suit for injunction by the Secretary of Labor against a manufacturer of books and book covers employing oppressive child labor. The facts showed that the manufactured articles sold by defendant to purchasers in the same State had an ultimate out-of-State destination which was manifest to defendant. The court construed the words “deliver for shipment in commerce” as sufficiently broad to cover this situation even

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case of a Detroit manufacturer who delivers his goods in Detroit to a distributor who, as the manufacturer is well aware, will ship the goods into another State. A delivery for shipment in commerce may also be made where raw materials are delivered by their producer to a manufacturer in the same State who converts them into new products which are later shipped across State lines. If the producer in such case is aware or has reason to believe that the finished products will ultimately be sent into another State, his delivery of the raw materials to the manufacturer is a delivery for shipment in commerce. Another example is a paper box manufacturer who ships a carton of boxes to a fresh fruit or vegetable packing shed within the same State, with knowledge or reason to believe that the boxes will there be filled with fruits or vegetables and shipped outside the State. In such case the box manufacturer has delivered the boxes for shipment in commerce.

§ 570.107 "Goods".¹⁰

(a) Section 12(a) prohibits the shipment or delivery for shipment in commerce of "any goods" produced in an establishment which were removed within 30 days of the employment there of oppressive child labor. It should be noted that the statute does not base the prohibition of section 12(a) upon the percentage of an establishment's output which is shipped in commerce.

(b) The Act furnishes its own definition of "goods" in section 3(i), as follows:

Goods means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

though the purchasers acquired title to the goods.

¹⁰The term *goods* is discussed in more detail in part 776 of this title (Interpretative Bulletin on the coverage of the wage and hours provisions) issued by the Administrator of the Wage and Hour Division.

The term includes such things as food-stuffs, clothing, machinery, printed materials, blueprints and also includes intangibles such as news, ideas, and intelligence. The statute expressly excludes goods after their delivery into the actual physical possession of an ultimate consumer other than a producer, manufacturer, or processor thereof. Accordingly, such a consumer may lawfully ship articles in his possession although they were ineligible for shipments (commonly called "hot goods") before he received them.¹¹

§ 570.108 "Produced".

The word "produced" as used in the Act is defined by section 3(j) to mean:

* * * produced, manufactured, mined, handled, or in any other manner worked on in any state; * * *¹²

(a) The prohibition of section 12(a) cannot apply to a shipment of goods unless those goods (including any part or ingredient thereof) were actually "produced" in and removed from an establishment where oppressive child labor was employed. This provision is applicable even though the under-age employee does not engage in the production of the goods themselves if somewhere in the establishment in or about which he is employed goods are "produced" which are subsequently shipped or delivered for shipment in commerce. In contrast to this restrictive requirement of section 12(a), it will be noted that the employees covered under the wage and hours provisions as engaged in the production of goods for commerce are not limited to those in or about establishments where such goods are being produced. If the requisite relationship¹³ to production

¹¹For a discussion of the exclusionary clause in section 3(i) of the Act, see *Powell et al. v. United States Cartridge Co.*, 70 S. CT. 755.

¹²The remaining portion of section 3(j) provides: " * * * and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State."

¹³See footnote 12.

of such goods is present, an employee is covered for wage and hours purposes regardless of whether his work brings him in or near any establishment where the goods are produced.¹⁴

(b) Since the first word in the definition of "produced" repeats the term being defined, it seems clear that the first word must carry the meaning that it has in everyday language. Goods are commonly spoken of as "produced" if they have been brought into being as a result of the application of work. The words "manufactured" and "mined" in the definition refer to special forms of production. The former term is generally applied to the products of industry where existing raw materials are transformed into new or different articles by the use of industrial methods, either by the aid of machinery or by manual operations. Mining is a type of productive activity involving the taking of materials from the ground, such as coal from a coal mine, oil from oil wells, or stone from quarries. The statute also defines the term "produced" to mean "handled" or "in any other manner work on."¹⁵ These words relate not only to operations carried on in the course of manufacturing, mining, or production as commonly described, but include as well all kinds of operations which prepare goods for their entry into the stream of commerce, without regard to whether the goods are to be further processed or are so-called "finished goods."¹⁶ Accordingly, warehouses, fruit and vegetable packing sheds, distribution yards, grain ele-

vators, etc., where goods are sorted, graded, stored, packed, labeled or otherwise handled or worked on in preparation for their shipment out of the State are producing establishments for purposes of section 12(a).¹⁷ However, the handling or working on goods, performed by employees of carriers which accomplishes the interstate transit or movement in commerce itself, does not constitute production under the Act.¹⁸

§ 570.109 "Establishment situated in the United States".

(a)(1) The statute does not expressly define "establishment." Accordingly, the term should be given a meaning which is not only consistent with its ordinary usage, but also designed to accomplish the general purposes of the Act. As normally used in business and in Government, the word "establishment" refers to a distinct physical place of business. This is the meaning attributed to the term as it is used in section 13(a)(2) of the Act.¹⁹ Since the establishments covered under section 12(a) of the Act are those in which goods are produced, the term "establishment" there refers to a physical place where goods are produced. Typical producing establishments are industrial plants, mines, quarries, and the like. The producing establishment, however, need not have a permanently fixed location as is the case with a factory or mine. A boat, for instance, where productive activities such as catching or canning fish are carried on is considered a producing establishment for purposes of section 12(a).

(2) Frequently, questions arise as to what should be considered a single establishment. No hard and fast rule can be laid down which will fix the area of

¹⁴See part 776 of this title (interpretative Bulletin on the coverage of the wage and hours provisions) issued by the Administrator of the Wage and Hour Division. Also, see §§ 570.112 and 570.113.

¹⁵For a more complete discussion of these words, see § 776.16 of part 776 (bulletin on coverage of the wage and hours provisions) of chapter V of this title.

¹⁶In *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, the Supreme Court stated that these words bring within the statutory definition "every step in putting the subject of commerce in a state to enter commerce," including "all steps, whether manufacture or not, which lead to readiness for putting goods into the stream of commerce" and "every kind of incidental operation preparatory to putting goods into the stream of commerce."

¹⁷*Lenroot v. Kemp and Lenroot v. Hazlehurst Mercantile Co.*, 153 F. 2d 153 (C.A. 5), where the court directed issuance of injunctions to restrain violations of the child labor provisions by operators of vegetable packing sheds at which they bought, then washed, sorted, crated, and packed cabbage and tomatoes for shipment in interstate commerce.

¹⁸*Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490.

¹⁹*A. H. Phillips, Inc. v. Walling*, 324 U.S. 490. See part 779 (bulletin on the retail and service establishment exemption from the wage and hours provisions) of chapter V of this title.

all establishments. Accordingly, a determination of the area contained in a single establishment must be based upon the facts of each individual situation. Facts which are particularly pertinent in this connection, however, are those which relate to the physical characteristics and the manner of operation and control of the business. Sometimes, an establishment may extend over an area of several square miles as is common with farms, logging enterprises, mines, and quarries. On the other hand, it may be confined to a few square feet. A typical illustration of this is a loft building that houses the workshops of hundreds of independent manufacturing firms. Each of the workshops is, for purposes of this section, a separate establishment.

(3) Similar principles are applicable in determining whether several buildings located on the same premises constitute one establishment or more than one. For example, where several factory buildings are located on the same premises and owned and operated by the same person, they are generally to be considered as a single establishment. On the other hand, factory buildings located on the same premises, but owned and operated by different persons, will not ordinarily be treated as a single establishment. Where the several factories, however, are engaged in a joint productive enterprise, they may constitute a single establishment. This is the case, for example, where a large shipyard contains the plants of a number of subcontractors who are engaged in making parts or equipment for the boats that are built in the yard.

(b) The phrase "situated in the United States" is construed to include any of the 50 States or the District of Columbia or any Territory or possession of the United States.

§ 570.110 "In or about".

(a) Section 12(a) excludes from the channels of interstate commerce goods produced in an establishment "in or about" which oppressive child labor has been employed. In a great many situations it is obviously easy to determine whether a minor is employed "in" an establishment. Thus, he is so employed where he performs his occupational duties on the premises of the

producing establishment. Furthermore, a minor is also considered as employed in an establishment where he performs most of his duties off the premises but is regularly required to perform certain occupational duties in the establishment, such as loading or unloading a truck, checking in or out, or washing windows. This is true in such cases even though the minor is employed by someone other than the owner or operator of the particular establishment. On the other hand, a minor is not considered to be employed in an establishment other than his employer's merely because such establishment is visited by him for brief periods of time and for the sole purpose of picking up or delivering a message or other small article.

(b) If, in the light of the statements in paragraph (a) of this section, the minor cannot be considered as employed in the establishment, he may, nevertheless, be employed "about" it if he performs his occupational duties sufficiently close in proximity to the actual place of production to fall within the commonly understood meaning of the term "about." This would be true in a situation where the foregoing proximity test is met and the occupation of the minor is directly related to the activities carried on in the producing establishment, in this connection, occupations are considered sufficiently related to the activities carried on in the producing establishment to meet the second test above at least where the requisite relationship to production of goods exists within the meaning of section 3(j) of the Act.²⁰ By way of example, a driver's helper employed to assist in the distribution of the products of a bottling company who regularly boards the delivery truck immediately outside the premises of the bottling plant is considered employed "in or about" such establishment, without regard to whether he ever enters the plant itself. On the other hand, employees working entirely within one establishment are not considered to be employed "in or about" a wholly different establishment occupying separate premises and operated by another employer. This

²⁰ See part 776 (bulletin on coverage of the wage and hours provisions) of this title.

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would be true even though the two establishments are contiguous. But in other situations the distance between the producing establishment and the minor's place of employment may be a decisive factor. Thus, a minor employed in clearing rights-of-way for power lines many miles away from the power plant cannot well be said to be employed "in or about" such establishment. In view of the great variety of establishments and employments, however, no hard and fast rule can be laid down which will once and for all distinguish between employments that are "about" an establishment and those that are not. Therefore, each case must be determined on its own merits. In determining whether a particular employment is "about" an establishment, consideration of the following factors should prove helpful:

- (1) Actual distance between the producing establishment and the minor's place of employment;
- (2) Nature of the establishment;
- (3) Ownership or control of the premises involved;
- (4) Nature of the minor's activities in relation to the establishment's purpose;
- (5) Identity of the minor's employer and the establishment's owner;
- (6) Extent of control by the producing establishment's owner over the minor's employment.

§ 570.111 Removal "within 30 days".

According to section 12(a) goods produced in an establishment in or about which oppressive child labor has been employed are barred as "hot goods" from being shipped or delivered for shipment in commerce in the following two situations: First, if they were removed from the establishment while any oppressive child labor was still being employed in or about it; second, if they were removed from an establishment in or about which oppressive child labor was no longer employed but less than 30 days had then elapsed since any such employment of oppressive child labor came to an end. Once any goods have been removed from a producing establishment within the above-mentioned thirty-day period, they are barred at any time thereafter from being shipped or delivered for shipment in

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commerce so long as they remain "goods" for purposes of the Act.²¹ Goods are considered removed from an establishment just as soon as they are taken away from the establishment as that term has been defined.²² The statute does not require that this "removal" from the establishment be made for the purpose or in the course of a shipment or delivery for shipment in commerce. A "removal" within the meaning of the statute also takes place where the goods are removed from the establishment for some other purpose such as storage, the granting of a lien or other security interest, or further processing.

[16 FR 7008, July 20, 1951, as amended at 23 FR 6240, Aug. 14, 1958. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

COVERAGE OF SECTION 12(c)

§ 570.112 General.

(a) Section 12(c) of the Act provides as follows:

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or in the production of goods for commerce.

(b) This provision, which was added by amendments of 1949 and 1961 to the Act, broadens child labor coverage to include employment in commerce. Moreover, it establishes a direct prohibition of the employment of oppressive child labor in commerce or in the production of goods for commerce. The legislative history pertaining to this provision leads to the conclusion that Congress intend its application to be generally consistent with that of wage and hours coverage provisions. The application of the provision depends on

²¹However, section 12(a) contains a provision relieving innocent purchasers from liability thereunder provided certain conditions are met. For a discussion of this provision, see § 570.128.

Also, section 15(a)(1) relieves any common carrier from liability under the Act for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier.

²²For a discussion of the meaning of "establishment," see § 570.109.

²³[Reserved]

the existence of two necessary elements: (1) The employment of "oppressive child labor"²⁴ by some employer and (2) the employment of such oppressive child labor in activities or enterprises which are in commerce or in the production of goods for commerce within the meaning of the Act.

[36 FR 25156, Dec. 29, 1971]

§ 570.113 Employment "in commerce or in the production of goods for commerce".

(a) The term "employ" is broadly defined in section 3(g) of the Act to include "to suffer or permit to work." The Act expressly provides that the term "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee". The nature of an employer-employee relationship is ordinarily to be determined not solely on the basis of the contractual relationship between the parties but also in the light of all the facts and circumstances. Moreover, the terms "employer" and "employ" as used in the Act are broader than the common-law concept of employment and must be interpreted broadly in the light of the mischief to be corrected. Thus, neither the technical relationship between the parties nor the fact that the minor is unsupervised or receives no compensation is controlling in determining whether an employer-employee relationship exists for purposes of section 12(c) of the Act. However, these are matters which should be considered along with all other facts and circumstances surrounding the relationship of the parties in arriving at such determination. The words "suffer or permit to work" include those who suffer by a failure to hinder and those who permit by acquiescence in addition to those who employ by oral or written contract. A typical illustration of employment of oppressive child labor by suffering or permitting an under-aged minor to work is that of an employer who knows that his employee is utilizing the services of such a minor as a helper or substitute in performing his employer's work. If the employer acquiesces in the practice or fails to exer-

²⁴ "Oppressive child labor" is discussed in §§ 570.117 to 570.121, inclusive.

cise his power to hinder it, he is himself suffering or permitting the helper to work and is, therefore, employing him, within the meaning of the Act. Where employment does exist within the meaning of the Act, it must, of course, be in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or in the production of goods for commerce in order for section 12(c) to be applicable.

(b) As previously indicated, the scope of coverage of section 12(c) of the Act is, in general, coextensive with that of the wage and hours provisions. The basis for this conclusion is provided by the similarity in the language used in the respective provisions and by statements appearing in the legislative history concerning the intended effect of the addition of section 12(c). Accordingly, it may be generally stated that employees considered to be within the scope of the phrases "in commerce or in the production of goods for commerce" for purposes of the wage and hours provisions are also included within the identical phrases used in section 12(c). To avoid needless repetition, reference is herein made to the full discussion of principles relating to the general coverage of the wage and hours provisions contained in parts 776 and 779 of this chapter. In this connection, however, it should be borne in mind that lack of coverage under the wage and hours provisions or under section 12(c) does not necessarily preclude the applicability of section 12(a) of the Act.²⁶

[36 FR 25156, Dec. 29, 1971]

JOINT AND SEPARATE APPLICABILITY OF SECTIONS 12(a) AND 12(c)

§ 570.114 General.

It should be noted that section 12(a) does not directly outlaw the employment of oppressive child labor. Instead, it prohibits the shipment or delivery for shipment in interstate or foreign commerce of goods produced in an establishment where oppressive child labor has been employed within 30 days before removal of the goods. Section

²⁶ See § 570.116

§570.115

12(c), on the other hand, is a direct prohibition against the employment of oppressive child labor in commerce, or in the production of goods for commerce. Moreover, the two subsections provide different methods for determining the employees who are covered thereby. Thus, subsection (a) may be said to apply to young workers on an “establishment” basis. If the standards for child labor are not observed in the employment of minors in or about an establishment where goods are produced and from which such goods are removed within the statutory 30-day period, it becomes unlawful for any producer, manufacturer, or dealer (other than an innocent purchaser who is in compliance with the requirements for a good faith defense as provided in the subsection) to ship or deliver those goods for shipment in commerce. It is not necessary for the minor himself to have been employed by the producer of such goods or in their production in order for the ban to apply. On the other hand, whether the employment of a particular minor below the applicable age standard will subject his employer to the prohibition of subsection (c) is dependent upon the minor himself being employed in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in production of goods for commerce within the meaning of the Act. If such a minor is so employed by his employer and is not specifically exempt from the child labor provisions then his employment under such circumstances constitutes a violation of section 12(c) regardless of where he may be employed or what his employer may do. Moreover, a violation of section 12(c) occurs under the foregoing circumstances without regard to whether there is a “removal” of goods or a shipment or delivery for shipment in commerce.

[36 FR 25157, Dec. 29, 1971]

§570.115 Joint applicability.

The child labor coverage provisions contained in sections 12(a) and 12(c) of the Act may be jointly applicable in certain situations. For example, a manufacturer of women’s dresses who ships them in interstate commerce, employs a minor under 16 years of age who gathers and bundles scraps of ma-

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terial in the cutting room of the plant. Since the employment of the minor under such circumstances constitutes oppressive child labor and involves the production of goods for commerce, the direct prohibition of section 12(c) is applicable to the case. In addition, section 12(a) also applies to the manufacturer if the dresses are removed from the establishment during the course of the minor’s employment or within 30 days thereafter. To illustrate further, suppose that a transportation company employs a 17-year-old boy as helper on a truck used for hauling materials between railroads and the plants of its customers who are engaged in producing goods for shipment in commerce. The employment of the minor as helper on a truck is oppressive child labor because such occupation has been declared particularly hazardous by the Secretary for children between 16 and 18 years of age. Since his occupation involves the transportation of goods which are moving in interstate commerce, his employment in such occupation by the transportation company is, therefore, directly prohibited by the terms of section 12(c). If the minor’s duties in this case should, for example, include loading and unloading the truck at the establishments of the customers of his employer, then the provisions of section 12(a) might be applicable with respect to such customers. This would be true where any goods which they produce and ship in commerce are removed from the producing establishment within 30 days after the minor’s employment there.

§570.116 Separate applicability.

There are situations where section 12(c) does not apply because the minor himself is not considered employed in commerce or in the production of goods for commerce. This does not exclude the possibility of coverage under the provisions of section 12(a), however. In those cases where oppressive child labor is employed in commerce but not in or about a producing establishment, coverage exists under section 12(c) but not under the provisions of section 12(a). The employment of telegraph messengers under 16 years of age would

normally involve this type of situation.²⁷ There may also be cases where oppressive child labor is employed in occupations closely related and directly essential to the production of goods in a separate establishment and therefore covered by section 12(c) but due to the fact that none of the goods produced in the establishment where the minors work are ever shipped or delivered for shipment in commerce either in the same form or as a part or ingredient of other goods, coverage of section 12(a) is lacking. An illustration of this type of situation would be the employment of a minor under the applicable age minimum in a plant engaged in the production of electricity which is sold and consumed exclusively within the same State and some of which is used by establishments in the production of goods for commerce.

[36 FR 25157, Dec. 29, 1971]

OPPRESSIVE CHILD LABOR

§ 570.117 General.

(a) Section 3(1) of the Act defines "oppressive child labor" as follows:

Oppressive child labor means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor 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) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being, but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor

²⁷In "Western Union Telegraph Co. v. Lenroot," 323 U.S. 490, the court held section 12(a) inapplicable to Western Union on the grounds that the company does not "produce" or "ship" goods within the meaning of that subsection.

certifying that such person is above the oppressive child labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(b) It will be noted that the term includes generally the employment of young workers under the age of 16 years in any occupation. In addition, the term includes employment of minors 16 and 17 years of age by an employer in any occupation which the Secretary finds and declares to be particularly hazardous for the employment of children of such ages or detrimental to their health or well-being. Authority is also given the Secretary to issue orders or regulations permitting the employment of children 14 and 15 years of age in nonmanufacturing and nonmining occupations where he determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being. The subsection further provides for the issuance of age certificates pursuant to regulations of the Secretary which will protect an employer from unwitting employment of oppressive child labor.

§ 570.118 Sixteen-year minimum.

The Act sets a 16-year-age minimum for employment in manufacturing or mining occupations. Furthermore, this age minimum 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, the Secretary is authorized to issue regulations or orders lowering the age minimum to 14 years where he finds that such employment is confined to periods which will not interfere with the minors' schooling and to conditions which will not interfere with their health and well-being. Pursuant to this

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authority, the Secretary permits the employment of 14- and 15-year-old children in a limited number of occupations where the work is performed outside school hours and is confined to other specified limits. Under the provisions of Child Labor Regulation No. 3, as amended,²⁸ employment of minors in this age group is not permitted in the following occupations:

(a) Manufacturing, mining, or processing occupations;

(b) Occupations requiring the performance of any duties in a workroom or workplace where goods are manufactured, mined, or otherwise processed;

(c) Occupations involving the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(d) Public messenger service;

(e) Occupations declared to be particularly hazardous or detrimental to health or well-being by the Secretary; or

(f) Occupations (except office or sales work) 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, and (4) construction (including demolition and repair).

The exception permitting office and sales work performed in connection with the occupations specified in paragraph (f) of this section does not apply if such work is performed on trains or any other media of transportation or at the actual site of construction operations. Employment of 14- and 15-year-olds in all occupations other than the foregoing is permitted by the regulation, if the following conditions are observed: (i) Employment only outside school hours and between the hours of 7 a.m. and 7 p.m., except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.; (ii) employment for not more than 3 hours a day nor more than 18 hours a week when school is in session; and, (iii) employment for not more than 8 hours a day nor more than 40 hours a week when school is not in session. The employment of minors under 14 years of age is not permissible under any cir-

²⁸Subpart C of this part.

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cumstances if the employment is covered by the child labor provisions and not specifically exempt.

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§ 570.120 Eighteen-year minimum.

To protect young workers from hazardous employment, the Act provides for a minimum age of 18 years in occupations found and declared by the Secretary to be particularly hazardous or detrimental to health or 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. They are issued after public hearing and advice from committees composed of representatives of employers and employees of the industry and the public and in accordance with procedure established in Child Labor Regulations No. 5 published in subpart D of this part. 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 Act and are now in effect. In general, they cover:

No. 1. Occupations in or about plants manufacturing explosives or articles containing explosive components.

No. 2. Occupations of motor-vehicle driver and helper.

No. 3. Coal-mine occupations.

No. 4. Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

No. 5. Occupations involved in the operation of power-driven woodworking machines.

No. 6. Occupations involving exposure to radioactive substances.

No. 7. Occupations involved in the operation of power-driven hoisting apparatus.

No. 8. Occupations involved in the operation of power-driven metal forming, punching, and shearing machines.

No. 9. Occupations in connection with mining, other than coal.

No. 10. Occupations in or about slaughtering and meat packing establishments and rendering plants.

No. 11. Occupations involved in the operation of bakery machines.

No. 12. Occupations involved in the operations of paper products machines.

No. 13. Occupations involved in the manufacture of brick, tile, and kindred products.

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No. 14. Occupations involved in the operation of circular saws, bandsaws, and guillotine shears.

No. 15. Occupations in wrecking, demolition, and shipbreaking operations.

No. 16. Occupations in roofing operations.

No. 17. Occupations in excavation operations.

[36 FR 25158, Dec. 29, 1971]

§ 570.121 Age certificates.

(a) To protect an employer from unwitting violation of the minimum age standards, it is provided in section 3(1)(2) of the Act that "oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age." An age certificate is a statement of a minor's age issued under regulations of the Secretary (Child Labor Regulation No. 1),³¹ based on the best available documentary evidence of age, and carrying the signatures of the minor and the issuing officer. Its purpose is to furnish an employer with reliable proof of the age of a minor employee in order that he may, as specifically provided by the act, protect himself against unintentional violation of the child labor provisions. Pursuant to the regulations of the Secretary, State employment or age certificates are accepted as proof of age in 45 States, the District of Columbia, and Puerto Rico, and Federal certificates of age in Idaho, Mississippi, South Carolina and Texas. If there is a possibility that the minor whom he intends to employ is below the applicable age minimum for the occupation in which he is to be employed, the employer should obtain an age certificate for him.

(b) It should be noted that the age certificate furnishes protection to the employer as provided by the act only if it shows the minor to be above the minimum age applicable thereunder to the occupation in which he is employed. Thus, a State certificate which shows a minor's age to be above the minimum required by State law for the

occupation in which he is employed does not protect his employer for purposes of the Fair Labor Standards Act unless the age shown on such certificate is also above the minimum provided under that act for such occupation.

EXEMPTIONS

§ 570.122 General.

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

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

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

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

(d) 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 the following:

(1) Manufacturing,

(2) Mining,

(3) 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.

In his interpretations of 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.

³¹ Subpart A of this part.

§ 570.123 Agriculture.

(a) Section 13(c) of the Act provides an exemption from the child labor provisions for “any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed.” This is the only exemption from the child labor provisions relating to agriculture or the products of agriculture. The various agricultural exemptions provided by sections 7(b)(3), 7(c), 13(a)(6), 13(a)(10) and 13(b)(5) from all or part of the minimum wage and overtime pay requirements are not applicable to the child labor provisions. This exemption, it will be noted, is limited to periods outside of school hours in contrast to the complete exemption for employment in “agriculture” under the wage and hours provisions. Under the original act, the exemption became operative whenever the applicable State law did not require the minor to attend school. The legislative history clearly indicates that in amending this provision, Congress sought to establish a clearer and simpler test for permissive employment which could be applied without the necessity of exploring State legal requirements regarding school attendance in the particular State. It recognized that the original provision fell short of achieving the objective of permitting agricultural work only so long as it did not infringe upon the opportunity of children for education. By recasting the exemption on an “outside of school hours” basis, Congress intended to provide a test which could be more effectively applied toward carrying out this purpose.

(b) The applicability of the exemption to employment in agriculture as defined in section 3(f)³² of the Act de-

³² *Agriculture* as defined in section 3(f) includes “farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry, or lumbering operations) performed by a farmer or on a farm

depends in general upon whether such employment conflict with school hours for the locality where the child lives. Since the phrase “school hours” is not defined in the Act, it must be given the meaning that it has in ordinary speech. Moreover, it will be noted that the statute speaks of school hours “for the school district” rather than for the individual child. Thus, the provision does not depend for its application upon the individual student’s requirements for attendance at school. For example, if an individual student is excused from his studies for a day or a part of a day by the superintendent or the school board, the exemption would not apply if school was in session then. “Outside of school hours” generally may be said to refer to such periods as before or after school hours, holidays, summer vacation, Sundays, or any other days on which the school for the district in which the minor lives does not assemble. Since “school hours for the school district” do not apply to minors who have graduated from high school, the entire year would be considered “outside of school hours” and, therefore, their employment in agriculture would be permitted at any time. While it is the position of the Department that a minor who leaves one district where schools are closed and who moves into and lives in another district where schools are in session may not work during the hours that schools are in session in the new district, it will not be asserted that this position prevents the employment of a minor in a district where schools are in session, if the school last attended by the minor has closed for summer vacation. As a reasonable precaution, however, no employer should employ a child under such circumstances before May 15, and after that date he should do so only if he is shown by the minor satisfactory evidence in the form of a written statement signed by a school official stating that the school with which he is connected is the one last attended by the minor and that the school is closed for summer vacation. Such statement

as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.”

should contain the minor's name, the name and address of the school, the date the school closed for the current year, the date the statement was signed, and the title of the school official signing the statement.

(c) Attention is directed to the fact that by virtue of the parental exemption provided in section 3(l) of the Act, children under 16 years of age are permitted to work, for their parents on their parents' farms at any time provided they are not employed in a manufacturing or mining occupation.

(d) The orders (subpart E of this part) declaring certain occupations to be particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being do not apply to employment in agriculture, pending study as to the hazardous or detrimental nature of occupations in agriculture.³³

[16 FR 7008, July 20, 1951, as amended at 23 FR 3062, May 8, 1958. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.124 Delivery of newspapers.

Section 13(d) of the Act provides an exemption from the child labor as well as the wage and hours provisions for employees engaged in the delivery of newspapers to the consumer. This provision applies to carriers engaged in making deliveries to the homes of subscribers or other consumers of newspapers (including shopping news). It also includes employees engaged in the street sale or delivery of newspapers to the consumer. However, employees engaged in hauling newspapers to drop stations, distributing centers, newsstands, etc., do not come within the exemption because they do not deliver to the consumer.

§ 570.125 Actors and performers.

Section 13(c) of the Act provides an exemption from the child labor provisions for "any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions." The term "performer" used in this provision is obviously more inclusive than the term "actor." In regulations issued pursuant

to section 7(d)(3) of the Act, the Administrator of the Wage and Hour Division has defined a "performer" on radio and television programs for purposes of that section.³⁴ The Secretary will follow this definition in determining whether a child is employed as a "performer" in radio or television productions for purposes of this exemption. Moreover, in many situations the definition will be helpful in determining whether a child qualifies as a "performer" in motion pictures or theatrical productions within the meaning of the exemption.

§ 570.126 Parental exemption.

By the parenthetical phrase included in section 3(l)(1) of the Act, a parent or a person standing in place of a parent may employ his own child or a child in his custody under the age of 16 years in any occupation other than the following: (a) Manufacturing; (b) mining; (c) an occupation found by the Secretary to be particularly hazardous or detrimental to health or well-being for children between the ages of 16 and 18 years. This exemption may apply only in those cases where the child is exclusively employed by his parent or a person standing in his parents' place. Thus, where a child assists his father in performing work for the latter's employer and the child is considered to be employed both by his father and his father's employer, the parental exemption would not be applicable. The words "parent" or a "person standing

³⁴Section 550.2(b) of this title provides:

(b) The term "performer" shall mean a person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor, singer, dancer, musician, comedian, or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting, singing, dancing, reading, narrating, performing feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively participates in such capacity in the actual presentation of a radio or television program. It shall not include such persons as script writers, stand-ins, or directors who are neither seen nor heard by the radio or television audience; nor shall it include persons who participate in the broadcast or telecast purely as technicians such as engineers, electricians and stage hands.

³³See note to subpart E of this part.

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in place of a parent” include natural parents, or any other person, where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent. It should further be noted that occupations found by the Secretary to be hazardous or detrimental to health or well-being for children between 16 and 18 years of age, as well as manufacturing and mining occupations, are specifically excluded from the scope of the exemption.

ENFORCEMENT

§ 570.127 General.

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.³⁵

§ 570.128 Good faith defense.

A provision is contained in section 12(a) of the Act relieving any purchaser from liability thereunder who ships or delivers for shipment in commerce goods which he 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 which he acquired for value without notice of any violation.³⁶

³⁵ Section 16(a) provides:

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.

³⁶ For a complete discussion of this subject see part 789 of this title, General Statement on the Provisions of section 12(a) and section 15(a)(1) of the Fair Labor Standards Act, as amended, relating to Written Assurances.

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§ 570.129 Relation to other laws.

Section 18 provides, in part, that “no provision of this act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this act.” The child labor requirements of the Fair Labor Standards Act, as amended, must be complied with as to the employment of minors within their general coverage and not excepted from their operation by special provision of the act itself regardless of any State, local, or other Federal law that may be applicable to the same employment. Furthermore, any administrative action pursuant to other laws, such as the issuance of a work permit to a minor or the referral by an employment agency of a minor to an employer does not necessarily relieve a person of liability under this act. Where such other legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, however, nothing in the act, the regulations or the interpretations announced by the Secretary should be taken to override or nullify the provisions of these laws. Although compliance with other applicable legislation does not constitute compliance with the act unless the requirements of the act are thereby met, compliance with the act, on the other hand, does not relieve any person of liability under other laws that establish higher child labor standards than those prescribed by or pursuant to the act. Moreover, such laws, if at all applicable, continue to apply to the employment of all minors who either are not within the general coverage of the child labor provisions of the act or who are specifically excepted from their requirements.

PART 575—WAIVER OF CHILD LABOR PROVISIONS FOR AGRICULTURAL EMPLOYMENT OF 10 AND 11 YEAR OLD MINORS IN HAND HARVESTING OF SHORT SEASON CROPS

- Sec.
- 575.1 Purpose and scope.
- 575.2 Definitions.