

DEPARTMENT OF LABOR**Wage and Hour Division, Employment Standards Administration****29 CFR Parts 570 and 579**

RIN 1215-AA09

Child Labor Regulations, Orders and Statements of Interpretation Child Labor Violations—Civil Money Penalties

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

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Department of Labor (Department or DOL) is proposing to revise the child labor regulations in order to implement two amendments of the Fair Labor Standards Act's child labor standards—the Compactors and Balers Safety Standards Modernization Act, Public Law 104-174 (August 6, 1996) (The Compactor and Baler Act); and the Drive for Teen Employment Act, Public Law 105-334 (October 31, 1998). The Compactor and Baler Act sets conditions which permit 16- and 17-year-old workers to load, but not operate or unload, certain scrap paper balers and paper box compactors. The Act also specifies that civil money penalties may be assessed for violations of these conditions. The Drive for Teen Employment Act prohibits minors under 17 years of age from driving automobiles and trucks on public roadways on the job, and establishes the conditions and criteria under which 17-year-olds may drive automobiles and trucks on public roadways on the job.

The Department is also proposing to revise regulation concerning government-issued Certificates of Age. Presently, the regulation requires that the employer return the certificate to the issuing agency, except that a certificate issued for employment in agriculture may be given to the named minor and a certificate issued to an 18- or 19-year-old shall be given to the named worker. The Department proposes to modify the regulation so as to allow all workers to retrieve the certificates from their employers when their employment ends.

Further, the Department is proposing revisions regarding the types of cooking that 14- and 15-year-olds may perform. The Department proposes to update the regulation and modify a long-standing DOL interpretation of this child labor standard.

Finally, the Department is proposing revisions to certain provisions which

prescribe certain hazardous employment for 16- and 17-year-olds. Currently, the regulation prohibits these minors from working in roofing operations. The Department is proposing to revise the regulation to prohibit all work on roofs. In addition, the Department is proposing to revise the regulation to update the definition of the terms explosives and articles containing explosive components in the prohibition on employment of minors in establishments which manufacture or store explosives.

DATES: Comments are due on or before January 31, 2000.

ADDRESSES: Submit written comments to John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Attention: Child Labor and Special Employment Team, Room S-3510, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard, or to submit comments by certified mail, return receipt requested. As a convenience, commenters may transmit comments by facsimile ("FAX") machine to (202) 693-1432. This is not a toll free number. If comments are transmitted by FAX and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

FOR FURTHER INFORMATION CONTACT:

Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-0072. This is not a toll free number. Copies of this proposed rulemaking may be obtained in alternative formats by calling (202) 693-0072 or (202) 693-1461 (TTY). The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audio-tape.

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act**

Title: Form WH-14, Application for Federal Certificate of Age.

Summary: Section 3(l) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(l), provides, in part, that an employer may protect against unwitting employment of "oppressive child labor" (as defined in section 3(l)) by having on file a certificate issued pursuant to DOL

regulations, certifying that the named person meets the FLSA minimum age requirements for employment.

Section 11(c) of the FLSA, 29 U.S.C. 211(c), requires that all employers covered by the Act make, keep and preserve records of wages, hours and other conditions and practices of employment with respect to their employees. The employer is to maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor.

Regulations, at 29 CFR Part 570, subpart B, set forth the requirements for obtaining certificates of age from the Department. The regulations provide that State-issued age, employment or working certificates, which substantially meet the Federal regulatory requirements for certificates of age, are an acceptable alternative to obtaining a Federal certificate of age. The regulations contain a list of States that may issue such acceptable certificates. Since age certificates are issued by most States, these are widely used as proof of age for FLSA child labor purposes.

Federal certificates of age are issued by the Department upon request by the youth and the prospective employer. Form WH-14 is the DOL application form. As a practical matter, it is used in those States where no State certificates are issued or State certificates do not meet the Federal regulatory requirements. The Wage and Hour Division reviews each WH-14 application and the accompanying proof of age, which is identified in the regulation as sufficient to establish the young applicant's age and thus to achieve the intended purpose of the statutory provision (*i.e.*, to assure that the employer is protected against unwitting violations of the child labor restrictions). As appropriate, a Federal certificate of age is issued and forwarded to the employer (if the youth is under 18 years of age) or to the youth (if he/she is 18 or 19 years of age). The supporting evidence of age is returned to the applicant(s). The 18- or 19-year-old presents the certificate to his/her employer upon entering employment.

The employer is required to keep the certificate on file for the duration of the youth's employment, in order to achieve the intended purpose of the FLSA provision (*i.e.*, to protect the employer in situations where compliance with the child labor standards is questioned). The estimated average employment period is 6 months. When a youth under 18 years of age leaves employment, the employer is directed by the current regulation to return the certificate to the office that issued it, except that a

certificate for employment in agriculture may be given to the youth; any subsequent certificate of age requested for that youth may be issued without additional proof of age. A certificate of age issued for a youth 18 or 19 years of age is to be given by the employer to the youth upon his/her leaving employment.

Need: In August 1998, the Office of Management and Budget (OMB), in its review and approval of the Form WH-14 under the Paperwork Reduction Act, approved this information collection (OMB No. 1215-0083). OMB's approval was contingent upon DOL's agreement to eliminate the requirement for an employer to return the certificate to the issuing official in certain circumstances. The Department is proposing, as agreed with OMB, to revise the regulation at § 570.6(b)(1), to direct employers to give to each employee, upon termination of employment, any Federal age certificate issued in his/her name. This would occur regardless of the age of the employee and regardless of the type of employment (*i.e.*, agriculture or nonagriculture). This proposed regulatory revision will enable young workers to provide future employer(s) with a properly issued age certificate without having to make another application to a government official. The Department is also proposing to revise the statement at the end of § 570.6(b)(2) to reflect the new OMB control number.

Respondents and proposed frequency of response: It is estimated that 45 such WH-14 applications will be submitted annually.

Estimated total annual burden: It is estimated that each such application will take approximately ten minutes to complete for a total annual burden of seven and one-half hours (45 reports×10 minutes).

Employees and employers of any of a wide variety of businesses, from small farms or retail stores to large manufacturing plants, may request Federal certificates of age. Absent specific wage data regarding applicants, respondent costs are estimated utilizing the average hourly rate of nonsupervisory workers on nonfarm payrolls of \$12.26 for 1997 (Monthly Labor Review, U.S. Department of Labor, Bureau of Labor Statistics, June 1998). Total annual respondent hour costs are estimated at \$91.95 (\$12.26×7.5 hours).

Total estimated annual postage and envelope costs for transmitting these applications are \$16.20 (45 reports×\$.33 postage+\$.03 per envelope).

Total annual respondent costs for form WH-14, application for federal

certificate of age—\$108.15 (\$91.95+\$16.20).

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

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

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

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

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

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

II. Background

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 16 years for employment in nonagricultural occupations, but the Secretary of Labor is authorized to provide by regulation for 14- and 15-year-olds to work in suitable occupations other than manufacturing or mining, and during periods and under conditions that will not interfere with their schooling or health and well-being. These FLSA provisions permit 16- and 17-year-olds to work in the nonagricultural sector, without hours or time limitations, except in certain occupations found and declared by the Secretary to be particularly hazardous, or detrimental to the health or well-being of persons under age 18.

The regulations for 14- and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of part 570 (29 CFR 570.31-.38). Reg. 3 limits the hours and times of day that such minors may work, and identifies occupations that are either permitted or prohibited for such minors. Under Reg. 3, 14- and 15-year-olds may work in certain occupations in retail, food service, and

gasoline service establishments, but are not to work in certain other occupations (including all occupations found by the Secretary to be particularly hazardous for 16- and 17-year-olds). Reg. 3, originally promulgated in 1939, was revised to reflect the 1961 amendments to the FLSA which extended the Act's coverage to include enterprises engaged in commerce or the production of goods for commerce. These amendments opened up new areas of employment for young workers in retail, food service, and gasoline service establishments.

The regulations concerning nonagricultural hazardous occupations are contained in subpart E of 29 CFR part 570 (29 CFR 570.50-.68). These Hazardous Occupations Orders (HOs) apply either on an industry basis, specifying the occupations in the industry that are prohibited, or on an occupational basis, irrespective of the industry in which performed. The seventeen HOs were adopted individually during the period of 1939 through 1963.

Because of changes in the workplace, the introduction of new processes and technologies, the emergence of new types of businesses where young workers may find employment opportunities, the existence of differing Federal and State standards, and divergent views on how best to correlate school and work experiences, the Department has long been reviewing the criteria for permissible child labor employment. In this review, the Department published a Proposed Rule in 1982, a Final Rule in 1991, both an Advance Notice of Proposed Rulemaking and a Proposed Rule in 1994, and a Final Rule in 1995.

On July 16, 1982, a Proposed Rule was published in the **Federal Register** (47 FR 31254) which proposed to revise several elements of Reg. 3, including the permissible hours and times of employment for 14- and 15-year-olds and the types of cooking operations those minors would be permitted to perform. The Proposed Rule generated considerable public interest and controversy, most having to do with the expansion of the hours and times of work for this age group. The Department subsequently suspended the proposal from further consideration and no final rule was implemented (50 FR 17434, April 29, 1985; DOL's Semiannual Regulatory Agenda).

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

of 21 members representing employers, education, labor, child guidance professionals, civic groups, child advocacy groups, State officials and safety groups. The mission of the CLAC was to give advice and guidance in developing possible proposals to change existing standards. After reviewing a number of issues, the CLAC proposed making certain changes to the child labor regulations. In December 1991, the Department promulgated a Final Rule which revised three HOs (56 FR 58626).

The Department continued to review the child labor regulations and, in an effort to accumulate data concerning all aspects of the provisions, published both a Notice of Proposed Rulemaking (NPRM) (59 FR 25164) and an Advance Notice of Proposed Rulemaking (ANPRM) (59 FR 25167) on May 13, 1994.

The NPRM proposed to exempt 14- and 15-year-olds from Reg. 3 hours standards when employed under certain restrictions as sports attendants for professional sports teams, to standardize the Reg. 3 process for issuing occupational variances for Work Experience and Career Exploration Program (WECEP) participants, to remove an outdated exemption for enrollees in certain work training programs, and to revise the process by which HOs are promulgated. A Final Rule on these issues was published April 17, 1995 (60 FR 19336).

The 1994 ANPRM requested public comment on several specific topics as well as all aspects of the child labor provisions. Several individuals and organizations submitted comments. The National Institute for Occupational Safety and Health (NIOSH) provided the Department with epidemiological data on a number of issues related to both Reg. 3 and the HOs. NIOSH also provided the Department with statistics regarding occupational injuries and made several recommendations. A number of child guidance professionals, educators, unions and child labor advocates also commented and made various recommendations. Among these were the Child Labor Coalition (CLC); the National Consumers League (NCL); the Defense for Children International USA (DCI); the National PTA (PTA); the United Food & Commercial Workers International Union, AFL-CIO (UFCW); the Food & Allied Service Trades Department, AFL-CIO (FAST); Letitia K. Davis, Sc.D, Ed.M, of the Massachusetts State Department of Health, Occupational Health Surveillance Program; the American Academy of Pediatrics (AAP); Professor Laurence Steinberg of Temple University; and Susan H. Pollack, M.D., Assistant

Professor, Department of Pediatrics and Preventive Medicine, University of Kentucky. Comments to the ANPRM are discussed below in the pertinent sections of this preamble.

Twice in the last three years, Congress has amended the child labor provisions of the FLSA. The Compactors and Balers Safety Standards Modernization Act, Public Law 104-174 (Compactor and Baler Act), was signed by the President on August 6, 1996. This legislation adds a section 13(c)(5) to the FLSA, permitting minors 16 and 17 years of age to load, but not operate or unload, certain scrap paper balers and paper box compactors if certain requirements are met. The Drive for Teen Employment Act, Public Law 105-334, was signed by the President on October 31, 1998. This legislation adds a section 13(c)(6) to the FLSA, prohibiting minors under 17 years of age from driving automobiles and trucks on public roadways on the job and establishing the conditions and criteria for 17-year-olds to drive automobiles and trucks on public roadways on the job.

In the present Notice of Proposed Rulemaking, the Department proposes revisions of regulations to implement the recent legislation and to update certain regulatory standards. The Compactor and Baler Act affects the HO 12 standards (Occupations involved in the operation of paper-products machines) (29 CFR 570.63) and certain other related regulations; amendments of those regulations are proposed. The Drive for Teen Employment Act affects the HO 2 standards (Occupations of motor-vehicle driver and outside helper) (29 CFR 570.52); an amendment of that regulation is proposed. As a result of its ongoing review of the child labor provisions, the Department is also proposing changes to HO 1 (Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components) (29 CFR 570.51), HO 16 (Occupations in roofing operations) (29 CFR 570.67), the Reg. 3 limitations on cooking (29 CFR 570.34), and 29 CFR 570.6(b)(1) which deals with the disposition of a Certificate of Age when the named individual's employment ends. The proposals are discussed below.

III. Proposed Regulatory Revisions

A. *Certificates of Age* (29 CFR 570.5-.27)

Section 3(l) of the FLSA provides an affirmative defense against the citation of child labor violations for employers who "have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor

certifying that such [employee] is above the oppressive child labor age" (29 U.S.C. 203(l)). The use of such certificates is not mandatory under the FLSA. As described above (Item I), the Department's regulations, at 29 CFR 570.5-.27, set out the procedures for application, issuance, retention and disposition of certificates of age. The regulations authorize the issuance of certificates by most of the States as well as by the Wage and Hour Division. Most certificates are, in fact, requested from and issued by the States.

Section 570.6(b) currently directs the employer to return the certificate to the issuing authority when the named worker's employment terminates, except that a certificate issued for employment in agriculture may be given to the worker and a certificate issued to an 18- or 19-year-old shall be given to the worker. The Department proposes to revise § 570.6(b) to specify that the worker's certificate issued by DOL be given to him/her when employment ends, regardless of the worker's age or type of employment. The youth may then provide the certificate to any future employer(s). This regulatory amendment, suggested by the Office of Management and Budget, would preclude unneeded repetition of the certification process and reduce paperwork burdens on employers.

B. *Reg. 3 Occupations: Cooking* (29 CFR 570.34)

Reg. 3 established restrictions on the type of cooking and cooking-related work which 14- and 15-year-olds may perform as employees of retail, food service, and gasoline service establishments. At § 570.34(b)(5), the regulation prohibits these minors from "cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking." Under § 570.34(a)(7), however, 14- and 15-year-olds are permitted to perform "kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to, dish-washers, toasters, dumbwaiters, popcorn poppers, milkshake blenders, and coffee grinders."

These regulatory standards were added to Reg. 3 after the 1961 FLSA amendments which extended the child labor provisions to certain enterprises engaged in commerce or in the production of goods for commerce. New areas of employment in retail, food service, and gasoline service establishments were opened to minors.

The regulations were the Department's response to the challenge of identifying those food preparation activities which 14- and 15-year-olds could safely perform without interfering with their schooling, health or well-being.

In establishing these standards, the Department recognized that some forms of cooking were not appropriate for persons under 16 years of age. Lifting large containers of hot materials, working over a hot stove for long periods of time, cooking over an open flame, and operating pressure cookers were all considered too dangerous for young workers. On the other hand, preparing an occasional hamburger or grilled cheese sandwich or performing simple cooking functions like those which minors might do in their own homes did not seem to place young workers at risk. The Department determined that the type of cooking performed at a snack bar or soda fountain, where the worker would not only take the customer's order but also prepare and serve the light fare, did not pose serious risks to the minor's health or well-being. The work was not strenuous, did not require continuous cooking at a grille or stove, and did not require the minor to use complicated or dangerous equipment.

The Department's promulgation and interpretation of the Reg. 3 standards were based, to some extent, upon a factor common to snack bars and soda fountains—namely, that the cooking performed in such food service operations was performed “in plain view” of the customer. This factor, in and of itself, did not make the activity safer, but it did tend to limit the scope of the cooking to activities that were relatively free of risk. By limiting cooking work to soda fountains and snack bars, Reg. 3 barred the “heavy duty” and more strenuous types of cooking performed in full-service restaurants, while permitting other, less strenuous types of “light” cooking. Over a period of time in the 1960's, the Department developed an “in plain view” interpretation of the regulation, making the Reg. 3 standard dependent upon whether the 14- and 15-year-olds are performing their cooking duties within the customers' sight. Under this interpretation, cooking performed “in plain view” would be permissible even if the minor was not working at a traditional soda fountain or snack bar, and cooking performed out of plain view (*i.e.*, in the kitchen or behind a partition) would not be permissible.

The snack bars and soda fountains upon which the Reg. 3 standards were established have been largely, if not entirely, replaced by different kinds of

fast food establishments during the decades of the 1970's, 1980's and 1990's. In recognition of the changing nature of the retail food service industry, the Wage and Hour Division examined fast food restaurants in 1977 and conducted a survey of fast food establishments in 1979 to determine what, if any, changes were needed in the cooking prohibitions. Interested parties, including major fast food chains, organized labor, and child labor advocates, were consulted.

In 1982, the Department published a Proposed Rule (47 FR 31254) which would have revised several elements of Reg. 3, including the permissible hours and times of employment for 14- and 15-year-olds and the types of cooking operations they would be allowed to perform. Under the proposal, all cooking would have been permitted except: cooking with hot oils at temperatures over 140 °F; cooking over an open flame; and cooking involving the use of pressure cookers without proper safety valves. The “in plain view” interpretation would no longer have been applied. The Proposed Rule generated considerable public interest and controversy, most having to do with the expansion of the hours and times of employment standards. The Department subsequently suspended the proposal from further consideration and no final rule was implemented (50 FR 17434, April 29, 1985; DOL's Semiannual Regulatory Agenda).

The Department continues to receive communications from the public suggesting that certain changes should be made to the regulations concerning cooking. A general consensus seems to have developed that the “in plain view” interpretation no longer serves as an important safety standard as it did in the 1960's, because the activities involved are no longer limited to “light” cooking. Nor does the interpretation provide sufficient guidance to employers, parents, and working teens. The proscription of tasks mainly on the basis of place of performance complicates the regulation and leads to confusion. For example, in one fast food establishment, 14- and 15-year-olds may perform most cooking jobs because all cooking is performed in the plain view of the customers; but at another food service establishment, those minors would not be able to perform the identical functions because all cooking is done in a closed kitchen away from the customer's view. Complications may also exist within a single establishment when some cooking equipment is placed so customers may view the cooking operation and additional pieces

of the same equipment are placed outside of the customer's line of sight.

The Department recognizes the need to review and update the Reg. 3 standards. New generations of cooking devices have been introduced since the cooking regulation was published in the 1960s, including microwaves, automatic cooking machines and systems, and computerized equipment and systems. Any proposed changes to the cooking prohibitions—to take into account all of these changes in the food service industry—must carefully consider the safety risks to young workers.

In an effort to accumulate data concerning all aspects of the child labor provisions, the Department in 1994 published an Advance Notice of Proposed Rulemaking (ANPRM) (59 FR 25167). The ANPRM requested public comment on many aspects of the child labor provisions, specifically including the Reg. 3 cooking standards. The Department received numerous comments on this matter.

The National Institute for Occupational Safety and Health (NIOSH) submitted epidemiological data supporting its recommendation of a general prohibition against 14- and 15-year-old minors cooking and working in close proximity of cooking appliances. NIOSH provided statistics regarding numbers and risks of burns. NIOSH cited as especially dangerous the contact burns associated with the cooking process, servicing the cooking equipment and working in the general area of cooking appliances. NIOSH also cited the hazard of slipping into or against equipment, particularly when floors near deep fryers and grilles become slippery from the oil. NIOSH cited the specific types of accidents that occur and noted that occupational burns to adolescents are frequently severe. NIOSH estimated that 5,200 adolescents sought emergency room treatment for work-related burns associated with cooking or working in a place where food was being prepared during the eighteen-month period of July 1992 through December 1993, and noted that the rate of burns in eating and drinking places—2.1 per 100 fulltime workers—was over 10 times greater than the rate for all other industries (0.2 per 100 fulltime workers). Citing that teenagers comprise nearly one-quarter of total employment in eating and drinking places, and stating that the “in plain view” policy provides no additional safety factors for teens, NIOSH recommended that cooking be prohibited regardless of where performed.

The Child Labor Coalition opposed 14- and 15-year-olds performing any

cooking, grilling, or frying, citing some of the same studies as NIOSH showing that burns are a leading cause of injuries among young workers. The Defense for Children International USA (DCI) stated that no cooking by 14- and 15-year-olds should be permitted in retail and food establishments, citing accident and injury data reporting that such work is dangerous. The DCI also endorsed the information provided by NIOSH as to the physical dangers of cooking.

The Food and Allied Service Trades Department, AFL-CIO (FAST) opposed any change that would relax or remove the restrictions against workers under the age of 18 cooking in retail and food establishments. The FAST based its comments on the incorrect premise that cooking is prohibited for those under 18 (*i.e.*, in fact, all cooking and baking are permitted for 16- and 17-year-olds unless included in the HO 10 and 11 prohibitions (food slicers and bakery machines)). The FAST cited the accident data regarding fast food workers, and noted that teenage cooks suffer more burns than adult cooks and that the most common sources of burns are cooking oils, grilles, and other cooking equipment.

An official of the Massachusetts Department of Health, Occupational Health Surveillance Program, recommended prohibiting cooking by all 14- and 15-year-olds irrespective of where the cooking takes place. The recommendation was based on a study of injury data from emergency departments in fourteen Massachusetts communities during 1979–1982. The estimated occupational injury rate for all employed teens was 16 per 100 fulltime equivalent employees. Burns accounted for 6 percent of occupational injuries to teens (but the study source data did not contain information about the industries in which injured teens were working). In an ongoing analysis of worker's compensation claims for teens in Massachusetts, the official reported that burns accounted for 6 percent of all occupational injuries to teens and that burns also accounted for 6 percent of cases of lost workdays of five or more days leading to Worker's Compensation claims. The official also reported that occupational burn injuries to teens are often severe, finding that 12 percent of occupational burns to teens covered multiple parts of the body.

The National Consumers League opposed 14- and 15-year-olds performing any cooking and cited several studies regarding the risks of cooking. The Washington State Child Labor Committee and the Washington State Department of Labor and Industries recommended that the

Department use the Washington State law as a model for Federal regulations; those State child labor regulations contain a provision banning cooking and baking by workers under 16 years of age.

The Ohio State Department of Education opposed any changes to the cooking provisions and was the only commenter to recommend retaining the "in plain view" interpretation. The agency also recommended continuing the current policy of issuing variances to allow students in Work Experience and Career Exploration Programs (WECEP) to cook under certain conditions, as those students receive safety instruction and are closely supervised throughout their WECEP participation.

The National Restaurant Association (NRA) supported allowing 14- and 15-year-old minors to perform cooking, including immersing foods in grease or tending cooking foods. The NRA suggested prohibiting minors from handling hot grease (140 °F or higher) before or after cooking, working over an open flame which is not contained in such a way as to prevent the flame from igniting clothing, and cooking with containers under pressure which have no safety valve. The NRA cited the current regulations as "a product of a bygone era" and stated that cooking and baking should be permitted regardless of where they are performed. The NRA's proposal was similar to the Department's 1982 Proposed Rule.

The National Council of Chain Restaurants (NCCR) also supported allowing 14- and 15-year-old minors to cook and bake. It labeled the current regulations as outdated and stated that the "in plain view" interpretation does not lend itself to practical and consistent application in the restaurant industry. The NCCR commented that modern technology and equipment make cooking and baking safer than at any time in the past. Six other comments, those from a State restaurant association, a city government, and four restaurants or chains, urged that cooking be permitted under conditions which make it safer (such as under adult supervision or after safety training).

With respect to the types of cooking equipment that may be used and temperatures of such equipment, one restaurant recommended allowing the use of all cooking equipment but added that stricter reporting of occupational injuries would be necessary. The Child Labor Coalition (CLC) recommended a complete review of all machines and injury data, in particular those which can cause burns from hot water and steam. The CLC cited its research which

showed that burns often occur in connection with work involving deep fat fryers, dishwashers, and cooking liquids.

The North Carolina State Department of Labor proposed that a hazardous occupations order be adopted which would ban all minors under age 18 from using deep fat or oil fryers not equipped with automated food lowering devices, cleaning or removing of grease or oil filters from any deep fat or oil fryer, and lifting, moving or carrying receptacles or containers of hot grease or oil.

In addition to the comments summarized above, the Department also received—in response to the 1994 ANPRM—several articles, studies, and papers that discuss dangers associated with cooking.

The Department has carefully considered all the comments and materials received, and has reviewed the Reg. 3 standards. The Department recognizes the delicate balance between the value of jobs that provide positive, formative experiences and the negative effects that the wrong type of jobs can have on the health and well-being of young workers. Just as in 1962, there are still some types of cooking that are not appropriate for minors under 16 years of age because of safety considerations. But as mentioned by several organizations that commented on the ANPRM, the Department believes that there are certain cooking duties minors can safely perform in modern food service establishments. The Department has preliminarily concluded that the current regulations should be revised so that 14- and 15-year-olds may perform a limited number of cooking activities—*i.e.*, only those that are safe and appropriate for their age group. The Department believes that this regulatory revision can be done without negatively impacting employment opportunities for young workers.

The Department is proposing to establish standards for cooking duties which the Department believes are safe and appropriate for these minors regardless of where the cooking is performed within the food service establishment. Thus, the current "in plain view" interpretation would be eliminated.

The proposal would permit 14- and 15-year-olds to: (1) Cook with electric or gas grilles which do not involve cooking over an open flame; (2) use deep fat fryers which are equipped with devices which automatically raise and lower the "baskets," but not pressurized fryers; (3) clean, maintain (including the changing, cleaning, and disposing of oil or grease and oil or grease filters) and repair cooking devices (other than power-

driven equipment) when the surfaces of the equipment or liquids do not exceed a temperature of 140 °F.

The maximum temperature of 140 °F was originally proposed in 1982 because it had been established as the minimum temperature at which a first-degree burn can occur. Recent consultations between the Wage and Hour Division and the Occupational Safety and Health Administration (OSHA) have led the Department to believe that this maximum temperature will protect minors who clean, maintain and repair non-power-driven equipment and handle cooking oils and grease.

The proposal would prohibit 14- and 15-year-olds from cleaning equipment such as grilles, deep fat fryers, and steam tables; removing grease filters; and lifting, moving or carrying receptacles or containers of hot grease or oil when the minor would be exposed to or working with liquid or equipment surfaces which exceed a temperature of 140 °F. This ban on carrying hot oil would apply regardless of the type of oil.

The ban on all baking activities by those under 16 years of age would continue. These minors would still be prohibited from performing all jobs that are part of the baking process, such as weighing and mixing ingredients; operating ovens, including convection ovens, microwave ovens (except those used for warming food as described below), pizza ovens, and automatic feeding ovens; removing items from ovens to cooling trays; and finishing baked products. This ban on baking tasks exists because of the dangers to young workers in activities such as lifting heavy bags of ingredients, filling hot pans, moving hot pans and trays into and out of ovens, emptying hot pans and trays, having clothing or fingers entangled in conveyors or other mechanisms of ovens, and operating power-driven equipment. However, the Department is reviewing this position and is seeking evidence regarding whether certain activities would be safe for 14- and 15-year-olds to perform in the baking process in retail establishments, and if so, whether we should therefore consider modifying the ban on the baking process performed in retail establishments by 14- and 15-year-olds. Specifically, the Department seeks evidence and comments on whether such youths should be permitted to perform certain prescribed activities such as measuring and weighing ingredients and finishing baked goods, provided that operation of power-driven equipment is not performed. The weighing and measuring of ingredients could entail lifting and moving large

containers of materials. NIOSH, in its October 24, 1994 comments on the 1994 ANPRM, recommended certain weight limits be adopted for jobs requiring lifting to reduce occupational musculoskeletal injuries (sprains and strains) to workers. Specifically, NIOSH recommended that the Department consider issuing a Hazardous Occupation Order imposing the following restrictions on manual handling jobs performed by minors under 18 years of age: "(1) Frequent lifting/lowering rates (not to exceed 6 lifts per minute), maximum weight should not exceed 15 lbs per lift; (2) Infrequent lifting/lowering rates (not to exceed once per minute), maximum weight should not exceed 30 lbs per lift; (3) in all cases, maximum lifting work duration should not exceed two continuous hours of work." The Department therefore seeks evidence and comments as to whether, if the Department does amend the rules to allow certain backing activities to be performed, there should be a weight limit, such as 10 pounds, for jobs requiring lifting by 14- and 15-year-olds.

Additionally, the proposal would continue the current ban against minors under 16 using such equipment as rotisseries, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as "Neico broilers."

This proposal would incorporate the Department's long-standing policy of permitting 14- and 15-year-olds to operate microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F, and to use, dispense, and serve food from warmers, steam tables, and other warming devices (even if the temperatures exceed 140 °F). The proposal would also preserve the current Reg. 3 standard allowing 14- and 15-year-olds to perform kitchen work and other work to prepare and serve food and beverages.

Finally, the proposal would preserve the current Reg. 3 process whereby State agencies operating approved Work Experience and Career Exploration Programs (WECEP) (in which students are closely supervised and receive safety instruction) may seek variances from the Department to authorize students to cook and to perform certain jobs that would otherwise be banned.

C. Explosives and Articles Containing Explosive Materials (HO 1) (29 CFR 570.51)

Hazardous Occupations Order No. 1, originally issued in 1939, greatly restricts the employment of minors in any establishment which manufactures

or stores explosives or articles containing explosive components (e.g., plants that manufacture dynamite, fireworks, or gunpowder). HO 1 also prohibits minors from handling and transporting primers and blasting caps.

The regulation's definition of the crucial terms "explosives and articles containing explosive components" has become, in part, obsolete. The definition states that these terms "mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers * * * issued pursuant to the (Interstate Commerce Act) * * *". Congress abolished the Interstate Commerce Commission in 1995. The HO 1 incorporation of ICC regulatory standards is, therefore, no longer feasible and the Department proposes to revise the definition to eliminate this ICC reference.

The Department considers it to be essential that the HO 1 definition of "explosives and explosive components" be as complete, clear, and user-friendly as possible, so as to best serve the FLSA's purpose of protecting young workers from hazards. Therefore, while preparing to delete the incorporation of ICC standards, DOL has sought an alternate source of expertise in the identification of explosives and explosive components. After careful consideration, the Department is of the view that the appropriate source of expertise is the Bureau of the Alcohol, Tobacco and Firearms, Department of the Treasury (ATF). Under statutory and regulatory mandates (18 U.S.C. 841(d); 27 CFR 55.23), the Director of ATF must revise and publish at least annually in the **Federal Register** a list of explosives covered by the U.S. Code Title 18 provisions concerning importation, manufacture, distribution and storage of explosive materials. The ATF list, which covers explosives, blasting agents and detonators, is intended to include any and all mixtures containing any of the materials on the list. The most recent list was published in the **Federal Register** on May 1, 1998 (63 FR 24207). The Department proposes to revise the HO 1 definition of "explosives and articles containing explosive components" to include the materials identified in the 1998 ATF list, which will appear in an appendix to the HO 1 subsection. By comparing this alphabetical list to the product information for materials that are used or stored at the work site (e.g., the list

of contents found on the product package), employers and other parties can readily determine whether any product or material is an explosive or contains explosive components, so as to be within the HO 1 prohibition.

D. Driving on Public Roads or Highways (HO 2) (29 CFR 570.52).

Hazardous Occupations Order No. 2, originally issued in 1940, generally prohibits minors under 18 years of age from employment in the occupations of motor-vehicle driver and outside helper on any public road or highway; in or about any mine, logging or sawmilling operations; or in any excavation covered by HO 17 (which includes excavation in trenches, building construction, or tunnels; 29 CFR 570.68). The occupational dangers specifically identified by the original HO 2 included the high degree of accident risk for persons of any age in these occupations, the fact that 16- and 17-year-old drivers experience a proportionately larger number of fatal accidents than older drivers, and the restrictions that numerous States placed on employees who perform as drivers and driver helpers.

HO 2 contains two limited exemptions to the prohibition on minors driving on public roads and highways: "Incidental and occasional" driving under certain restrictions; and, school bus drivers for a limited period under certain restrictions. These two exemptions are addressed in this proposed rule, and are discussed separately below.

1. "Incidental and Occasional Driving" (§ 570.52(b)(1))

HO 2 provides a limited exemption (§ 570.52(b)(1)) permitting 16- and 17-year-olds to drive automobiles and trucks on public roads and highways on an "incidental and occasional" basis when all the following criteria are met:

- The automobile or truck being driven does not exceed 6,000 pounds gross vehicle weight;
 - The driving is restricted to daylight hours;
 - The minor holds a State driver's license valid for the type of driving involved in the job performed and has completed a State-approved driver education course; and
 - The vehicle is equipped with a seat belt or similar restraining device for the driver and for each helper, and the employer has instructed each minor that such belts or other devices must be used.
- The limited exemption is not applicable to any occupation of motor-

vehicle driver that involves towing a vehicle.

The term "incidental and occasional"—while not defined in the regulations—was for many years interpreted by the Department to mean only driving that involves emergency-type situations or that happens at rare intervals. Thus, the Department enforced the exemption as not including driving which, even if only infrequent or sporadic, is an integral part of the job. The Department's interpretation excluded from the exemption any situations where a minor's employment requires routine and regular driving, such as to deliver auto parts, make pizza deliveries, or run errands.

The Department reviewed HO 2 in 1984 and concluded, based upon data involving vehicle-related injuries and fatalities, that HO 2 should be retained in its current form. The Department found that 16-year-olds were involved in a disproportionate share of accidents and tended to be responsible for fatal accidents more often than other drivers. Seventeen-year-old drivers were the next most likely to be involved in such accidents. Teenagers accounted for 8 percent of the population at the time but sustained 17 percent of fatal injuries in automobile accidents.

In 1987, concerned that some of the child labor regulations needed updating, the Department created the Child Labor Advisory Committee (CLAC), a committee whose mandate was to consider, among other things, the appropriate scope of "incidental and occasional" driving in the HO 2 exemption. In 1989, after careful consideration of HO 2, the CLAC recommended clarification of the term "incidental and occasional" driving. The committee's recommendation, discussed below, was later adopted with modifications and issued by the Department as interpretative guidance.

In 1994, in its continuing effort to review its child labor regulations, the Department published an Advance Notice of Proposed Rulemaking (59 FR 25167) seeking the views of the public on possible changes in the child labor regulations, including the Hazardous Occupations Orders. Although HO 2 was not specifically mentioned in the ANPRM, the Department received comments from various groups with differing views of HO 2. For example, the National Automobile Dealers Association (NADA), individual automobile dealerships, and florists requested more flexibility in the Department's interpretation of "incidental and occasional" driving and urged a change to HO 2 to permit minors to spend more time driving on

the job. Child advocacy groups, on the other hand, sought to further limit or abolish completely job-related teenage driving. The Child Labor Coalition, for example, supported a definition of "incidental and occasional" which permitted emergency-situation driving only. The Washington State Child Labor Advisory Committee recommended a complete ban on teenagers driving on-the-job.

As a result of comments received in response to the ANPRM, the Department decided to review HO 2. In 1995, in order to clarify the appropriate scope of "incidental and occasional" driving until further rulemaking could be completed, the Wage and Hour Division adapted the Child Labor Advisory Committee's 1989 recommended interpretation. Under this Departmental interpretation of the regulatory language, driving was deemed "incidental" if it was limited to no more than 20% of the minor's work in any workday and did not exceed 5% of the minor's work time in any workweek when performed. Driving was deemed "occasional" if the minor drove on average no more than once in a workweek and no more than four times in a calendar month. A "single episode" of driving meant an occurrence when the employee was working and operated a motor vehicle on behalf of the employer. Although the Child Labor Advisory Committee also recommended that the HO 2 exception should be permitted only for 17-year-olds, the Department did not address this point because it was considered too substantive to be adopted without rulemaking.

The Drive for Teen Employment Act (Pub. L. 105-334) was signed by the President on October 31, 1998. The Act amended the FLSA by adding a new subsection 13(c)(6). This provision prohibits employees under 17 years of age from performing any on-the-job driving of automobiles and trucks on public roadways. It permits 17-year-old minors to drive automobiles and trucks on public roadways only if such driving meets all of the following conditions:

- "(A) such driving is restricted to daylight hours;
- "(B) the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;
- "(C) the employee has successfully completed a State approved driver education course;
- "(D) the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee

that the seat belts must be used when driving the automobile or truck;

“(E) the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

“(F) such driving does not include—

“(i) the towing of vehicles;

“(ii) route deliveries or route sales;

“(iii) the transportation for hire of property, goods, or passengers;

“(iv) urgent, time-sensitive deliveries;

“(v) more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer or to a customer (other than urgent, time-sensitive deliveries);

“(vi) more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

“(vii) transporting more than three passengers (including employees of the employer); or

“(viii) driving beyond a 30 mile radius from the employee's place of employment; and

“(G) such driving is only occasional and incidental to the employee's employment.

“For purposes of subparagraph (G), the term ‘occasional and incidental’ is 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.”

While the Drive for Teen Employment Act affects the current HO 2 exemption for “occasional and incidental” driving, the Act does not affect any other parts of HO 2. The HO applies to driving on public roadways and has no effect on driving of motor vehicles by 16- and 17-year-old employees when performed exclusively on private property (except in or about any mine, logging or sawmilling operations, or any excavation covered by HO 17). The HO 2 prohibition regarding the employment of 16- and 17-year-olds to drive motor vehicles other than cars and truck—such as truck-tractors, trailers, semitrailers, and motorcycles—on public roads remains the same. The HO 2 prohibition concerning the employment of 16- and 17-year-olds as “outside helpers” on motor vehicles is unchanged. The Act also leaves unchanged the applicability of HO 2 regardless of the registration or ownership of the vehicle being driven by the minor. Further, the Act has no effect on the relationship between the FLSA, HO 2, and State laws. Many States have laws setting standards for child labor and teen drivers. When both Federal and State laws apply, the law

setting the more stringent standard must be observed.

The Department proposes to revise HO 2 to incorporate the provisions of the Drive for Teen Employment Act and to provide guidance regarding what constitutes “urgent, time-sensitive deliveries.” The Department is of the view that such deliveries—prohibited by the Act—would include 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. Such 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.

The Department notes that the employer bears the burden of proving compliance with several conditions contained in the Drive for Teen Employment Act that must be met before a 17-year-old employee may drive automobiles and trucks on public roadways in his/her job performance. These conditions include—the employee must have a State license valid for the type of driving being performed; the employee must have successfully completed a State approved driver education course; and the employee must have no records of any moving violations at the time of hire. The Department does not propose to require that employers create or maintain any records with regard to compliance with the Drive for Teen Employment Act.

In order to better protect themselves against unwitting violations of HO 2, employers may wish to obtain, at the time of hire, sufficient documentation from 17-year-old employees who will be expected to drive on-the-job. This documentation could include such things as an age certificate issued in accordance with the child labor regulations (29 CFR 570.5–.27), photocopies of the minor's driver license and his/her certificate of completion or diploma issued by the State approved driver education course, and correspondence from State or local

authorities and/or the minor's insurance company verifying that the minor has no records of moving violations. The Department also notes that the Drive for Teen Employment Act limits the type and extent of driving a 17-year-old may perform on-the-job. In order to better protect themselves against unwitting violations of these HO 2 restrictions, employers may wish to maintain logs to keep track of on-the-job driving performed by 17-year-old employees. These logs could identify the driver and show such things as the starting and stopping times of each trip, the destination of each trip, the purpose of each trip, the number of miles driven, the vehicle driven, and the number of passengers riding in the vehicle.

2. School Bus Drivers (§ 570.52(b)(2))

Hazardous Occupations Order No. 2 provides a limited exemption for driving on public roads and highways by certain youths employed as school bus drivers (§ 570.52(b)(2)). This exemption has been included in HO 2 for decades, but was revised to its present form in 1991. The Department conducted a review of the school bus driver exemption in 1990, and gave particular attention to the views of the Child Labor Advisory Committee (discussed above). A Proposed Rule was published in 1990, addressing this exemption along with some other issues concerning other HOs (55 FR 42812). A Final Rule was issued in 1991 (56 FR 58626), revising the school bus drivers exemption to permit employment of young workers as school bus drivers only through the 1995–1996 school year, for certain schools that were already employing young drivers under authorizations previously issued by the Department.

The Department proposes to delete from HO 2 the now-expired school bus driver exemption. The exemption was available only to certain “grandfathered” school districts and, by the explicit language of the regulation, expired with the 1995–1996 school year. The Department sees no justification for a revival of the exemption, since our records reflect that this exemption was last used by a school district in the 1994–1995 school year, one year before the exemption's last available school term under the regulation.

E. Scrap Paper Balers and Paper Box Compactors (HO 12) (29 CFR 570.63)

Hazardous Occupations Order No. 12 generally prohibits minors under 18 years of age from working in occupations involving the operation of paper-products machines. The HO prohibits the loading, operation and

unloading of scrap paper balers, including paper box balers and compacting machines, and other power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. When HO 12 was promulgated in 1954, the dangers specifically associated with the operation of scrap paper balers involved being caught in the plungers during the compression process and suffering strains and other injuries while moving the compressed bales.

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

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

The Department published an Advance Notice of Proposed Rulemaking in 1994 (59 FR 25167), seeking the public's views on possible changes in the child labor regulations, including the Hazardous Occupations Orders. Although HO 12 was not specifically mentioned in the ANPRM, the Department received comments from representatives of the grocery industry asserting that recent technological changes have rendered certain new balers and compactors safe for minors to load. The Food and Allied

Service Trades Department, AFL-CIO, opposed any relaxation of the prohibitions contained in HO 12. The Child Labor Coalition also opposed any relaxation of HO 12 and suggested that it should be expanded to include all compactors.

The Compactor and Baler Act was signed by the President on August 6, 1996 (Pub. L. 104–174). This legislation amends the FLSA by adding a new subsection 13(c)(5) to permit 16- and 17-year-olds to load, but not operate or unload, scrap paper balers and paper box compactors only if all of the following conditions are met:

"(A) (the loading involves) * * * scrap paper balers and paper box compactors—

"(i) that are safe for 16- and 17-year-old employees loading the [machines]; and

"(ii) that cannot be operated while being loaded.

"(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- and 17-year-old employees to load only if:

"(i)(I) the scrap paper balers and paper box compactors meet the American National Standard Institute's Standard ANSI Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors; or

"(II) the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after the date of enactment of this paragraph and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

"(ii) the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

"(iii) the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

"(iv) the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that:

"(I) the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

"(II) 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

"(III) any employee under the age of 18 may not operate or unload the scrap

paper balers and paper box compactors."

The Department notes that the employer bears the burden of proving compliance with the conditions established by the Compactor and Baler Act which allow 16- and 17-year-olds to load certain scrap paper balers and paper box compactors.

The amendment also required that all employers subject to the FLSA submit a report to the Secretary of Labor when an employee under 18 years of age died or suffered an injury requiring medical treatment (other than first aid) as a result of contact with a scrap paper baler or a paper box compactor during the loading, operation, or unloading of the equipment. (§ 13(c)(5)(C)). This reporting obligation, which expired on August 6, 1998, required that the report be submitted within ten days of the occurrence of the injury or death. Only one report, involving the serious injury of a minor in Cass County, Texas, was received by the Department during the mandatory reporting period.

The Compactor and Baler Act also modified section 16(e) of the FLSA—concerning civil money penalties—to specify that such penalties may be assessed for violations of the new subsection 13(c)(5) as well as other child labor provisions. The Act did not modify the amount of the penalty under section 16(e), which sets a maximum of \$10,000 per violation for each minor who was the subject of the violation.

The Department proposes to amend HO 12 to incorporate the provisions of the Compactor and Baler Act. The regulation's prohibition on 16- and 17-year-olds operating and unloading compactors and balers would not be changed, and the regulation would specify that these minors may load machines only in accordance with the following standards set by the Act. The Department notes that employers bear the burden of proving compliance with these standards.

(1) *The equipment must meet the ANSI standards imposed by the Act.* The Department recognizes that Congress explicitly applied certain industry standards for the determination of which balers and/or compactors are safe for minors to load: American National Standards Institute's (ANSI) Standard ANSI Z245.5–1990 for scrap paper balers or Standard ANSI Z245.2–1992 for paper box compactors. ANSI is a national organization that coordinates the development of voluntary, consensus standards in a wide range of areas, including product and worker safety. Congress has used ANSI standards in other contexts as expressions of the best available

technology in the safety area. For example, the Occupational Safety and Health Act of 1970 directed the Department of Labor to adopt the then-existing ANSI standards, rather than delay any activity until the agency promulgated particular occupational safety and health standards (see section 6(a) of the Occupational Safety and Health Act, 29 U.S.C. 655(a)). The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. Because these ANSI standards are copyright-protected, the Department cannot include them in the regulations or reproduce them for distribution to the public. Copies of the applicable ANSI standards are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, 20408, at the Occupational Safety and Health Administration Docket Office at Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, and at any of the OSHA regional offices. Copies of these standards are available for purchase at the American National Standards Institute, 11 West 42nd Street, New York, New York 10036.

The Department proposes that the employer will be required to make an initial determination of whether its machine(s) meet the ANSI standards, and that the Wage and Hour Division may make a final determination in any investigation concerning minors' work with the machines.

The Compactor and Baler Act applies specific ANSI standards, issued by the organization in 1990 and 1992. However, the Act also provides that any new standard(s) adopted by ANSI would be sufficient for the determination of safety of the balers and compactors if the Secretary of Labor certifies the new standards to be at least as protective of the safety of minors as Standard ANSI Z245.5-1990 for scrap paper balers or Standard ANSI Z245.2-1992 for paper box compactors. The Department is at this time proposing a regulation which incorporates only the two ANSI standards specified by Congress.

The Department is aware that ANSI has adopted newer standards for scrap paper balers (Standard ANSI Z245.5-1997) and for paper box compactors (Standard ANSI Z245.2-1997). The Department is reviewing these standards to determine if they are at least as protective of the safety of minors as those standards cited in the Compactor and Baler Act. A preliminary review

indicates the new standards are as protective as those cited in the Compactor and Baler Act and we are considering whether to include them along with the older standards when the final rule is promulgated. The public is invited to provide comment on whether Standard ANSI Z245.5-1997 is as protective of the safety of minors as Standard ANSI Z245.5-1990 and whether Standard ANSI Z245.2-1997 is as protective of the safety of minors as Standard ANSI Z245.2-1992.

(2) *Notice is provided and posted on each piece of equipment.* The Compactor and Baler Act requires that, before any 16- or 17-year-olds may load materials into scrap paper balers and paper box compactors, the employer must provide notice and post a notice on each piece of equipment stating that 16- and 17-year-olds may only load the equipment, and any employee under age 18 may not operate or unload such equipment. The Department is proposing that the employer meets this statutory requirement by posting a permanent notice—containing the necessary information—in a place on the machine that is prominent and easily visible to any persons loading, operating, or unloading it. The Department proposes no specific form of notice but proposes specific language taken from the statutory requirements to be included in the notice.

(3) *The equipment must have certain controls and locks.* The Compactor and Baler Act requires that the equipment must include an on-off switch incorporating a key-lock or other system, that the control of the system must be maintained in the custody of employees who are 18 years of age or older, and that the on-off switch must be maintained in an off position when the equipment is not in operation. The Department proposes to include these explicit requirements in the regulation.

The Department also proposes to include in the regulation a specific identification of paper box compactors among the types of equipment subject to HO 12. This addition is required by the legislation, which explicitly includes paper box compactors. In addition, this regulatory change will communicate the Department's long held position that HO 12 also applies to paper box compactors which perform the same function, operate in a similar manner, and present the same risks as scrap paper balers, which are explicitly listed in the current regulation.

In addition to the regulatory changes necessitated by the Compactor and Baler Act, the Department proposes to modify HO 12 to include scrap paper balers and paper box compactors that are used to

process other materials in addition to paper products. In the past, HO 12 has prohibited minors from loading, operating, and unloading only those scrap paper balers and paper box compactors that are used exclusively to process paper products. This narrow application ignored the fact that these machines are used to compress materials other than paper without any changes in design or procedures for loading, operating and unloading, and that the risks to minors associated with the loading, operating, and unloading of the machines remain the same regardless of the materials. Such other materials which may be processed by scrap paper balers and paper box compactors include, but are not limited to, plastics, rubber, foam rubber and aluminum cans. This modification of HO 12 is needed to prevent injuries to minors and, in addition, is supported by the definitions of both balers and compactors contained in the ANSI Standards which Congress adopted in the Compactor and Baler Act. We have preliminarily concluded that occupations involving the loading, operating and unloading of scrap paper balers and paper box compactors that process other materials in addition to paper are particularly hazardous for minors between 16 and 18 years of age. The proposal would also revise the title of the HO to reflect its expanded coverage.

The proposed rule also amends the regulations in part 579 concerning civil money penalties, to implement the Compactor and Baler Act's explicit authorization for penalties not to exceed \$10,000 for each employee who was the subject of a violation of new subsection 13(c)(5) of the FLSA.

F. Work in Roofing Occupations (HO 16) (29 CFR 570.67)

Hazardous Occupations Order No. 16 covers "occupations in roofing operations." It bans all occupations in roofing, but not all work on roofs. Roofing operations, as defined by the regulation, include most roofing activities and related occupations whether performed at elevations or at ground level. Not included are other tasks performed on or near roofs such as the installation, repair and maintenance of roofing sheathing, television and microwave antennas, air conditioning equipment, and gutters and downspouts.

The Department has received inquiries questioning why employees under 18 years of age may perform any work on a roof. Available data, such as that provided by the National Institute for Occupational Safety and Health and

the Massachusetts State Department of Health, indicates that working at heights is a major contributor to injuries and deaths of young workers.

The Department's 1994 Advance Notice of Proposed Rulemaking (59 FR 25167) raised the issue of minors working at heights. The ANPRM requested comments regarding a ban on all work performed by minors on roofs. The ANPRM also requested information as to whether such a prohibition should be a generic restriction or one limited to a particular industry or industries. Finally, the ANPRM sought information regarding exemptions from HO 16 for apprentices and student learners.

The Department received a number of comments on this issue, the vast majority of which supported the prohibition of roofing work and all work on a roof. The comments came from a variety of sources, including industry organizations, child advocates, and State and Federal agencies.

The National Roofing Contractors Association and the United Union of Roofers, Waterproofers and Allied Workers, via a single letter signed by their Presidents, supported a continuation of the prohibition against minors working in roofing occupations. They also recommended expanding the ban to include "any phase of roofing work, including the construction or repair of roof sheathing, installation of gutters and downspouts or any other related roofing work." They saw "no value to exchanging the safety and health of 16- or 17-year-old minors for the opportunity to learn limited phases of roofing." They stated the risk was too great and the price was too high.

The Child Labor Coalition (CLC) and the National Consumers League (NCL) supported a generic restriction with cross-industry application involving all work at elevations; they recommended using the Occupational Safety and Health Administration (OSHA) height standard which lowered the fall protection standard from 16 feet to 6 feet and which became effective on February 6, 1995 (59 FR 40672). The CLC and the NCL supported a prohibition on all workplace activities by minors involving elevations above 6 feet, whether on roofs, hanging out windows, or working on ladders, scaffolds or other elevated surfaces. The NCL cited injury and fatality data from OSHA and the Roofer's Union that supported a ban on any work above 6 feet. The NCL also cited NIOSH data from 1980 to 1985 which identified falls as a major cause of injuries to construction workers.

An official of the Massachusetts State Department of Public Health,

Occupational Health Surveillance Program, noted that falls are a leading cause of occupational fatalities in Massachusetts, as they are nationally. She cited 1993 statistics in which deaths involving falls exceeded motor vehicle related deaths and homicides, making them the leading cause of fatal occupational injuries. The majority of falls occurred in the construction industry (60 percent), but falls were a problem in a wide spectrum of industries. The official favored a generic approach to banning working at heights and would ban all work on ladders or at heights greater than 6 feet (the OSHA standard).

Similarly, the North Carolina State Department of Labor supported a ban on working at heights. It suggested banning "any work which involves the risk of falling from any elevated place located 10 feet or more above the ground, including work involving the use of ladders and scaffolds in which work is performed higher than 10 feet from the ground surface." A member of the Washington State House of Representatives who also served as a member of the Washington State Child Labor Advisory Committee noted that the State of Washington's child labor regulations contain a limit on working more than 10 feet above ground or floor level and recommended that the Federal regulations adopt a similar provision.

The single commenter not in favor of prohibiting all work on a roof was the Associated Builders and Contractors, Inc. (ABC), which opposed a ban on 16- and 17-year-olds working at heights. ABC noted that most construction jobs require working at heights, and suggested that the Department should take into consideration the strides OSHA has made in protecting all construction workers. ABC commented that a ban would jeopardize valuable career-advancing opportunities and that proper supervision, safety instructions, and training are sufficient to reduce or alleviate any heightened risk of injury without sacrificing the benefit of work experience. ABC also stated that such a ban would bar the construction industry from participating in school-to-work programs. ABC stated that any blanket prohibition on occupations involving heights or working with electricity would chill potential career opportunities and prevent the brightest and best of non-college-bound adolescents from being recruited into careers in the construction industry.

The Department has carefully considered the comments and available data and has concluded that the dangers cited in the original report when HO 16 was first issued still persist for youths

working on roofs. The main danger for such youths is from falls which, as noted by several commenters, may occur in any occupation performed on a roof. We have preliminarily concluded that occupations involving working on roofs, as well as all occupations in roofing operations, are particularly hazardous for minors between 16 and 18 years of age. The Department, therefore, is proposing to amend HO 16 to expand the ban from all roofing occupations to include all work performed on a roof. This ban would include, but not be limited to, occupations on or in close proximity to roofs such as the installation, repair, and maintenance of gutters and downspouts, sheathing or roof bases, television antennas, air conditioners, exhaust and ventilating equipment, heating equipment, and similar appliances attached to roofs. The exemption for apprentices and student-learners employed under the conditions prescribed in 29 CFR 570.50 (b) and (c) would continue to apply under HO 16. The Department believes that the additional supervision and training required by the exemption, coupled with the limited exposures provided by the exemption, will help to reduce safety risks to 16- and 17-year-olds working on roofs.

IV. Executive Order 12866

This proposed rule is being treated as a "significant regulatory action" within the meaning of Executive Order 12866, because of its importance to the public and the Administration's priorities. Therefore, the Office of Management and Budget has reviewed the proposed rule. However, because this proposed rule is not "economically significant" as defined in section 3(f)(1) of EO 12866, it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order.

This proposal would revise the child labor regulations in response to two statutory amendments enacted by the Congress that altered two of the child labor hazardous occupation orders: HO 12, affecting activities involving certain scrap paper balers and paper box compactors; and HO 2, affecting the operation of motor vehicles. The economic impact of these statutory provisions is expected to be minimal. The additional revisions that are being proposed are also expected to have little or no direct cost impact. The revisions affecting the types of cooking and related food preparation activities that 14- and 15-year-olds may perform in food service establishments (Reg. 3 Occupations) are primarily clarifications of existing provisions. An amendment to HO 16 to prohibit youth under age 18

from performing all work on roofs and an update of definitions for the term "explosives" in HO 1 that prohibits minors working where "explosives" are made or stored are expected to affect few minors. A change in the regulation on government-issued certificates of age intended to reduce paperwork when a minor's employment ends would reduce the cost impact of the existing regulation. The proposal thus overall relieves certain existing restrictions under two of the HOs and Reg. 3 occupations, expands restrictions under one HO, reduces paperwork burden involving age certificates, and makes other technical, clarifying changes. Although a small number of employers may be required to hire an older worker to perform the prohibited tasks, we believe that any resulting costs directly incurred would be minimal. Rules that limit permissible job activities for working youth to those that are safe do not, by themselves, impose significant added costs on employers, in our view. In fact, ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education, as required by the statute, produces many positive benefits and actually reduces health and productivity costs that employers may otherwise incur because of higher accident and injury rates to young and inexperienced workers. In any event, the direct, incremental costs imposed by this proposed rule are expected to be minimal. Collectively, they will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy or its individual sectors, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, this rule is not "economically significant" and no regulatory impact analysis has been prepared.

V. Small Business Regulatory Enforcement Fairness Act

The Department has similarly concluded that this proposed rule is not a "major rule" requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to

compete with foreign-based enterprises in domestic or export markets.

VI. Unfunded Mandates Reform Act of 1995; Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, "* * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)." For purposes of the Unfunded Mandates Reform Act, and as noted above, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of \$100 million by State, local or tribal governments in the aggregate, or by the private sector. Moreover, two of the changes constitute "regulations [that] incorporate requirements specifically set forth in law" (*i.e.*, amendments to HO 2 and HO 12).

For similar reasons, the proposed rule does not impose a significant "unfunded mandate" within the meaning of Executive Order 12875. This order requires agencies to consult with State, local, and tribal governments when developing regulatory proposals containing significant unfunded mandates. By its terms, section 1 of E.O. 12875 applies to "any regulation that is not required by statute and that creates a mandate upon a State, local or tribal government." Two provisions (driving and paper balers) are specifically required by statutory amendments enacted by Congress. Furthermore, the Department believes that there are very few if any minors employed by State, local and tribal governments in the affected occupations. To the extent that any minors may be so employed, the Department believes that any costs that might result from using older employees to perform the prohibited tasks would be minimal, and would be more than offset by reduced health and productivity costs resulting from accidents and injuries to minors on the job. Thus, as described above, this proposed rule does not contain changes not otherwise required by statute that create significant unfunded mandates on affected units of government.

VII. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities. Two provisions (driving and paper balers) are specifically required by statutory amendments enacted by Congress. It is anticipated that the other provisions would have little or no cost impact on any small entities. The

amendment to the provisions concerning the circumstances when 14- and 15-year-olds are permitted to cook is primarily a clarification of the existing provision. We believe that the prohibition against work on a roof and the revision to the paper balers provision would affect few minors, and therefore few small businesses. Although a small number of employers would be required to use an older employee to perform the prohibited tasks, we believe that any resulting costs directly incurred would be minimal. Indeed, we believe that the child labor regulations, by fostering safer work environments for working youth, would reduce health and productivity costs to employers, including covered small business, resulting from accidents and injuries to minors on the job. Thus, given the nature of the changes proposed by the rule, and for the reasons discussed above, we do not believe the rule will have a significant economic impact on a substantial number of small entities. The Department has certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Therefore, no Regulatory Flexibility Analysis is required.

Document Preparation: This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 570

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

29 CFR Part 579

Child labor, Penalties.

Signed at Washington, D.C. on the 22nd day of November, 1999.

Bernard E. Anderson,

Assistant Secretary, Employment Standards Administration.

For the reasons set forth above, title 29, parts 570 and 579, of the Code of Federal Regulations are proposed to be amended as follows:

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

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

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

2. In § 570.6, the section heading, paragraph (b)(1) and the parenthetical statement following paragraph (b)(2) are proposed to be revised to read as follows:

§ 570.6 What information is contained in Federal certificates of age and how does an employer use it?

* * * * *

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

(2) * * *

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

3. The authority citation for part 570, subpart C, is proposed to be revised to read as follows:

Authority: Sec. 3, 52 Stat. 1060, as amended; 29 U.S.C. 203, 212.

4. In § 570.34, the section heading, paragraphs (a)(7) and (b)(5) are proposed to be revised to read as follows:

§ 570.34 Which occupations are minors 14 and 15 years of age permitted to perform in retail, food service, and gasoline service establishments?

(a) * * *

(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, and devices used to maintain the temperature of prepared foods (such as warmers, steam tables, and heat lamps). 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 140 °F;

* * *

(b) * * *

(5) Baking and cooking except:

(i) Cooking with electric or gas grilles which does not involve cooking over an open flame; and

(ii) Cooking with deep fryers which are equipped with a device which automatically lowers the baskets into the hot oil or grease and automatically raises the baskets from the hot oil or grease;

* * * * *

5. The authority citation for part 570, subpart E, is proposed to be revised to read as follows:

Authority: Secs. 3, 12, 13(c), 18, 52 Stat. 1060, 1069; 29 U.S.C. 203, 212, 213(c), 218.

6. The heading of subpart E is proposed to be revised to read as follows:

Subpart E—What Occupations Are Particularly Hazardous for the Employment of 16- and 17-Year-Olds or Detrimental to Their Health or Well-Being?

7. In § 570.51, paragraph (b)(2) is proposed to be revised to read as follows:

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

* * * * *

(b) * * *

(2) The terms *explosives* and *articles containing explosive components* mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods identified in appendix A to this section.

* * * * *

8. A new Appendix A to § 570.51 is proposed to be added to read as follows:

Appendix A to § 570.51—List of Explosive Materials

Acetylides of heavy metals; aluminum containing polymeric propellant; aluminum ophorite explosive; amatex; amatol; ammonal; ammonium nitrate explosive mixtures (cap sensitive); ammonium nitrate explosive mixtures (non cap sensitive)*; aromatic nitro compound explosive mixtures; ammonium perchlorate explosive mixtures; ammonium perchlorate composite propellant; ammonium picrate (picrate of ammonia, Explosive D); ammonium salt lattice with isomorphously substituted inorganic salts; ANFO (ammonium nitrate-fuel oil); * baratol; baronol; BEAF (1,2-bis (2,2-difluoro-2-nitroacetoxyethane)); black powder; black powder based explosive mixtures; blasting agents, nitro-carbonitrates, including non cap sensitive slurry and water gel explosives*; blasting caps; blasting gelatin; blasting powder; BTNEC (bis (trinitroethyl) carbonate); bulk salutes; BTNEN (bis (trinitroethyl) nitramine); BTTN (1,2,4 butanetriol trinitrate); butyl tetryl;

calcium nitrate explosive mixture; cellulose hexanitrate explosive mixture; chlorate explosive mixtures; composition A and variations; composition B and variations; composition C and variations; copper acetylide; cyanuric triazide; cyclotrimethylenetrinitramine (RDX); cyclotetramethylenetetranitramine (HMX); cyclonite (RDX); cyclitol; DATB (diaminotrinitrobenzene); DDNP (diazodinitrophenol); DEGDN (diethyleneglycol dinitrate); detonating cord; detonators; dimethylol dimethyl methane dinitrate composition; dinitroethyleneurea; dinitroglycerine (glycerol dinitrate); dinitrophenol; dinitrophenolates; dinitrophenyl hydrazine; dinitroresorcinol; dinitrotoluene-sodium nitrate explosive mixtures; DIPAM; dipicryl sulfone; dipicrylamine; display fireworks; DNP (dinitropentano nitrile); DNPA (2,2-dinitropropyl acrylate); dynamite; EDDN (ethylene diamine dinitrate); EDNA; ednatol; EDNP (ethyl 4,4-dinitropentanoate), erythritol tetranitrate explosives; esters of nitro-substituted alcohols; EGDN (ethylene glycol dinitrate); ethyl-tetryl; explosive conitrates; explosive gelatine; explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons; explosive mixtures containing oxygen releasing inorganic salts and nitro bodies; explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels; explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels; explosive mixtures containing sensitized nitromethane; explosive mixtures containing tetranitromethane (nitroform); explosive nitro compounds of aromatic hydrocarbons; explosive organic nitrate mixtures; explosive liquids; explosive powders; flash powder; fulminate of mercury; fulminate of silver; fulminating gold; fulminating mercury; fulminating platinum fulminating silver; gelatinized nitrocellulose; gem-dinitro aliphatic explosive mixtures; guanyl nitrosamino guanyl tetrazene; guanyl nitrosamino guanylidene hydrazine; guncotton; heavy metal azides; hexanite; hexanitrodiphenylamine; hexanitrostilbene; hexogen (RDX); hexogene or octogene and a nitrated N-methylaniline; hexolites; HMX (cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; octogen); hydrazinium nitrate/hydrazine/aluminum explosive system; hydrazoic acid; igniter cord; igniters; initiating tube systems; KDNBF (potassium dinitrobenzofuroxane); lead azide; lead mannite; lead mononitroresorcinol; lead picrate; lead salts, explosive; lead styphnate (styphnate of lead, lead trinitroresorcinol); liquid nitrated polyol and trimethylolethane; liquid oxygen explosives; magnesium ophorite explosives; mannitol hexanitrate; MDNP (methyl 4,4-dinitropentanoate); MEAN (monoethanolamine nitrate); mercuric fulminate; mercury oxalate; mercury tartrate; metriol trinitrate; minol-2 (40% TNT, 40% ammonium nitrate, 20% aluminum); MMAN (monomethylamine nitrate), methylamine nitrate; mononitrotoluene-nitroglycerin mixture; monopropellants; NIBTN (nitroisobutametrial trinitrate); nitrate sensitized with gelled nitroparaffin; nitrated

carbohydrate explosive; nitrated glucoside explosive; nitrated polyhydric alcohol explosives; nitrates of soda explosive mixtures; nitric acid and a nitro aromatic compound explosive; nitric acid and carboxylic fuel explosive; nitric acid explosive mixtures; nitro aromatic explosive mixtures; nitro compounds of furane explosive mixtures; nitrocellulose explosive; nitroderivative of urea explosive mixture; nitrogelatin explosive; nitrogen trichloride; nitrogen tri-iodide; nitroglycerine (NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine); nitroglycide; nitroglycol (ethylene glycol dinitrate, EGDN); nitroguanidine explosives; nitroparaffins explosive grade and ammonium nitrate mixtures; nitronium perchlorate propellant mixtures; nitrostarch; nitro-substituted carboxylic acids; nitrourea; octogen (HMX); octol (75 percent HMX, 25 percent TNT); organic amine nitrates; organic nitramines; PBX (RDX and plasticizer); pellet powder; penthrinite composition; pentolite; perchlorate explosive mixtures; peroxide based explosive mixtures; PETN (nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate); picramic acid and its salts; picramide; picrate of potassium explosive mixtures; picratol; picric acid (manufactured as an explosive); picryl chloride; picryl fluoride; PLX (95% nitromethane, 5% ethylenediamine); polynitro aliphatic compounds; polyolpolynitratennitrocellulose explosive gels; potassium chlorate and lead sulfocyanate explosive; potassium nitrate explosive mixtures; potassium nitroaminotetrazole; pyrotechnic compositions; PYX (2,6-bis(picrylamino))=3,5-dinitropyridine; RDX (cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6, -trinitramine; hexahydro-1,3,5-trinitro-5-triazine); safety fuse; salutes, (bulk); salts of organic amino sulfonic acid explosive mixture; silver acetylde; silver azide; silver fulminate; silver oxalate explosive mixtures; silver styphnate; silver tartrate explosive mixtures; silver tetrazene; slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive); smokeless powder; sodatol; sodium amatol; sodium azide explosive mixture; sodium dinitro-ortho-cresolate; sodium nitrate-potassium nitrate explosive mixture; sodium picramate; special fireworks; squibs; styphnic acid explosives; tacot (tetranitro-2,3,5,6-dibenzo-1, 3a,4,6a tetrazapentalene); TATB (triaminotrinotrobenzene); TEGDN (triethylene glycol dinitrate); tetrazene (tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate); tetranitrocarbazole; tetryl (2,4,6 tetranitro-N-methylaniline); tetrytol; thickened inorganic oxidizer salt slurried explosive mixture; TMETN (trimethylolethane trinitrate); TNEF (trinitroethyl formal); TNEOC (trinitroethylorthocarbonate); TNEOF (trinitroethylorthoformate); TNT (trinitrotoluene, trotyl, triliton); torpex, tridite; trimethylol ethyl methane trinitrate composition; trimethylolethane trinitrate-nitrocellulose; trimonite; trinitroanisole; trinitrobenzene; trinitrobenzoic acid; trinitrocresol; trinitro-meta-cresol; trinitronaphthalene; trinitrophenetol;

trinitrophloroglucinol; trinitroresorcinol; tritonal; urea nitrate; water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive); water-in-oil emulsion explosive compositions; xanthamons hydrophilic colloid explosive mixture.

This list was published in the **Federal Register** by the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, pursuant to 18 U.S.C. 841(d) and 27 CFR 55.23.

* The asterisks indicate materials that constitute blasting agents.

9. In § 570.52, paragraph (b) is proposed to be revised and new paragraphs (c)(5) and (c)(6) are proposed to be added to read as follows:

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

* * * * *

(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 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) * * *

(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 work time 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.

10. In § 570.63, the section heading and paragraphs (a)(1)(i), (b) and (c) are proposed to be revised to read as follows:

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

(a) * * *

(1) * * *

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

* * * * *

(b) *Definitions.*

(1) The term *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.

(2) The term *paper products machine* means 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. 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 applies to those machines which, in addition to paper products, also process other material for disposal.

(3) The term *scrap-paper baler* means a powered machine used to compress paper and possibly other solid waste, with or without binding, to a density of form that will support handling and transportation as a material unit without requiring a disposable or reusable container.

(4) The term *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.

(5) The term *applicable ANSI Standard* means the American National Standard Institute's Standard ANSI Z245.5-1990 for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2-1992 for paper box compactors which are incorporated by reference as specified in this paragraph, or any replacement standard adopted by the American National Standard Institute which the Secretary of Labor 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.

(i) The standards which are incorporated by reference in this paragraph 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.

(ii) 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 of

Labor 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. 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.

(iii) Copies of these standards are available for purchase from the American National Standards Institute (ANSI), 11 West 42nd St., New York, NY, 10036. In addition, these standards are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, 20408, and through the Occupational Safety and Health Administration Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC, 20210, or any of its regional offices.

(c) *Exemptions.* (1)(i) Sixteen- and 17-year-old 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:

(A) 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 final determination when conducting an investigation of the employer);

(B) 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 employees who are 18 years of age or older;

(C) 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

(D) 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) stating that:

The scrap paper baler or compactor meets the industry safety standard applicable to the machine (Standard ANSI Z245.5-1990 for scrap paper balers and Standard ANSI Z245.2-1992 for paper box compactors).

Sixteen- and 17-year-old employees may only load the scrap paper baler or paper box compactor.

Any employee under the age of 18 may not 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).

11. In § 570.67 the heading and paragraphs (a) and (b) are proposed to be revised to read as follows:

§ 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.*

(1) The term *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.

(2) The term *on or about a roof* includes all work performed upon 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); 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 upon or about roofs.

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

12. The authority citation for part 579 is proposed to be revised to read as follows:

Authority: 29 U.S.C. 203, 211, 212, 213, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263. 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 1371, 36 FR 8755; sec. 3103, Pub. L. 101-508; sec. 2, Pub. L. 104-174.

13. In § 579.1, the section heading and paragraphs (a), (a)(1), (a)(6) and (b) are proposed to be revised to read as follows:

§ 579.1 What does this regulation cover?

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989, the Omnibus Budget Reconciliation Act of 1990, and the Compactors and Balers Safety Standards Modernization Act of 1996, provides that—

(1) Any person who violates the provisions of section 12 relating to child labor, section 13(c)(5), or any regulation issued under those sections shall be subject to a civil penalty of not to exceed \$10,000 for each employee who was the subject of such a violation.

* * * * *

(6) Except for civil money penalties collected for violations of sections 12 and 13(c)(5), sums collected as penalties

pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties in accordance with the provision of section 2 of an Act entitled “An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes” (29 U.S.C. 9a).

* * * * *

(b) This part explains our procedures for issuing a notice of civil penalty to an employer that has violated section 12 or section 13(c)(5) of the Act, or any regulation issued under those sections; describes the types of violations for which we may impose a penalty and the factors we will consider in assessing the amount of the penalty; outlines the procedure for a person charged with violations to file an exception to the determination that the violations occurred; and summarizes the methods we will follow for collecting and recovering the penalty.

14. In § 579.5, the section heading and paragraph (a) are proposed to be revised to read as follows:

§ 579.5 How is the amount of the penalty determined and how is the penalty assessed?

(a) The administrative determination of the amount of the civil penalty, not to exceed \$10,000 for each employee who was the subject of a violation of section 12 or section 13(c)(5) of the Act, or of any regulation issued under those sections, shall be based on the available evidence of the violation or violations and shall take into consideration the size of the business of the person charged and the gravity of the violation as provided in paragraphs (b) through (d) of this section.

§ 579.9 [Removed]

15. Section 579.9 is proposed to be removed.

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