

DEPARTMENT OF LABOR**Employment Standards Administration****Wage and Hour Division****29 CFR Parts 570, 579, and 580**

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: Final rule.

SUMMARY: This document revises the child labor regulations in order to implement two amendments of the Fair Labor Standards Act's child labor standards—the Compactor and Balers Safety Standards Modernization Act, (August 6, 1996) (The Compactor and Baler Act); and the Drive for Teen Employment Act, (October 31, 1998). This document also revises procedural regulations dealing with administrative hearings and appeals of civil money penalties.

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. This document also revises the regulation to implement the provisions of this Act. 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 regulation is also revised to implement the provisions of this Act.

A regulation concerning government-issued Certificates of Age is also being revised. Prior to this Final Rule, the regulation required that the employer return the certificate to the issuing agency when the employee left employment, except that a certificate issued for employment in agriculture may be given to the named minor at termination of employment and a certificate issued to an 18- or 19-year-old shall be given to the named worker at termination of employment. This revision modifies the regulation to direct the employer to give the certificates to the employees when their employment ends.

Further, the Department is revising the regulation regarding the types of cooking and cooking-related duties that 14- and 15-year-olds may perform. The Department is updating the regulation to modify a long-standing Department of Labor (DOL) interpretation of this child labor standard.

Finally, this document revises certain other provisions which proscribe certain hazardous employment for 16- and 17-year-olds. Prior to this revision, the regulation prohibited these minors from working in roofing operations. The Department has revised the regulation to also prohibit all work on or about roofs. In addition, the Department has revised 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: *Effective Dates:* This rule is effective February 14, 2005. The incorporation by reference of American National Standards Institute standards in the regulations is approved by the Director of the Federal Register as of February 14, 2005.

FOR FURTHER INFORMATION CONTACT:

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Questions of interpretation and/or enforcement of final regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the Wage and Hour Division's toll-free help line at 1-866-4USWAGE (1-866-487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's website for a nationwide listing of Wage and Hour District and Area Offices at: <http://www.dol.gov/esa/contacts/whd/america2.htm>.

SUPPLEMENTARY INFORMATION:**I. Background**

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 16 years for

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

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

The regulations concerning nonagricultural hazardous occupations are contained in subpart E of 29 CFR part 570 (29 CFR 570.50-.68). These Hazardous Occupations Orders (HOs) apply 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, a Final Rule in 1995, and a Notice of Proposed Rulemaking in 1999.

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. The Department considered the CLAC's suggestions, as well as suggestions received from the public as noted above. A Proposed Rule was published in October 1990, proposing changes to three HOs (55 FR 42612). In December 1991, the Department promulgated a Final Rule which revised the three HOs (56 FR 58626).

The Department continued to review the child labor regulations and, 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, employer associations and child labor advocates also commented and made various recommendations.

Twice in the last eight 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.

The Department published a Notice of Proposed Rulemaking in the **Federal Register** on November 30, 1999 (64 FR 67130), inviting comments until January 31, 2000, on 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 were 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 was proposed. As a result of its ongoing review of the child labor provisions, the Department also proposed changes to HO 1 (Occupations in or about plants or establishments

manufacturing or storing explosives or articles containing explosive components) (29 CFR 570.51), HO 16 (Occupations in roofing operations) (29 CFR 570.67), the Reg. 3 limitations on cooking (29 CFR 570.34), and 29 CFR 570.6(b)(1) which deals with the disposition of a Certificate of Age when the named individual's employment ends.

II. Summary of Comments

A total of 16 comments were received in response to the notice—from trade and professional associations, advocacy organizations, private consultants, an employer, a State department of labor, a State department of education, and one Federal agency (the National Institute for Occupational Safety and Health (NIOSH)). The sole employer responding restricted his comments to recommending changes to Hazardous Occupations Order No. 8 (Occupations involved in the operations of power-driven metal forming, punching, and shearing machines), a subject not raised by the Proposed Rule. The New Jersey Department of Labor limited its comments to commending the Secretary's concern for the safety of minors and advising her that the proposed rule would in no way impede in the enforcement of New Jersey's child labor laws. A consultant with the Ohio Department of Education reported that a committee of teachers of Career Based Intervention Programs agreed with all the proposals with the assumption that the Department would continue to grant variances to WECEP participants as it has done in the past.

In July of 2002, NIOSH disseminated its report entitled *National Institute for Occupational Safety and Health Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders*. The report, which makes many recommendations, also repeats the comments NIOSH submitted in response to the NPRM which are discussed later in this document. Since receiving the NIOSH report, the Department has been conducting a detailed review and has met with various stakeholders to evaluate and prioritize each recommendation for possible regulatory action consistent with the established national policy of balancing the benefits to employment opportunities for youth with the necessary and most effective safety protections.

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. 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), prior to this Final Rule, directed the employer to return the certificate to the issuing authority when the named worker's employment terminated, except that a certificate issued for employment in agriculture could be given to the worker and a certificate issued to an 18- or 19-year-old was to be given to the worker. The Department proposed 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 could 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.

The Department received two comments on this proposal. A consultant with the Ohio Department of Education's Career Based Intervention Programs commented that when the responsibility of providing the age certificate to the new employer is delegated to the minor, the certificate may not actually get to the new employer in many cases. The Department believes that young workers will be cooperative with prospective employers in providing employment-related information. The National Grocers Association (NGA) recommended that the proposal be expanded to include certificates issued by State governments as well. Although the Department encourages States to adopt similar rules regarding the disposition of age certificates, it is left to the individual States to establish rules regarding the disposition of the certificates they issue. This portion of the proposal is adopted as a Final Rule.

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 FLSA's coverage to include certain enterprises engaged in commerce or in the production of goods for commerce. The Act's child labor provisions became applicable to additional areas of employment in retail, food service, and gasoline service establishments. 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 or with equipment that utilize extremely high temperatures, 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 safely 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 stove or range, 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 quick-service restaurants (also referred to as fast food establishments) that evolved 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 quick-service restaurants in 1977 and conducted a survey of quick-service restaurants in 1979 to determine what, if any, changes were needed in the cooking prohibitions. Interested parties, including major quick-service restaurant 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 continued to receive communications from the public suggesting that certain changes should be made to the regulations concerning cooking. A general consensus seemed to develop that the "in plain view" interpretation no longer served as an important safety standard as it did in the 1960's, because the activities involved were no longer limited to "light" cooking. Further, the general view appeared to be that the interpretation did not provide sufficient guidance to employers, parents, and working teens. The proscription of tasks mainly on the basis of place of performance complicated the regulation and led to confusion. For example, in one quick-service restaurant, 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 recognized 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 and diverse comments on this matter.

The Department carefully considered all the comments and materials received, and reviewed the Reg. 3 standards, to develop the Proposed Rule which was published on November 30, 1999. Recognizing 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, the Department

preliminarily concluded that the 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 believed that this regulatory revision could be accomplished without negatively impacting employment opportunities for young workers.

The Department proposed to eliminate the "in plain view" interpretation and establish standards for cooking duties which it believed to be safe and appropriate for these minors regardless of where the cooking is performed within the food service establishment. The proposed standards would prohibit 14- and 15-year-olds from any cooking except cooking with electric or gas grilles which does not involve cooking over an open flame, and using deep fat fryers which are equipped with and utilize, during the frying process, devices which automatically raise and lower the "baskets," but not pressurized fryers. The proposal also would permit 14- and 15-year-olds to 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 proposal would, thus, prohibit 14- and 15-year-olds from performing any of the following duties when the minor would be exposed to or working with liquid or equipment surfaces which exceed a temperature of 140 °F: cleaning equipment such as grilles, deep fat fryers, and steam tables; removing grease filters; filtering grease or oil; and lifting, moving or carrying receptacles or containers of hot grease or oil. This ban on carrying or working with hot oil would apply regardless of the type of oil.

The Department proposed to continue the current interpretation of Reg. 3 as banning 14- and 15-year-olds from using such equipment as rotisseries, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as "Neico broilers." The Department also proposed to continue its long-standing interpretation of the regulation as permitting these minors 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). Further, the proposal preserved the current Reg.

3 provision allowing these minors to perform kitchen work and other work to prepare and serve food and beverages, including operating certain machines used in performing such work.

Additionally, the Department proposed to continue the ban on all baking activities by those under 16 years of age. These minors would still be prohibited from performing all jobs that are part of the baking process, such as weighing and mixing ingredients; placing or assembling products in pans or on trays; operating ovens, including convection ovens, microwave ovens (except those used for warming food as described above), pizza ovens, and automatic feeding ovens; removing items from ovens; placing items on 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, and operating power-driven equipment. Although the proposal continued the ban on all baking activities by those under 16 years of age, the Department requested 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 consideration should be given to modifying the ban on the baking process performed in retail establishments by 14- and 15-year-olds. Specifically, the Department sought 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. As a result of recommendations submitted by NIOSH in response to the 1994 ANPRM, the Department also sought evidence and comments as to whether, if the Department does amend the rules to allow certain baking activities to be performed, there should be a weight limit, such as 10 pounds, for jobs requiring lifting by 14- and 15-year olds.

Finally, the proposal preserved the current Reg. 3 process whereby State agencies operating approved Work Experience and Career Exploration Programs (WECEPs) (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.

Ten comments were received in response to these proposals. The commenters were unanimous in supporting the elimination of the "in plain view" standard, although they disagreed concerning the standards which had been proposed to replace it. NIOSH recommended that the "in plain view" interpretation be withdrawn; this position was endorsed by the American Federation of Labor and Congress of Industrial Relations (AFL-CIO), the United Food and Commercial Workers International Union (UFCW), and the Child Labor Coalition of the National Consumers League (CLC). However, each of these commenters took issue with particular aspects of the proposed standards. NIOSH noted that, when it had commented on the Department's 1994 ANPRM, it had "recommended that all cooking and working in proximity to cooking appliances should be a prohibited activity for youths under 16 years of age, regardless of whether the cooking was within 'plain view' of the customer." But in commenting on the Proposed Rule, NIOSH endorsed the elimination of the "in plain view" standard while supporting some of the proposals concerning permissible activities in food service employment. NIOSH stated that it "appreciates and concurs with DOL's intent [in the Proposed Rule] to permit 14- and 15-year-olds to conduct safe and appropriate work activities, including those associated with cooking, while prohibiting them from performing more hazardous activities." The NIOSH comment included copies of several reports and publications concerning occupational injuries including injuries in food service establishments. The National Restaurant Association (Association), the National Child Labor Committee (NCLC), and the National Council of Chain Restaurants (Council) commented that the "in plain view" standard is no longer appropriate and should be eliminated. The Association approved of the "'common sense' approach" taken in the Proposed Rule, and stated that "[t]he current interpretation is a product of a bygone era and is not practical in most restaurant settings. * * * the Association supports the proposal to eliminate the 'in plain view' interpretation while allowing limited cooking and cleaning of cooking devices." The Council pointed out that "the restaurant industry provides a tremendous number of entry level positions that are often the ideal 'first' jobs for teenage individuals seeking part-time employment, but who otherwise have little or no job skills to

offer employers. * * * any expansion of the child labor restrictions in a manner that is not directly necessary to the safety and well-being of teenage employees will only serve to eliminate entry level job opportunities for young individuals that otherwise may have little experience to offer employers."

The commenters expressed differing views with regard to the proposal to allow 14- and 15-year-olds to cook with electric and gas grills that do not involve cooking over an open flame and with deep fryers which are equipped with and utilize devices which automatically raise and lower the baskets.

Several commenters opposed the proposal. NIOSH stated that cooking appliances, such as grills and deep fryers, are associated with serious occupational burns among youth caused not only by cooking but also by the worker coming into contact with hot surfaces or hot grease as a result of slipping, or falling, or being in close enough proximity to food that is "popping" as it cooks. NIOSH also commented that limiting the use of fryers to only those which automatically raise and lower cooking baskets may reduce the risk of injuries, but the limitation would not prevent all burn injuries associated with fryers. The CLC, the AFL-CIO, and the UFCW cited data provided by NIOSH and expressed concerns about the risks associated with the high temperatures at which grills and fryers operate. With regard to the use of deep fat fryers equipped with devices that automatically raise and lower the baskets, the UFCW questioned whether such devices are effective in assuring safety; and the NCLC opposed allowing youths to cook with such fryers because of the unreliability of such equipment and a concern that supervisors of young workers would assign them to operate equipment even though it did not comply with the restriction. A Dallas based labor consultant recommended that the Department heed the NIOSH and CLC recommendations.

The National Restaurant Association supported the proposal to allow 14- and 15-year-olds to cook with gas and electric grills that do not involve cooking over an open flame; the Association did not comment concerning the proposal pertaining to the use of deep fryers. The National Council of Chain Restaurants supported the proposal regarding cooking with gas and electric grills, and noted its assumption that the proposal would allow these employees to operate "automated broilers" which cook chicken, hamburgers, and other foods

without exposure to an open flame. The Council recommended that the proposal regarding deep fryers be modified, to permit these employees to cook with all fryers including those not equipped with devices that automatically raise and lower the baskets. The Council stated that such devices do not add to operator safety and that "the job of using a deep fryer is just as safe for the operator regardless of whether the basket is lowered and raised automatically or manually." The NCLC commented that, absent any contrary-indicating injury data, it would appear that permitting the use of electric and gas grills that do not include an open flame may not contribute to a rise in teen occupational injuries; the NCLC stated that should such data exist, promulgating this portion of the proposal should be delayed until NIOSH could generate a study of teen occupational injuries resulting from the use of such grills.

Only one commenter—NIOSH—addressed the proposal to continue the Department's long-standing positions on several additional matters: 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; permitting such minors to use, dispense, and serve food from warmers, steam tables, and other warming devices (even if the temperatures exceed 140 °F); permitting them to perform kitchen work and other work to prepare and serve food and beverages; and banning them from using such equipment as rotisseries, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as "Neico broilers." On all of these matters, NIOSH concurred with the Department's proposal.

The commenters expressed contradictory views with regard to the proposal to allow 14- and 15-year-old workers 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.

NIOSH did not oppose minors performing the named tasks, but did object to establishing 140 °F as the maximum temperature. Noting that the Department had proposed this temperature because it had been established as the minimum temperature at which a first-degree burn can occur, NIOSH objected to the Department allowing youths performing

these clean-up tasks to be exposed to a temperature sufficient to cause first-degree burns. The AFL-CIO, the UFCW, and the CLC expressed similar concerns. Neither NIOSH nor any of the other commenters suggested a temperature which, in their opinion, would be an acceptable standard for the equipment or materials with which these youths would be performing clean-up tasks. The AFL-CIO, the UFCW, and the CLC along with the NCLC questioned the practicality of the proposal. These commenters expressed doubt that the minors, their employers, and enforcement officials would be able to determine when and if the equipment, oil, or grease had cooled to the permissible temperature of 140 °F, and the CLC inquired whether the Department could enforce the standard "short of a reported injury which indicates non-compliance." The UFCW and the AFL-CIO expressed further concern about the lack of training provided to adolescents in the quick-service restaurant industry, as reported in a 1999 study by NIOSH.

The Education Development Center, Inc. (EDC) of Newton, Massachusetts, took no position on the matter but submitted data and incident reports from the Massachusetts Department of Public Health regarding occupational injuries in restaurants and retail bakeries. The EDC expressed the view that this information "underscores the problem of burn injuries among teen workers." Included in the information was a reference to training materials prepared by the Educational Foundation of the National Restaurant Association for its members, *Aware; Employee and Customer Safety. Manager's Manual, Preventing Burns, 1997* (Inventory Code MG 525, ISBN: 1-883904-62-5. National Safety Council Inventory Code: 15865-0600), which identified 100 °F as the appropriate temperature for oil or grease to be handled by workers (adults or minors) for disposal.

The National Restaurant Association supported the proposal concerning clean-up tasks, including the standard of a maximum allowable temperature of 140 °F for equipment and materials to be handled by youths in such tasks. The National Council of Chain Restaurants did not directly address the proposal concerning permissible clean-up tasks and the maximum allowable temperature.

The Department received some general comments, but no detailed information, in response to the Proposed Rule's request for data and comments on baking activities. NIOSH and the UFCW recommended that the Reg. 3 ban on all baking activities be

maintained. The only comment concerning a possible weight limitation came from the UFCW, which recommended against establishing weight limitations on lifting by minors, because a standard would be difficult to enforce and would not work in practice. The Council of Chain Restaurants recommended that the Department give consideration to relaxing the across-the-board prohibition on baking when such functions are performed in a retail restaurant setting, stating that such activities are "generally extremely safe" for employees, including 14- and 15-year-olds. The National Restaurant Association, while not addressing the issue of identifying potentially permissible baking activities, offered to conduct a survey of its membership to gather more detailed information for the Department's consideration.

The Department has given careful consideration to all the views and recommendations presented in the comments, and has examined all the materials and authorities that were provided and/or cited by the commenters. Based on this thorough evaluation, the Department has concluded that the Proposed Rule concerning Reg. 3 cooking restrictions will be made final with certain limited modifications as described below.

With regard to the elimination of the "in plain view" interpretation, the Department has concluded that the proposed standard should be adopted to replace the "soda fountains, lunch counters, snack bars" regulatory language which had been the basis of that interpretation. The Final Rule permits 14- and 15-year-olds to perform only cooking tasks using electric or gas grills which do not have open flames, and using deep fryers which are equipped with and utilize devices that automatically lower and raise the baskets. This standard allows all 14- and 15-year-olds to perform the kinds of cooking tasks that many such workers have, for decades, been permitted to perform under the "lunch counter" regulatory language (provided that these tasks were performed "in plain view" of the customers). The Department, therefore, does not view this standard as substantially altering the nature of the Reg. 3 restriction, or as increasing the exposure of individual youngsters to possible harm in their food service establishment work sites. The standard provides more consistency in protecting young workers' health and well-being, by specifying the allowable cooking tasks without regard to the manner in which work sites may be arranged by different employers (*i.e.*, the existence of a wall or a pass-through partition,

which may vary from worksite to worksite, will have no effect on whether a cooking task is allowable). The standard provides more consistency for employers' child labor compliance efforts and business operations, since all employers will be held to the same rule on allowable cooking tasks regardless of the appearance or arrangement of their worksites. The standard assures the health and well-being of young workers by limiting their cooking tasks to specific types of equipment (*i.e.*, no open flames, no manually-operated deep fryer baskets), but leaves opportunities for employment in the food service establishments which have been—and will continue to be—extremely important "first job" experiences for many thousands of young workers. The Department is sensitive to the concerns of commenters who recommended that 14- and 15-year-olds should no longer be permitted to perform any cooking duties whatsoever, due to the possibilities of accidents in the workplace. But the Department believes that such a rule would be unnecessarily broad and that it would be an unwarranted barrier to the personal development of youths that benefit in many ways from positive, healthful work experiences in food service establishments. The Department considers the Final Rule—severely restricting the types of cooking duties that may be performed by such minors—to be appropriate.

The Department seeks to forestall any confusion which might arise from the comment of the Council of Chain Restaurants concerning this portion of the Proposed Rule. The Council indicated that it viewed the proposal to allow youths to cook with "no open flame" electric and gas grills as permitting these workers to use a number of automated broilers which are used to broil chicken, beef, and hamburgers as well as toast bread and buns. The Department cautions that the proposal did not alter the Department's long-standing position that cooking with such broilers is prohibited. That position is expressly stated in the Final Rule to prevent misunderstanding, as further discussed below. The Council also recommended that 14- and 15-year-old employees be permitted to cook with all deep fryers, including those not equipped with devices that automatically raise and lower the baskets. The Council stated that "the job of using a deep fryer is just as safe for the operator regardless of whether the basket is lowered and raised automatically or manually." The Department considers both the use of

baskets and the automatic basket device to be important safety features because they significantly restrict the young workers' likelihood of contact with the hot oil or grease in the fryer. Therefore, the Department cautions that 14- and 15-year-olds may not use deep fryers that do not use baskets to contain the food product during frying, nor may they use fryers that require the operator to manually lower or raise the baskets. To assure that employers are fully informed, the Final Rule expressly requires that deep fryers must utilize automatic baskets in order for such employees to cook with them.

In connection with the proposal to continue several long-standing Departmental positions concerning cooking and cooking-related activities, the Department has concluded that the positions should be continued in the Final Rule. As explained in the NPRM Preamble, these positions ban 14- and 15-year-olds from using equipment such as rotisseries, fryolators and "Neico broilers," and permit them to use certain microwave ovens, to use and serve foods from certain warming devices, and to perform various food preparation and kitchen work. The only commenter that addressed these positions—NIOSH—specifically endorsed each of them. No commenter objected to any of the positions. In light of the comment record, as well as the Department's enforcement experience, we believe that it is appropriate to maintain all of these positions. In addition, we believe that the text of Reg. 3 should be modified to add clear statements of two of these standards that have, heretofore, been interpretations of the existing regulatory provisions. Having all of these standards expressly included in the regulation will provide better guidance for employers and greater protections for young workers. Consequently, the Final Rule contains all of these long-established departmental standards.

With regard to the proposal that 14- and 15-year-olds be permitted to perform certain clean-up functions on equipment and materials at a temperature no higher than 140 °F, the Department has concluded—after review of the comments—that a modification in the maximum allowable temperature is appropriate.

While the commenters did not object to the tasks that would be permitted, most of the commenters objected to the maximum allowable temperature of 140 °F, the temperature at which a minor would be exposed to a first-degree burn. Upon careful consideration, the Department concurs with the views of the commenters and

has concluded that the regulation should set a temperature standard which would substantially alleviate the potential for these young employees receiving even a superficial burn when performing the authorized cleaning, filtering and disposal activities. None of the commenters suggested an alternative to the proposed maximum allowable temperature. Therefore, the Department has looked to available data and industry publications in order to identify the appropriate maximum allowable temperature of 100 °F.

The Department has reviewed the data presented in a 1990 article entitled *Recommended Maximum Temperatures for Touchable Surfaces* (*Applied Ergonomics* 1990, 21.1, 69–73), in which the author, H. Siekman, demonstrates that there can be no single "maximum temperature for touchable surfaces" below which burns can be avoided. The maximum safe temperature varies with both the materials from which the surface is made and the amount of time the skin stays in contact with the hot surface. The article notes that the maximum safe touchable temperature is attained at 140 °F when contact is made for a period of 3–4 seconds with a smooth, uncoated metal surface or with water. The maximum safe touchable temperature for these two same surfaces is reached at 149 °F when the contact lasts no more than one second. Although the author did not determine the maximum safe touchable temperature for oil or grease, the Occupational Safety and Health Administration's Office of Occupational Medicine has advised us that similar burns will occur from contact with oil or water when the temperature and length of the exposures are the same for each liquid.

The Department has considered the safety guidelines for the food service industry, published by the Educational Foundation of the National Restaurant Association—*Aware: Employee and Customer Safety. Manager's Manual, Preventing Burns, 1997* (Inventory Code MG 525, ISBN: 1–883904–62–5, National Safety Council Inventory Code: 15865–0600). These safety guidelines recommend that the oil from deep fryers be cooled to 100 °F prior to disposal (without differentiating when an adult or a minor employee performs such tasks).

The Department has concluded that a maximum allowable temperature of 100 °F—for equipment surfaces as well as for oil and grease—will significantly diminish the possibility of young workers suffering burns while cleaning equipment and surfaces or while

filtering and disposing of cooking oil and grease.

The Department recognizes that compliance with this standard will require vigilance by employers, whose managers and supervisors must assure that equipment and materials have cooled to 100 °F or less, before young workers are allowed to undertake any clean-up tasks such as washing the machines or removing or filtering the oil or grease. This supervision may be exercised through the use of thermometers, and through the imposition of cool-down waiting periods during which the equipment is out of use while the temperature falls. The Department's enforcement of this standard will use the investigative methods which have consistently been used in the child labor program. As with other child labor restrictions, the investigator would, of course, consider a violation to be self-evident where there is an injury to a young worker as a result of the specified activities (e.g., worker's hand burned by oil that the worker was filtering or removing). As with other restrictions, the investigator would also identify violations through observations at the worksite and through interviews with workers (both adults and minors) and supervisors, to obtain information concerning the tasks performed by youths.

The ban on cleaning grilles that exceed a temperature of 100 °F would not prohibit 14- and 15-year-olds from performing the normal grill "maintenance" that an employee routinely does during the actual cooking process involving the use of water and a spatula to scrape away and remove food particles and grease from the surface of the grill.

With regard to the Reg. 3 prohibition on all baking activities by 14- and 15-year-olds, the Department has concluded that no regulatory modification will be undertaken at the present time. The comments addressing this point were general statements of positions, either opposed to any change in the existing regulation or in favor of a relaxation of the existing prohibition. No specific information was submitted. The National Restaurant Association offered to conduct a survey of its members to obtain information and requested an extension of the comment period for this purpose, but the Department concluded that it would not be appropriate to further delay the rule making procedure to provide time for this activity. The Department would welcome any survey information that the Association may provide. The matter of the Reg. 3 prohibition on

baking activities may be considered in future rule making.

The Proposed Rule did not contain provisions dealing with the training of young workers. However, several commenters expressed concerns that young workers fail to receive on-the-job training that is crucial to protecting their health and well-being. The Department recognizes the important roles that occupational safety education and training—in the home, in the classroom, and on-the-job—play in helping teens experience positive work experiences and in reducing injuries to all workers. The Department encourages all those who can positively impact the health and well-being of young workers to expand their efforts in this important area of safety instruction.

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 proposed to revise the definition to eliminate this ICC reference.

The Department considers it 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, the Department sought an alternate source of expertise in the identification of explosives and explosive components. After careful consideration, the Department

concluded that the appropriate source of expertise is the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (ATF). Prior to the enactment of the Homeland Security Act of 2002, the ATF was part of the Department of Treasury and was named the Bureau of Alcohol, Tobacco and Firearms. 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. At the time of the publication of the Proposed Rule, the most recent ATF list had been published in the **Federal Register** on May 1, 1998 (63 FR 24207). The most recent list was published in the **Federal Register** on March 31, 2004 (69 FR 16958). The Department proposed to revise the HO 1 definition of "explosives and articles containing explosive components" to include the materials identified in the 1998 ATF list, and have it appear in an appendix to the HO 1 subsection of the regulations. The Department pointed out that, by comparing this alphabetical list of materials 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 could readily determine whether any product or material is an explosive or contains explosive components, so as to be within the HO 1 prohibition.

Only two comments were received on this proposal. NIOSH recommended that, as the ATF list is to be updated in the **Federal Register** annually, the Department should reference the "current" list rather than incorporate the 1998 list into the regulations. NIOSH also recommended that the Department retain the more general terminology (e.g., ammunition, fireworks, primers and smokeless powders) within the text of HO 1 as these terms are not contained in the List of Explosive Materials. The CLC supported the Department's referencing of the ATF list of explosives but expressed a concern about the Department's "enforcement of HO 1 protection when it comes to minors being employed in the U. S. military."

The Department has carefully considered these comments and consulted with the ATF. The ATF has advised that the Department's proposed

definition of *explosives* and *articles containing explosive components* is incomplete as it does not contain all the explosives listed in 18 U.S.C. 841(c)–(f). The ATF noted that the proposed definition, should, but does not, "encompass any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion" as per 18 U.S.C. 841(d). The ATF also reminded the Department that its annual list of explosive materials is not all-inclusive and the fact that an explosive material is not on the list does not mean that it falls outside of the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. The ATF also recommended, as did NIOSH, that the Department not publish the annual list of explosives as an appendix of HO 1 but incorporate the list in the HO by reference so as to ensure that the list is current and to avoid the need for additional rulemaking each time the list is revised. The ATF also recommended that the regulation refer the public to the website where ATF publishes the list.

As explained above, the Department's intention in the Proposed Rule was to provide the most complete, clear and user friendly regulation possible, through the incorporation of the ATF list into the regulation (as a complete, alphabetical list in Appendix A) rather than a mere cross-reference to the ATF publication. Upon reconsideration, the Department agrees with NIOSH and the ATF that these goals can be better achieved by incorporating the ATF list of explosive materials into the rule by reference and by providing the public with information as to how to obtain the most current list. Accordingly, the HO 1 Appendix presented in the Proposed Rule has been omitted.

The Department also agrees that greater clarity can be brought to the definition of *explosives* and *articles containing explosive component* by adopting ATF's recommendations to expand that definition to include "any chemical compound, mixture, or device the primary or common purpose of which is to function by explosion" and incorporate the statement, as contained on the ATF list of explosive materials, that the list is updated annually and not intended to be all-inclusive. The Department believes that these changes serve to clarify the proposed definition and are of such a nature that they can be incorporated into the final rule without additional public comment. Accordingly, the Department adopts the proposal as a Final Rule with the modifications listed above.

The Department notes that, while the Proposed Rule contained a detailed list

of particular materials in the Appendix, it did not propose to remove the more general terminology of *ammunition*, *black powder*, *blasting caps*, *fireworks*, *high explosives*, *primers*, and *smokeless powder* from the HO 1 definition of the terms *explosives and articles containing explosive components*. Therefore, the NIOSH concern about the regulatory definition is accommodated through the adoption of the rule, as proposed.

In response to the comments of the CLC concerning minors in military service, the Department notes that the jurisdiction of the FLSA—including its child labor provisions—does not extend to members of the United States' armed forces.

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 fact that States placed numerous restrictions 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. The history of these two exemptions was discussed in the Proposed Rule. The exemptions 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 in 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 to 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 adopted 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 worktime 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 employees 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 affected the HO 2 exemption for “occasional and incidental” driving, the Act did not affect any other parts of HO 2, which continue to apply as it has since the regulation’s promulgation. The HO restrictions apply to driving on public roadways and have 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 against the employment of 16- and 17-year-olds driving motor vehicles on public roads other than cars and trucks—such as truck-tractors, trailers, semitrailers, and motorcycles—remains the same. The HO 2 prohibition

concerning the towing of any vehicle (whether such vehicle is motorized or non-motorized) also 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 proposed 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 stated its 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 noted 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 did not propose to require that employers create or maintain any records with regard to compliance with the Drive for Teen Employment Act.

The Department observed that, 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 noted that the Drive for Teen Employment Act limits the type and extent of driving a 17-year-old may perform on-the-job. The Department did not propose to require that employers create or maintain any records with regard to compliance with these provisions of the Act. The Department observed, however, that in order to better protect themselves against unwitting violations of these 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.

Four comments were received on the proposal to revise HO 2.

NIOSH concurred with the Department’s proposal to incorporate the provisions of the Drive for Teen Employment Act in HO 2 and supported the proposed standard regarding “urgent and time-sensitive deliveries.” Though agreeing that requiring employers to create new systems of records to document compliance with the revised HO 2 would be unnecessarily prescriptive, NIOSH expressed the view that the proposed guidance to employers—concerning possible records and driving log information—would be helpful to them in their efforts to comply with the law. NIOSH recommended that these suggestions and guidance should be retained in the final rule.

The NCLC stated that it was “disturbed by the extension of commercial driving activities permitted for seventeen year olds” but did support the requirements that these drivers be properly licensed and have no record of moving violations. The NCLC expressed concern as to the enforceability of the proposed regulation, and stated that the

Department might be able to monitor and enforce compliance if the Department's suggestions (concerning employer documentation of the licensing and driving history of 17-year-olds, as well as logs concerning the nature and extent of their driving) were made requirements.

A Dallas-based labor consultant echoed the sentiments of the NCLC and stated that the proposal—suggesting, but not requiring, possible records—gave an incentive for the employer not to keep any records. He recommended that the rule should require that adequate records be maintained “so that when an investigator checks for compliance it is all documented.” He also suggested that the rule should include a requirement that 17-year-old drivers maintain safe driving records while employed.

The National Automobile Dealers Association (NADA) commented on three aspects of the proposal. First, NADA objected to the NPRM Preamble statement that “the employer bears the burden of proving compliance” with the Drive for Teen Employment Act; NADA suggested that the statement should be that “employers are responsible for complying with the Act and with HO 2.” Further, NADA objected to the NPRM Preamble’s “list[ing] gratuitously a host of detailed recordkeeping ‘suggestions.’” NADA recommended that these suggestions be deleted “so as to avoid any conflict with the Act’s intent or with Paperwork Reduction and Regulatory Flexibility Acts requirements.” Finally, NADA objected to the proposed definition of *urgent, time sensitive deliveries*. While acknowledging that “employers should not require employee drivers, least of all teenagers, to drive under time restraints that may result in speeding or otherwise compromise safety,” NADA stated that that the proposed definition “can be read to restrict an employer’s ability to see that work responsibilities are completed in a timely manner and without inappropriate delay.” NADA observed that “[t]he fact is, younger workers often require extra oversight regarding their work timeliness. Consequently, the * * * definition should * * * distinguish between deliveries that are prohibited because they necessarily call for haste or undue speed and those that evidence responsible work habits.” NADA did not suggest alternative language.

The Department has fully considered these comments.

With regard to the employer’s obligation to assure compliance, and the NPRM Preamble suggestions as to methods by which the employer may meet that obligation, the Department has

concluded that the rule will be issued as proposed and that the compliance suggestions (which were not proposed for inclusion in the regulation) will not be withdrawn.

As pointed out by NADA, the employer bears the burden of complying with the Drive for Teen Employment Act. An employer can permit a 17-year-old employee to drive on public roads or highways in the course of his/her job duties *only* through the “incidental and occasional driving” exemption incorporated into the FLSA by the Drive for Teen Employment Act. If the Department conducts an investigation, it will follow its normal investigation procedures to determine if the employer complied with child labor requirements, including the restrictions on driving. If the Department finds a violation, it will be the employer’s burden—as it is for all statutory and regulatory exemptions—to establish that it did not violate the driving restrictions. It is well settled that an employer seeking to avail itself of any exemption to FLSA provisions must be able to prove satisfaction of all the requirements of that exemption. *See e.g., Arnold v. Ben Kanowsky*, 361 U.S. 388, 392; *reh. denied*, 362 U.S. 945 (1947); *Donovan v. United Video, Inc.*, 725 F.2d 577, 580–81 (10th Cir. 1984). The employer may carry this burden of proof through documents or records of its own choice; the Department does not impose any particular requirements as to documentation. However, we consider it to be appropriate to offer assistance to employers who seek to comply with the FLSA and HO 2. Therefore, the Department has made suggestions of several easy-to-use methods that employers may wish to follow—which include obtaining and/or photocopying documentation concerning such things as the age, licensing and driving history of the 17-year-old, and the maintaining of certain logs concerning on-the-job driving. These suggested methods are purely voluntary, despite the recommendations of some commenters that these records be made mandatory. No employer will be penalized for not having the materials identified in the suggestions. Since the Department is not imposing any recordkeeping burdens on employers through this compliance assistance, there is no conflict with the intent of the Drive for Teen Employment Act, or with the requirements of the Paperwork Reduction Act and Regulatory Flexibility Act.

With regard to the definition of *urgent, time-sensitive deliveries*, the Department has concluded that the rule will be issued as proposed. The definition encompasses the types of on-

the-job driving that are likely to involve 17-year-old employees in hurried and therefore hazardous work activity. The Department concurs with NADA’s comment that “young workers often require extra oversight regarding their work timeliness” and believes that this need for oversight is a natural result of their youth and inexperience in the world of work. The Department recognizes that, on a day-to-day basis, employers of young workers provide training in important work habits such as timeliness, productive use of worktime, attention to details, and responsiveness to instructions. Employers can better protect the health and well-being of their young workers by taking their need for extra oversight into account during all aspects of their employment. An employer’s oversight should include assuring that adequate time is provided for the young worker’s safe completion of tasks, and assuring that appropriate instructions are given to the worker in a clear and effective manner. Employers should be aware that if a young driver is not given enough time to complete a trip without hurrying, or if he/she is given instructions which imply a requirement for hurried action, an on-the-job trip that would not normally fall within the definition of an *urgent, time-sensitive delivery* would become one. The Department is confident that employers of 17-year-old drivers will recognize the needs of their young workers, and will exercise appropriate oversight in developing work skills while assuring compliance with the Drive for Teen Employment Act.

The Department has considered the suggestion of one commenter that the rule should include a requirement that 17-year-old drivers maintain safe driving records while employed. However, we have concluded that the Drive for Teen Employment Act does not authorize the imposition of such a requirement. The statute speaks only of the young driver having “no records of any moving violation at the time of hire.”

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 proposed 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 saw 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.

No comments were received concerning this proposal. The proposed deletion of this HO 2 provision is implemented in the Final Rule.

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 establishments that use 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 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 NPRM stated that the Compactor and Baler Act 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 NPRM also explained that the Compactor and Baler Act 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

at that time was a maximum of \$10,000 per violation for each minor who was the subject of the violation.

The Department proposed to amend HO 12 to incorporate the provisions of the Compactor and Baler Act. The NPRM specified that 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 standards set by the Act. The Department noted that employers bear the burden of proving compliance with these standards:

(1) *The equipment must meet the ANSI standards imposed by the Act.* The NPRM recognized 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. Sec. 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 NPRM stated that 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, D.C., 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 proposed 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 Department's proposal incorporated only the two ANSI standards specified in the Compactor and Baler Act. However, the Department recognized that 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 NPRM explained that the Department was 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). When the NPRM was issued, the Department was in the process of 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 indicated the new standards are as protective as those cited in the Act, and the NPRM noted that the Department was considering whether to include the new standards along with the older standards when the final rule was promulgated. The public was invited to provide comment on whether Standard ANSI Z245.5–1997 is as protective of the safety of minors as Standard ANSI-S245.5–1990, 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 the machine meets the applicable ANSI standard, that 16- and 17-year-olds may only load the equipment, and that no employee under age 18 may operate or unload such equipment. The Department proposed that the employer meet 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 proposed no specific form

of notice but proposed 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 proposed to include these explicit requirements in the regulation.

The Department also proposed to include in the regulation a specific identification of paper box compactors among the types of equipment subject to HO 12. The NPRM explained that this addition was required by the legislation, which explicitly includes paper box compactors. In addition, the NPRM stated, this regulatory change would 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 proposed to modify HO 12 and its title 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.

The proposed rule also would amend 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.

The Department received six comments on this proposal—from NIOSH, the Food Marketing Institute (FMI), the Council, the NCLC, the CLC, and the National Grocers Association (NGA). None of the commenters opposed the proposal to incorporate the provisions of the Compactor and Baler Act into the regulation. However, the commenters differed with regard to some of the particulars of the proposed regulation, as discussed by topic below.

Notice to be posted on machine. Opinions differed as to the wording of the notices that must be posted on balers and compactors that 16- and 17-

year-olds would be authorized to load, but not operate or unload.

The Department proposed that the exact language appearing in the statute be required on all notices in order to eliminate confusion and provide employers with clear guidance. The Department also believed that minors, who change jobs frequently, would receive greater overall protection if the posting language were consistent among all employers.

The NCLC commented that, while it had opposed and continues to oppose the Compactor and Baler Act, it realized that the Department must implement the provisions of the statute. In that context, the NCLC stated that it supported "the clear and stringent proposed revisions" to HO 12. The CLC also supported the Department's proposal but recommended that the notice should also include language prohibiting any minor from placing his or her hands, arms, or legs into the machine at any time.

Both the NGA and the FMI objected to the Department's proposal to adopt, for the required notice, the language exactly as it appears in the statute. Both organizations recommended that the Department not adopt the verbatim statutory language for the notice but, instead, allow employers to use the notice "stickers" which these organizations have developed for their industry. The NGA stated that, along with the FMI, it had undertaken an educational compliance program to inform retailers and wholesalers of how to comply with the new law. This program included the developing and marketing of notice stickers, copies of which were provided to the Department along with their comments. The organizations asserted that these stickers were in compliance with the posting requirements of the Compactor and Baler Act. The FMI also stated that it worked closely with ANSI experts to ensure that the stickers were consistent with industry safety standards and would effectively attract the attention of employees approaching or intending to use the machines. The FMI and the NGA pointed out that adoption of the proposed rule would render their stickers unusable.

After carefully considering the comments, the Department agrees that accepting only those notices which reflect the exact wording of the Compactor and Baler Act would be overly prescriptive. The Department believes that the intent of the Compactor and Baler Act will be satisfied if each notice: (1) Contains an accurate statement that the baler or compactor to be loaded by the minor meets the

applicable ANSI standard named in section 13(c)(5)(B)(i)(I) of the FLSA or meets a more recent ANSI standard which the Secretary has certified to be at least as protective of the safety of minors as the standard described in section 13(c)(5)(B)(i)(I); (2) cites the specific ANSI standard, including the year of issuance, that the employer is providing notice that the equipment meets; (3) includes a clear statement that 16- and 17-year-olds may only load the scrap paper balers and paper box compactors; and, (4) includes a clear statement that no employee under the age of 18 may operate or unload the scrap paper balers and paper box compactors.

The Department has examined the sample notices—stickers—provided by both the NGA and the FMI. We note that these stickers do not clearly identify the applicable ANSI standard as required by the Compactor and Baler Act. ANSI includes, in the caption or title of each of its standards, both a "series identifier" and a year of issuance, so as to eliminate confusion between different editions of standards that apply to the same type of machinery. Congress recognized this precision of ANSI nomenclature when, in adopting the Compactor and Baler Act, it specifically required that balers meet Standard ANSI Z245.5–1990 and compactors meet Standard ANSI Z245.2–1992. ANSI has issued a succession of standards in the Z245.5 series for balers: Standard ANSI Z245.5–1982; revised and replaced by Standard ANSI Z245.5–1990 (approved December 12, 1989); revised and replaced by Standard ANSI Z245.5–1997. ANSI does not always adopt the same series identifier when revising and replacing standards for a type of machinery. The standard specified in the Act for compactors—Standard ANSI Z245.2–1992—replaced Standard ANSI Z245.1–1984. The sample notices submitted by the FMI and the NGA do not include the year the ANSI standard was issued, but merely reference the series identifier number. The Department considers this notice to be inadequate. We are concerned that an employer who utilizes a baler that is over 20 years old—but which meets the antiquated Standard ANSI Z245.5–1982—would be under the mistaken impression that after applying the sticker provided by the FMI or NGA, he/she could legally allow 16- and 17-year-old employees to load that equipment. We are also concerned about employers who might apply this sticker, and mistakenly assume themselves to be in compliance with the law by relying on a new ANSI standard which had not

been certified by the Department as providing at least the same levels of protection to young workers as those specifically named in the Compactor and Baler Act. It is imperative that all notices posted in accordance with the Compactor and Baler Act cite both the series identifier and year of issuance for the ANSI standard, so that employers, their supervisory staff, and their young workers are fully informed, as Congress intended them to be.

The Department would consider the NGA and FMI stickers to constitute acceptable notices if they are modified to state explicitly the full caption of the ANSI standard (both the series identifier and the year of issuance). This modification may, of course, be made by printing all future stickers with the full, accurate information as to the specific applicable standard. But existing stickers may also be modified by making hand-written insertions of the additional information that is necessary to identify the specific standard. Such insertions must be written legibly, in indelible ink, and in the same size of lettering as the ANSI standard identifiers already printed on the sticker.

The NGA and the FMI have also provided copies of stickers they have developed to be placed on equipment that does not meet the requirements of the Compactor and Baler Act and, therefore, cannot be loaded, operated or unloaded by any employee who is less than 18 years of age. These stickers, which are not required by the Act and the use of which is completely voluntary, alert employees that they may not load, operate or unload the equipment unless they are 18 years of age or older. The Department appreciates these efforts by the NGA and the FMI and encourages all employers to adopt similar signage when applicable, as part of their efforts to reduce occupational injuries to young workers and increase compliance with the child labor provisions.

Making the determination that the equipment meets the ANSI standard named in the Compactor and Baler Act or a more recent ANSI standard the Secretary has certified as being at least as protective of the safety of minors. The FMI objected to the Department proposal 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 FMI asserted that the Compactor and Baler Act does not support this proposal, and suggested

that a machine's satisfaction of ANSI standards should be established by the reasonable assurances of the machine's manufacturer coupled with maintenance records. The FMI expressed concern that the employer should not be required to maintain any records beyond these assurances and maintenance records.

The Department considers the proposed provision to be necessary to achieve the clear intent of the Act, which is to allow minors to load machines (despite the HO 12 prohibition) only if such machines meet the ANSI standards specified in the statutory and regulatory exemption. The employer which has its young employees loading these machines can lawfully do so only pursuant to this exemption. As discussed above with respect to the HO 2 "incidental and occasional driving" regulation, the employer must be able to prove its satisfaction of all the requirements of this, or any other, FLSA exemption. The employer cannot know whether its operation is in compliance with the exemption (*i.e.*, cannot know whether its minor employees are permitted to load a particular machine) unless and until it determines that the machine meets the applicable ANSI standard. While the information mentioned by FMI would, of course, be important, the employer should also consider other pertinent information, such as equipment modifications, performance of scheduled maintenance, and equipment malfunctions. The Department does not, and will not, prescribe that any particular documentation or records be created by the employer.

As part of an investigation authorized by section 11(a) of the FLSA, the Wage and Hour Administrator may make a determination as to whether the equipment meets the ANSI standard cited on the notice posted by the employer on the machine; such a determination may be essential to an investigative finding of whether the employer has violated the regulation. The employer, of course, may request administrative review where the Administrator determines that minors are working in violation of the regulation because the machine they are using does not meet the ANSI standard. Upon reflection, the Department recognizes that the phrase "final determination" in the Proposed Rule may be confusing, in that the Administrator's investigative determination would be subject to review and, if appropriate, to revision in the administrative adjudicatory process. Therefore, the Department has

concluded that the regulation should not state that the Administrator's investigative determination is "final."

After carefully considering the FMI comment, the Department has concluded that the proposed provision is necessary and appropriate under the FLSA and the Compactor and Baler Act. The proposed provision—with the word "final" deleted—is included in the Final Rule.

The Secretary's review of the more recent ANSI standards. The Compactor and Baler Act applies specific ANSI standards, issued by the organization in 1990 (balers) and 1992 (compactors). However, the Act also provides that any new standard(s) adopted by ANSI would also be sufficient for the determination of safety of the balers and compactors, if the Secretary of Labor certifies the new standard(s) to be at least as protective of the safety of minors as the two standards specified in the Act. In the NPRM, the Department stated that it was reviewing two new ANSI standards, and invited the public to comment on whether those standards should be certified by the Secretary.

Only one commenter, NIOSH, directly addressed the newer ANSI standards, supporting their incorporation into the regulation "as they are as protective as previous standards cited in the Compactor and Baler Act." The CLC cautioned the Department to review thoroughly new ANSI standards for their effectiveness in protecting working minors, and to revise the regulation to reflect improved safety protection standards as they are introduced. The Department agrees with the CLC, concerning the importance of careful consideration of new safety standards. The Department's review of the new ANSI standards agrees with NIOSH's findings. The Secretary, in promulgating this Final Rule, hereby certifies that Standard ANSI Z245.5–1997 is as protective of the safety of minors as Standard ANSI-S245.5–1990 and that Standard ANSI Z245.2–1997 is as protective of the safety of minors as Standard ANSI Z245.2–1992. Accordingly, these newer standards are included in the Final Rule.

Revising HO 12 to include scrap paper balers and paper box compactors that are used to process other materials in addition to paper products. The Department proposed 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. As explained in the NPRM, HO 12 has, in the past, prohibited minors from loading, operating, and unloading only those scrap paper balers

and paper box compactors that are used exclusively to process paper products.

The FMI and the NGA objected to this proposal as being unauthorized, stating that the Compactor and Baler Act addresses only machinery used for paper products. These commenters, along with the Council, also stated that the Department had provided no basis or evidence for the expansion of HO 12.

NIOSH supported this proposal, stating "[r]eview of surveillance and investigation data demonstrate that baling and compacting equipment are associated with deaths and injuries of workers, that these deaths are associated with uncontrolled hazardous energy and inadequate machine guards, and that deaths and injuries result from machines that process non-paper materials (e.g., aluminum cans, plastic, foam, and rubber) as well as paper materials." NIOSH reported that data covering the period of October 1, 1996 through December 31, 1999, reflects that balers and compactors were responsible for an estimated 2,625 injury reports nationwide. Almost half of the injuries occurred while working in either a retail or grocery store, with 24% occurring in manufacturing. NIOSH also reported that at least 29 occupational fatalities involving paper balers and compactors occurred between 1992 and 1997.

In making the proposal to modify HO 12, and in considering the comments on the proposal, the Department has given careful thought to the Secretary's long-standing and important statutory duty to ban unsafe working conditions for minors. The FLSA, at section 3(l), gives the Secretary the authority and responsibility to identify and declare those occupations which are "particularly hazardous for the employment of children * * * or detrimental to their health or well-being." In meeting this statutory duty, the Secretary has promulgated the seventeen Hazardous Occupations Orders, including HO 12 on balers and compactors. The Secretary need not and should not wait for additional legislation when making determinations concerning the safety and well-being of working youth.

Since its inception, HO 12 has prohibited minors from loading, operating and unloading balers and compactors that are used exclusively to process paper products. In proposing to expand the scope of the regulation, the Department recognized that the existing, narrow prohibition ignores the fact that these machines are used to compress materials in addition to paper without any changes in design or procedures for loading, operating and unloading. Such other materials which may be processed

by scrap paper balers and paper box compactors include, but are not limited to, plastics, rubber, food waste, foam rubber and aluminum cans. The risks which these machines present to minor employees remain the same, regardless of the materials being processed. The information provided by NIOSH demonstrates that injuries and deaths continue to occur in the loading, operation and unloading of these machines, whether or not they are used exclusively for paper products. Further, the Department's enforcement experience shows that these machines are, indeed, "particularly hazardous" to load, operate or unload. For example, in recent years the Wage and Hour Administrator has investigated cases involving a 16-year-old who was killed operating a compactor, a 17-year-old whose arm was crushed while operating a compactor, and a 15-year-old who suffered a serious injury to his hand while operating a paper baler.

The Department does not believe that its revision of the scope of HO 12 required a new legislative authorization through the enactment of the Compactor and Baler Act. The Department's authority with regard to all of the Hazardous Occupations Orders is based on long-standing FLSA provisions. However, we note that the proposed expansion of HO 12 to include machines used for materials in addition to paper products is, in fact, supported by the definitions of both balers and compactors contained in the ANSI Standards which Congress adopted in the Compactor and Baler Act. Standard Z245.5-1990, for balers, identifies the materials which may be processed by the machines: "Primary materials includ[ing] natural and synthetic fibers and their by-products;" "Waste paper (newsprint, corrugated containers, and the like), trim scrap, mill broke, metals (other than ferrous scrap), and textiles* * *" Standard Z245.2-1992, for compactors, identifies the "refuse" which may be processed: "Any type of solid waste (except human wastes), including garbage, rubbish, ashes, incinerator residues, street cleanings, plant trimmings, and residential, commercial, and industrial solid wastes, including recyclable materials." Further, the Department takes the position that the lack of reports from employers pursuant to the Compactor and Baler Act is not a factor in this revision of HO 12; the Department's enforcement experience and the data provided by NIOSH are ample information as to the "particular hazards" of these machines. We note, however, that the one report submitted

by an employer pursuant to the Act involved an incident in which a 17-year-old had both his legs amputated in a baler machine at a recycling center. At the time of his injury, the machine was crushing cardboard, but the machine was the only baler at the center and, therefore, was also used for processing other materials, including plastic.

Accordingly, the Secretary has determined 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 proposed modification of HO 12 is included in the Final Rule.

The Department notes that after the issuance of this Final Rule, there will still be one class of balers and compactors that falls outside of the scope of HO 12—those machines that process everything and anything but paper products. These machines share similar designs and operating procedures with those compactors and balers that process only paper products or process other materials in addition to paper products. The Secretary has not made a determination that occupations involving the loading, operating and unloading of balers and compactors that do not process paper are particularly hazardous to the health and well-being of youths between 16 and 18 years of age. The Department will continue to review this matter and may consider future rulemaking to further revise HO 12.

In addition, two minor editorial modifications to the existing regulation have been made in the Final Rule. The word "also" in the last sentence of section 570.63(b)(2) (ii) which is part of the definition of the term *paper products machine* was moved to avoid any confusion over what types of machines are subject to the HO. The word "of" in section 570.63(b) (3) that defines the term *scrap paper baler* has been replaced with the word "or" to comport with the language in the ANSI standard.

Proposal to amend the regulations in part 579 concerning civil money penalties. In the 1999 NPRM, the Department proposed to amend the regulations in sections 579.1 and 579.5 to implement the Compactor and Baler Act's explicit authorization for civil money 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. No comments were received on this proposal. After publication of the 1999 NPRM, but prior to the publication of this Final Rule, the Department published a different Final

Rule in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (66 FR 63501, December 7, 2001). That regulatory action not only increased the maximum amount of the civil money penalty that may be assessed under the FLSA for a child labor violation to \$11,000, but also implemented the Compactor and Baler Act's authorization for civil money penalties. As the Compactor and Baler Act's authorization for civil money penalties has already been incorporated into section 579.5, that proposed change need not be included in this Final Rule. The corresponding proposed changes to section 579.1, however, are included in this Final Rule.

The Final Rule includes both the Federal Civil Penalties Inflation Adjustment Act change in the maximum amount of the penalty and the change specified in the Proposed Rule.

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 NIOSH 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. Many supported a complete prohibition against minors working above a certain elevation, often specified as 6 to 10 feet. The comments came from a variety of sources, including industry organizations, child advocates, and State and Federal agencies.

The single ANPRM 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 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.

After considering all of the information obtained in response to the ANPRM, the Department proposed to amend HO 16 to expand the ban from all *roofing occupations* to include all *work performed on or about 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, installation of sheathing, roof trusses or roof bases, television antennas, air conditioners, exhaust and ventilating equipment, heating equipment, and similar appliances attached to roofs. The Department also proposed that 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 stated its view 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.

Four comments were received concerning this proposal.

NIOSH supported broadening the scope of HO 16, as proposed. NIOSH reported that the roofer occupation is among the occupations at highest risk of fatal work-related injury among workers of all ages. NIOSH stated that work on and around roofs is associated with falls from heights and contact with electrical energy, and that these two causes of injury together accounted for 18% of work-related injury deaths of 16- and 17-year-olds in the 1980's. Further, NIOSH reported that hazards are associated with workers using roofs as a means of access or support for other work at heights. As an example of such hazards, NIOSH discussed the death of a 17-year-old window washer who

plunged 15 floors to his death due to the failure of the rigging he had attached to the roof of the building.

ABC—which had been the only ANPRM commenter that did not favor prohibiting all work on a roof—commented that it believed its previous concerns had been substantially addressed through the proposed regulation's preservation of the exceptions for apprentices and student-learners.

The NCLC and the CLC opposed the proposal as not having gone far enough. These commenters recommended that the regulation should prohibit minors working at elevations “in any and every capacity” whether on roofs, hanging out windows, or working on ladders, scaffolds, or other elevated surfaces. The CLC suggested that the prohibition should apply to work at elevations above 6 feet.

The Department has carefully considered the comments and available data, as well as our own enforcement experience. Based on this information, the Department has concluded that the dangers cited in the report supporting the promulgation of HO 16 still persist for youths working not only in roofing occupations but also on or about roofs. The main danger for such youths is from falls which may occur in any work performed on or about a roof. This danger was demonstrated by three recent incidents investigated by the Wage and Hour Administrator. Two minors (one in Pennsylvania and one in Alabama) fell to their deaths while employed in the installation of roofing trusses (part of building construction, but not a roofing occupation under the current regulation). A third minor, 16 years of age, died in July of 2002 in Arizona after falling from a roof while assisting in the maintenance of an air conditioning unit (again, work on a roof but not a roofing occupation under the current regulation). The danger of falls was also demonstrated in the incident cited by NIOSH: death of a window washer who worked on the roof of the building to attach and then enter the rigging which failed and caused his fall. Additional dangers in work on or about a roof include exposure to electricity, as discussed by NIOSH and as demonstrated in a case recently investigated by the Wage and Hour Administrator in which a 17-year-old was killed when the pipes he was hoisting to a roof (for assembly there into clothing racks) came into contact with overhead power lines.

The Department notes that the regulatory phrase *on or about a roof* is not limited to circumstances where the minor employee is standing or working

on the roof itself. The prohibition extends to standing or working on a ladder or scaffold at or near the roof, working on the installation of roof trusses or joists which will support the roof, as well as working from or being transported to or from the roof in mechanical devices such as hoists. Thus, for example, a minor is prohibited from working on a scaffold (as well as on the roof itself) to install roof flashing or gutters. To avoid the possibility of confusion as to the scope of this prohibition, the proposed definition of the term *on or about a roof* has been modified in the Final Rule, to clarify that the term includes work “upon or in close proximity to a roof” and to clarify that the installation of trusses or joists is included in the “construction of the base of roofs” within the meaning of this definition.

The Department has carefully considered the views of commenters who suggested that the regulation should ban all work at an elevation, such as at a height of six feet. While we recognize that there may be some risk of accidents whenever workers are performing tasks above ground level, we have concluded, based on available data, that all such work by minors cannot be declared to be particularly hazardous. Therefore, we believe that such an across-the-board prohibition would be unwarranted, at the present time, and would deny minors many safe and promising employment opportunities such as library assistants climbing low ladders to retrieve or replace books, or retail stock clerks retrieving or restoring merchandise to shelving, or lifeguards mounting their stands at poolside. This matter may be further addressed in a future rule making, if appropriate.

The Department has concluded that occupations involving working on or about roofs, as well as all occupations in roofing operations, are particularly hazardous for minors between 16 and 18 years of age, and accordingly adopts the proposal as a Final Rule with the modifications discussed above.

G. Miscellaneous Matters

The Department has also made minor, nonsubstantive, changes to the regulations that are not discussed above. The 1999 NPRM proposed that the section headings contained in Subparts B and C of 29 CFR Part 570 and in 29 CFR Part 579 be presented as questions. It was believed such a format would more clearly identify the contents of each section. Upon further review, the Department has determined that headings consisting of a few words, or a short phrase, will be more useful to

the reader. Accordingly, the question format has not been adopted and the section headings will now consist of a few words or a short phrase. Also, as mentioned earlier, the 1999 NPRM proposed to revise 29 CFR Part 579.5 to incorporate the civil money penalty provisions of the Compactor and Baler Act. This revision was accomplished by a separate Final Rule published by the Department (66 FR 63501, December 7, 2001) and therefore does not need to be included in this Final Rule. Furthermore, the Department has concluded that four numbered subsections of the existing regulation on civil money penalties are obsolete—three “reserved” (§§ 579.6–.8) and one dealing with the implementation of the 1990 FLSA amendment which increased the child labor civil money penalty to \$10,000 (§ 579.9). The Final Rule removes these subsections from the regulation. In addition, the Department is also revising 29 CFR Part 579.3(a)(5) to remove a no longer appropriate reference to 29 CFR Part 545. Part 545, which was titled *Homeworkers in Industries in Puerto Rico*, was removed by the Department in 1990 as a result of the 1989 amendments to the FLSA (55 FR 12114, March 30, 1990). Finally, in keeping with current guidance provided by the **Federal Register**, we have restructured the *definitions* in 29 CFR 570.63 and 570.67 to reflect an alphabetical sequence.

III. Changes to Procedural Regulations (29 CFR Part 580)

The Department has determined that the procedural regulations—dealing with administrative hearings and appeals of civil money penalties—require updating to make it clear that the administrative procedures are a prerequisite to judicial review and to identify the Department’s Administrative Review Board as the entity to which appeals from Administrative Law Judge decisions are taken. The Final Rule makes the necessary changes in Part 580 procedural regulations. Because these revisions pertain to rules of agency procedure or practice, notice of proposed rulemaking and public comment procedures are not required for these revisions pursuant to Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A). Therefore, these procedural amendments are being adopted as a final rule without prior notice and comment.

IV. Paperwork Reduction Act

Federal Certificate of Age

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 afford the employer an affirmative defense against unwitting violations of the child labor provisions). 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 was directed, prior to this revision of the regulation, to return the certificate to the office that issued it, except that a certificate for employment in agriculture might be given to the youth; any subsequent certificate of age requested for that youth could be issued without additional proof of age. A certificate of age issued for a youth 18 or 19 years of age was 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, as agreed with OMB, has revised 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 regulatory provision 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 has also revised the statement at the end of § 570.6(b)(2) to reflect the new OMB control number.

Respondents and frequency of response: It is estimated that 10 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 one and two-thirds hours (10 applications × 10 minutes per application = 1.667 hours). The filing of a Federal Certificate of Age is estimated to take one-half minute per document for a total annual burden of .083 hours (10 Federal Certificates of Age × .5 minutes = .083 hours).

Total Annual Reporting and Recordkeeping Burden = 1.75 Hours.

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 non-supervisory workers on non-farm payrolls of \$15.38 for 2003 (Monthly Labor Review, U.S. Department of Labor, Bureau of Labor Statistics). Total annual respondent costs are estimated at \$26.92 (\$15.38 × 1.75 hours).

Total estimated annual postage and envelope costs for transmitting these applications are \$4.00 (10 reports × \$.37 postage + \$.03 per envelope).

Total Annual Respondent Costs for FORM WH-14, Application for Federal Certificate of Age—\$30.92 (\$26.92 + \$4.00).

No comments were received from the public regarding this burden. Two comments were received on the substantive aspects of the regulatory proposal concerning age certificates and these are discussed earlier in this document.

No changes have been made in this Final Rule which affect the information collection and recordkeeping requirements and estimated burdens previously submitted to OMB and discussed in the proposed rule.

V. Executive Order 12866

This 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 Department’s priorities. Therefore, the Office of Management and Budget has reviewed the rule. However, because this 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. In addition, this rule imposes no new information collection, recordkeeping, or reporting requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

It is well established that several characteristics of youth place adolescent workers at increased risk of injury and death. Lack of experience in the work place and in assessing risks, and developmental factors—physical, cognitive, and psychological—all contribute to the higher rates of occupational injuries and deaths experienced by young workers. The Census of Fatal Occupational Injuries, U.S. Department of Labor, Bureau of Labor Statistics, reported that during the years of 1992–1997, 15-year-olds actually experience an occupational

fatality rate per 100,000 fulltime equivalents that is greater than the average for all workers. A NIOSH report also showed that the fatality rate for adolescents aged 16 and 17 was 5.1 per 100,000 full-time equivalent workers for the 10-year period 1980–89 [Castillo *et al.* 1994], while the rate for adults aged 18 and older was 6.1. As NIOSH stated, “[t]his relatively small difference in rates is cause for concern because youths under age 18 are employed less frequently in especially hazardous jobs.” *Special Hazard Review: Child Labor Research Needs.*

Recommendations from the NIOSH Child Labor Working Team, Ch. 2, August 1997. NIOSH also estimates that youth work injuries exceed 200,000 each year, and of that number, 77,000 are serious enough to warrant treatment in hospital emergency rooms. The NIOSH statistics show that, despite the fact that workers aged 15 through 17 are generally restricted from performing in hazardous occupations such as mining, motor-vehicle driving, logging, sawmilling and construction, they have a higher rate of injuries requiring emergency room treatment than any other age group except 18- and 19-year-olds (who are not restricted from performing such work). *NIOSH Recommendations to the U. S. Department of Labor for Changes to Hazardous Orders*, p. 8, May 2002. The economic and social costs associated with the deaths and serious injuries of young workers are substantial.

The Department considers the issuance of this rule as an important and necessary step in its ongoing review of the criteria for permissible child labor employment, a review which strives to balance the potential benefits of transitional, staged employment opportunities for youth with the necessary protections for their education, health and safety. Because youth often overcome the effects of those characteristics that initially place them at increased risk of injury and death in the workplace only through the maturation process, it is believed that requiring older workers to perform those tasks that present greater risks to younger workers actually eliminates injuries and deaths “rather than delaying them or transferring them to the older workers.

This rule revises 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 Department believes that only a few minors employed in such occupations would be affected by these revisions. In addition, any costs that might result from using older employees to perform the prohibited tasks would be more than offset by reduced health and productivity costs resulting from accidents and injuries to minors on the job. The additional changes are also expected to have little or no direct cost impact. The changes 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. Changes 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.

In addition, the information required to be disclosed or posted on machines covered by the Baler and Compactor Act does not impose new burdens under the Paperwork Reduction Act because the information to be disclosed is originally supplied by the Federal government under the statute and these regulations (see 5 CFR 1320.3(c)(2)). The Department believes that any new costs incurred by employers to comply with the notice requirements would be *de minimis*. The Department estimates that the largest group of employers that will qualify for and take advantage of this limited exemption are grocery stores and food service establishments, of which only approximately 20% of the grocery stores (3,395) and 1% of the eating and drinking establishments (2,003) are covered by the FLSA, have balers or compactors which meet the ANSI standards named in the Compactor and Baler Act, and employ 16- and 17-year-old minors who they wish to utilize to load the balers or compactors, for a total of 5,398 affected employers.

Compliance with the notice requirements can be achieved by purchasing or creating a notice with all required information and affixing it to the baler or compactor. Once the notice is affixed and assuming all the equipment continues to meet the required ANSI Standard, the requirement is permanently satisfied and need only be repeated if the notice

is damaged or destroyed. Some employers may purchase the required notice. Some employers may create their own notice. Some employers have only one baler or compactor; others have several, possibly at multiple locations. Considering these various situations, we estimate that it will take an average of 4 minutes per employer to satisfy the notice requirement for a total, one-time burden of 360 hours. Absent specific wage data regarding the employees who will satisfy these notice requirements, respondent costs are estimated utilizing the average hourly rate of nonsupervisory workers of \$10.04 in the retail trade for 2002 (Monthly Labor Review, U.S. Department of Labor, Bureau of Labor Statistics). The total additional costs associated with the notice requirement are estimated at \$3,614.40 (\$10.04 × 360 hours).

The Department also believes that this rule will not reduce the overall number of safe, positive and legal employment opportunities available to young workers. The rule overall modifies 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 in addition to fewer occupational injuries and deaths, including reduced health and productivity costs that employers may otherwise incur because of higher accident and injury rates to young and inexperienced workers. In any event, the direct, incremental costs imposed by this 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.

VI. Small Business Regulatory Enforcement Fairness Act

The Department has similarly concluded that this 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.

VII. Regulatory Flexibility Act and Executive Order 13272

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 baler and box compactor provisions 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 businesses, 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.

VIII. Unfunded Mandates Reform Act of 1995

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).

IX. Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and the undersigned hereby certifies that the rule will not adversely affect the well-being of families.

X. Executive Order 13045, Protection of Children

Executive Order No. 13045, dated April 23, 1997 (62 FR 19885), applies to any rule that (1) is determined to be “economically significant” as defined in Executive Order No. 12866, and (2) concerns an environmental health or safety risk that the promulgating agency has reason to believe may have a disproportionate effect on children. This action is not subject to Executive Order No. 13045 because it is not economically significant as defined in Executive Order No. 12866. In addition, although this rule impacts the youth employment provisions of the FLSA and the employment of adolescents and young adults, it does not impact the environmental health or safety risks of children.

XI. Executive Order 13132, Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” The rule does not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

XII. Executive Order 13175, Indian Tribal Governments

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

XIII. Executive Order 12630, Constitutionally Protected Property Rights

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

XIV. Executive Order 12988, Civil Justice Reform Analysis

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

XV. Executive Order 13211, Energy Supply

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

XVI. Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 942 U.S.C. 1500) and the Department’s NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

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, Law enforcement, Penalties.

29 CFR Part 580

Administrative practice and procedure, Child labor, Employment, Labor, Law enforcement, Penalties.

Signed at Washington, DC on the 7th day of December, 2004.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Alfred B. Robinson, Jr.,

Acting Administrator, Wage and Hour Division.

■ For the reasons set forth above, title 29, parts 570, 579, and 580, of the Code of Federal Regulations are amended as set forth below.

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION**Subpart B—[Amended]**

■ 1.–2. The authority citation for part 570 Subpart B is revised to read as follows:

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

■ 3. In § 570.5, the section heading is revised to read as follows:

§ 570.5 Certificates of age and their effect.

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

§ 570.6 Contents and disposition of certificates of age.

* * * * *

(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.)

■ 5. In § 570.7, the section heading is revised to read as follows:

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

■ 6. In § 570.8, the section heading is revised to read as follows:

§ 570.8 Issuance of a Federal certificate of age.

■ 7. In § 570.9, the section heading is revised to read as follows:

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

■ 8. In § 570.10, the section heading is revised to read as follows:

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

■ 9. In § 570.11, the section heading is revised to read as follows:

§ 570.11 Continued acceptability of certificates of age.

■ 10. In § 570.12, the section heading is revised to read as follows:

§ 570.12 Revoked certificates of age.

■ 11. In § 570.25, the section heading is revised to read as follows:

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

■ 12. In § 570.27, the section heading is revised to read as follows:

§ 570.27 Revision of subpart B.**Subpart C—[Amended]**

■ 13. The authority citation for part 570 Subpart C is revised to read as follows:

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

■ 14. In § 570.31, the section heading is revised to read as follows:

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

■ 15. In § 570.32, the section heading is revised to read as follows:

§ 570.32 Effect of subpart C.

■ 16. In § 570.33, the section heading is revised to read as follows:

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

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

§ 570.34 Occupations minors 14 and 15 years of age are 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, devices used to maintain the temperature of prepared foods (such as warmers, steam tables, and heat lamps), and microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F.

Minors are permitted to clean kitchen equipment (not otherwise prohibited), remove oil or grease filters, pour oil or grease through filters, and move receptacles containing hot grease or hot oil, but only when the equipment, surfaces, containers and liquids do not exceed a temperature of 100 °F;

* * * * *

(b) * * *

(5) Baking and cooking are prohibited except:

(i) Cooking is permitted with electric or gas grilles which does not involve cooking over an open flame (**Note:** this provision does not authorize cooking with equipment such as rotisseries, broilers, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as "Neico broilers"); and

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

* * * * *

■ 18. In § 570.35, the section heading is revised to read as follows:

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

■ 19. In § 570.35a, the section heading is revised to read as follows:

§ 570.35a Work experience and career exploration program.

■ 20. In § 570.36, the section heading is revised to read as follows:

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

■ 21. In § 570.37, the section heading is revised to read as follows:

§ 570.37 Effect of this subpart on other laws.

■ 22. In § 570.38, the section heading is revised to read as follows:

§ 570.38 Revision of subpart C.

Subpart E—[Amended]

■ 23. The authority citation for part 570 subpart E is revised to read as follows:

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

■ 24. In § 570.51, paragraph (b) (2) is 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 explosives and explosive materials as defined in 18 U.S.C. 841(c)–(f) and the implementing regulations at 27 CFR part 555. The terms include any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, as well as all goods identified in the most recent list of explosive materials published by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice. This list is not intended to be all-inclusive and is updated and published annually in the **Federal Register** pursuant to 18 U.S.C. 841(d). A copy of the most recent version of the list may be found through the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Web site at <http://www.atf.gov>.

* * * * *

■ 25. In § 570.52, paragraph (b) is revised and new paragraphs (c)(5) and (c)(6) are 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 worktime in any workweek.

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

■ 26. In § 570.63, the section heading and paragraphs (a)(1)(i), (b) and (c) are 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 combining machine, sheeting machine, scrap paper baler, paper box compactor, or vertical slotter.

* * * * *

(b) *Definitions.*

Applicable ANSI Standard means the American National Standard Institute's Standard ANSI Z245.5-1990 ("American National Standard for Refuse Collection, Processing, and Disposal—Baling Equipment—Safety Requirements") for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2-1992 ("American National Standard for Refuse Collection, Processing, and Disposal Equipment—Stationary Compactors—Safety Requirements") for paper box compactors. Additional applicable standards are the American National Standard Institute's Standard ANSI Z245.5-1997 ("American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Baling Equipment—Safety Requirements") for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2-1997 ("American National Standard for Equipment Technology and Operations for Wastes and Recyclable Materials—Stationary Compactors—Safety Requirements") for paper box compactors, which the Secretary has certified to be at least as protective of the safety of minors as Standard ANSI Z245.5-1990 for scrap paper balers or ANSI Z245.2-1992 for paper box compactors. The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. These ANSI standards are incorporated by reference in this paragraph and have the same force and effect as other standards in this part. Only the mandatory provisions (*i.e.*, provisions containing the word "shall" or other mandatory language) of these standards are adopted as standards under this part. These standards are incorporated by reference as they exist on the date of the approval; if any changes are made in these standards which the Secretary finds to be as protective of the safety of minors as the current standards, the Secretary will publish a Notice of the change of standards in the **Federal Register**. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of

these standards are available for purchase from the American National Standards Institute (ANSI), 23 West 43rd St., Fourth Floor, New York, NY, 10036. In addition, these standards are available for inspection at the National Archives and Records Administration (NARA) and at the Occupational Safety and Health Administration's Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210, or any of its regional offices. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

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

Paper box compactor means a powered machine that remains stationary during operation, used to compact refuse, including paper boxes, into a detachable or integral container or into a transfer vehicle.

Paper products machine means:

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

(2) The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment. The term also applies to those machines which, in addition to paper products, process other material for disposal.

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

(c) *Exemptions.* (1) Sixteen- and 17-year-olds minors may load materials into, but not operate or unload, those scrap paper balers and paper box compactors that are safe for 16- and 17-year-old employees to load and cannot be operated while being loaded. For the

purpose of this exemption, a scrap paper baler or a paper box compactor is considered to be safe for 16- and 17-year-old to load only if all of the following conditions are met:

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

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

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

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

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

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

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

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

■ 27. In § 570.67 the section heading and paragraphs (a) and (b) are 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.*

On or about a roof includes all work performed upon or in close proximity to a roof, including carpentry and metal work, alterations, additions, maintenance and repair, including painting and coating of existing roofs; the construction of the sheathing or base of roofs (wood or metal), including roof

trusses or joists; gutter and downspout work; the installation and servicing of television and communication equipment such as cable and satellite dishes; the installation and servicing of heating, ventilation and air conditioning equipment or similar appliances attached to roofs; and any similar work that is required to be performed on or about roofs.

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

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

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

Authority: 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4–2001, 66 FR 29656; 104 Stat. 890 (28 U.S.C. 2461 note), as amended by 110 Stat. 1321–373 and 112 Stat. 3293.

■ 30. In § 579.1, the section heading and paragraphs (a) introductory text, (a)(1), (a)(6) and (c) are revised to read as follows:

§ 579.1 Purpose and scope.

(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 \$11,000 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).

* * * * *

(c) 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.

■ 31. In § 579.3, the section heading and paragraph (a)(5) are revised to read as follows:

§ 579.3 Violations for which child labor civil money penalties may be assessed.

(a) * * *

(5) The failure by an employer employing any minor for whom records must be kept under any provision of part 516 of this title to maintain and preserve, as required by such provision, such records concerning the date of the minor's birth and concerning the proof of the minor's age as specified therein; and

* * * * *

■ 32. In § 579.5, the section heading is revised to read as follows:

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

§§ 579.6 through 579.8 [Removed]

■ 33. Sections 579.6 through 579.8 are removed.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 34.–35. The authority citation for part 580 is revised to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4–2001, 66 FR 29656; 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 36. Section 580.5 is revised to read as follows:

§ 580.5 Finality of notice.

If the person charged with violations does not, within 15 days after receipt of the notice, take exception to the determination that the violation or violations for which the penalty is imposed occurred, the administrative determination by the Administrator of the amount of such penalty shall be deemed final and not subject to administrative or judicial review. Upon the determination becoming final in such a manner, collection and recovery of the penalty shall be instituted pursuant to § 580.18.

■ 37. In § 580.6, paragraph (a) is revised to read as follows:

§ 580.6 Exception to determination of penalty and request for hearing.

(a) Any person desiring to take exception to the determination of penalty, or to seek judicial review, shall request an administrative hearing pursuant to this part. The exception shall be in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, and must be received no later than 15 days after the date of receipt of the notice referred to in § 580.3. No additional time shall be added where service of the determination of penalties or of the exception thereto is made by mail. If such a request for an administrative hearing is timely filed, the Administrator's determination shall be inoperative unless and until the case is dismissed or the Administrative Law Judge issues a decision affirming the determination.

* * * * *

■ 38. Section 580.13 is revised to read as follows:

§ 580.13 Procedures for appeals to the Administrative Review Board.

(a) Any party desiring review of a decision of the Administrative Law Judge, including judicial review, must file a petition for review with the Department's Administrative Review Board (Board). To be effective, such petition must be received by the Board within 30 days of the date of the decision of the Administrative Law Judge. Copies of the appeal shall be served on all parties and on the Chief Administrative Law Judge. If such a petition for review is timely filed, the decision of the Administrative Law Judge shall be inoperative unless and until the Board dismisses the appeal or issues a decision affirming the decision of the Administrative Law Judge.

(b) All documents submitted to the Board shall be filed with the Administrative Review Board, Room S–

4309, U.S. Department of Labor, Washington, DC 20210. An original and two copies of all documents must be filed.

(c) Documents are not deemed filed with the Board until actually received by the Board, either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(d) A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding. Such service shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address of the party.

§ 580.14 [Removed and Reserved]

■ 39. Section 580.14 is removed and reserved.

■ 40. Section 580.16 is revised to read as follows:

§ 580.16 Final decision of the Administrative Review Board.

The Board's final decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

■ 41. In § 580.18, paragraph (a) is revised to read as follows:

§ 580.18 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final under § 580.5 in accordance with the administrative assessment thereof, or

pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in § 580.12, or the decision of the Board pursuant to § 580.16, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor. The person against whom such penalty has been assessed or imposed shall promptly remit the amount thereof, as finally determined. The payment shall be by certified check or by money order, made payable to the order of the Wage and Hour Division, and shall be delivered or mailed to the District Office of the Wage and Hour Division which issued and served the original notice of the penalty.

* * * * *

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