

**DEPARTMENT OF LABOR****Wage and Hour Division****29 CFR Part 570**

RIN 1215-AB44

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

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

**ACTION:** Advance notice of proposed rulemaking and request for comments.

**SUMMARY:** The Department of Labor (Department or DOL) is considering proposing revisions to the child labor regulations issued pursuant to the Fair Labor Standards Act (FLSA), 29 CFR part 570, which set forth the criteria for the permissible employment of minors under 18 years of age. In particular, subpart E of these regulations is under review. Subpart E identifies occupations deemed particularly hazardous for or detrimental to the health or well-being of employees under 18 years of age. This advance notice of proposed rulemaking seeks the views of the public on the need for changes to these regulations.

**DATES:** Comments must be received on or before July 16, 2007.

**ADDRESSES:** You may submit comments, identified by RIN 1215-AB44, by either one of the following methods:

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:**

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

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the Wage and Hour Division's toll-free help line at (866) 4US-WAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's 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. Electronic Access and Filing Comments**

*Public Participation:* This advance notice of proposed rulemaking is available through the **Federal Register** and the <http://www.regulations.gov> Web site. You may also access this document via the WHD home page at <http://www.wagehour.dol.gov>. To comment electronically on federal rulemakings, go to the Federal eRulemaking Portal at <http://www.regulations.gov>, which will allow you to find, review, and submit comments on federal documents that are open for comment and published in the **Federal Register**. Please identify all comments submitted in electronic form by the RIN docket number (1215-AB44). Because of delays in receiving mail in the Washington, DC area, commenters should transmit their comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>, or submit them by mail early to ensure timely receipt prior to the close of the comment period. Submit one copy of your comments by only one method.

**II. Background**

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

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

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

conditions for employing such apprentices and student-learners are detailed in § 570.50(b) and (c).

Because of changes in the workplace, the introduction of new processes and technologies, the emergence of new types of businesses where young workers may find employment opportunities, the existence of differing federal and state standards, and divergent views on how best to 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 Notice of Proposed Rulemaking (NPRM) in 1982, a Final Rule in 1991, both an Advance Notice of Proposed Rulemaking (ANPRM) and an NPRM in 1994, a Final Rule in 1995, an NPRM in 1999, and a Final Rule in 2004.

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

The Department continued to receive suggestions from the public that certain changes should be made to the child labor regulations on a number of issues. In 1987, the Department established a Child Labor Advisory Committee (CLAC) composed of 21 members representing employers, education, labor, child guidance professionals, civic groups, child advocacy groups, state officials, and safety groups. The mission of the CLAC was to give advice and guidance in developing possible proposals to change existing standards. After reviewing a number of issues, the CLAC proposed making certain changes to the child labor regulations. The Department considered the CLAC's suggestions, as well as suggestions received from the public as noted above, and published an NPRM in October 1990, proposing changes to three HOs (55 FR 42612). In December 1991, the Department promulgated a Final Rule that revised the three HOs (56 FR 58626).

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

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

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

Congress has amended the child labor provisions of the FLSA three times since 1996. The Compactor and Balers Safety Standards Modernization Act, Pub. L. 104-174 (Compactor and Baler Act), was signed into law on August 6, 1996. This legislation added section 13(c)(5) to the FLSA, permitting minors 16 and 17 years of age to load, but not operate or unload, certain scrap paper balers and paper box compactors when certain requirements are met. The Drive for Teen Employment Act, Pub. L. 105-334, was signed into law on October 31, 1998. This legislation added section 13(c)(6) to the FLSA, prohibiting minors under 17 years of age from driving automobiles and trucks on public roadways on-the-job and establishing the conditions and criteria for 17-year-olds to drive automobiles and trucks on public roadways on-the-job. The Department of Labor Appropriations Act, 2004, Pub. L. 108-199, amended the FLSA by creating a limited exemption from the youth employment provisions for minors 14 to 18 years of age who are excused from compulsory school attendance beyond the eighth grade. The exemption, contained in section 13(c)(7) of the FLSA, allows eligible youth, under specific conditions, to be employed inside and outside of places of business that use machinery to process wood products,

but does not allow such youth to operate or assist in operating power-driven woodworking machines. This exemption overrides the FLSA's formerly complete prohibition on the employment of 14- and 15-year-olds in manufacturing occupations contained in section 3(l).

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

In 1998, the Department provided funds to NIOSH to conduct a comprehensive review of the scientific literature and available data in order to assess current workplace hazards and the adequacy of the current youth employment HOs to address them. This study was commissioned to provide the Secretary with another tool to use in her ongoing review of the youth employment provisions, and of the hazardous occupations orders in particular. The report, entitled *National Institute for Occupational Safety and Health Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders* (hereinafter referred to as the NIOSH Report or the Report), was issued in July of 2002. The Report, which makes 35 recommendations concerning the existing nonagricultural HOs and recommends the creation of 17 new HOs, also incorporated the comments NIOSH submitted in

response to the 1999 NPRM. The report is available for review on the Department's YouthRules! Web site at <http://www.youthrules.dol.gov/resources.htm>.

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

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

equipment, and strict adherence to recognized safe working practices.

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

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

The methodology used by SiloSmashers was to compare the direct costs and benefits of implementing or revising an HO, as recommended by NIOSH, with the costs and benefits of not implementing or revising the HO based on the NIOSH recommendations. Each SiloSmashers analysis was conducted on a mutually exclusive basis to yield a net present value (NPV). SiloSmashers defines NPV as "the discounted dollar value of an investment across the expected planning horizon. As a dollar figure, NPV is presented at the full value level for each implementation approach (implementing versus not implementing) as well as at the incremental approach (the difference between implementing versus not implementing). As a comparison tool and under the incremental approach, the higher the NPV, the higher the expected value of implementation." The NPVs reported by SiloSmashers for each of the NIOSH recommendations addressing the current nonagricultural HOs range from a negative \$9,537,000 to a positive \$113,556,000.

Although the SiloSmashers report includes both a quantitative analysis and a qualitative analysis of each NIOSH recommendation, the

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

In addition, not only was the methodology used by SiloSmashers to generate the NPVs subject to the same data limitations faced by NIOSH regarding the employment, fatality, and injury rates of young workers, but it also raises additional concerns. First, if SiloSmashers were unable to identify any minors who were fatally injured while performing work that was the subject of the NIOSH recommendation being examined, even if many adult workers were killed while performing that exact same work, the analysis would reflect that implementation of the recommendation would have no benefit in reducing occupational hazards to youth. Such an assumption is contrary to the Department's long-held position that work which is dangerous for adults is inherently dangerous for youth. For example, because SiloSmashers found no deaths of youth resulting from the operation of chainsaws, it concluded that implementation of the NIOSH recommendation to expand HO 14 to prohibit the operation of chainsaws on all materials, and not just on wood and wood products as currently prohibited by HOs 4 and 5, would have no impact on the number of occupational fatalities suffered by 16- and 17-year-olds. The Department strongly disagrees with this conclusion. NIOSH based its recommendation on data that demonstrate that chainsaws continue to be the source of substantial numbers of fatalities as well as nonfatal injuries which may be unusually severe. Accordingly, the Department believes that the operation of chainsaws is inherently dangerous for young workers, regardless of the lack of youth-specific injury and fatality data. The Department agrees with NIOSH that the prudent course of action is to prohibit the use of chainsaws by all workers under the age of 18.

Secondly, when youth fatalities were identified, the values the SiloSmashers report placed on the lives saved and injuries prevented under the various NIOSH Report recommendations are based on estimates published in economic literature that are based on adult populations. Applying those estimates to children may result in an underestimate of the risk to children

because the susceptibility of a developing child's body to illness, injury, or death will most likely differ from that of the fully developed body of an adult. These differences are important in any such analysis, as society tends to place a higher value on the lives of children compared to adults. By their very nature, child labor laws are intended to protect children from situations that are permissible for adults. Thus, even without some of the other data limitations discussed above, the estimates presented in the SiloSmashers report consistently understate the benefits of implementing the NIOSH recommendations. Because of the data limitations and flaws in methodology, the Department does not consider the individual analysis prepared by SiloSmashers to be influential for rulemaking purposes.

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

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

The NIOSH Report also makes 11 recommendations that impact the current agricultural HOs as well as 17

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

### III. Topics Upon Which Information Is Being Sought

The Department is publishing this ANPRM to obtain information, data, and feedback from the public with respect to the matters set out below.

#### A. Student-Learner and Apprentice Exemptions to the Hazardous Occupations Orders

Seven of the 17 current nonagricultural HOs contain exemptions permitting the employment of 16- and 17-year-old student-learners and apprentices in otherwise prohibited work under specific conditions. The HOs that permit such employment are HO 5 (Occupations involved in the operation of power-driven woodworking machines, § 570.55), HO 8 (Occupations involved in the operations of power-driven metal forming, punching, and shearing machines, § 570.59), HO 10 (Occupations in the operation of power-driven meat processing machines and occupations involving slaughtering, meat packing or processing, or rendering, § 570.61), HO 12 (Occupations involved in the operation of paper-products machines, scrap paper balers, and paper box compactors, § 570.63), HO 14 (Occupations involved in the operations of circular saws, band saws, and guillotine shears, § 570.65), HO 16 (Occupations in roofing operations and on or about a roof, § 570.67), and HO 17 (Occupations in excavation operations, § 570.68).

Discussions on whether to allow exemptions from certain HOs for apprenticeships began in the early 1940s after the enactment of the first five HOs. It was agreed that a blanket exemption for apprentices—one that would apply to every HO—was not appropriate. Representatives of the Children's Bureau, which at that time

was the agency responsible for the promulgation of the HOs, postulated that if the basic characteristics of a particular occupation were hazardous, and the work of a hazardous nature was relatively continuous, such work would remain hazardous for youth even if enrolled in an apprenticeship program. On the other hand, if the craft for which the apprentice is being trained is basically nonhazardous, but requires the occasional performance of hazardous work to complete the training, an exemption for apprentices might be feasible under certain circumstances. No guidelines were provided regarding just how much hazardous work should be allowed before the occupation became too hazardous to warrant an exemption for apprentices. However, the Children's Bureau did note that circumstances that would allow the creation of such an exemption would include the adoption of safeguards guaranteeing proper supervision of the work of the apprentice by an instructor or other qualified person. Similar discussions concerning the appropriateness of exemptions for student-learners soon followed. HO 5 was amended on November 13, 1941 to include an exemption for apprentices and again amended on September 26, 1947, to accommodate student-learners. The remaining HOs that currently contain similar exemptions, starting with HO 8 issued on January 12, 1950, contained these exemptions as of the dates of their promulgation. The committees that were convened by the Department to study whether to create HOs for particular industries or occupations, pursuant to the provisions of former subpart D of 29 CFR part 570, made their own determinations regarding the inclusion or omission of student-learner and apprentice exemptions. It is not evident that these committees followed the general guidance provided by the Children's Bureau when considering student-learner and apprenticeship exemptions. Subpart D was deleted in 1995 as the procedural requirements for creating and amending the HOs (rulemaking) were largely superseded by the Administrative Procedure Act (see 60 FR 19336).

Although the actual exemptions for student-learners and apprentices are contained within each specific HO, the definitions and general requirements relating to these exemptions are detailed in § 570.50. Section 570.50(b) states that an apprentice exemption from an HO shall apply only when (1) the apprentice is employed in a craft recognized as an apprenticeship trade; (2) the work of the apprentice in the occupations declared

particularly hazardous is incidental to his or her training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Bureau of Apprenticeship and Training of the United States Department of Labor as employed in accordance with the standards established by that Bureau, or is registered by a state agency as employed in accordance with the standards of the state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such federal or state standards.

Section 570.50(c) states that student-learner exemptions shall apply when: (1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school; and (2) such student-learner is employed under a written agreement that provides (i) that the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his or her training; (ii) that such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person; (iii) that safety instructions shall be given by the school and correlated by the employer with on-the-job training; and (iv) that a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of the student-learner, and shall be signed by the employer and the school coordinator or principal.

Although the regulations do not provide definitions of the terms *intermittent* and *short periods of time*, the Department interprets those terms to mean that the duties assigned the minor may not be such that he or she is constantly operating the prohibited machinery during the work shift, but only doing so as part of the training experience. Therefore, an apprentice or student-learner may not be the principal operator of prohibited machinery (see Child Labor Bulletin 101, *Youth Employment Provisions for Nonagricultural Occupations under the Fair Labor Standards Act*). He or she must work under the close supervision

of a fully qualified and experienced adult, such as a journey-level worker. Further, this would preclude an apprentice or student-learner from being a production worker, responsible for spending a significant portion of the workday operating prohibited machinery or performing prohibited tasks. The Department considers the continuous performance of otherwise prohibited work that exceeds one hour a day to be more than intermittent and more than for short periods of time. The Department also considers the performance of otherwise prohibited work that totals more than 20% of the student-learner's work shift to be more than for short periods of time.

The regulations do not define the term *direct and close supervision*. The Department's interpretation of *direct and close supervision* as it applies to apprentices and student-learners is based on guidance originally provided by the Bureau of Apprenticeship and Training (BAT) within the Department of Labor's Employment and Training Administration's Office of Apprenticeship and Training, Employer and Labor Services. BAT establishes ratios governing the number of journeymen and apprentices that may be employed on the job site in order to ensure worker safety and that the apprentices receive both proper training and supervision. BAT has advised that the most widely used ratio is one apprentice for the first journey-level worker on-site and one apprentice for every three additional journey-level workers thereafter. The Department considers the requirement of direct and close supervision to be met when there is one journey-level worker or experienced adult working with the first apprentice/student-learner on-site, and at least three journey-level workers or experienced adults working alongside each additional apprentice/student-learner. More information about this issue is included in the Department's publication *Youth Employment Provisions for Non-Agricultural Occupations under the Fair Labor Standards Act, CL Bulletin 101*. Of course, the requirement for direct and close supervision applies only during the periods when the apprentice/student-learner is actually performing work that would otherwise be prohibited by the HO.

The NIOSH Report made several recommendations concerning the application of the student-learner and apprentice exemptions to specific HOs. The Report recommended that the Department retain the exemptions in HO 5 (Occupations involved in the operation of power-driven woodworking

machines), HO 8 (Occupations involved in the operations of power-driven metal forming, punching, and shearing machines), and HO 12 (Occupations involved in the operation of paper-products machines, scrap paper balers, and paper box compactors). The Report recommended that the Department revise the exemptions for student-learners and apprentices in HO 10 (Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat packing or processing, or rendering) so that they would apply only to the operation of power-driven meat-processing machines in retail, wholesale, and service industries-not in meat products manufacturing industries. Finally, the Report recommended that the Department remove the student-learner and apprentice exemptions contained in HO 16 (Work in roofing occupations and on or about a roof) and HO 17 (Occupations in excavating operations).

The Department does not believe the Report provided sufficient rationales for these individual recommendations to warrant implementation and is seeking additional information from the public. In order to address the recommendations made by the Report, and to provide guidance for considering student-learner and apprentice exemptions for any future HOs that may be proposed, the Department is seeking public comment on establishing criteria as to when an exemption for student-learners and apprentices is appropriate. Such criteria, of course, must be consistent with the established national policy of balancing the benefits of employment opportunities for youth with the necessary and appropriate safety protections. Information is also being sought regarding whether the current limitations on the amount of hazardous work that may be performed by an apprentice or student-learner, as well as the degree of required supervision, adequately protect, over-protect, or insufficiently protect the health and safety of young workers. The Department is also especially interested in receiving information about the roles apprenticeship and student-learner programs play in helping youth (1) acquire and practice good occupational safety and health work practices, (2) properly assess workplace risks, and (3) reduce occupational injuries and deaths. Finally, the Department is questioning whether it should retain the provision in § 570.50(b)(4) that extends this limited exemption to apprenticeship programs that, although not registered with the BAT or a state agency

recognized by BAT, conform substantially with the federal or state standards.

*B. Power-Driven Woodworking Machines, Power-Driven Metal Processing Machines and Power-Driven Paper Processing Machines*

The Department is seeking information from the public regarding the scope of several HOs that deal with the operation of power-driven machinery by youth in the workplace. As previously mentioned, the HOs were promulgated independently of one another at various times between 1939 and 1963. Several of the HOs apply to entire industries or processes, e.g., HO 3 bans most work in coal mining, HO 4 bans most work in logging and sawmilling, and HO 17 bans most work in excavation operations. Other HOs prohibit youth from operating certain equipment regardless of the industry in which the youth may be employed. For example, HO 5 (Occupations involved in the operation of power-driven woodworking machines) prohibits the covered employment of 16- and 17-year-olds in the operation of power-driven wood-working machines wherever located. The term *power-driven wood-working machines* is defined in § 570.55(b)(1) as meaning all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer. This definition does not list or name specific types of machines, but encompasses any machine-past, current, or future-that is designed to perform or actually performs the functions of cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer. Under this definition, a band saw designed by the manufacturer to cut wood or veneer, but never used to cut wood or veneer, would still be prohibited under HO 5. This is true even if the machine were used to cut paper, metal, foam rubber, or bakery products such as sheet cake. Likewise, HO 5 would prohibit a band saw designed to cut metal and equipped with a blade designed exclusively for use on metal when used to cut wood or veneer.

Another example would be that the definition of prohibited machinery contained in HO 8 (Occupations involved in the operations of power-driven metal forming, punching, and shearing machines) is quite different from that contained in HO 5, largely because of the limited scope of HO 8.

HO 8 prohibits 16- and 17-year-olds from being employed in the occupations of operator or helper on power-driven metal forming, punching, and shearing machines. Section 570.59(a)(1) states that prohibited machines are: (1) All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls, and hot or cold rolling mills; (2) all pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches; (3) all bending machines, such as apron brakes and press brakes; (4) all hammering machines, such as drop hammers and power hammers; and (5) all shearing machines, such as guillotine or squaring shears, alligator shears, and rotary shears.

Section 570.59(b)(3) defines the term *forming, punching, and shearing machines* to mean power-driven metal-working machines, other than machine tools, that change the shape of or cut metal by means of tools, such as dies, rolls, or knives that are mounted on rams, plungers, or other moving parts. This exclusion from HO 8 of machine tools used on metal permits 16- and 17-year-olds to operate a large number of machines that HO 5 would prohibit if the same machines were used on wood or veneer, or were designed to be used on wood or veneer. The Department excluded machine tools from the prohibitions of HO 8 because the frequency of injuries due to machine tools was low compared to the frequency of injuries due to forming, punching, and shearing machines, even though the total number of injuries due to machine tools was still quite large due to the number of machine tools in use. In a 1951 publication entitled *Machine Tools and their Hazards, Bulletin Number 129*, the Department also noted that the severity of injuries due to machine tools was also lower than the severity of injuries due to forming, punching, and shearing machines.

The NIOSH Report reflects that occupational fatality and injury data regarding the operation of machine tools has changed since the Department promulgated HO 8. NIOSH notes that the Census of Fatal Occupational Injuries (CFOI) identified 31 fatalities between 1992 and 1997 associated with metal forming, punching, and shearing machine operations-machines prohibited by HO 8. There were an additional 58 fatalities during the same period associated with the operation of machine tools, including presses,

metalworking lathes, and machines used for grinding and polishing. In addition NIOSH notes that injuries requiring at least 1 day away from work have also been associated with machine tools: 1,733 injuries with 7 median days away from work for bending, rolling, and shaping machines; 2,322 injuries with 4 median days away from work for grinding and polishing machines; and 4,183 injuries with 7 median days away from work for presses.

In 1951, the Department, in a publication entitled *Machine Tools and Their Hazards*, cited the following definition of machine tools provided by the National Machine Tool Builders' Association: "Machine tools are power-driven complete metal-working machines, not portable by hand, having one or more tool- or work-holding devices, and used for progressively removing metal in the form of chips." Grinding, honing, and lapping machines are included in this classification, although the chips removed can be seen only under the microscope. Machine tools can range in size from small bench machines, such as a jeweler's lathe, to huge machines weighing 50 tons or more. The regulations do not provide a list of permitted machine tools, but the Department has for many years published the following list of common machine tools in its Child Labor Bulletin 101 (*Youth Employment Provisions for Nonagricultural Occupations under the Fair Labor Standards Act*): (1) Milling Function Machines: horizontal milling machines, vertical milling machines, universal milling machines, planer-type milling machines, gear hobbing machines, profilers, and routers; (2) Turning Function Machines: engine lathes, turret lathes, hollow spindle lathes, automatic lathes, and automatic screw machines; (3) Planing Function Machines: planers, shapers, slotters, broaches, keycasters, and hack saws; (4) Grinding Function Machines: grinders, abrasive wheels, abrasive belts, abrasive disks, abrasive points, polishing wheels, buffing wheels, stoppers, and lapping machines; and (5) Boring Function Machines: vertical boring mills, horizontal boring mills, jig borers, pedestal drills, radial drills, gang drills, upright drills, drill presses, centering machines, reamers, and honers.

As a different example, unlike HOs 5 and 8, HO 14 (Occupations involved in the operations of circular saws, band saws, and guillotine shears), specifically names three types of machines and then prohibits their operation by workers under 18 years of age regardless of the materials being processed. Section 570.65(b)(4) defines a circular saw to

mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials. Section 570.65(b)(5) defines a *band saw* to mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials. Section 570.65(b)(6) defines a *guillotine shear* to mean a machine equipped with a moveable blade operated vertically and used to shear materials. Because these definitions use the all-encompassing term "materials," the application of HO 14 is not limited by the nature of the items being sawed or sheared. Therefore, a band saw used for sawing beef bones or meat and prohibited by HO 10 (Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat packing or processing, or rendering), a band saw used for sawing cake and prohibited by HO 11 (Occupations involved in the operation of bakery machines), and a band saw used for sawing paper and prohibited by HO 12 (Occupations involved in the operation of paper-products machines, scrap paper balers, and paper box compactors) would all be concurrently prohibited by HO 14. The Department, in an NPRM being published in conjunction with and on the same day as this ANPRM, is proposing to expand the prohibitions of HO 14 to include the operation of power-driven chain saws, wood chippers, and reciprocating saws.

In its Report, NIOSH makes several recommendations concerning HOs that involve power-driven machines. The Report recommends that the Department expand HO 5 to include similar power-driven machines used to operate on materials other than wood and expand HO 8 to include the several types of machine tools that are not currently prohibited. Alternatively, the Report recommends that the Department revise HOs 5, 8, and 12 by merging them into a single or multiple HOs that address the function of the machine (i.e., cutting, shaping, forming, grinding, etc.) rather than the material being processed. The rationale for these recommendations is that metal, woodworking, and special material machinery are associated with substantial numbers of worker deaths and injuries. In addition, many of the hazards inherent in woodworking machines are found in machines that process other materials.

The Department is seeking information about the appropriateness and feasibility of adopting the Report recommendations detailed above

concerning the expansion of HO 5 and HO 8. Information concerning whether 16- and 17-year-olds can safely operate metal-working machine tools—which are currently permitted by HO 8—is of particular interest. In addition, the Department is requesting comments on whether consideration should be given to the recommendation to ban certain power-driven machines based on their functions rather than the materials they are used to process. Could such a recommendation be implemented without encompassing in its blanket prohibitions equipment that 16- and 17-year-old workers could, under proper circumstances, safely operate? Such equipment might include, for example, power-driven countertop bagel slicers that meet the current definition of circular saws under HO 14, power-driven trimmers and shears used in landscaping, and computer-controlled lasers that are used to cut, with exacting precision, everything from textiles and metal to decorative mats used in the framing of artwork.

#### C. Occupational Radiation Exposures

HO 6 (Exposure to radioactive substances and to ionizing radiations) prohibits the employment of workers between the ages of 16 and 18 to perform any work in any workroom in which (1) radium is stored or used in the manufacture of self-luminous compound; (2) self-luminous compound is made, processed, or packaged; (3) self-luminous compound is stored, used, or worked upon; (4) incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; and (5) other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of table one of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure" issued June 5, 1959. In addition, HO 6 prohibits the employment of such minors in any other work that involves exposure to ionizing radiations in excess of 0.5 rem per year.

HO 6 became effective on May 1, 1942 and was amended in 1949, 1957, and 1961. The study leading to the HO was initiated because a number of cases of radium poisoning, most of which resulted in death, were reported after the First World War. Many of these

poisonings were of young women, and in a number of instances exposure began before the age of 18 years. The study reported that there were four principal industrial processes in which radioactive substances were found at that time: (1) The self-luminous dial-painting industry, which included the manufacture of self-luminous compound (containing radium or other radioactive material), and its application to watch, clock, and instrument dials and hands, and to other objects such as buttons or electric light fixtures; (2) the incandescent-mantle industry, which involved the impregnation of rayon with solutions of thorium nitrate and subsequent processing in the course of which radioactive emanation escaped into the air (incandescent mantles are mantles for gas, gasoline, or kerosene lamps that provide a brilliant white light because of the property of incandescence upon heating); (3) industrial radiography, in which radium was used for the production of radiographs by means of which imperfections in heavy castings could be detected; and (4) the refining of radium and mesothorium from radioactive ores and sands.

Although the original investigation did not cover the use of radium for medical purposes, HO 6 was amended in 1957 to include a prohibition regarding exposure to ionizing radiation and radiations emitted from sealed sources of radioactive materials such as reactors, accelerators, and X-ray machines, and to set permissible limits for exposure to radioactivity for minors under age 18. HO 6 defines *ionizing radiation* to mean alpha and beta particles, electrons, protons, neutrons, gamma and X-ray, and all other radiations that produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and X-ray.

HO 6 was amended in 1961 to bring the standards in line with changes reflected in Handbook No. 69 of the Bureau of Standards and with recommendations from the Federal Radiation Council. Although the provisions of the 1961 amendment are still contained in HO 6, many things have changed. In 1988, the National Bureau of Standards became the National Institute of Standards and Technology. Handbook 69, published by the National Bureau of Standards, was withdrawn and superseded by Report No. 022—*Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure* published by the National Council on Radiation Protection and Measurements

(NCRP). The NCRP, conceived in 1929 as The Advisory Committee on X-Ray and Radium Protection, was chartered by Congress in 1964. The mission of the NCRP includes the collection, analysis, development, and dissemination in the public interest of information and recommendations about protection against radiation and about radiation measurements.

NIOSH recommends in its Report that HO 6 be revised to reflect current risks to youth for occupational radiation exposures. Although employment opportunities in the self-luminous compound industries have mostly disappeared for all workers, NIOSH notes that youth are increasingly working in such settings as medical or veterinary offices where they may be exposed to ionizing radiation while assisting in diagnostic radiologic procedures. Equipment emitting ionizing radiation is also used in the security screening industry at such locations as airports, train and bus depots, and cargo loading docks. This industry has received widespread attention and has grown rapidly both in size as well as in technological innovation following the events of September 11, 2001.

NIOSH reports that "risks of occupational exposures to ionizing radiation in youth stem from concerns about increased susceptibility for cell damage associated with adolescent growth and development, as well as concern about increased likelihood for disease development with exposures at an earlier age." The Report also notes that evidence for increased susceptibility of youth to ionizing radiation has prompted the OSHA and the U.S. Nuclear Regulatory Commission to set the maximum permissible exposure for youth at 10% of the permissible level for adults (0.5 rem per year and 0.3 rem per quarter).

The Report recommends that the prohibitions of HO 6 be revised to include the following wording: "Working with any machine that generates ionizing radiation, including assisting in diagnostic or therapeutic radiology procedures involving radiation." The Report recommends that no apprentice or student-learner exemption be created because of the increased risk for youth and research showing that radiographic equipment and procedures frequently do not meet national standards.

The Department is seeking information from the public regarding the feasibility of adopting the NIOSH recommendation. Should a prohibition be adopted that does not specify a maximum permissible annual exposure

such as the 0.5 rem per year currently contained in the HO? If a maximum permissible exposure should be specified for young workers, what level of exposure is appropriate? In addition, the Department is interested in documenting the existence of safeguards employers and employees can utilize to ensure exposures to ionizing radiation are kept to permissible levels.

#### *D. Petroleum and Natural Gas Extraction*

HO 9 (Occupations in connection with mining, other than coal) generally prohibits the employment of 16- and 17-year-olds in occupations in connection with mining, other than coal mining. HO 3 specifically bans the employment of such minors in coal mining occupations.

Section 570.60(b) defines the term *all occupations in connection with mining, other than coal*, to mean all work performed underground in mines and quarries; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing or cleaning operations performed upon the extracted minerals except where such operations are performed as a part of a manufacturing process. The term does not include work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded and further processed, or plants manufacturing clay glass or ceramic products. Nor does the term include work performed in connection with coal mining, in petroleum production, in natural-gas production, or in dredging operations that are not part of a mining operation, such as dredging for construction or navigation purposes.

The NIOSH Report recommends that the Department expand the prohibitions of HO 9 to include all work performed in connection with petroleum and natural gas extraction because that industry suffers a high rate of occupational fatalities and large numbers of serious injuries. NIOSH reports that the 1992–1997 fatality rate for oil and gas extraction—25.8 per 100,000 workers—was nearly five times the fatality rate among workers in all

industries. Between 1980 and 1989, the National Traumatic Occupational Fatality Surveillance System identified 10 fatalities of workers under age 18 in the oil and gas extraction sector, although no additional fatalities were reported through the date of the Report. In addition, the Survey of Occupational Injuries and Illnesses reflects that in 1997, the median number of days away from work due to injury or illness in this sector was 13, almost three times the median number of days reported for all workers.

The Department is seeking information from the public regarding the feasibility of implementing the Report's recommendation to expand the prohibitions of HO 9 to include all work in connection with petroleum and natural gas extraction. Are minors currently employed in this industry and, if so, what occupations do they perform? If the recommendation were adopted, how extensive should the prohibition be? Should the prohibition be industry-wide and cover the refining of petroleum and the processing of natural gas? Are there some activities within the industry that 16- and 17-year-olds may safely perform? If so, what are they? In keeping with the information discussed in Item A of this ANPRM, if HO 9 were expanded to prohibit work in petroleum and natural gas extraction would an exemption for student-learners and apprentices be appropriate for such work?

#### *E. Occupations in Construction*

Although Reg. 3 bans the employment of 14- and 15-year-olds in almost all construction occupations and does not permit such youth to work on construction sites, there is no such blanket prohibition regarding the employment of 16- and 17-year-olds. Several HOs, however, contain prohibitions that limit the tasks and types of work that minors may perform in the construction industry.

HO 1 (Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive compounds), among other things, generally prohibits the employment of 16- and 17-year-olds in occupations in or about any non-retail establishment where explosives or materials containing explosive compounds are stored. This same HO also prohibits the employment of such minors in all occupations involved in the manufacturing, transporting, or handling of primers and all occupations involved in the loading, inspecting, packing, shipping, and storage of blasting caps. HO 5 (Occupations involved in the operation of power-

driven woodworking machines) prohibits 16- and 17-year-olds from operating, including setting up, adjusting, repairing, oiling, and cleaning, all fixed or portable power-driven machines or tools used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer. HO 7 (Occupations involved in the operation of power-driven hoisting apparatus) generally prevents these same minors from being employed to operate elevators, cranes, derricks, hoists, and high-lift trucks, including forklifts and bobcat loaders. HO 7 also prohibits such minors from assisting in the operation of cranes, derricks, or hoists performed by crane hookers, crane chasers, hookers-on, riggers, riggers helpers, and similar occupations. The use and operation of elevators, which are often used in the construction of high-rise structures, are also prohibited by HO 7. HO 8 (Occupations involved in the operation of power-driven metal forming, punching, and shearing machines) prohibits the employment of 16- and 17-year-olds in occupations involving the operation or the assisting in the operation of power-driven metal rolling, pressing, punching, bending, hammering, and shearing machines. HO 14 (Occupations involved in the operations of circular saws, band saws, and guillotine shears) prohibits the employment of 16- and 17-year-olds as operators or helpers on circular saws, band saws, and guillotine shears. The prohibitions of this HO apply regardless of the material being processed (wood, metal, plastic, foam rubber, etc.) and extend to the tasks of setting up, adjusting, repairing, oiling, and cleaning the named equipment.

HO 15 (Occupations involved in wrecking, demolition, and shipbreaking operations) prohibits 16- and 17-year-olds from performing all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship, or other vessel. HO 16 (Occupations in roofing operations and on or about a roof) prohibits the employment of 16- and 17-year-olds in all roofing operations. Roofing operations, as defined in § 570.67(b), means all work performed in connection with the installation of roofs, including metal work such as flashing, and applying weatherproofing materials and substances 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. HO 16 was revised in 2004 (69 FR 57404) to also prohibit 16- and 17-year-olds from performing any work on or about a roof. The term *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; installing and servicing 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. HO 17 (Occupations in excavation operations) generally prohibits the employment of 16- and 17-year-olds in excavating, working in, or backfilling trenches; excavating for buildings or other structures; working within tunnels prior to the completion of all driving and shoring operations; and working within shafts prior to the completion of all sinking and shoring operations.

HOs 5, 8, 14, 16, and 17 contain exemptions that, under specified terms and conditions, permit bona-fide student-learners and apprentices to perform otherwise prohibited tasks. In addition, HO 4 (Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill), which generally prohibits the employment of 16- and 17-year-olds in any occupations within the logging and sawmill industries, does permit such youth to work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps. This same HO permits 16- and 17-year-olds to work in the repair or maintenance of roads, railroads, and flumes-work that could possibly fall within a definition of construction. In addition, HO 9 (Occupations in connection with mining, other than coal), which generally prohibits the employment of 16- and 17-year-olds in mining operations, does permit such youth to work in repair maintenance shops not located underground, maintain living quarters, repair and maintain roads, and build and maintain sections of railroad tracks under specified conditions. The construction activities permitted by HO 4 and HO 9 may be performed by 16- and 17-year-

olds only when the tasks do not violate the provisions of any other HO. For example, although HO 4 would allow a 16-year-old to be employed to construct the living quarters of a logging camp, such a minor could not operate a power-driven circular saw to cut lumber because such work is prohibited by both HO 5 and HO 14. That same youth could not help with the installation or repair of the roof of such living quarters because such work is prohibited by HO 16.

NIOSH recommends that the Department establish a new HO prohibiting the employment of 16- and 17-year-olds in all work in construction occupations as defined by Bureau of Census occupations codes 553–599, 866, and 869 as those codes existed prior to 2000. NIOSH recommends that a student-learner and apprentice exemption not be incorporated into the new HO.

The occupations that NIOSH recommends be prohibited by the new HO are brickmasons; stonemasons; tile setters (hard and soft); carpet installers; carpenters; drywall installers; electricians; electrical power installers and repairers; painters (construction and maintenance); paperhangers; plasterers; plumbers; pipefitters; steamfitters; concrete and terrazzo finishers; glaziers; insulation workers; paving, surfacing and tamping equipment operators; roofers; sheetmetal duct installers; structural metal workers; construction workers not elsewhere classified; helpers, construction trades; and construction laborers. NIOSH also recommends that supervisors and apprentices associated with the occupations listed above be included within the scope of the new HO's prohibitions. The NIOSH Report makes additional recommendations regarding the creation of other new HOs that would affect youth employment in construction. These include HOs that would prohibit the employment of 16- and 17-year-olds to work at heights of more than six feet; operate heavy machinery including earthmoving equipment used in excavation, landscaping operations, and road construction and maintenance; welding; and work requiring the use of respiratory protection.

The rationale for creating a new HO that would prohibit the employment of 16- and 17-year-olds in construction operations is that workers in many of the construction trades have extremely high rates of occupational injury fatalities and sustain large numbers of nonfatal injuries, many of a severe nature. NIOSH notes that despite a number of existing HOs that address

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

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

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

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

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

#### *F. Hydraulic Grease Racks*

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

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

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

#### *G. General*

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

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

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

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

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

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

**Victoria A. Lipnic,**

*Assistant Secretary, Employment Standards Administration.*

**Paul DeCamp,**

*Administrator, Wage and Hour Division.*

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## **DEPARTMENT OF LABOR**

### **Wage and Hour Division**

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

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

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

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

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

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

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