Chapter 33

CHILD LABOR: FLSA

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33a COVERAGE AND EXEMPTIONS

33a00 Statutory provisions, regulations, and interpretative materials.

(a) Sections 3(l), 12, 13(c), and 13(d) of the Fair Labor Standards Act (FLSA) and 29 CFR 570 are the basic source materials that govern the application of the child labor provisions of the FLSA. This chapter of the FOH supplements these documents.

(b) **FLSA section 3(l)**

(1) FLSA section 3(l) defines "oppressive child labor" as a condition of employment under which:

a. any employee under the age of 16 years is employed by an employer in any occupation, or

b. where any employee between 16 and 18 years of age is employed by an employer in any occupation which the Secretary of Labor (Secretary) shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being.

The Secretary has declared 17 hazardous occupations orders (HOs) for non-agricultural employment which are contained in subpart E of 29 CFR 570: 29 CFR 570.50 -.68.

(2) FLSA section 3(l) gives the Secretary authority to issue regulations governing the employment of 14- and 15-year-old persons in non-hazardous occupations other than mining or manufacturing. Child Labor Regulation No. 3 (subpart C of 29 CFR 570) sets forth the conditions of employment for 14- and 15-year-old youths. This employment is confined to certain periods and conditions that do not interfere with their schooling or adversely affect their health and well-being.

(c) FLSA section 12 generally prohibits the shipment in commerce of any goods produced in an establishment in or about which within 30 days prior to the removal of such goods any oppressive child labor was employed; prohibits the employment of oppressive child labor in any enterprise engaged in commerce or in the production of goods for commerce; and authorizes the Secretary to administer the provisions of the FLSA relating to oppressive child labor. The two types of coverage established by FLSA sections 12(a) and (c) are discussed in detail in FOH 33a01 -02 below.

(d) FLSA section 13(c), among other things, contains the statutory exemptions pertaining to child labor. This section addresses the employment of youth: in agriculture (sections 13(c)(1), (2), and (4)); as actors or performers in motion pictures or theatrical productions, or in radio or television productions (section 13(c)(3)); as loaders of compacting and/or baling equipment (section 13(c)(5)); as drivers of automobiles and trucks (section 13(c)(6)); and as employees of facilities where machinery is used to process wood products (section 13(c)(7)).

(e) FLSA section 13(d) contains exemptions from FLSA sections 6, 7, and 12 for the employment of workers engaged in the delivery of newspapers to the consumer, and to any homeworker engaged in the making of wreaths composed principally of natural holly, pine,

cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(f) The employment of youths under 14 years of age is limited to work that is not subject to the FLSA or is exempt from its provisions.

33a01 **Child labor coverage: section 12(c).**

(a) Section 12(c) provides that "[n]o employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce." *See* 29 CFR 570.112 -.113 discuss the provisions related to coverage under section 12(c).

(b) Coverage for the prohibition of the employment of oppressive child labor under section 12(c) is the same as under sections 6 and 7: individual coverage or enterprise coverage (*see* FOH 10 -12).

33a02 **Child labor coverage: section 12(a).**

(a) Section 12(a) of the FLSA states that "[n]o producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed." Such goods are referred to as "hot goods" (*see* FOH 33a02(c)(1)b. for an example of hot goods). *See* 29 CFR 570.104 -.111 contain the provisions related to coverage under section 12(a).

(1) The term "goods" is defined in section 3(i) of the FLSA as "goods [], wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof...." This definition expressly excludes goods after their delivery into the actual physical possession of an ultimate consumer other than a producer, manufacturer, or processor. The term includes such items as foodstuffs, clothing, machinery, printed materials, blueprints, and also includes intangibles (*see* 29 CFR 570.107).

(2) The term "commerce" is defined in FLSA section 3(b) as meaning "trade, commerce, transportation, transmission, or communication among the several [s]tates or between any [s]tate and any place outside thereof."

(3) The term "oppressive child labor" is defined in FLSA section 3(l). For purposes of section 12(a), oppressive child labor can and does occur in establishments whose minor employees are not covered on an individual or enterprise basis under FLSA section 12(c) because the definition of "oppressive child labor" does *not* require that the minor employees be covered under the FLSA.

(b) Goods produced in an establishment in or about which oppressive child labor has been employed are barred as hot goods and are prohibited from being shipped or delivered for shipment in commerce under section 12(a) if:

(1) such goods were removed from the establishment while any oppressive child labor was still being employed in or about it, or

(2) such goods were removed from the establishment within 30 days after the employment of oppressive child labor had ceased in or about the establishment.

(c) The prohibitions of section 12(a) apply only to the *shipment of goods* in commerce that were actually produced in and removed from an establishment in or about which oppressive child labor was employed.

(1) These hot goods provisions are applicable even though the underage employee does not himself or herself engage in the production of the goods, as long as somewhere in the establishment in or about which he or she is employed goods are produced which are subsequently shipped or delivered for shipment in commerce. It also does not matter if the youth's employment that constitutes the oppressive child labor is covered under FLSA section 12(c).

a. For example, section 12(a) would apply where 14- or 15-year-old minors are employed to load milk on trucks at a dairy establishment and deliver it to households if the dairy establishment produces some of its goods for shipment in commerce. This employment constitutes oppressive child labor because such work is prohibited by 29 CFR 570.33(k) and 29 CFR 570.33(n).

b. The hot goods provisions of section 12(a) would also apply in the following example. A 15-year-old minor works as a cashier in a small retail bakery that makes cakes and pies, some of which are shipped, or delivered for shipment, in commerce. Assume the minor does not handle checks or credit card transactions. Because the annual dollar volume of the enterprise is under $500,000, the minor would not be covered on an enterprise basis under section 12(c). Because the minor is not employed in commerce or in the production of goods for commerce, he or she is not covered on an individual basis. But if this minor's employment was in violation of the child labor standards (such as working until 10:00 p.m. in violation of the Child Labor Reg. 3 hours standards) oppressive child labor would have occurred. The products produced by the baker during the period of the oppressive child labor, and 30 days thereafter, would be hot goods under section 12(a).

c. As explained in FOH 33a02(c)(4) below, section 12(a) coverage also applies when a minor is employed by an employer other than the establishment owner or operator if that minor performs some work in or about the producing establishment.

(2) Section 12(a) only applies to hot goods and bars a producer, manufacturer, or dealer from shipping or delivering hot goods in commerce. To establish hot goods for purposes of section 12(a), the Wage and Hour Division (WHD) does not have to show that a minor was engaged in the production of goods. The WHD must only demonstrate that a minor was illegally employed in or about the establishment where the goods were produced within 30 days prior to the removal of the goods from the establishment. If 30 days pass after the child labor violation and no further violations have occurred, the hot goods will have cooled, and shipment from the establishment is permitted. If the goods are removed before 30 days have passed, the goods are permanently hot. Finally, section 12(a) does not bar shipment or sale of goods where the initial shipment does not occur until the goods have cooled.

(3) A producer, manufacturer, or dealer may ship goods in commerce either by moving them himself or herself in interstate or foreign commerce or by causing them to move, such as by delivery to a carrier.

a. A baker ships his or her bread in commerce whether he or she carries it in his or her own truck across state lines or sends it by contract or common carrier to his or her customers in other states.

b. A manufacturer delivers his or her goods for shipment in commerce when he or she transports his or her goods in state to a distributor who, as the manufacturer is well aware, will ship the goods into another state. For example, a paper box manufacturer who ships a carton of boxes to a fresh fruit or vegetable packing shed within the same state, with knowledge or reason to believe that the boxes will there be filled with fruits or vegetables and shipped outside the state, has delivered the boxes for shipment in commerce.

c. However, the word "ship" must be applied in its ordinary meaning. It does not apply to the transmission of telegraphic messages, for example (*see* 29 CFR 570.106(a)).

(4) Consideration must be given to both whether a minor is employed in or employed about the establishment.

a. A minor who performs occupational duties on the premises of the producing establishment is employed in that establishment. A minor is also employed in an establishment where the minor performs most duties off the premises but is regularly required to perform certain occupational duties in the establishment, such as loading or unloading a truck. This is true even though the minor is employed by someone other than the owner or operator of the particular establishment.

b. However, a minor is not employed in an establishment other than his or her employer's merely because such establishment is visited by the minor for brief periods of time and for the sole purpose of picking up or delivering a message or other small article.

c. If the minor cannot be considered as employed in the establishment, he or she may, nevertheless, be employed about it. However, the minor must perform occupational duties sufficiently close in proximity to the actual place of production to fall within the commonly understood meaning of the term "about," and the minor's occupation must be directly related to the activities carried on in the producing, manufacturing, or dealing establishment.

1. For example, a driver's helper employed to assist in the distribution of the products of a bottling company who regularly boards the delivery truck immediately outside the premises of the bottling plant is considered employed in or about such establishment, without regard to whether he or she ever enters the plant itself.

2. On the other hand, employees working entirely within one establishment are not considered to be employed in or about a wholly different establishment occupying separate premises and operated by another employer. This would be true even though the two establishments are contiguous (*see* 29 CFR 570.110(b)).

(5) Section 12(a) of the FLSA establishes a good faith defense from the prohibition on shipping hot goods for a purchaser of these goods who has acquired these goods for value, in good faith, without notice that the goods were produced in violation of the FLSA, and in reliance on written assurance from the producer that the goods were produced in compliance with the FLSA.

a. For example, a wholesaler who purchases goods in good faith from a producer, manufacturer, or dealer of such goods, who in turn sells these goods in his or her retail establishment, would have a good faith defense from the section 12(a) prohibitions.

b. However, a person or firm that owns the goods throughout the production process, even though some or all of the production work is done by independent contractors, or subcontractors or other producers of goods, cannot be a purchaser in good faith who is removed from the hot goods provisions of section 12(a). For example, a garment manufacturer could not claim that he or she was a purchaser in good faith, if he or she owns the product throughout the manufacturing process, even though the cutting, sewing, and embroidery work was all performed by independent contractors, contractors, and subcontractors.

33a03 <u>Distinction between sections 12(a) and 12(c) coverage.</u>

(a) Coverage under section 12(c) is dependent upon a minor being employed in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce. Section 12(c) coverage is based upon either the minor's performance of individually covered activities or employment in a covered enterprise. If such a minor is employed under these circumstances a violation of section 12(c) would occur regardless of where he or she may be employed or what his or her employer may do and regardless of whether there is a removal of goods or a shipment or delivery for shipment in commerce.

(b) Coverage under section 12(a), on the other hand, often said to apply on an establishment basis, is dependent upon the performance of duties in or about an establishment producing goods for commerce rather than upon the nature of the work performed by the minor employee or by the nature of the enterprise. Section 12(a) coverage does not require that the minor whose employment constitutes oppressive child labor be covered on an enterprise or individual basis. The provisions of section 12(a) would still apply in a situation in which an underage employee does not engage in the production of goods himself or herself if somewhere in the establishment in or about which he or she is employed goods are produced which are subsequently shipped or delivered for shipment in commerce.

(c) Section 12(a) does not directly exclude the employment of oppressive child labor. Instead, it prohibits the shipment or delivery for shipment in interstate or foreign commerce of goods produced in an establishment where oppressive child labor has been employed within 30 days

before removal of the goods. Section 12(c), on the other hand, is a direct prohibition against the employment of oppressive child labor in commerce, or in the production of goods for commerce.

33a04 Domestic service employees: child labor.

The child labor provisions of FLSA section 12 apply to domestic service employees only when such employees are covered on an individual or enterprise basis, or if they are employed in or about a home where homeworkers produce goods for commerce. Thus, unless such coverage exists, the prohibitions of section 12 do not apply. However, the minimum wage and overtime provisions of FLSA sections 6(b) and 7(a)(1) are applicable, pursuant to sections 6(f) and 7(l) if the tests are met, unless such employment is exempt under sections 13(a)(15) or (b)(21). *See* 29 CFR 552.108.

33b CHILD LABOR REGULATION NO. 3: THE HOURS STANDARDS

33b00 General.

(a) Although 16 is the basic minimum age for employment in non-agricultural occupations, section 3(l) of the FLSA gives the Secretary authority to issue regulations governing the conditions under which youth 14 and 15 years of age may be employed.

(b) 14- and 15-year-olds may not be employed in any job covered by the FLSA unless the Secretary has provided, by regulation or HO, that the employment of such youth is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being. Employment that is not specifically permitted is prohibited (*see* 29 CFR 570.32).

(c) The Secretary's declaration of what legal employment 14- and 15-year-olds may hold, and for what periods, is contained in Child Labor Regulation No. 3, subpart C of 29 CFR 570.

(d) The FLSA generally prohibits the employment of 14- and 15-year-olds in mining and manufacturing occupations, and any HO established by the Secretary.

33b01 Child Labor Reg. 3 hours standards.

29 CFR 570.35(a) sets forth the conditions of employment in non-agricultural occupations for 14- and 15-year-old minors, confining such employment to periods and conditions that do not interfere with their schooling.

(a) Child Labor Reg. 3 limits the employment of 14- and 15-year-olds to periods that are:

(1) outside of school hours.

(2) not before 7:00 a.m.; and not after 7:00 p.m. (except such youth may work until 9:00 p.m. between June 1st and Labor Day). This means that such minors may only work until 7:00 p.m. from the day after Labor Day through May 31st. These end of day hours standards are tied to the *calendar* year, not the school year.

(3) no more than 3 hours on a school day, including Fridays, and no more than 18 hours in a week in which school is in session.

(4) no more than 8 hours on a non-school day, and no more than 40 hours in a week when school is not in session.

(b) School hours

(1) School hours are determined by the local public school in the area where the minor is residing while employed (this is true even if the minor does not attend the public school (*i.e.*, attends a private school, a religious school, or is home schooled)). "School hours" refers to the hours established by the school district during the regularly scheduled school year and not the hours the individual child is required to attend (*see* 29 CFR 570.35(b)).

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(2) Special provisions apply to students participating in a state sponsored Work Experience and Career Exploration Program (WECEP) authorized by the Department of Labor (DOL) in accordance with 29 CFR 570.36 or in school sponsored Work-Study Program (WSP) in accordance with 29 CFR 570.37 (*see* FOH 33b02(c) -(d) for more information about these programs).

(c) Outside school hours and school hours

(1) "Outside school hours" means such periods as before and after school hours, holidays, summer vacations, weekends, and any other day or part of a day when the local public school district where the minor resides while employed is not in session.

(2) Because school hours are determined by the hours established by the local public school district during the regularly scheduled school year, *summer school sessions are also considered to be outside school hours* for the purpose of applying the hours limitations of Child Labor Reg. 3.

(3) In some instances, a school may employ a student 14 or 15 years of age to work (*e.g.*, in the cafeteria) during the noon hour or during a period when the student has no class. For purposes of Child Labor Reg, 3 (*see* 29 CFR 570.35(a)(1)), such work will be considered as outside school hours (*see* FOH 10).

(4) As discussed in FOH 33b02(b), 29 CFR 570.35(c) creates exceptions from certain Child Labor Reg. 3 hours limitations for certain 14- and 15-year-old minors.

(5) At one time, the WHD permitted enrollees in the in school program of the Neighborhood Youth Corps (NYC) to work during school hours as this term is used in Child Labor Reg. 3 under certain specified conditions. Such youth were limited to working no more than 8 hours per week. The Employment and Training Administration (ETA) has advised the WHD that the NYC ended in the early 1970s and all successor programs have required compliance with the federal child labor provisions, including the hours standards of Child Labor Reg. 3.

(d) Week defined

(1) "Week," as used in 29 CFR 570.35(a)(2) -(3), means a regularly recurring period of 168 hours (*i.e.*, seven consecutive 24-hour periods) that is identical to the workweek that the employer establishes under 29 CFR 778.105. Prior to 07/19/2010, the effective date of the 2010 Final Rule published on 05/20/2010, the term "week" was defined as a standard calendar week that commences at 12:01 a.m. Sunday and ends at midnight Saturday.

(2) "Week when school is in session," as used in 29 CFR 570.35(a)(3), means any week the local public school district where the minor resides while employed is in session and students are required to attend for at least 1 day or partial day.

33b02 Partial exemptions impacting the Child Labor Reg. 3 hours standards.

(a) Professional sports attendants

29 CFR 570.35(c)(2) exempts from the hours standards of Child Labor Reg. 3 minors 14 and 15 years of age who are employed to perform sports-attending services at professional sporting events provided they are employed outside of school hours and perform only those sports-attending duties listed in that section.

(1) Duties which are permitted include pre- and post-game or practice setup of balls, items, and equipment; supplying and retrieving balls, items, and equipment during a sporting event; clearing the field or court of debris, moisture, etc. during play; providing ice, drinks, towels, etc., to players during play; running errands for trainers, managers, coaches, and players before, during, and after a sporting event; and returning and/or storing balls, items, and equipment to club houses or locker rooms after sporting events.

(2) Duties which are *not* permitted include grounds or field maintenance such as grass mowing, spreading, or rolling tarpaulins used to cover playing areas, etc.; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts, or similar facilities; loading and unloading balls, items, and equipment from team vehicles before and after a sporting event; doing laundry; working in concession stands or other selling and promotional activities; and performing the duties of an umpire, referee, or other sports official.

(b) High school graduates, children excused from school on religious grounds, and expelled students

(1) 29 CFR 570.35(c)(1) provides exemptions from the Child Labor Reg. 3 hours standards limitations contained in 29 CFR 570.35(a)(1), (3), and (5) for those 14- and 15-year-olds listed below who, for a variety of reasons, do not or cannot attend school. These exemptions, which stem from long-standing WHD enforcement positions, were placed in the regulations by the Final Rule published on 05/20/2010 (*see* 75 FR 28423):

a. Minors who have graduated from high school

b. Minors who have been excused from compulsory school attendance by the state or other jurisdiction once they have completed the eighth grade if compliance is achieved with all the requirements of the state school attendance law

c. Minors who are subject to an order of a state or federal court prohibiting them from attending school

d. Minors who have been permanently expelled from school (not a temporary suspension) and are not required by state or local law or ordinance or court order to attend another school

e. Minors who have a child to support and appropriate state officers, pursuant to state law, have waived school attendance standards for the minors

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(2) The above minors, however, are subject to the remaining conditions established by Child Labor Reg. 3, including the occupational limitations and the provisions that permit them to work only between the hours of 7:00 a.m. and 7:00 p.m. (9:00 p.m. between June 1st and Labor Day).

(3) None of the exceptions listed in this section apply to youth employed in agriculture. The prohibition against the employment of youth under 16 years of age in agriculture during the hours the local public school is in session (except when employed by his or her parent on a farm owned or operated by that parent) is statutory. No exception from the prohibition against employment during school hours, other than the parental exemption, is provided by the FLSA for employment in agriculture.

(c) Work Experience and Career Exploration Program (WECEP)

(1) 29 CFR 570.36 provides for certain variations from Child Labor Reg. 3 for minors 14 and 15 years of age who are enrolled in and employed pursuant to a state WECEP that has been approved by the WHD. In order to qualify for such variations, a state educational agency (normally the state department of education) must file a letter of application with the Administrator of the WHD for approval of a program plan. Individual schools or school districts may not apply for or be granted a WECEP by the WHD; approval is granted only to the state government.

a. After the WHD has authorized the state program, records of the names and addresses of each school enrolling students in the WECEP, as well as the number of students enrolled, must be kept at the state educational office and made available for review in that office by WHD representatives. Additionally, the state educational agency or the local school must keep on file a copy of the written training agreement that is required for each student participating in the WECEP. These records must be kept for a period of 3 years.

b. A list of states that have been authorized to operate a WECEP can be found at www.dol.gov/whd.

(2) *Hours of work for WECEP students*

29 CFR 570.36(d) provides that students who are working under an approved WECEP (including those employed in non-hazardous agricultural occupations) may be employed for as many as 3 hours on any school day and 23 hours in any week school is in session, any portion of which may be during school hours. No other changes, however, in the hours standards established by Child Labor Reg. 3 are permitted and the standards will not be waived.

(3) *Occupations for WECEP students*

a. 29 CFR 570.36(c) prohibits WECEP participants from being employed in the occupations of mining, manufacturing, and those the Secretary has declared to be hazardous for the employment of minors between the ages of 16 and 18 (*i.e.*, the HOs). This same section provides for the employment of WECEP students in some occupations otherwise prohibited under Child Labor Reg. 3 if a variance has been issued by the Administrator.

b. Variances

Before a student may be employed in a prohibited occupation, the state educational agency must submit a written request for a variance to the Administrator which outlines all the steps the WECEP will take to ensure that the minor can safely perform the work in question. Information regarding the classroom and on-the-job safety training, supervision, and personal protective equipment the youth will receive must be detailed in the request.

1. WECEP variance approvals are specific to the school operating the WECEP and the employer that employs the student. Variance approvals run concurrently with the WECEP approval period of the state program (up to 2 years). Variances are valid only during the months school is in session for the WECEP participant. The variances are not valid during summer vacation periods.

2. The most common occupations covered by WECEP variance requests that have been approved by the National Office (NO) on an individual basis, include:

A. cooking over electric and gas grills that does not involve cooking with an open flame and cooking with deep fat fryers. Prior to 02/14/2005 when new Child Labor Reg. 3 cooking rules became effective, these requests allowed WECEP participants to perform cooking duties that were *not* in plain view of the customer. After 02/14/2005, the WHD will consider issuing, on a case by case basis, variances that allow WECEP students to operate deep fat fryers that are *not* equipped with devices that automatically raise and lower the baskets.

B. unloading trucks at retail and food service establishments. The variance approvals issued by the NO impose limitations on the amount of weight that may be lifted and the amount of time that may be spent performing this task.

C. operating power-driven lawn mowers (not riding mowers) and weed-eaters that use plastic string (not metal) to cut vegetation. Limitations on the amount of time WECEP participants may perform these duties are detailed on the variance approvals.

D. washing and cleaning of school buses. The variance approvals allow WECEP participants to work in garages and bus barns but not to use power washing equipment, step ladders or ladders, nor to work in pits when washing or cleaning buses.

(4) *Wage rates for WECEP students*

WECEP students generally must be paid the applicable minimum wage rate (including a youth minimum wage, where applicable). Student-learner certificates cannot apply to the employment of WECEP participants because, by definition, student-learners must be at least 16 years of age (*see* 29 CFR 520.300). Under certain conditions, properly certified employers may pay WECEP participants less than the applicable federal minimum wage as full-time students in accordance with FLSA section 14(b) (*see* 29 CFR 519).

(d) Work-Study Program (WSP)

(1) 29 CFR 570.37 provides for certain variations from Child Labor Reg. 3 for minors 14 and 15 years of age who are enrolled in and employed pursuant to a WSP that has been approved by the WHD. In order to qualify for such variations, the superintendent of the school attended by the WSP candidate must first file with the Administrator a letter of application for approval of the WSP.

(2) The WSP is open only to youth enrolled in a college preparatory curriculum. A WSP student-participant must receive, every school year he or she participates in the WSP, at least the minimum number of hours of classroom instruction required to complete a fully-accredited college preparatory curriculum (as determined by the state educational agency responsible for establishing such standards). Such classroom instruction shall include, every year the youth participates in the WSP, training in workplace safety and state and federal child labor provisions and rules.

(3) *Hours of work for WSP participants*

a. Employment of student-participants in the WSP authorized by 29 CFR 570.37 will be confined to not more than 18 hours in a week when school is in session, a portion of which may be during school hours in accordance with the following formula that is based upon a continuous 4-week cycle.

1. In 3 of the 4 weeks, the participant is permitted to work during school hours on only 1 day per week, and for no more than for 8 hours on that day.

2. During the remaining week of the 4-week cycle, the WSP student-participant is permitted to work during school hours on no more than 2 days, and for no more than for 8 hours on each of those 2 days.

b. The employment of WSP student-participants must also comport with the time of day and number of hours standards contained in 29 CFR 570.35(a)(2)-(4), and 29 CFR 570.35(a)(6).

c. The limitations on the number of hours that participating students may be employed, as described in FOH 33b02(d)(3) above, constitute the absolute maximum number of hours that participants may be employed.

1. Participating schools and employers may choose to adopt some other schedule of work hours that comports with the established maxima,

such as one 4-hour day or one 6-hour day each workweek; or two 8-hour days each weekend; or 3 hours a day at the end of each of 3 school days, as long as those hours comply with end-of-day hours standards established by 29 CFR570.35(a)(6).

2. They are, however, prohibited from allowing the same participant to work during school hours on more than 1 school day in any school week, except every fourth week in the 4-week cycle when such youth may work during school hours on no more than 2 school days in that week.

(4) *Occupations for WSP students*

a. WSP participants must be employed in accordance with the provisions of 29 CFR 570.33 -.34.

b. The WSP has no provisions for special occupational variances like those found in WECEP.

(5) *Wage rates for WSP students*

a. WSP students generally must be paid the applicable minimum wage rate (including a youth minimum wage, where applicable). Student-learner certificates cannot apply to the employment of WSP participants because, by definition, student-learners must be at least 16 years of age (*see* 29 CFR 520.300). Under certain conditions, properly certified employers may pay WSP participants less than the applicable federal minimum wage as full-time students in accordance with FLSA section 14(b) (*see* 29 CFR 519).

b. Some WSP students may wish to assign their wages to their school to defray the cost of the students' educations. The WHD will not take exception to such assignments as long as they comport with the provisions of 29 CFR 531.40.

(e) Youth employed by a parent in a business owned entirely by that parent are exempt from the Child Labor Reg. 3 hours standards (*see* FOH 33e00).

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33c CHILD LABOR REGULATION NO. 3 OCCUPATION STANDARDS: PROHIBITED OCCUPATIONS

33c00 General.

(a) The FLSA generally prohibits the employment of 14- and 15-year-olds in mining and manufacturing occupations and those occupations the Secretary has declared to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being (*i.e.*, the HOs).

(b) In accordance with FLSA section 3(l), non-exempt 14- and 15-year-olds may only be employed in those non-agricultural occupations that the Secretary has determined do not interfere with their health and well-being. Occupations that are not specifically listed as permitted are *prohibited* (*see* 29 CFR 570.32). Such youth must also be employed in compliance with the hours standards established by 29 CFR 570.35.

(c) 29 CFR 570.34 lists those jobs that the Secretary has determined do not interfere with the health and welfare of 14- and 15-year-olds. These are the permitted occupations:

(1) 29 CFR 570.33 details examples of occupations in which 14- and 15-year-olds may *not* be employed. This list is not exhaustive, but reflects some of the more common areas of violation. This list is provided to add clarity to the list of permitted occupations detailed in 29 CFR 570.34.

(2) The order in which the Child Labor Reg. 3 occupational standards are presented in this chapter follow, as nearly as possible, the order in which each standard is presented or touched upon in 29 CFR 570.33 -.34. In general, FOH 33c discusses the list of prohibited occupations (*see* 29 CFR 570.33) and the permitted occupations (*see* 29 CFR 570.34) are discussed in FOH 33d. Because 29 CFR 570.33 -.34 tend to reinforce and provide clarity to each other, considerable overlap between FOH 33c and FOH 33d is to be expected.

33c01 Manufacturing, mining, and processing.

(a) 29 CFR 570.33(a) prohibits the employment of 14- and 15-year-olds in manufacturing, mining, or processing occupations. This section also prohibits the employment of such minors in occupations which require the minors to perform any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed. FLSA section 13(c)(7) provides an exemption from these requirements for certain youth who may now be employed inside and outside of establishments where power-driven machinery is used to process wood products (*see* FOH 33e06).

(b) The definitions of “manufacturing” and “processing” contained in FOH 33c01(e) -(f) below are intended for use only in connection with the child labor provisions of the FLSA.

(c) It is necessary to distinguish between manufacturing and processing only when the parental exemption is involved (*see* FOH 33c00). The parental exemption contained in the FLSA does not permit the employment of 14- and 15-year-olds in manufacturing or mining, but does allow the employment of this age group by a parent in processing occupations.

(d) Although Child Labor Reg. 3 generally prohibits the employment of 14- and 15-year-olds in processing occupations (*see* 29 CFR 570.33(a)), youth may perform certain named processing occupations that are detailed in 29 CFR 570.34.

(e) Manufacturing defined

The term "manufacturing" means making anything from raw materials by hand, or by machinery, or by art. The process of manufacturing generally involves the transformation of raw materials or semi-finished goods into new or different articles. The manufacturing process is not completed until the article being manufactured has reached the form in which it will be available to the ultimate consumer. Any occupation involved in the manufacture of a product from the assembling of the raw materials for manufacture to the completion of the manufactured article is a part of the manufacturing process, and, therefore, a manufacturing occupation. All manufacturing is processing, but not all processing is manufacturing. The following are examples of manufacturing within the meaning of Child Labor Reg. 3:

(1) Trimming and examining of items when performed as a part of a manufacturing process

(2) Quality control and inspection of manufactured products

(3) Cleaning of a printing press and proofreading in a print shop

(4) Canning of fresh fruits or vegetables

(5) The assembly of component parts into a finished product away from the place where the component parts are manufactured is a continuation of the manufacturing process, and is manufacturing

(6) Assembling of box shook or crates in which goods are to be packed, including making of the lid or cover, is a change in the raw material from which the box or crate is made and constitutes manufacturing, whether done by hand or machine (however, assembling light-weight flat-folded cartons either by stapling with a hand stapler machine or by pasting with tape is not manufacturing)

(7) Lidding, the operation of fastening down the cover on the filled container, is manufacturing when it is accomplished by use of a power-driven machine

(8) Stitching of bags containing produce by means of automatic electric sewing machines in fresh fruit and vegetable packing sheds is manufacturing

(9) The folding, pinning, and packaging for shipment of newly manufactured apparel

(10) *Carding*

If the article is sold to the consumer as a packaged or carded article, as is often the case with jewelry or buttons, the packaging or carding of the article into the form in which it is offered to the public is considered an integral part of the manufacturing of the article when the work is performed in the manufacturing establishment.

(f) Processing defined

(1) The term "processing" ordinarily is understood to convey the idea of an operation in the course of which goods undergo a change in form or substance. Examples of processing within the meaning of Child Labor Reg. 3 are:

a. Cleaning and filleting of fish, freezing fresh shrimp, and the picking and packing of crabs

b. Slaughtering of livestock

c. Dressing of poultry

d. Cracking of nuts

e. Laundering, folding, hanging, and pressing clean laundry, and the altering of clothes, whether performed in commercial laundries or retail dry cleaners (except the washing and drying of laundry performed in a coin-operated laundromat with home type washer and dryer machines is not considered processing if performed in a room separated from all other processing)

f. Cutting or chipping of ice

g. Air drying or seasoning of lumber

h. Repairing of motor vehicles, changing tires and batteries

i. Placing of business records on microfilm

j. Operations in connection with bulk mailings including folding letters, addressing, stuffing, and sealing envelopes, affixing postage, and bundling mailings

k. Painting of mine timbers; painting and embossing objects

l. Developing of X-rays

m. Development of film into photographs, including the use of automated systems in retail stores

n. The cutting of mats for photographs, engravings, and artwork, whether by hand, with a power-driven tool, or a computerized automatic cutter

(2) The following activities would not be manufacturing or processing activities:

a. The trimming and shearing of ordinary household-size Christmas trees with hand tools (*i.e.*, not power-driven equipment) does not constitute a "processing occupation" as the term is used in Child Labor Reg. 3. Therefore, minors 14 and 15 years of age may be employed in this occupation in accordance with the other provisions of Child Labor Reg. 3. In some instances, occupations in connection with Christmas trees may be

within the definition of agriculture contained in FLSA section 3(f) (*see* FOH 20b06); in such cases sections 13(c)(1) -(2) apply.

b. The transfer of propane from large pressurized tanks to smaller tanks of a lower pressure without the use of power-driven equipment is not considered processing. Therefore, minors 14 and 15 years of age are not be prohibited from performing this activity because it is not considered processing. The basic form of the propane gas is not altered when it is transferred from the large pressurized tank to the smaller pressurized tank.

c. The packing of fresh fruits and vegetables is not processing because the goods remain in their raw or natural state. Packing includes cleaning, washing, trimming, application of artificial coloring, sorting, grading, tiering, wrapping, packaging, and labeling packages when these operations take place in conjunction with and as a part of the packing of fresh fruits and vegetables.

d. The tagging and pricing of clothing for sale in a retail used-clothing shop, when some of the clothing is not salable and is returned to a central location for processing into rags or sold for scrap, is not processing. The mere sorting of clothing does not change or alter the clothing.

e. The stuffing of newspapers (that is the placing of one section of newspaper inside another) when performed outside the work rooms in which printing, manufacturing, or processing takes place, is a distribution function rather than a manufacturing or processing function. Therefore, 14- and 15-year-old minors may be employed in such newspaper stuffing, provided all the terms and conditions of Child Labor Reg. 3 are met. This applies also to other occupations in the newspaper industry further removed from the manufacturing of the newspaper, such as bundling, tying up, addressing, and other mailing room occupations, and to employment in a wholesale house engaged in the distribution of newspapers and magazines. Prohibited processing would occur if the minors placed newspapers in plastic bags and then heat-sealed the bags for security reasons or to protect the contents from the elements.

33c02 <u>Occupations in work rooms.</u>

(a) Under Child Labor Reg. 3, 29 CFR 570.33(a), minors may not generally be employed in a work room or work place where *goods* are manufactured, mined or otherwise processed. “Goods” in this context refers to “goods” as defined in FLSA section 3(i).

(b) The Child Labor Reg. 3 prohibition against working in a work room or work place where goods are manufactured applies even if the minor is engaged in work other than manufacturing, mining, or processing. The prohibition continues to apply even if the minor is working during hours or days when the plant or establishment is closed and not in operation.

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(c) Work rooms where goods are manufactured or processed include work centers and manufacturing operations of community rehabilitation programs that employ workers with

disabilities at subminimum wages under certificates issued in accordance with FLSA section 14(c).

(d) There are some exceptions to this general prohibition against working in work rooms.

(1) Children 14 and 15 years of age generally may not be employed in work rooms where manufacturing or the processing of goods takes place, but they may be employed in establishments at which such activities occur if they are working in a work room or area separate from that in which the manufacturing or processing takes place. The work area must be separated from where the actual manufacturing or process occurs by a wall or barrier.

a. The type of barrier between the manufacturing or processing activities and the minors' work place depends in large measure upon the nature of the manufacturing or processing operation. The barrier must be sufficient in height, strength, and density to guard the youth from exposure to the hazards presented by the manufacturing or processing process. A strong barrier of wire might be all that is necessary to constitute a separate work room. Ordinarily, a barrier at least seven feet high is adequate.

b. There may be openings in the partition, but they may not be wider than those made for an ordinary door, and such openings should have doors if possible. If dust or fumes are present, however, a solid partition extending all the way from floor to ceiling may be necessary.

(2) Certain 14- and 15-year-olds may be employed inside and outside of establishments that use power-driven machinery to process wood products under specified conditions (*see* FLSA section 13(c)(7)). The provisions of this limited exemption are discussed in detail in FOH 33e06.

(3) 29 CFR 570.34 permits the employment of 14- and 15-year-olds in certain processing occupations (*e.g.*, limited cooking tasks, office work such as photocopying, and hand polishing of cars and trucks are permitted).

33c03 <u>Child Labor Reg. 3 and the hazardous occupations orders (HOs).</u>

(a) Section 3(l) of the FLSA, which defines "oppressive child labor," prohibits 16- and 17-year-olds from performing those occupations which the Secretary finds and declares to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being. Under this authority, the Secretary has issued 17 non-agricultural HOs.

(b) Although the HOs are written specifically to regulate the employment of 16- and 17-year-olds, the prohibitions established by the HOs are equally applicable to the employment of 14- and 15-year-olds because of Child Labor Reg. 3 (*see* 29 CFR 570.33(b)). This section incorporates into the list of occupations prohibited to 14- and 15-year-olds any occupation prohibited by an HO.

(c) Child Labor Reg. 3 and the HOs work together to provide a safe work place for 14- and 15-year-olds. Provisions in Child Labor Reg. 3 will not only overlap those of the HOs but will often be broader than those contained in the HOs. For example:

(1) HO 2 prohibits minors from working as outside helpers on motor vehicles; Child Labor Reg. 3 prohibits all work as helpers on motor vehicles.

(2) HO 7 prohibits the operation, and in some cases assisting to operate, power-driven hoisting equipment. Child Labor Reg. 3 bans the operation and the tending of all hoisting equipment, whether power-driven or manually-driven.

(3) HO 11 prohibits the operation of certain power-driven bakery machines. Child Labor Reg. 3 bans all baking activities by 14- and 15-year-olds.

33c04 **Operation of hoisting apparatus, including forklifts.**

29 CFR 570.33(c) prohibits 14- and 15-year-old minors from operating, tending, setting up, adjusting, cleaning, oiling, or repairing all hoisting apparatus. The term "hoist" refers to any apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. 29 CFR 570.34(n) prohibits these same minors from performing work using a lifting apparatus in connection with automobiles and trucks.

(a) The Child Labor Reg. 3 prohibition against the operation of hoists is much broader than that of HO 7. Under Child Labor Reg. 3, unlike HO 7, prohibited hoists do not have to be power-driven but can rely on mechanical or human power such as those that are operated by a crank or foot pedal.

(1) Under Child Labor Reg. 3, the term "hoist" includes all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum, and trolley suspension hoists.

(2) Under Child Labor Reg. 3, 14- and 15-year-olds are prohibited from using most kinds of hoisting and lifting equipment, such as hydraulic grease rack lifts used in gasoline service stations, tire stores, and other establishments servicing automobiles, as well as service racks and hand jacks, even if that machinery did not fit within the definition of a "hoist or lifting apparatus," because Reg. 3 does not explicitly permit the use of such equipment. *See* 29 CFR 570.32.

(b) **Forklifts**

A forklift is a type of power-driven, industrial, high-lift truck used for lateral transportation. It is equipped with a power-operated device, usually in the form of a fork or platform, capable of tiering loaded pallets or skids one above the other. Minors 14- and 15-years-old may not operate or tend a forklift under Child Labor Reg. 3 because it is both a hoist and a piece of power-driven machinery. These Child Labor Reg. 3 prohibitions also preclude 14- and 15-year-olds from riding on a forklift and working from a forklift.

(c) **Dumbwaiters**

14- and 15-year-olds are generally prohibited from operating any hoisting devices, but 29 CFR 570.34(i) permits such minors to operate dumbwaiters when used to perform work involved with the preparing and serving of food.

(d) Minors 14 and 15 years of age would also be prohibited from operating or tending those hoists found in large retail stores that are designed to move individual shopping carts from

one floor to the next. These devices, often constructed in conjunction with escalators, are both power-driven machinery and hoisting machines.

33c05 **Work performed in or about boiler or engine rooms, or in the maintenance or repair of the establishment, machines, or equipment.**

(a) 29 CFR 570.33(d) prohibits the employment of 14- and 15-year-olds in or about boiler or engine rooms and in connection with the maintenance and repair of the establishment, machines, or equipment. Maintenance would generally include the cleaning of such machines or equipment.

Child Labor Reg. 3 includes certain exceptions to the above maintenance (*i.e.*, cleaning) prohibitions regarding kitchen equipment and motor vehicles.

(1) *Kitchen equipment*

29 CFR 570.34(i) permits 14- and 15-year-olds to clean kitchen equipment (not otherwise prohibited by Child Labor Reg. 3 or the HOs) under certain conditions.

a. Such minors may clean kitchen equipment, 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 °Fahrenheit (F).

1. Questions have been raised as to how compliance with this provision can be achieved and maintained—that the temperature of equipment, surfaces, containers, and liquids being cleaned, filtered, and/or transported do not exceed 100 °F (*see* 69 FR 75399, 12/16/2004).

2. In some situations, employer-installed thermometers could ensure that the required temperature has been reached.

A. Cleaning schedules that incorporate adequate cooling down periods, or that are executed before the heating elements of the equipment are activated, can help ensure compliance with this provision.

B. Clearly articulating policies that require compliance to managers and other employees and monitoring can help ensure compliance with this provision.

C. The Occupational Safety and Health Administration (OSHA) has advised the WHD that an individual performing such cleaning functions would not normally experience a first degree burn until the equipment, surfaces, containers, and liquids being cleaned, filtered, and/or transported reached a temperature of at least 140 °F. Accordingly, it is WHD's position that, generally, a violation of 29 CFR 570.34(i) has occurred whenever a covered 14- or 15-year-old employee received at least a first degree burn while performing these named duties.

b. Child Labor Reg. 3 does not prohibit a minor 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. This position applies only to electric and gas grills that do not involve cooking with open flames (*see* 69 FR 75388, 12/16/2004).

(2) *Motor vehicles*

29 CFR 570.34(n) permits 14- and 15-year-olds to perform work in connection with cars and trucks if confined to the following: dispensing gasoline and oil; courtesy services such as window washing and checking oil levels; car cleaning, washing, and polishing that is done by hand; and other occupations permitted by Child Labor Reg. 3, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring. This exception does not allow 14- and 15-year-olds to operate or maintain automatic car wash equipment or systems.

33c06 <u>Operation or tending of power-driven machines.</u>

(a) 29 CFR 570.33(e) generally prohibits 14- and 15-year-olds from occupations which involve the operating, tending, setting up, adjusting, cleaning, oiling, or repairing of any power-driven machinery other than office machines. Exceptions to this general prohibition are also provided for certain food service related equipment as per 29 CFR 570.34(c) and certain work in connection with cars and trucks as per 29 CFR 570.34(n).

(b) The term "power-driven machinery" as used by Child Labor Reg. 3 is very broad, and includes machines driven by electrical, mechanical, water, or other power such as steam or hydraulic. It also includes battery-operated machines and tools but does not apply to machines or tools driven exclusively by hand or foot power (*see* 75 FR 28408).

(c) To emphasize the fact that Child Labor Reg. 3 prohibits 14- and 15-year-olds from operating and tending almost all power-driven equipment, 29 CFR 570.33(e) lists particular pieces of equipment that have historically been the source of child labor violations. This list is designed to provide clarity and is not exhaustive.

(d) Tending of power-driven machinery is also interpreted broadly under Child Labor Reg. 3 and generally encompasses all activities associated with the operation of such machinery, including but not limited to:

(1) Setting up, adjusting, cleaning, fueling, oiling, maintaining, inspecting, transporting, and repairing such machinery

(2) Loading materials into the machinery and removing materials from the machinery

(3) Monitoring of machinery to ensure that it is operating properly

(4) Individuals who assist the operators of machinery (in such matters as ensuring that there is a clear path of movement for the machine, ensuring that the load the machine is carrying or transporting is properly balanced or distributed, providing direction for the placement of a load (*e.g.*, in the case of a forklift), and providing physical or

verbal assistance in the steering of machinery) would all be performing tending activities under Child Labor Reg. 3

(5) Tending includes assisting passengers on and off such power-driven machinery as a ski lift, an amusement park ride, or a slide at a water park (when water is pumped to the top of the slide)

(e) The following are WHD enforcement positions relating to the operation and/or tending of certain pieces of power machinery. A discussion regarding power-driven kitchen equipment and food processing equipment is contained in FOH 33c12.

(1) *Vacuum cleaners and floor waxers*

In addition to certain office machines (*see* FOH 33d01) and kitchen equipment (*see* FOH 33c12), Child Labor Reg. 3 permits 14- and 15-year-olds to operate vacuum cleaners and floor waxers (*see* 29 CFR 570.34(h)).

a. The term "floor waxers" refers to those combination or multipurpose floor care machines designed to strip wax from floors, reapply wax, and buff or polish floors. Such machines, also called buffers, burnishers, and polishers, consist of a motor housed above a circular rotating horizontal surface to which various pads or brushes may be attached, depending upon the task to be performed. The operator directs the movement of the machine using a handle that rises perpendicular to the base of the machine.

b. The term "floor waxers" does not include the above described machines when used to sand or refinish floors, as such equipment would generally be prohibited under HO 5 (occupations involved in the operation of power-driven woodworking machines). In addition, Child Labor Reg. 3 prohibits the employment of 14- and 15-year-olds in processing and construction occupations.

c. The term "floor waxers" does not include any floor stripper, cleaner, scrubber, burnisher, or polisher upon which the operator may ride while operating the machine.

(2) *Power-driven mowers*

29 CFR 570.33(e) prohibits the employment of 14- and 15-year-olds in occupations involving the operating or tending of power-driven machinery, and specifically names lawn mowers. Furthermore, HO 2 would prohibit anyone under the age of 18 from operating a riding lawn mower when used as a means of transportation on public roads or highways (*see* FOH 33h02(e)(3)).

(3) *Cutters, including weed trimmers and weed eaters*

The prohibitions of 29 CFR 570.33(e) include operating or tending power-driven cutters such as weed trimmers, weed eaters, and hedge trimmers.

(4) *Golf carts and all-terrain vehicles (ATVs)*

29 CFR 570.33(e) prohibits 14- and 15-year-old minors from operating or tending power-driven machinery, including golf carts and ATVs. 29 CFR 570.33(f) prohibits these same minors from being employed in occupations involving the operation of motor vehicles. As golf carts and ATVs are power-driven machines that are also motor vehicles, no one under 16 years of age may operate or tend such machines.

a. These Child Labor Reg. 3 prohibitions are much broader than those of HO 2. The Child Labor Reg. 3 prohibitions are not restricted to the operation of the motor vehicle on public roads or highways.

b. The operation of a golf cart or an ATV would also be prohibited under HO 2 if the minor were operating the vehicle as a means of transportation on a public road or highway (*see* FOH 33e02c(2)(b)).

(5) *Cart Caddy and QuicKART*

29 CFR 507.33(e) prohibits 14- and 15-year-olds from operating or tending power-driven machinery. This would include the Cart Caddy, QuicKART, and similar pieces of equipment.

a. The Cart Caddy and QuicKART are two types of power-driven machines often used by grocers and other retail stores to move large strings of shopping carts. These machines are hooked to the last shopping cart in a string and then the operator guides the string of carts back to the store while commanding the machine to move by means of a hand-held remote control. The operator walks behind the machine and operates the manual throttle when returning to the parking lot to collect more carts.

b. As these machines are not considered to be motor vehicles as defined in HO 2, they do not fall within the scope of HO 2. 16- and 17-year-old minors are permitted to operate these machines (*see* FOH 33h02(e)(2)).

(6) *Office machines*

29 CFR 570.33(e) and 29 CFR 570.34(a) permit 14- and 15-year-old minors to operate office machines. Office machines that may be operated by 14- and 15-year-old minors include computers, typewriters, electric staplers, printers, copiers, cash registers, pencil sharpeners, automatic letter openers, adding machines and calculators, postage machines, automatic filing systems, VCRs, and digital cameras.

(7) *Paper shredders*

14- and 15-year-olds may operate office type paper shredders in an office setting as part of office work. Child Labor Reg. 3 prohibits such youth from operating paper shredders in an industrial or recycling setting.

(8) *Amusement park and water park rides*

The Child Labor Reg. 3 general prohibition against the operation and tending of power-driven machinery includes the operating or tending of all power-driven amusement park and water amusement park rides.

a. Tending would include such duties as assisting riders as they enter and leave the ride, checking to ensure seat belts are properly fastened, and policing the area to ensure the ride is operated safely.

b. These prohibitions extend to most power-driven rides and attractions at water parks as well. 29 CFR 570.34(l)(1) specifically prohibits all minors under 16 years of age from working as dispatchers at the top of elevated water slides (*see* FOH 33d06(d)(2)). Note: certain activities may be performed by properly certified 15-year-old lifeguards at traditional swimming pools and water amusement parks (including such water park facilities as wave pools, lazy rivers, specialized activity areas that may include water falls and sprinkler areas, and at the receiving or splashdown areas of the elevated water slides (*see* 29 CFR 570.34(l)(1) and FOH 33d06).

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c. In addition, 29 CFR 570.33(f) prohibits 14- and 15-year-old minors from operating a motor vehicle or serving as helpers on such vehicles. Some amusement park rides or equipment, such as go-karts, coaches, and equipment used in daily parades, meet the definition of motor vehicles (for purposes of Reg. 3, the WHD uses the definition of motor vehicle from HO 2; *see* 29 CFR 570.52(c)(1)).

d. 29 CFR 570.33(n)(1) prohibits 14- and 15-year-olds from performing occupations in connection with the transportation of persons or property by rail, highway, air, water, pipeline, or other means. Some amusement park rides, such as boats, paddle boats, swan rides, ferries, and railroads fall within this prohibition.

e. The operation of amusement park rides is not prohibited for 16- and 17-year-old minors under HO 7. Although a number of rides in amusement and theme parks have characteristics similar to certain machines that minors are prohibited from operating under HO 7, they are not derricks, cranes, hoists, elevators, or manlifts as defined by the HO (*see* FOH 33h07(c)).

(9) *Conveyors*

See FOH 33c17.

(10) *Automatic elevators*

Child Labor Reg. 3 prohibits 14- and 15-year-olds from operating automatic freight elevators and automatic combined passenger and/or freight elevators. Such youth may operate and ride in fully automatic passenger elevators as found in most office buildings. *See* FOH 33h07.

33c07 Motor vehicles and service as helpers.

(a) 29 CFR 570.33(f) prohibits 14- and 15-year-olds from occupations involving the operation of motor vehicles or serving as helpers on such vehicles. This same section prohibits such youth from riding on a motor vehicle, inside or outside of an enclosed passenger compartment, except as permitted by 29 CFR 570.34(o) (*see* FOH 33c07(d)). In addition, 29 CFR 570.33(k) prohibits 14- and 15-year-olds from loading and unloading goods or property to and from motor vehicles, railroad cars, or conveyors, except for those hand tools, personal protective equipment, and personal items specifically permitted by 29 CFR 570.34(k).

(b) The term "motor vehicle," defined in 29 CFR 570.52(c)(1), means any automobile, truck, truck-tractor, trailer, semi-trailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but does not include any vehicle operated exclusively on rails.

(1) A motor vehicle does not have to be designed for use on public roads, or actually be used on public roads, to fall within the prohibitions of Child Labor Reg. 3. This differs from the prohibitions of HO 2 (*see* 29 CFR 570.52).

(2) In addition to the examples listed in 29 CFR 570.52(c)(1), the WHD has made the following determinations regarding the definition of a motor vehicle under 29 CFR 570:

a. Power-driven golf-carts and ATVs are motor vehicles (*see* 75 FR 28408 and FOH 33h02(3)). The Cart Caddy and QuicKART, two types of machines often used by grocers and other retail stores to move large strings of shopping carts, are not considered to be motor vehicles under 29 CFR 570 (*see* FOH 33h07(c)(5) and FOH 33c06(e)(5)).

b. Certain amusement park rides or equipment, such as go-carts, parade vehicles, and coaches, are motor vehicles as defined by 29 CFR 570.52(c) (*see* FOH 33c06(e)(8)).

(c) The term "motor vehicle helper" is not defined in Child Labor Reg. 3. Reg. 3 prohibits 14- and 15-year-olds from "service as helpers on such vehicles." This provision has been included in Child Labor Reg. 3, without change, since the inception of the regulations as a temporary rule in 1938. The WHD's interpretation of the term "motor vehicle helper" has evolved over the years and was influenced by the definition of "outside helper" contained in HO 2 (*see* 29 CFR 570.52(c)).

(1) For purposes of Child Labor Reg. 3, the WHD considers a helper on a motor vehicle to be one whose employment assists in the operation of a motor vehicle used in the transportation or delivery of persons or property. Duties may include assisting in the pick-up and/or delivery of people or property, the loading or unloading of the vehicle, shifting property around the vehicle, and/or assisting the driver of the vehicle or other helpers on motor vehicles.

(2) A helper on a motor vehicle does not have to ultimately ride as a passenger, either inside or outside of the vehicle, to be considered a helper under Child Labor Reg. 3. But the mere fact that a minor rides as a passenger on a vehicle during working hours does not make that minor a helper under Child Labor Reg. 3.

a. 29 CFR 570.34(k) permits 14- and 15-year-olds to load onto and unload from motor vehicles the light, personal, non-powered hand tools; personal protective equipment; and other personal items that they will use as part of their employment under certain conditions (*see* FOH 33d05).

b. Youth peddling and door-to-door salespersons as motor vehicle helpers

1. 29 CFR 570.33(j) prohibits the employment of minors under 16 years of age in youth peddling or as door-to-door salespersons—selling such things as candy, greeting cards, calendars, etc. Youth peddlers often perform motor vehicle helper duties prohibited by Child Labor Reg. 3 (*see* FOH 33c07(c)(2)b.).

2. Minors who are illegally employed as youth peddlers often do more than simply ride in the crew leader's van or automobile while being transported to the sales areas—they often facilitate the sales operations by performing such activities as sorting merchandise and packing peddler's kits while in *transit*, or loading and unloading the merchandise being sold. When performing these tasks, the youth peddlers are also engaged as helpers on a motor vehicle under Child Labor Reg. 3.

3. Minors who merely ride in the crew leader's vehicle and perform no activities that facilitate the movement of the persons or property being transported would not be considered to be helpers on a motor vehicle under Child Labor Reg. 3.

(d) Riding as a passenger on motor vehicles

(1) 29 CFR 570.34(o) permits 14- and 15-year-olds to ride inside passenger compartments of motor vehicles when:

a. they are not the operator of the vehicle;

b. they are not serving as a helper on the vehicle;

c. a significant reason for them being a passenger in the vehicle is not to perform work in connection with transporting, or assisting in the transporting, of other persons or property;

d. each minor riding in the passenger compartment must have his or her own seat, each seat must be equipped with a seat belt or similar restraining device, and the employer must instruct the minors that such belts or other devices must be used (this requirement is similar to those contained in FLSA section 13(c)(6) and 29 CFR 570.52(b) (*see* FOH 33h02(d)(1))); and

e. each driver transporting the young workers must hold a state driver's license valid for the type of driving involved and, if the driver is under the age of 18, his or her employment must comply with the provisions of 29 CFR 570.52.

(2) Should any of the requirements detailed in FOH 33c07(d)(1) not be met, a violation of Child Labor Reg. 3 has most likely occurred.

33c08 Outside window washing.

29 CFR 570.33(g) prohibits 14- and 15-year-olds from performing outside window washing that involves working from a sill (*see* FOH 33c09).

33c09 Ladders, scaffolds, or their substitutes.

(a) 29 CFR 570.33(g) prohibits 14- and 15-year-olds from performing all work requiring the use of ladders, scaffolds, or their substitutes. This prohibition is not just confined to tasks involved with outside window washing.

(b) Although Child Labor Reg. 3 does not define the term "ladder," regulations issued by DOL's OSHA do. WHD relies upon this definition when enforcing the child labor provisions of the FLSA.

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(1) Under 29 CFR 1910.21(c)(1), a ladder is "an appliance usually consisting of two side rails joined at regular intervals by cross-pieces called steps, rungs, or cleats, on which a person may step in ascending or descending."

(2) Under 29 CFR 1910.21(c)(2), a stepladder means "a self-supporting portable ladder, non-adjustable in length, having flat steps and a hinged back. Its size is designated by the overall length of the ladder measured along the front edge of the side rails."

(c) 29 CFR 570.34(l)(2) permits properly certified 15-year-olds who are employed as lifeguards to use a ladder to access and descend from the lifeguard chair (*see* FOH 33d06(c)(10)).

(d) The WHD has adopted an enforcement position that permits 14- and 15-year-olds who are otherwise employed in compliance with the provisions of 29 CFR 570 to use a one- or two-step footstool or stepladder as part of their employment.

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33c10 Baking.

(a) 29 CFR 570.33(h) prohibits 14- and 15-year-olds from performing all baking activities.

(1) Under Child Labor Reg. 3, baking is a process and prohibited activities include such things as the weighing, measuring, and mixing of ingredients; placing or assembling products in pans or on trays; operating ovens (including placing items in ovens and removing items from ovens); placing items on cooling trays or racks; and finishing or icing baked products (*see* 69 FR 75383, 12/16/2004, for more information).

(2) This prohibition on performing activities that are steps in the baking process precludes 14- and 15-year-olds from assembling pizzas just prior to baking. This is true even if older workers will actually place the pizzas in the ovens and remove them from the ovens.

(b) The ban on baking precludes 14- and 15-year-olds from operating almost all ovens, including convection ovens, microwave ovens (except those used for warming foods as described in FOH 33c10(b)(2) below), pizza ovens, automatic feeding ovens, and high speed ovens.

(1) *High speed ovens*

14- and 15-year-olds are prohibited from cooking or baking with high speed ovens that operate using a combination of high speed air impingement, infrared browning elements, microwaves, and catalytic converters. These ovens, which can operate at temperatures of 500 °F, can quickly cook a wide variety of food items.

a. These ovens, including models manufactured by TurboChef called the Tornado, the C3, and the High h Batch, are often used by quick service restaurants to bake or toast submarine sandwiches and pizzas.

b. Such equipment may not be considered a toaster that would be permitted under 29 CFR 570.34(i) (*see* FOH 33c12(b)(2)).

c. Enforcement experience indicates that these high speed ovens are used in a variety of food service establishments, hotels, and theaters.

(2) *Microwave ovens*

14- and 15-year-olds may operate microwave ovens that, in accordance with 29 CFR 570.34(i), are used only to warm prepared food and do not have the capacity to work above 140 °F.

33c11 <u>Cooking.</u>

(a) 29 CFR 570.33(h) generally prohibits 14- and 15-year-olds from performing any cooking *except* that which is permitted by 29 CFR 570.34(c).

(b) Such minors may cook with electric and gas grills that do not involve cooking over an open flame (*see* 29 CFR 570.34(c)).

(1) The cooking surface of the grill must be solid to ensure the minors do not cook over an open flame. These provisions preclude 14- and 15-year-olds from cooking over charcoal flames, open fires, and those gas and electric grills that do not utilize a solid slab cooking surface.

(2) Some electric and gas grills have solid cooking surfaces on top, but are also equipped with a broiler under the grill that takes advantage of the single source of heat (electric element or gas flame). 14- and 15-year-olds may cook with such grills but may not use the broilers.

(c) The regulations (*see* 29 CFR 570.34(c)) also specifically mention that such minors may not cook with such equipment as rotisseries, broilers, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as Neico broilers (*see* FOH 33c12(b)(3)).

(d) Such minors may cook with deep fryers that are equipped with and utilize a device which automatically lowers the baskets into the hot oil or grease and automatically raises the baskets from the hot oil or grease (*see* 29 CFR 570.34(c)).

(1) The regulations require that the product being deep fried be contained in a basket during the frying process. Therefore, 14- and 15-year-olds could not be employed to deep fry products that are placed into and removed from the hot fat or grease via some other utensil (*e.g.*, tongs, fork, stick, etc.).

(2) 14- and 15-year-olds may not manually operate (*i.e.*, raise or lower) such baskets.

(3) On 02/14/2005, a final rule revising portions of 29 CFR 570 became effective. This rule, among other things, established the types of cooking duties that 14- and 15-year-olds may legally perform as discussed above. Prior to 02/14/2005, such minors could cook only at soda fountains, lunch counters, snack bars, or cafeteria serving lines. The WHD interpreted this provision to mean that all cooking by this age group had to be performed in plain view of the customer. The "in plain view" rule ended effective 02/14/2005.

(4) The rules concerning the cleaning of kitchen equipment by 14- and 15-year-olds are discussed in FOH 33d04(e).

33c12 **<u>Power-driven kitchen equipment.</u>**

(a) Although 29 CFR 570.33(h) prohibits minors 14 and 15 years of age from performing most cooking tasks, 29 CFR 570.34(i) permits such minors to perform occupations involved in preparing and serving food and beverages, including operating machines used to perform such work. Machines such youth are *permitted* to operate include, but are not limited to:

(1) electric and gas grills that do not involve cooking the product over an open flame;

(2) deep fryers that utilize baskets to contain the food product being cooked and which are equipped with and utilize a device that automatically lowers the basket into the hot oil or grease and automatically raises the basket out of the hot oil or grease;

(3) dishwashers;

(4) toasters (*see* FOH 33c12(b)(2));

(5) dumbwaiters if limited to kitchen work involving the preparation and serving of food;

(6) popcorn poppers;

(7) milk shake blenders, including blenders used to make smoothies, Frappuccinos, and fruit drinks;

(8) coffee grinders;

(9) automatic coffee machines, including espresso and cappuccino machines (*see* 75 FR 28409);

(10) devices used to maintain the temperature of prepared foods, such as warmers, steam tables, and heat lamps (even if the temperature exceeds 140 °F),

(11) microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F;

(12) cotton candy machines (*see* FOH 33c12(b)(6)); and

(13) Sno Cone, Snow Cone, and Italian ice machines (*see* FOH 33c12(b)(9)).

(b) 14- and 15-year-olds are prohibited from operating many other pieces of power-driven equipment used in kitchens and food service establishments. Below are specific pieces of power-driven kitchen equipment that are cited in the regulations or upon which the WHD has formally opined.

(1) *Toasters*

29 CFR 570.34(i) permits 14- and 15-year-old minors to operate certain machines, including toasters.

a. The WHD has long interpreted the term "toaster" to mean that type of equipment that was generally found in snack bars and lunch counters when Child Labor Reg. 3 was issued and used to toast such items as slices of bread and English muffins. This includes such equipment as the two- or four-slice pop-up toasters similar to those manufactured for home use and the small conveyor type bread toasters now often found at self-service breakfast buffets (*see* 75 FR 28409).

b. Broilers, automatic broiler systems, high speed ovens, and rapid toaster machines used at quick service restaurants to toast such items as buns, bagels, and muffins (all of which operate at high temperatures, often in excess of 500 °F) are not toasters under Child Labor Reg. 3, and minors must be at least 16 years of age to operate them (*see* 75 FR 28409). One rapid toaster that 14- and 15-year-olds are not permitted to operate is the Model VCT-200.

(2) *Broilers, including automatic broiler systems*

a. 14- and 15-year-olds are prohibited from performing *all baking activities*, including operating most ovens, and from cooking with all broilers. Some electric and gas grills that have solid cooking surfaces on top are also equipped with a broiler under the grill that takes advantage of the single source of heat (electric element or gas flame). 14- and 15-year-olds may cook with such grills, but may not use the broilers.

b. <u>Automatic broiler systems (*see* 29 CFR 570.34(c))</u>

14- and 15-year-olds are prohibited from operating automatic broilers and cooking systems, such as those produced by Nieco Automatic Broilers. Nieco broilers, also called FlexiChef® Cooking Systems, and other automatic broiler systems use a combination of convection and radiant heat

to flame broil a wide variety of items. These items include ribs, chicken, steak, hamburgers, seafood, nachos, vegetables, and breadsticks. Automatic broilers, which can be powered by electric, natural gas, or propane, often operate at temperatures in excess of 500 °F.

1. Automatic broilers may operate using a conveyor or system of conveyors. The product is simply placed on the conveyor at the feed end and it flows through to the discharge end, flame broiled on both sides at the same time.

2. On some systems called Return-Flow broilers, the product is both fed and returned on the same end of the broiler. Some automatic broilers also feature up to four independently timed conveyor belts, allowing the user to broil up to four separate items at the same time. The broilers may also have a meat holding unit for limited product holding after broiling and a bun grill for toasting buns.

3. Enforcement experience indicates that these automatic broilers are used in a variety of food service establishments.

(3) *Rotisseries (see 29 CFR 570.34(c))*

A rotisserie is a device that cooks food while it slowly rotates. Heating sources may be electricity, gas, charcoal, or wood. A rotisserie contains a spit fitted with a pair of prongs that slide along its length. Food (usually meat) is impaled on the spit and the prongs, which are inserted on each side of the food, are screwed tightly into place to hold the food securely. Modern rotisseries have a motor that automatically turns the shaft, while their predecessors relied on human power.

a. 14- and 15-year-olds are prohibited from cooking with rotisseries.

b. Not included in the Child Labor Reg. 3 prohibition regarding the operation of rotisseries would be those pieces of equipment, often used at movie theaters, amusement parks, and snack bars, that heat and maintain the temperature of pre-cooked hot dogs and sausages. Such permitted pieces of equipment include roller grills, consisting of a horizontal surface composed of a series of rotating cylinders, upon which the hot dogs are heated, and rotisserie cabinets, where the hot dogs are placed on spikes or cradles and then orbited around or past a heat source.

(4) *Power-driven food slicers, grinders, choppers, and mixers*

29 CFR 570.33(e) prohibits 14- and 15-year-old minors from performing occupations which involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, food processors, food cutters, and food mixers.

a. These occupations are prohibited under Child Labor Reg. 3 regardless of the material being processed by such machines. This prohibition is much broader than that contained in HO 10 (*see* 75 FR 28409).

b. Power-driven bagel slicers are food slicers under Child Labor Reg. 3, and are therefore, prohibited. This prohibition is much broader than that contained in HO 14 and the enforcement position discussed in FOH 33h11(e).

c. Bakery type mixers

1. Child Labor Reg. 3 prohibits 14- and 15-year-olds from operating, tending, setting up, adjusting, cleaning, oiling, or repairing power-driven food mixers regardless of the product being processed, the size of the mixer, or the blade or attachment being used. This prohibition is much broader than that imposed by HO 11, occupations involved in the operation of bakery machines.

2. Although HO 11 (*see* 29 CFR 570.62(b)(1)) provides an exception that allows 16- and 17-year-olds to operate certain lightweight, small capacity, portable countertop power-driven food mixers, this exception does not apply to those under 16 years of age (*see* FOH 33h11(d)(2)d.).

d. Dairy Queen Blizzard Flavor Treat Machine/Whisper Quiet Mix-N-Blend Machine

The "Blizzard," a trademarked product of Dairy Queen, is made from soft ice cream. Although somewhat similar to a milk shake, the Blizzard is very thick and cannot be poured. The customer selects ingredients, such as chocolate, fruit, or different kinds of candy to be added to the soft ice cream. All the ingredients are placed in a cup and then blended or mixed by the Blizzard machine. Because these machines act as a milk shake blender, a machine specifically permitted by 29 CFR 570.34(i), 14- and 15-year-olds may operate both the Dairy Queen Blizzard Flavor Treat Machine and the Whisper Quiet Mix-N-Blend Machine.

(5) *Cotton candy machines*

Child Labor Reg. 3 does *not* prohibit 14- and 15-year-olds from operating most standard cotton candy machines.

a. The operator of the cotton candy machine puts sugar crystals into a cylinder in the center of the machine. The sugar crystals are heated by hot air from an enclosed element to a soft liquid consistency. The liquid sugar is then spun out into a fluff that collects within the bowl of the machine. The operator takes a cardboard cone and twirls it around just inside the surface of the bowl, picking up the spun cotton candy until the cone is filled to a serving size.

b. 29 CFR 570.34(i) permits 14- and 15-year-old-minors 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* dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders.

1. Most cotton candy machines are designed in such a manner to present few hazards to the operator, and the operator is exposed to none of the moving parts of the machine.

2. This machine operates in a fashion similar to a popcorn popper, which is a permitted piece of equipment.

(6) *Waffle irons*

a. Child Labor Reg. 3 does not prohibit 14- and 15-year-olds from cooking with electric waffle irons, including those used in restaurants and ice cream shops to make waffle cones. These waffle irons are similar to electric grills with solid heating elements powered by electricity. They do not involve cooking over an open flame, do not operate at extremely high temperatures, and their operation does not constitute baking under 29 CFR 570.33(h).

b. 14- and 15-year-olds may also clean such waffle irons as long as the equipment and surfaces do not exceed a temperature of 100 °F (*see* 29 CFR 570.34(i)).

(7) *Two-sided grills*

a. Child Labor Reg. 3 does not prohibit 14- and 15-year-olds from cooking with electric or gas two-sided grills such as those manufactured by Garland Commercial Industries under the name Master Series Xpress Grills. This equipment consists of a standard gas or electric grill that is equipped with electric platen heaters that can be lowered (automatically or manually) onto the food product to allow for two-sided cooking. Such equipment operates similar to a waffle iron.

b. 14- and 15-year-olds may also clean such two-sided grills as long as the equipment and surfaces do not exceed a temperature of 100 °F (*see* 29 CFR 570.34(i)).

(8) *Ice chippers, grinders, and shavers*

a. Child Labor Reg. 3 prohibits 14- and 15-year-olds from operating and tending most power-driven machinery used to grind or shave ice. Such machines are often used in restaurants, grocery stores, concession stands, amusement parks, and industrial settings to process ice. They range greatly in size, horsepower, and the amount of ice they can process per hour.

b. <u>Sno Cone, Snow Cone, and Italian ice machines</u>

1. The WHD will not, however, assert a violation of Child Labor Reg. 3 when 14- and 15-year-olds operate ice grinders and shavers that are designed and used to produce Sno Cones, Snow Cones, and Italian ice (products that consist of a single serving of ice which is then covered with flavored syrup). These machines are designed in such a manner to present few hazards to the operator, and it appears that the operator is exposed to none of the moving parts of the machine.

2. Machines included under this enforcement position are often found at concession stands at parks, theaters, swimming pools, fairs, and other amusement venues. The machines may be free-standing units, table top units, or contained in specially constructed Snow Cone carts.

3. Ice grinding and shaving machines included under this enforcement position may be electric, gas, or battery operated, but the horsepower of the motors may not exceed ½ horsepower. The maximum output of such machines may not exceed 500 pounds of snow per hour.

4. The WHD will not charge a violation when 14- and 15-year-olds operate the ice grinding and shaving equipment described in this subsection. They may also perform limited tending functions such as loading ice into the machine, cleaning the exterior of the machine, and cleaning the compartment that holds the crushed or shaved ice. Such youth may not assemble or disassemble the machine or perform any work that entails contact with moving parts that grind or shave the ice.

5. Manufacturers whose equipment have been found to meet the requirements of this enforcement position include Sno-Konette models 1002, 1003, 1203, 1803, and 1903; Paragon models PA-6133110, PA-6133210, and PA-6133410; and Echols models GWP-1360, GWP-117, GWP-103, and GWP-123.

33c13 <u>Work in freezers and meat coolers and in the preparation of meats for sale.</u>

(a) 29 CFR 570.33(i) prohibits the employment of 14- and 15-year-olds in work in freezers and meat coolers. These same regulations ban most work in the preparation of meat for sale.

(b) For example, minors would be prohibited from working as dairy stock clerks handling ice cream, meat clerks, deli clerks, or frozen food stock clerks, where their duties would require them to enter and remain in meat coolers or freezers for prolonged periods of time. Child Labor Reg. 3 also prohibits 14- and 15-year-olds from taking inventory or performing clean-up work which would require the minors to remain in the freezer or meat cooler for extended periods of time (*see* 75 FR 28411 -28412).

(1) A meat cooler, for purposes of 29 CFR 570.33(i), is any confined, refrigerated area within a retail or food service establishment where meat products are received, cut, trimmed, or otherwise processed; stored; and handled. A meat cooler will often contain equipment such as band saws, meat grinders, slicers, and other dangerous, power-driven machinery. It may also have conveyor systems to move products and a wrapping station to package products.

(2) Not included in the definition of a meat cooler are those coolers that are used merely to store items such as beverages, produce, dairy products, and/or prepackaged meat products such as hot dogs, luncheon meats, or bacon.

(3) Also not included in the definition of meat cooler are those refrigerated rooms, often found in convenience stores and located directly behind and attached to sales cases,

from which employees can replenish stocks of beverages, dairy products (non-frozen), and prepackaged meat products.

(c) 14- and 15-year-old employees may occasionally enter freezers only momentarily to retrieve items (*see* 29 CFR 570.34(i)). For example, a minor who works in an ice cream shop may occasionally be required to enter a freezer to obtain a new carton of ice cream. In such circumstances, the minor is not considered to be working in a freezer. Such minors may not enter meat coolers, even momentarily.

33c14 **Youth peddling.**

(a) 29 CFR 570.33(j) prohibits the employment of 14- and 15-year-olds as youth peddlers or door-to-door salespersons. Youth peddling entails the selling of goods or services to customers at locations other than the youth employer's establishment, such as the customers' residences or places of business, or public places such as street corners or public transportation stations.

(1) This provision does not prohibit a young salesperson from conducting sales for his or her employer on property controlled by the employer that is out of doors but may properly be considered part of the employer's establishment.

(2) Youth may conduct sales in such employer exterior facilities, whether temporarily or permanent, as garden centers, sidewalk sales, and parking lot sales when employed by that establishment.

(b) Prohibited activities associated with youth peddling not only include the actual attempt to make a sale or the actual consummation of a sale, but also the preparatory and concluding tasks normally performed in conjunction with making the sales. These prohibited activities include:

(1) the loading and unloading of vans or other motor vehicles, and the service as helpers on such vehicles (*see* FOH 33c07(c)(2));

(2) the stocking and restocking of sales kits and trays; and

(3) the exchanging of cash and checks with the employer.

(c) Youth peddling does not include the activities of persons who, as volunteers and without compensation, sell goods or services on behalf of eleemosynary organizations or public agencies, such as schools.

(1) The WHD considers individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objections, without contemplation of pay, not to be employees of the religious, charitable, or similarly non-profit corporations that receive their services.

(2) As used in 29 CFR 570.33(j), the term "compensation" does not include the small prizes, trophies, or other awards of minimum value that the eleemosynary organization may give a volunteer in recognition of his or her efforts (*see* 75 FR 28413).

33c15 **Sign wavers.**

(a) 29 CFR 570.33(j) generally prohibits the employment of 14- and 15-year-olds as sign wavers: individuals who as part of promotional activities hold, wear, and/or wave signs, costumes, merchandise, sandwich boards, or placards in order to attract potential customers.

(b) The above provision does not prohibit a 14- and 15-year-old from performing sign waving tasks when performed inside of or directly in front of the employer's establishment providing the product, service, or event being advertised.

33c16 **Loading and unloading of goods or property onto or from motor vehicles and railroad cars.**

(a) 29 CFR 570.33(k) prohibits 14- and 15-year-olds from loading and unloading goods or property onto or from motor vehicles, railroad cars, or conveyors. 29 CFR 570.34(k), however, does permit such youth to load and unload certain specified items onto and from motor vehicles under certain circumstances.

(b) FOH 33c17 discusses the use of conveyors under Child Labor Reg. 3.

(c) The prohibitions of 29 CFR 570.33(k) involve both goods and property.

33c17 **Loading and unloading of goods or property onto or from conveyors.**

(a) 29 CFR 570.33(k) prohibits 14- and 15-year-olds from loading and unloading goods or property to or from conveyors. Under these regulations, conveyors need not be power-driven to be prohibited (some conveyors operate by gravity).

(b) Conveyors are not defined in the regulations but include any mechanical device, such as a continuous moving belt, auger, or series of rollers, that transports bulk materials or packages from one place to another. Conveyors are often found in warehouses, packing sheds, manufacturing establishments, airports (including mobile equipment used to load and move baggage and cargo), and retail establishments.

(c) Other prohibitions of the Child Labor Reg. 3 standards, such as working in manufacturing, transportation, work rooms, and warehouses, or operating/tending power-driven machinery, may also prevent minors from working with conveyors regardless of the industry or type of establishment.

(d) The WHD does not interpret 29 CFR 570.33(k) to prohibit 14- and 15-year-olds from working with the types of conveyors normally found at checkout counters in supermarkets and other retail stores.

(1) Such conveyors have solid surfaces, are fully enclosed, and are designed with features that protect the hands and limbs of both the operators and the customers who place materials on them or remove purchases from them. The cashier controls the operation of the conveyor through a switch or foot pedal, and the individual items placed on the conveyor are neither large nor heavy. There also may be other smaller conveyors located beyond the cashier that transport the items that have been checked to a bin or counter where they are bagged. 14- and 15-year-olds may also work with those types of conveyors.

(2) On the other hand, some stores may have an additional type of conveyor system that is often located between the checkout station and the customer vehicle loading area in the front of the store. These conveyors may use plastic bins or other storage compartments to hold bags of groceries that are transported to the vehicle loading area. These types of conveyors are not enclosed, convey heavy loads, and may present hazards to young employees who load and unload them. 14- and 15-year-olds are prohibited from operating such conveyors under both 29 CFR 570.33(k) and the Child Labor Reg. 3 general prohibition against operating or tending power-driven equipment. Such youth are prohibited from operating or tending such conveyors and may not load or unload materials to or from such equipment.

33c18 Poultry catching and cooping.

(a) 29 CFR 570.33(l) prohibits the employment of 14- and 15-year-olds to catch and coop poultry in preparation for transportation or for market. Such activity, often referred to as chicken catching, is also banned as a processing occupation by 29 CFR 570.33(a).

(b) This prohibition includes the catching and cooping of all poultry, not just chickens.

(c) In those rare instances when the catching activities would be agricultural in nature, such as where poultry catchers are employed solely by a farmer on a farm to catch poultry raised by that farmer, the catchers would be subject to the agricultural child labor provisions contained in FLSA sections 13(c)(1) -(2).

33c19 Public messenger service.

(a) 29 CFR 570.33(m) prohibits the employment of 14- and 15-year-olds in the occupation of public messenger service. The term "public messenger service," as used in this section, means the kind of messenger service performed by delivery companies (*i.e.*, companies whose principal business is the delivery of letters, messages, and/or parcels), and also, to the extent the law applies to them, telegraph companies (*see* 75 FR 28415).

(b) Child Labor Reg. 3 does not prohibit the employment of 14- and 15-year-olds by firms other than public messenger services as errand boys/girls to pick up and deliver messages or packages by foot, bicycle, or public transportation (*see* 29 CFR 570.34(g)).

33c20 Transportation of persons or property by rail, highway, air, water, pipeline, or other means.

(a) 29 CFR 570.33(n)(1) prohibits the employment of 14- and 15-year-olds in occupations connected with the transportation of persons or property by rail, highway, air, water, pipeline, or other means. This prohibition involves the transportation of persons or property, and not just goods, which entails movement in commerce. In addition, 29 CFR 570.33(k) prohibits 14- and 15-year-olds from loading or unloading most goods or property onto or from motor vehicles, railroad cars, or conveyors.

(b) This prohibition makes it unlawful to employ 14- and 15-year-old minors in jobs clearly and directly related to the operating, servicing, maintaining, or loading of media of transportation. Child Labor Reg. 3 does not, however, prohibit the employment of 14- and 15-year-olds to pick up or deliver packages or messages (whether by foot, bicycle, or riding on subways, buses, or taxis) as long as the employer is not a public messenger service (*see* FOH 33c19

and 29 CFR 570.33(m)). Such minors also may perform office work or sales work that does not involve the performance of any duties on media of transportation.

(c) Occupations which are in connection with transportation within the meaning of Child Labor Reg. 3, and are therefore, prohibited to 14- and 15-year-olds include:

(1) jobs performed on trains, boats, buses, or other media of transportation;

(2) jobs performed in, on, or in close proximity to roundhouses, railway tracks, repair shops, docks or wharfs, hangars, runways, or other such places where power-driven equipment designed or used for transportation (including train cars) is repaired, cleaned, or serviced, or may be in motion;

(3) jobs in loading or unloading railway cars or tanks, trucks, boats, planes, buses, or other media of transportation; and

(4) jobs that require riding in a motor vehicle. Riding in a motor vehicle would be prohibited under 29 CFR 570.33(f) if a significant reason for the minor being a passenger in the vehicle is for the purpose of transporting (or assisting in the transporting of) the persons or the property (*see* 29 CFR 570.34(o)). The transportation of the persons or property does not have to be the *primary* reason for the trip for this prohibition to apply (*see* FOH 33c07(d)).

33c21 **Warehousing and storage.**

(a) 29 CFR 570.33(n)(2) prohibits the employment of 14- and 15-year-olds in occupations in connection with warehousing and storage, except they may perform office work or sales work for such employers.

(b) Warehousing and storage, as used in Child Labor Reg. 3, includes:

(1) public warehouses;

(2) cold storage warehouses;

(3) long distance moving and storage establishments;

(4) public storage facilities where consumers rent space or containers to store property (whether the property is transported to the facility by the consumer, storage facility, or some other party);

(5) wholesale houses (except for certain work in wholesale houses engaged in the distribution of newspapers and magazines, *see* FOH 33c01(f)(2)e.);

(6) tobacco warehouses, except such employment in loose leaf tobacco warehouses as a ticket or tag person, waterperson, or sweeper during tobacco auctions, which employment is more closely allied to sales work than to warehousing and storage, but not excepting other occupations in the warehousing of tobacco, such as regrading or rechecking tobacco, or handling heavy tobacco baskets on the floor;

(7) warehouses operated either as departments or as a separate establishment by retail stores;

(8) warehouses and storage establishments operated either as separate establishments or departments, by factories, canneries, and other manufacturing and processing establishments; and

(9) planer mill lumber yards, where lumber, green, or dry is stacked and stored (*see* limited exception contained in FLSA section 13(c)(7) and discussed in FOH 33e06).

(c) Warehousing and storage, as used in Child Labor Reg. 3, does not include:

(1) fresh fruit and vegetable packing sheds and concentration points, and

(2) stockrooms operated by retail stores as an incident to selling and located on the same premises as the retail store.

33c22 **Communications and public utilities.**

(a) 29 CFR 570.33(n)(3) prohibits the employment of 14- and 15-year-olds in occupations in connection with communications and public utilities, except such youth may be employed in these industries to perform office or sales work as long as the work is not performed on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

(b) **Communications**

(1) Such on-air duties as announcing, reading advertisements, and playing music on radio or television are exempt from the child labor provisions under FLSA section 13(c)(3) (*see* FOH 33e01).

(2) Operating a switchboard in a telephone exchange is an occupation in connection with communication. This work is not considered to be office work.

(3) Answering the telephone and taking messages in a telephone answering service or call center are considered office work.

(c) Public utilities, as contemplated by Child Labor Reg. 3, include electric, natural gas, telecommunication (including telephone), water, and transportation services.

33c23 **Construction.**

29 CFR 570.33(n)(4) prohibits the employment of 14- and 15-year-olds in occupations in connection with construction, including demolition and repair, except such minors may perform office work and sales work for such employers as long as the work is not performed on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

33d CHILD LABOR REGULATION NO. 3: PERMITTED OCCUPATIONS

33d00 General.

(a) In accordance with FLSA section 3(l), non-exempt 14- and 15-year-olds may only be employed in those non-agricultural occupations that the Secretary has determined do not interfere with their health and well-being. Occupations that are not specifically listed as permitted are prohibited (*see* 29 CFR 570.32). Such youth must also be employed in compliance with the hours standards established by 29 CFR 570.35.

(b) 29 CFR 570.34 lists those jobs that the Secretary has determined do not interfere with the health and well-being of 14- and 15-year-olds.

(1) 29 CFR 570.33 details occupations in which 14- and 15-year-olds generally may *not* be employed. This list is not exhaustive, but reflects some of the more common areas of violation. This list is provided to add clarity to the list of permitted occupations detailed in 29 CFR 570.34.

(2) Prior to 07/19/2010, the effective date of the 2010 Final Rule, the non-agricultural employment of 14- and 15-year-olds was generally limited to retail, food service, and gasoline service establishments, or in departments or discrete portions of the premises devoted to retailing, food service, or gasoline service in other establishments. The Final Rule eliminated those limitations, thus expanding employment opportunities for this age group into additional industries such as state and local government, wholesale establishments, medical offices, and non-profit organizations.

(c) The order in which the Child Labor Reg. 3 occupational standards are presented in this chapter follow, as nearly as possible, the order in which each standard is presented or touched upon in 29 CFR 570.33 -.34. In general, FOH 33d discusses the permitted occupations (*see* 29 CFR 570.34), and the list of prohibited occupations are discussed in FOH 33c (*see* 29 CFR 570.33). Because 29 CFR 570.33 -.34 tend to reinforce and provide clarity to each other, considerable overlap between FOH 33c -d is to be expected.

33d01 Office and clerical work, including the operation of office machines.

(a) 29 CFR 570.34(a) permits 14- and 15-year-olds to be employed to perform office and clerical work, including the operation of office machines.

(b) Office work includes such tasks as filing, typing, data processing, computer programming, answering the telephone, and bookkeeping in an office setting; the cleaning and dusting of an office are considered office work and are permitted under Child Labor Reg. 3 for minors 14 and 15 years of age.

(c) **Paper shredders**

14- and 15-year-olds may operate office type paper shredders in an office setting as part of office work. Child Labor Reg. 3 would prevent such youth from operating paper shredders in an industrial or recycling setting.

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33d02 Work of an intellectual or artistically creative nature.

(a) 29 CFR 570.34(b) permits 14- and 15-year-olds to be employed to perform work of an intellectual or artistically creative nature. Such employment is permitted in any industry other than those prohibited by Child Labor Reg. 3 and is also subject to all the applicable time standards established in 29 CFR 570.35 and the prohibited occupation standards contained in 29 CFR 570.33.

(b) Permitted work of an intellectual nature includes, but is not limited to such tasks as computer programming, the writing of software, teaching or performing as a tutor, and serving as a peer counselor or teacher's assistant. Such work is limited to work that is similar to that performed in an office setting and may not involve the use of any power-driven equipment other than those permitted by 29 CFR 570.34.

(c) Artistically creative work is confined to work in a recognized field of artistic or creative endeavors as discussed in 29 CFR 541.302(b) (*see* 75 FR 28417). This section limits the scope of artistically creative endeavors to such fields as music, writing, acting, and graphic arts. Under this provision, 14- and 15-year-olds are permitted to be employed in such occupations as musicians, singers, artists, runway models, and church musical directors.

(1) 14- and 15-year-olds who are employed in artistically creative endeavors will continue to be prohibited from performing any of the occupations or tasks detailed in the revised 29 CFR 570.33.

(2) These prohibitions include work in manufacturing and processing occupations, the operation of most power-driven equipment, and any duties in workrooms or workplaces where goods are manufactured or processed.

a. These prohibitions would prevent a 14- or 15-year-old from working in a factory or workroom as a molder or hand painter producing mass quantities of nearly identical pottery or ceramic items, but would permit the youth to express his or her artistic talents in a potter studio to shape by hand a unique clay pot or sculpt a piece of art.

b. Likewise, a 14- or 15-year-old could be employed, with all the safeguards of 29 CFR 570.33-.35, as a painter of portraits but not as a painter of automobiles or houses.

c. Similarly, a youth could be employed to create unique photographs that rise to the level of art, but would be prevented from developing those photographs and working with the chemicals and solvents commonly used in such processing activities.

d. The WHD stated in the preamble to the 2010 Final Rule in response to a specific question that the DOL does not consider tattooing or body piercing to be artistically creative endeavors under the provisions of either 29 CFR 570.34(b) or 29 CFR 541.302(b) (*see* 75 FR 28417).

e. In addition, the hours standards provisions of 29 CFR 570.35 restrict the number of hours and times of day that 14- and 15-year-olds may be

employed in any FLSA-covered work, including artistically creative endeavors.

33d03 Permitted cooking duties.

(a) 29 CFR 570.33(h) generally prohibits 14- and 15-year-olds from performing any cooking *except* that which is permitted by 29 CFR 570.34(c).

(b) 29 CFR 570.34(c) permits 14- and 15-year-olds to cook with the following equipment:

(1) gas grills that do not involve cooking over an open flame, and

(2) 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. The regulations require that the product being deep fried be contained in a basket during the frying process. Therefore, 14- and 15-year-olds could not be employed to deep fry products that are placed into and removed from the hot fat or grease via some other utensil (*e.g.*, tongs, fork, stick, etc.).

(c) 29 CFR 570.34(c) also specifically mentions that such minors may not cook with such equipment as rotisseries, broilers, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as Nieco broilers.

(d) The rules concerning prohibited cooking duties are discussed in FOH 33c11.

(e) The rules concerning the cleaning of kitchen equipment by 14- and 15-year-olds are discussed in FOH 33c05(b)(1).

(f) The rules concerning the operation of power-driven kitchen equipment are discussed in FOH 33c12.

33d04 Kitchen work, including the preparing and serving of food and beverages, and the cleaning of kitchen equipment.

(a) 29 CFR 570.34(i) permits 14- and 15-year-olds to perform certain work involved with the preparing and serving of food and beverages, including the operation of certain machines and devices. A list of permitted kitchen equipment and devices is provided in FOH 33c12(a).

(b) 29 CFR 570.34(i) permits 14- and 15-year-olds to operate devices used to maintain the temperature of prepared foods such as warmers, steam tables, and heat lamps.

(c) 29 CFR 570.34(i) permits 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.

(d) 29 CFR 570.34(j) permits 14- and 15-year-olds to clean vegetables and fruits. This same section also permits such youth to wrap, seal, label, weigh, price, and stock items, including vegetables, fruits, and meats, when performed in areas physically separate from a freezer or meat cooler.

(e) 29 CFR 570.34(i) permits 14- and 15-year-olds 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. *See* FOH 33c05(b)(1) for a detailed discussion about the cleaning of kitchen equipment and surfaces.

33d05 **Loading and unloading of certain items onto and from motor vehicles.**

(a) Although 29 CFR 570.33(k) generally prohibits 14- and 15-year-olds from loading goods or property onto or from motor vehicles, that section notes that 29 CFR 570.34(k) does allow such youth to perform certain loading and unloading duties.

(b) 29 CFR 570.34(k) permits 14- and 15-year-olds to load and unload, onto and from motor vehicles, those light, non-power-driven hand tools and personal protective equipment that the minor will use as part of his or her employment at the worksite. They may also load and unload personal items such as back packs, lunch boxes, or coats that their employers allow them to take to the worksite.

(1) Such light tools include, but are not limited to, rakes, hand-held clippers, shovels, and brooms. Such light tools do not include items like trash, sales kits, promotion items or items for sale, lawn mowers, or other power-driven equipment.

(2) Such minors are not permitted to load or unload safety equipment such as barriers, cones, or signage.

33d06 **Lifeguards.**

(a) 29 CFR 570.34(l) permits 15-year-olds, *but not 14-year-olds*, to be employed to perform lifeguard duties at traditional swimming pools and water amusement parks when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety. 29 CFR 570.34(l) was incorporated into the regulations by the 2008 Final Rule and replaces an enforcement position previously adopted by the WHD.

(1) The core and defining duty of a lifeguard is to rescue swimmers in danger of drowning, often by entering the water and physically bringing the swimmer to safety (*see* 75 FR 28418). Child Labor Reg. 3 now prohibits the employment of anyone under 15 years of age to perform this core duty, and 15-year-olds may do so only when properly certified.

(2) Any employee under the age of 16 whose duties include this core duty, such as a junior lifeguard or a swim teacher aide, or whose employment could place him or her in a situation where the employer would reasonably expect him or her to perform such rescue duties, would be performing the duties of a lifeguard while working in such a position. For such employment to comply with Child Labor Reg. 3, the employee must be at least 15 years of age and be properly certified.

(3) A 15-year-old, who has been properly certified as a lifeguard, may also serve as a swimming instructor, but only when he or she has also been properly certified as a swimming instructor by the American Red Cross or some other recognized certifying agency (*see* 29 CFR 570.34(l)(2)).

(b) Where 15-year-old lifeguards may and may not be employed

(1) *Traditional swimming pools*

a. Properly certified 15-year-old lifeguards may be employed at traditional swimming pools. A traditional swimming pool means a water tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming, and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith.

b. The provisions of 29 CFR 570.34(l) apply irrespective of who owns, operates, or manages the pool. Therefore, such minors could be employed at hotel pools, apartment complex pools, and homeowner association pools, as well as community pools.

(2) *Water amusement parks*

a. Properly certified 15-year-olds may be employed as lifeguards at most facilities of a water amusement park. A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but also includes such additional attractions as wave pools, lazy rivers, baby pools, activities areas, and elevated water slides.

b. 15-year-olds may serve as lifeguards at wave pools, lazy rivers, activity areas, baby pools, and receiving or splashdown areas of elevated water slides.

c. 14- and 15-year-olds may not be stationed at the top of an elevated water slide to monitor the slide operations, keep order, and serve as dispatcher to ensure patrons properly ride the slide. The general prohibition against operating or tending power-driven equipment contained in Child Labor Reg. 3 prohibits youth under 16 from performing these non-traditional lifeguard duties at the top or on the stairs of an elevated slide. This same prohibition prevents youth under 16 from being employed to operate or tend, or serve as attendants on amusement park rides.

(3) *Natural environments*

No one under 16 years of age may be employed as a lifeguard at rivers, streams, lakes, ponds, quarries, reservoirs, wharfs, piers, canals, oceanside beaches, nor other natural environments.

(c) The duties 15-year-old lifeguards may perform include the following:

(1) Rescuing swimmers in danger of drowning

(2) Monitoring activities at poolside to prevent accidents

(3) Providing swimming lessons, but only if properly certified to do so (*see* FOH 33d06(e)(3)a. below)

(4) Teaching water safety

(5) Providing assistance to patrons

(6) Helping maintain order and cleanliness in the pool and pool areas

(7) Conducting and officiating at swim meets

(8) Administering first aid

(9) Checking in and out items such as towels, and personal items such as rings, watches, and apparel

(10) Using a ladder to access and descend from a lifeguard chair

(11) Using hand tools to clean the pool and pool areas

(12) Testing and recording water quality for temperature and/or Ph levels, using all of the tools of the testing process including adding chemicals to the test water sample

(d) The duties 15-year-old lifeguards may *not* perform include the following:

(1) Such youth may not enter or work in any mechanical room or chemical storage area, including any areas where the filtration and chlorinating systems are housed.

(2) Such youth may not operate or tend any power-driven equipment, including power-driven elevated water slides often found at water amusement parks and some swimming pools.

a. Child Labor Reg. 3 prohibits the employment of youths under 16 years of age as dispatchers or attendants at the top of elevated water slides performing such tasks as maintaining order, directing patrons as to when to depart the top of the slide, and ensuring that patrons have begun their ride safely (*see* 29 CFR 570.34(l)(2)).

b. Properly certified 15-year-old lifeguards may be stationed at the splashdown pools at the bottom of the elevated water slides to perform those permitted duties listed in FOH 33d06(b) above.

c. The prohibition concerning tending power-driven water slides would not apply to those small water slides designed for use by very small children and often located in baby pools. These slides that normally rise no more than 5 or 10 feet are accessed by ramps that patrons walk up rather than stairways or ladders. Properly certified 15-year-old lifeguards may tend these little slides designed for very small children.

(e) Certification

(1) 29 CFR 570.34(l) requires that 15-year-olds be trained and certified in water safety and aquatics by the American Red Cross or a similar certifying agency before they may be employed as lifeguards or to perform the core duties of a lifeguard as discussed in FOH 33d06(a)(1) above.

(2) Normally, the youth will have in his or her custody a certificate documenting that he or she has successfully completed all classroom and practical skill sets necessary for certification as a lifeguard. Such certification will normally be sufficient for purposes of establishing compliance with this portion of Child Labor Reg. 3.

(3) As per 29 CFR 570.34(l)(2), 15-year-olds who, as part of their employment, serve as swimming instructors, teaching others how to swim, must not only hold proper certification as lifeguards, but must also be certified as swimming instructors by the American Red Cross or some other recognized certifying organization.

(4) Once a lifeguard turns 16 years of age, this dual requirement for certification, just as all the other provisions of Child Labor Reg. 3, end.

(5) The WHD has determined that the following organizations offer lifeguard certification programs that are similar to that offered by the American Red Cross and therefore satisfy the requirements of 29 CFR 570.34(l). This list is not to be considered exhaustive.

a. American Lifeguard Association (www.americanlifeguard.com)

b. Ellis & Associates (www.jellis.com)

c. National Aquatic Safety Company (NASCO) (www.nascoaquatics.com)

d. United States Lifesaving Association (www.usla.org)

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33e CHILD LABOR EXEMPTIONS

33e00 Employment by parents: FLSA section 3(l).

(a) Non-agricultural employment

(1) FLSA section 3(l) exempts from the definition of "oppressive child labor," and thus from FLSA section 12 coverage, employment by parents or persons standing in place of parents of their own child or a child in their custody, provided that the minor, if 16 or 17 years of age, is not employed in an occupation covered by a non-agricultural HO.

a. If the minor is under 16 years of age, he or she may not be employed in an actual manufacturing or mining occupation, or in an occupation covered by a non-agricultural HO. Such minors under 16 years of age may be employed in processing occupations or in a manufacturing workroom, if not employed in an actual manufacturing occupation or in an occupation declared to be hazardous.

b. If the minor is under 16 years of age, the Child Labor Reg. 3 hours standards would not apply to the youth when he or she was employed by a business owned by his or her parent or a person standing in place of his or her parent.

(2) The exemption applies only when the parent is the sole employer of the minor. If the parent is a partner in a partnership or an officer of a corporation, the parental exemption does not apply unless the parents are the only members of the partnership or the sole owners of the corporation.

(3) The parental exemption in the FLSA was included to permit children to be employed in some occupations by their parents on the basis that a parent's natural concern for his or her child's well-being would serve to protect the child.

(4) Application of this exemption is limited to the employment of children exclusively by their parents. Any other applications would render the safeguard mentioned above ineffective. The sole owner of a business is in a position to regulate the duties of his or her child and provide guidance. Where the ownership of the corporation or partnership is vested in persons other than the parent, the child is responsible to persons other than his or her parent; his or her duties are regulated by the corporation or partnership.

33e01 Employment as actors or performers.

FLSA section 13(c)(3) provides an exemption from section 12 for employment as an actor or performer in motion pictures or theatrical, radio, or television productions. Minors employed as performers in a circus also fall within this exemption.

33e02 Newspaper delivery employees.

FLSA section 13(d) provides an exemption from FLSA sections 6, 7, and 12 for any employee engaged in the delivery of newspapers to the consumer (*see* FOH 23).

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33e03 Homeworkers making wreaths.

FLSA section 13(d) provides an exemption from FLSA sections 6, 7, and 12 for homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (include the harvesting of the evergreens or other forest products used in making such wreaths) (*see* FOH 25).

33e04 Loading of certain balers and compactors by 16- and 17-year-olds.

FLSA section 13(c)(5) provides for an exemption from the child labor provisions for the employment of 16- and 17-year-olds to load, but not operate or unload, certain power-driven scrap paper balers and paper box compactors under certain conditions (*see* FOH 33h12(d)(2)).

33e05 Limited driving of certain automobiles and trucks by 17-year-olds.

FLSA section 13(c)(6) provides an exemption for 17-year-olds, but not 16-year-olds, who, as part of their employment, perform the occasional and incidental driving of automobiles and trucks on public highways under specified conditions (*see* FOH 33h02(d)(2)).

33e06 Employment of certain youth inside and outside of places of business that use power-driven machinery to process wood products.

FLSA section 13(c)(7) provides a limited exemption from the child labor provisions for certain youth between the ages of 14 and 18 years who, by statute or judicial order, are excused from compulsory school attendance beyond the eighth grade, that permits their employment inside and outside of places of business that use power-driven machinery to process wood products. Although the exemption allows certain youth between the ages of 14 and 18 years to be employed inside and outside of places of business that use power-driven machines to process wood products, it does so only if such youth do not operate or assist in the operation of power-driven woodworking machines (*see* FOH 33c01(a) and FOH 33h04(d)(2)). 14- and 15-year-olds whose employment falls under the section 13(c)(7) exemption may be employed during school hours (*see* FOH 33b02(b)(1)b.), but are still subject to the other hours and occupation standards established by Child Labor Reg. 3.

33f CHILDREN EMPLOYED IN AGRICULTURE

33f00 Outside of school hours.

(a) FLSA section 13(c) provides that section 12 will apply to minors under 16 years of age employed in hazardous occupations in agriculture unless employed by a parent or person standing in the place of a parent. *See* FOH 33f03. Thus, the exemption for minors below the age of 16 employed in agriculture outside of school hours is limited to occupations which have not been declared hazardous.

(b) The definition of "agriculture" in FLSA section 3(f) determines whether an employee is "employed in agriculture" for purposes of FLSA sections 13(c)(1) or (2), regardless of whether or not the employment is subject to the FLSA section (6)(a)(5) minimum wage.

(c) The term "outside of school hours" refers to the hours before and after school, holidays, Saturday, Sunday, vacation time, and any day when the school in the district where the minor is living is not in session.

33f01 Children who move into another area.

The WHD has taken the enforcement position that children who leave one district where schools have closed for summer vacation and move into and live in another district where schools are still in session may work during the hours schools are in session in this new district. This position applies only during the spring of the year. In order to ensure compliance, employers should verify that the school the minor previously attended has closed for summer vacation.

33f02 Minimum age during school hours.

(a) The minimum age is 16 for employment in agriculture during school hours unless:

(1) the minor is employed exclusively by his or her parent or by a person standing in the place of his or her parent.

(2) the minor has completed his or her high school course.

(3) the minor is below the eligible entrance age in the state. In states where there is no written eligible age, the compulsory age becomes the eligible age.

(4) the school, which the minor normally attends or would normally attend in the district where he or she is living, is closed for crop vacation or any other reason. In some communities, one school may close for crop vacation while others in the same community remain in session. The Wage and Hour Investigator will need to find out which public or parochial school the minor attends, and in the case of the migrant minor, which public school he or she would normally attend.

(5) the school, due to crowded conditions, is operating on a split-shift basis. Under this plan the school day is divided into half-day sessions. Some children attend classes in the morning and others in the afternoon. The children under these circumstances could be legally employed in agriculture the half-day they are not required to attend school.

(6) the administrative unit, such as the high school or junior high school which the minor attends, is closed. The exemption makes no provision for the release of individual children or any class or grade to work in agriculture.

(b) Minors below 16 years of age may not be employed in agricultural HOs except where employed by a parent or person standing in the place of a parent on a farm owned or operated by the parent or person standing in place thereof (*see* FOH 33f03). Thus, the employment during school hours of minors under 16 years of age, under the conditions set forth in FOH 33f02(a)(2) -(6) above, is permitted only where the minor does not engage in such hazardous work.

33f03 **HOs in agriculture.**

(a) FLSA section 13(c)(2) reads as follows: "[T]he provisions of section 12 of this title relating to child labor shall apply to an employee below the age of 16 employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of 16, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person."

(b) The 16-year minimum age for agricultural employment in occupations declared to be hazardous applies to covered agricultural employment which meets the definition given in FLSA section 3(f) and without regard to whether or not such employment is subject to the minimum wage provided by section 6(a)(5). The 16-year minimum age does not depend upon whether or not the employment is outside school hours. Thus, the 16-year minimum age for such hazardous occupations applies during vacation periods as well as hours before and after school or on non-school days.

(c) The parental exemption from the HOs in agriculture, in FLSA section 13(c)(2), applies to the minor's natural parent or to a "person standing in the place of his parent," as long as the employment is *on a farm owned or operated* by such parent or person.

(d) *Owned by* the parent or person standing in the place of the parent includes part ownership as a partner in a partnership or as an officer of a corporation which owns the farm if the ownership interest in the partnership or corporation is substantial.

(e) *Operated by* the parent or person standing in the place of the parent means that the person exerts active and direct control over the operation of the farm or ranch by making day-to-day decisions affecting basic income, assigning work, hiring and firing employees, and exercising direct supervision of the farm or ranch work. Ranch managers, therefore, who meet these criteria could employ their own children under 16 on the ranch they operate without regard to the provisions of the HO in agriculture.

(f) The 18-year minimum age set by the 17 non-agricultural HOs (*see* FOH 33h) does not apply to an employee employed in agriculture as defined in section 3(f). For example, if a minor under 18 is employed in agriculture and works as a driver on a motor vehicle, HO 2 does not apply even though the minor may go in or about a producing establishment to deliver the farmer's products. On the other hand, if the minor's employment does not meet the tests in FLSA section 3(f), HO 2 would apply in the normal manner. If a minor *under 16* is employed in agriculture as defined in section 3(f), he or she is subject only to the HOs in agriculture set forth in FOH 33f03(g) below.

(g) The following occupations in agriculture have been declared hazardous by the Secretary for the employment of minors under 16 years of age:

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

a. Farm tractors overturn easily and the operator or passenger may be seriously injured. Serious injuries are complicated if the accident occurs in an isolated area and is not discovered quickly.

b. The rotating drive mechanisms of implements or PTO drives inflict serious injuries if parts of the body or clothing come in contact with the exposed driveshaft or moving parts.

c. Persons under 16 may operate garden type tractors.

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

a. <u>Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner</u>

1. These machines use rotary gears, revolving shafts, driving chains, belts, augers, conveyor belts and chains, knives, blowers, levers, and hydraulic pistons to grasp, cut, pound, grind, convey, compress, push, or pull material.

2. The farm worker sometimes comes in contact with the moving parts and is seriously injured when he or she tries to unclog, repair, or adjust the machine when the motor is running.

b. <u>Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity type self-loading wagon or trailer</u>

1. These machines, except for some that are fed manually, are similar in construction and operation to those described above, and involve the same hazards. There is an additional danger that if a part of the body is caught by a turning auger, amputation is almost unavoidable.

2. Persons under 16 may move the crop to the person feeding the machine and remove the finished product from the area; they may load and unload material from other types of conveyors, such as belt, bucket, or chain.

3. The unloading of a bulk body truck, including machines with self-unloading bulk boxes, meets the description of this HO in agriculture and is prohibited for minors under age 16. However, the operation of a potato bin piler is permitted for minors under 16 years of age working on farms.

c. Power post-hole digger, power post-driver, or non-walking type rotary tiller

1. The hazard of the post-hole digger is the danger of becoming entangled with the rotating drive. The hazard with the power post-hole driver is a possibility of being struck by the descending ram.

2. Persons under 16 may set posts in holes, tamp the earth, attach and stretch wire, install gates, and repair fences.

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

a. Trencher or earthmoving equipment

The hazards of earthmoving or trenching equipment are entanglement with moving parts and falling under a moving piece of equipment.

b. Forklift

Forklifts have a double hazard of falling loads and overturning. They also accidentally may be driven over the edge of platforms.

c. Potato combine

d. Power-driven circular, band, or chain saw

The chief hazards in connection with saws are the danger of amputation and severe cuts from contact with the cutting edge.

(4) *Working on a farm in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes or a sow with suckling pigs, or cow with newborn calf (with umbilical cord present)*

a. Handling these animals requires experience, skill, and strength. If they attack without warning, escape is especially difficult from confined areas.

b. This section does not prohibit work with these or any animals in an open area. It does not prohibit work with beef or range bulls and cattle, dairy cattle, or breeding stock on the range.

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

Workers under 16 are still permitted to work with timber up to 6 inches in diameter, which includes most fence posts and tier poles.

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

a. Many severe injuries occur when work is done from a ladder or scaffold at a considerable height.

b. This section does not prohibit using ladders to reach a worksite above 20 feet, as long as the work is not done from a ladder or scaffold.

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

a. Exposure to traffic while moving at considerable speed makes driving a motor vehicle on a public road or highway hazardous. The additional responsibility of carrying passengers makes such driving unsuitable for minors under 16 years of age.

b. In addition, most states will not issue a driver's license for a youth under 16 years of age.

c. Minors under 16 may drive a truck or automobile on the farm itself. However, they may not ride on any tractor or serve as a helper on any tractor.

(8) *Working inside*

a. A fruit, forage, or grain storage designed to retain an oxygen-deficient or toxic atmosphere

b. An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position

c. A manure pit

d. A horizontal silo while operating a tractor for packing purposes

1. When oxygen is replaced by another gas or consumed by fermentation, anyone entering these storage areas is in danger of asphyxiation.

2. If the top unloading device is in operating position in the silo, a person may become entangled in its cutting and tearing mechanism and be seriously injured.

3. Employees under 16 may work inside the non-gastight type silo while the unloading device is in a raised position, and they may also operate this device from outside the silo.

4. The hazard involved in operating a tractor for packing purposes in a horizontal silo is the danger of overturning.

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

a. Many agricultural chemicals present serious health hazards. Some have a corrosive effect on body tissue. Some affect the central nervous system, causing respiratory failures, and many cause death by the accumulation of even minute quantities over a prolonged period.

b. The hazards involved in the job of flagman are that the employee must stand in the line of the flight to direct the pilot and also because of the possibility of contamination from the chemicals being applied.

c. Minors under 16 may handle and apply fertilizers or chemicals that are not labeled as indicated by this agricultural HO.

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

The use of blasting agents requires experience and expertise. Mishandling can result in accidental detonation, maiming, or loss of life.

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

Vapors are very irritating to the eyes and to the respiratory system. In case of contact with the skin, it may result in severe burns. Too high a concentration of vapors could cause suffocation.

(h) The following are some examples of work activities *not* affected by the agricultural HOs:

(1) Handling chemical pesticides and fertilizers not included in FOH 33f03(g)(9) above

(2) Driving a truck, automobile, or bus on the farm proper and serving as helpers on such vehicles

(3) Loading and unloading trucks

(4) Operating garden type tractors

(5) Picking vegetables and berries, and placing them on conveyors or in containers

(6) Clearing brush and harvesting trees up to six inches in butt diameter

(7) Working from ladders at heights less than 20 feet, such as picking of most fruits

(8) Working with farm animals, except work with certain breeding stock in confined areas, including showing any animal at livestock shows, fairs, exhibits, or similar activities when not taking place on a farm

(9) Hand planting and cultivation

(10) Raising and caring for poultry

(11) Milking cows

(12) Processing and storing milk and dairy products

(13) Cleaning barns, equipment storage buildings, chicken coops, etc.

(14) Mowing lawns

(15) Riding, driving, or exercising horses

(16) Picking cotton

(17) Handling of irrigation pipes

(18) Harvesting and storing tobacco

(19) Riding on transplanters

33f04 **Educational and/or training programs providing exemptions from certain provisions of the HOs in agriculture.**

(a) **Student-learner exemptions** (*see* 29 CFR 570.72(a))

(1) This exemption applies to minors 14 and 15 years of age.

(2) This exemption only applies to the tasks listed in FOH 33d03(g)(1) through and including FOH 33d03(g)(6) (*see* 29 CFR 570.71(a)(1) -(6)).

(3) The application of this exemption is not limited to the school term but also applies in the summer vacation provided all the terms of the exemption are met. The necessary direct and close supervision during the summer months is ordinarily provided by a vocational agricultural teacher employed on a 12-month basis.

(b) **Federal Extension Service Exemption** (*see* 29 CFR 570.72(b))

(1) Any minor who is 14 or 15 years of age may enroll in the tractor training course and/or the farm machinery training course set up by the local county agricultural extension agent as part of the 4-H club program.

(2) Upon successful completion of the training course(s), he or she will be permitted to work in those occupations identified in FOH 33d03(g)(1) -(2) for which he or she has been trained (*see* 29 CFR 570.71(a)(1) -(2)).

(3) Minors may be identified by showing their copy of the Certificate of Training. The employer is also required to keep a copy of the certificate on file.

(c) Vocational agriculture training exemption (*see* 29 CFR 570.72(c))

(1) Any minors 14 and 15 years of age enrolled in cooperative vocational agriculture training programs who take and successfully complete courses provided by local vocational agriculture teachers on the safe use of tractors and farm machinery will be permitted to be employed in those occupations identified in FOH 33d03(g)(1) -(2) (*see* 29 CFR 570.71(a)(1) -(2)).

(2) Minors may be identified by showing their copy of the Certificate of Training. The employer is also required to keep a copy of the certificate on file.

33g HAZARDOUS OCCUPATIONS ORDERS (NON-AGRICULTURAL) BACKGROUND

33g00 General discussion.

(a) Section 3(l) of the FLSA, which defines "oppressive child labor," prohibits 16- and 17-year-olds from performing those occupations which the Secretary finds and declares to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being. Under this authority, the Secretary has issued 17 HOs.

(b) The HOs specifically cover 16- and 17-year-old minors. But minors under 16 years of age are also banned from performing any of the occupations prohibited by the HOs because of Child Labor Reg. 3 (*see* 29 CFR 570.33(b)).

33g01 How HOs are created.

(a) All the HOs were originally issued between 1939 and 1963. The first six HOs were issued by the now-defunct Children's Bureau. Reorganization Plan No. 2 transferred the authority to issue HOs to the Division of Labor Standards, effective 07/16/1946. HOs 7 through 17 were issued by the Child Labor and Youth Employment Branch of the Division of Labor Standards or its successor agencies, often with technical help from either the Division of Safety Standards or experts in the industry being studied.

(1) The process used to issue the original HOs consisted of conducting an investigation (*i.e.*, a study) of an industry, process, or machinery considered to be dangerous for young employees. Hearings would often be held and a committee of interested parties would often be convened to make recommendations. The process culminated with the issuance of a report that detailed the hazards involved and actually presented the HO. The reports established the range and scope of each HO, coverage, and any exclusions and exemptions. These reports still remain the basis for opinions issued under each of the original HOs, although subsequent amendments to the HOs have expanded their scope.

(2) Recent changes to individual HOs have resulted from such things as legislation, stakeholder input, academic studies, and WHD enforcement experiences. Detailed information concerning these changes are provided in the preambles of the Federal Register (FR) publications issued during rulemaking.

(b) The procedure used to establish the HOs (found in Child Labor Regulation No. 5, previously incorporated in subpart D of 29 CFR 570.41 -.49) preceded the enactment of the Administrative Procedure Act (APA). On 04/17/1995, the DOL published a notice in the FR (*see* 60 FR 19336), which deleted subpart D; consequently, any amendments to existing HOs or creation of new HOs must now follow the procedures established by the APA.

33g02 The effect of the 1961 and 1966 FLSA Amendments on HOs.

The HOs, with the exception of HO 16 and HO 17, were issued before enactment of the 1961 and 1966 FLSA Amendments, which brought many previously uncovered establishments under the provisions of the FLSA (*e.g.*, retail, construction, and state and local governments). Most of the original reports establishing the HOs did not address retail operations because of

the limited FLSA coverage; however, many of the HOs have since been amended to address their application to retail operations.

33g03 <u>Industry, process-oriented, or machine-specific HOs.</u>

(a) Certain HOs apply to whole industries or processes

These include:

HO 1: Manufacturing or storing of explosives;

HO 3: Coal mining;

HO 4: Forest fire fighting and fire prevention, timber tract and Forestry Service occupations, and logging and sawmilling operations;

HO 9: Mining other than coal mining;

HO 10: Slaughtering, meat and poultry packing, processing, or rendering;

HO 13: Manufacturing brick, tile, and kindred products;

HO 15: Wrecking, demolition, and shipbreaking operations;

HO 16: Roofing operations and on or about a roof; and

HO 17: Excavation operations.

Generally, most of the work in the named industry or process is prohibited with a few exceptions such as office or maintenance work performed outside of the production area.

(b) Other HOs address only families of machines or specific acts

In some instances, many machines common to an industry are prohibited. These include:

HO 2: Motor vehicle occupations;

HO 5: Power-driven woodworking machines,

HO 6: Exposure to radioactive substances and ionizing radiation; and

HO 12: Balers, compactors, and power-driven paper products machines.

(c) Other HOs prohibit only those machines that specifically are named as being dangerous

These include:

HO 7: Power-driven hoisting apparatus;

HO 8: Power-driven metal forming, punching, and shearing machines;

HO 11: Power-driven bakery machines; and

HO 14: Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs.

(d) A few of the HO prohibitions are so broad in scope that they include not only the machines used in the industry at the time the report was issued but any similar machines developed after the issuance of the HO. For example, the ban on woodworking machines (HO 5) includes all computerized woodworking machines, and the ban on high-lift trucks (HO 7) includes all types and uses of such trucks, whether specifically identified or not.

(e) There are separate HOs covering agricultural work (agricultural HOs), which prohibit minors under age 16 from performing certain tasks on farms. These are discussed and defined in subpart E-1 of 29 CFR 570. Agricultural work activities must be separated from non-agricultural activities so that the appropriate child labor standard is applied.

(f) In order to reduce confusion, the scope of each HO is discussed separately in the sections covering the individual HOs (*see* FOH 33g05 and FOH 33h).

33g04 **Special purposes of HO 14.**

(a) The report establishing HO 14 considered the general safety of work associated with circular saws, band saws, and guillotine shears. The report found that the operation of this equipment is hazardous wherever used, and that setting up, adjusting, repairing, oiling, and cleaning of these machines are also hazardous. This led the WHD to review the scope of other HOs and it was determined that only HO 5 specifically prohibited these ancillary activities. Accordingly, HO 8 and HOs 10 -12 were revised to prohibit minors from setting up, adjusting, repairing, oiling, and cleaning the machines prohibited by those HOs.

(b) HO 14 serves as a catch-all HO. It prohibits minors from operating circular saws, band saws guillotine shears, chain saws, wood chippers, abrasive cutting discs, and reciprocating saws in any employment situation where this machinery is not prohibited by any of the other HOs. This is discussed further in FOH 33h14(a): Scope of HO 14.

33g05 **HOs are mutually exclusive.**

The HOs are designed to be mutually exclusive. Certain machines, however, may fall under different HOs at different times because their functions can vary, as when different attachments are used. For example, a dough mixer prohibited under HO 11 would be prohibited under HO 10 if a meat grinding attachment were added to make hamburger. Likewise, there may be situations when the illegal employment of a youth will fall under several HOs (*e.g.*, the employment of a 16-year-old youth in a coal mine, while using a circular saw, would constitute a violation of HO 3 and HO 14).

33g06 **Apprentices and student-learners.**

(a) HOs 5, 8, 10, 12, 14, 16, and 17 contain limited exemptions for apprentices and student-learners provided they are employed under certain conditions (*see* 29 CFR 570.50). None of these limited exemptions, however, permit apprentices or student-learners to drive motor vehicles as part of their training programs.

(b) Apprentices

The provisions of the HOs listed in FOH 33g06(a) above do not apply to the employment of apprentices, provided:

(1) the apprentice is employed in a craft recognized as an apprenticeable trade (the DOL ETA Office of Apprenticeship Training, Employer, and Labor Services (OA), part of the ETA, can provide guidance);

(2) the work of the apprentice in the hazardous occupation is incidental to the apprentice training, intermittent and for short periods of time, and under the direct and close supervision of a journey worker; and

(3) the apprentice is registered by the OA (or a state agency approved by the OA) or is employed under a written apprenticeship agreement which conforms to federal or state standards as determined by the Secretary.

(c) Student-learners

(1) The provisions of the HOs listed in FOH 33g06(a) above do not apply to the employment of a student-learner 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, provided that the student-learner is employed under a written agreement which provides:

a. that the work of the student-learner in the occupation declared particularly hazardous shall be incidental to the training;

b. 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;

c. that safety instruction shall be given by the school and correlated by the employer with on-the-job training; and

d. that a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

(2) The student-learner discussed in this section can be (and usually is) different from those student-learners for whom an employer may obtain a certificate to pay at subminimum wage under 29 CFR 520. An employer does not have to obtain the special certificate that allows him or her to employ student-learners at wages less than the minimum wage in order to take advantage of this limited exemption from certain HOs.

(3) The WHD considers a Jobs Corps training program to be equivalent to “a course of study in a substantially similar program conducted by a private school” under 29 CFR 570.50(c)(1) and employers of Job Corps enrollees could take advantage of the limited exemption for student-learners if all the other conditions listed in 29 CFR 570.50(c) are met.

(4) A high school graduate may be employed in an *occupation in which he or she has successfully completed training as a student-learner* without the restrictions imposed by 29 CFR 570.50(c)(1) -(2), even though he or she is not yet 18 years of age. Such minors must be employed in compliance with the all the remaining child labor provisions (the remaining HOs that do not have student-learner exemptions). Merely graduating from high school is not sufficient to trigger this limited exemption from the student-learner provisions; the minor must also have successfully completed the appropriate vocational training.

(5) The student-learner exemption is not limited to the school term but applies during the summer vacation provided all the terms of the exemption are met (*see* 29 CFR 570.50(c)). The required direct and close supervision and safety instructions will ordinarily be provided by the coordinator or an appropriate school official during the summer months. It is also necessary to establish that the student plans to be enrolled in a bona fide vocational education program the term following the vacation period.

(d) The following definitions, applicable to the limited exemption from certain HOs, were discussed in detail in the preamble of the 04/17/2007 Advance Notice of Proposed Rulemaking (*see* 72 FR 19328 and 72 FR 19332).

(1) The terms "intermittent" and **"**short periods of time" are not defined in the regulations and determinations concerning the employment of each apprentice and student-learner are made on a case-by-case basis after reviewing all the facts of the particular situation. The following items will be considered when making such determinations:

a. An apprentice or student-learner may not be the principal operator of prohibited machinery. He or she must work under the close supervision of a fully qualified and experienced adult, such as a journey-level worker in the case of an apprentice.

b. The duties assigned the minor may not be such that he or she is constantly operating the prohibited machinery during the work shift, but may only do so when required by the training experience. This precludes an apprentice or student-learner from being a production worker responsible for spending a significant proportion of the workday performing prohibited work.

c. While no universal timeline may be imposed, the continuous performance of otherwise prohibited work (*e.g.*, operating prohibited machinery) for more than 1 hour in a workday is more than intermittent and more than for a short period of time. The performance of otherwise prohibited work throughout a work shift which totals more than 20 percent of the apprentice's or student-learner's work shift is also more than for a short period of time.

(2) The term "direct and close supervision" is not defined in the regulations. Apprenticeship agreements registered with the OA or OA-approved state agencies, however, do establish ratios concerning the number of journey workers and apprentices that may be on the job site at any one time. These ratios help ensure worker safety and that the apprentices receive both proper training and supervision. According to the OA, the most widely used ratio is one apprentice for the first journey-level worker on-site and one apprentice for every three additional journey

workers thereafter. For the purpose of the limited exemption contained in 29 CFR 570.50, the requirement of direct and close supervision is met when there is one journey worker or experienced adult working with the first apprentice or student-learner on-site, and at least three journey workers or experienced adults working alongside each additional apprentice or student-learner. *The requirement for direct and close supervision only applies during the periods when the apprentice or student-learner is actually performing the otherwise prohibited work.*

33g07 **Wage and Hour Division "STOP" stickers for hazardous equipment.**

(a) As part of our *YouthRules!* initiative, the WHD has produced a supply of special "STOP" stickers which employers may place on hazardous equipment to alert workers that they must be at least 18 years of age to operate and/or clean the equipment. The stickers are appropriate for use on meat slicers, forklifts, balers, compactors, power-driven bakery equipment, freight elevators, power saws, etc. These stickers may also be downloaded from the *YouthRules!* Website.

(b) There are three versions of these stickers:

(1) One warns employees that they must be "18 TO OPERATE OR CLEAN THIS EQUIPMENT" and encourages the reader to contact the WHD for more information about the child labor laws (*see* Exhibit A below).

(2) One states "NO OPERATORS UNDER 18 YEARS OF AGE" and encourages the reader to contact the WHD for more information about the child labor laws (*see* Exhibit B below).

(3) The third sticker, designed exclusively for use on forklifts in *non-agricultural* work places, states in English and Spanish, "No operators under 18 years of age—IT'S THE LAW." The forklift stop sticker was developed in conjunction with the Massachusetts Department of Health and the National Institute for Occupational Safety and Health (NIOSH) (*see* Exhibit C below).

(c) Employers who use these stickers should place them in conspicuous spots on the equipment, but never cover up other important information such as safety instructions, model numbers, or emergency guidelines.

(d) Use of the stickers does *not* remove, in any way, an employer's obligation to ensure compliance with all child labor provisions at all times.

Exhibit A

Exhibit B

Exhibit C

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33h THE NON-AGRICULTURAL HAZARDOUS OCCUPATIONS ORDERS

33h00 Format of FOH 33h.

Each of the 17 non-agricultural HOs is presented in FOH 33h using the following format:

(a) Scope of HO

This section discusses the scope and extent of the HO, including whether the HO is industry-wide, process, or machine-specific. It also discusses whether the HO prohibits ancillary duties (*e.g.*, assisting to operate, riding on, cleaning, oiling, etc.) and whether the named machines are prohibited in all covered establishments. A definitions section is included where appropriate.

(b) Occupations prohibited

This section describes the occupations, processes, or machines that are prohibited by the HO based on the original report issued in conjunction with the HO, as well as those included by later rulemaking.

(c) Occupations not specifically banned

This section describes the occupations that are not specifically banned and, therefore, are permitted for 16- and 17-year-olds.

(d) Exemptions

This section discusses statutory or regulatory exemptions, such as the exemption for student-learners and apprentices.

(e) Enforcement positions

This section lists WHD's current enforcement positions regarding certain activities, machines, or processes. This section is designed to address the more frequently encountered situations.

33h01 HO 1: Manufacturing or storage occupations involving explosives.

Name: occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components

Originally adopted: 07/01/1939

(a) Scope of HO 1

(1) Workers in plants or establishments manufacturing or storing explosives, including articles containing explosive components, are especially subject to accident from explosions despite the progress made by manufacturers and OSHA in developing safeguards. The finding of the original investigation accompanying the report was that the accident severity rate for explosive manufacturing was about twice as great as the average for all manufacturing industries in 1936. The injuries resulting from such explosions are often serious, resulting in fatalities or permanent injuries.

(2) This HO deals with occupations in plants or establishments engaged in manufacturing, handling, storing, and transporting of explosives, articles containing explosive components, small arms ammunition, blasting caps, and primers. This includes fireworks (*see* FOH 33h01(a)(4)a. for the definitions of the terms "explosives" and "articles containing explosive components").

(3) The HO does *not* apply to the following:

a. retail stores, including the storage of ammunition in gun shops, sporting goods stores, building supplies, and hardware stores; retail fireworks stands; and other retail establishments; and/or

b. gun clubs, trap and skeet ranges, turkey shoots, certain armories, police stations, and other such areas where only small arms ammunition is being stored.

c. The use of explosives in mining operations is covered by HOs 3 and 9. The use of explosives in demolition and shipbreaking work is covered by HO 15. The use of explosives in excavation work is covered by HO 17. Storage of explosives at such sites, however, is covered under HO 1.

(4) *Definitions*

a. 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 USC 841(c) -(f) and the implementing regulations at 27 CFR 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 FR pursuant to 18 USC 841(d). A copy of the most recent version of the list may be found through the Bureau of Alcohol, Tobacco, Firearms, and Explosive's Website, located at www.atf.gov.

b. The term "plant or establishment manufacturing or storing explosives or articles containing explosive components" means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing, or storing of explosives or articles containing explosive components. Types of establishments which may store these materials include ammunition depots, dynamite magazines, bunkers, armories, and fireworks warehouses.

c. The term "non-explosives areas," as used in the exception in HO 1, are those which meet *all* four criteria found in 29 CFR 570.51(b)(3) and listed below. The criteria are such that ordinarily only areas in large plants or establishments could qualify; a small fireworks plant or establishment would not ordinarily cover such a large area that it could sustain a non-explosives area.

1. None of the work performed in the area involves the handling or use of explosives.

2. The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings. The American Table of Distances, published by the Institute of Makers of Explosives, was last revised in 1991. The table lists minimum safe distances for the location of explosive storage and manufacturing buildings from inhabited buildings, railways, highways, etc. These distances vary with the type and amount of explosive materials.

3. The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area. The phrase "or is otherwise located so that is constitutes a definite designated area" was included to bring in any area which is located at a great distance from the explosives area, or is on the other side of a natural barricade at least comparable to a fence.

4. Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant that does not meet the above three criteria. The painting of a warning on the doors of all buildings containing explosives advising minors under 18 years of age to stay out does not satisfy this requirement. Such warnings would have no actual restraining effect on employees under 18 years of age and, by themselves, would not constitute a satisfactory control within the intent of 29 CFR 570.51(b)(3).

(b) Occupations prohibited

16- and 17-year-olds are prohibited from performing:

(1) all occupations in or about any plant or establishment (other than retail establishments and those establishments which manufacture or store small-arms ammunition as described in FOH 33h01(b)(2) below); except 16- and 17-year-olds may perform work that does not involve the handling or use of explosives in qualifying non-explosives areas.

(2) the following work in plants manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arm ammunitions:

a. all occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

b. all occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.

c. all occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same work room in which rimfire cartridges are primed.

d. all occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.

e. all occupations involved in the loading, inspecting, packing, shipping, and storage of blasting caps.

(3) the following work peculiar to the fireworks industry:

a. HO 1 applies to homeworkers engaged in the manufacture of fireworks in their own homes. Since explosives are stored in the home prior to and after assembly, a homeworker's home would meet the definition of a "plant or establishment manufacturing or storing explosives."

b. HO 1 applies to shooters who are hired by various civic organizations and governments to transport fireworks from the manufacturer or wholesaler to the display site, set up the fireworks at the site, load mortars (*i.e.*, tubes from which the shells are fired), and fire shells. Fireworks must be temporarily stored at the site prior to the display. The term "establishments storing explosives" in 29 CFR 570.51(b)(1) is sufficiently broad to cover these storage situations.

(4) work which involves the storage of ammunition and/or explosives:

a. HO 1 applies to any establishment, other than a retail establishment, which stores ammunition (other than small-arms ammunition not exceeding .60 caliber) or explosives, regardless of whether or not manufacturing takes place at the facility.

b. minors 16 and 17 years of age, however, could work in a non-explosives area of such an establishment or at an establishment where only small-arms ammunition was stored. Central warehouses used by retail stores, lacking the retail concept, would also be covered by HO 1.

(c) Occupations not specifically banned

(1) HO 1 does not cover retail establishments selling explosives or articles containing explosive components such as hardware stores, fireworks outlets, or building supply stores. Individual storerooms, located at retail stores used to stock merchandise sold by that store, are also not covered by HO 1 (*see* FOH 33h01(b)(4)b. above concerning warehouses).

(2) Work in plants manufacturing explosives, in plants storing explosives, and in plants manufacturing articles containing explosive components, which does not involve the handling or use of explosives, *and* which is performed in a non-explosives area.

(3) All work in plants manufacturing or storing small-arms ammunition (*i.e.*, not exceeding .60 caliber) or blasting caps *that is not specifically prohibited by HO 1*. Examples include working as an inspector, office work, machine operators (if not covered by HOs 5 or 8), packing (except blasting caps), shipping, and other work not involving the handling of explosives.

(d) Exemptions

There are no provisions in HO 1 for apprentices or student-learners. There are no other exemptions applicable to this HO.

(e) Enforcement positions

(1) *Geophysical survey crews*

a. Jug handlers (*i.e.*, those who help string the wire from the shooting hole to the recording equipment) in geophysical surveys that involve the detonation of explosives in underground locations are not subject to the prohibitions of HO 1.

b. The overnight parking of trucks containing explosives used by the survey crews is not sufficient for the trucks to be considered establishments storing explosives.

(2) Generally, no area in fireworks plants can meet the non-explosive area criteria of 29 CFR 570.51(b)(3).

33h02 <u>HO 2: Motor vehicle occupations.</u>

Name: occupations of motor vehicle driver and outside helper

Originally adopted: 01/01/1940

(a) Scope of HO 2

(1) Driving a motor vehicle involves a high degree of accident risk for persons of all ages, and is particularly hazardous for minors between the ages of 16 and 18 due to their lack of experience. Despite the prohibitions of HO 2, transportation-related deaths (largely highway incidents) remained the most frequently recorded cause of occupational deaths of 16- and 17-year-olds between 1980 and 2007. HO 2 applies to all employers subject to the non-agricultural child labor provisions of the FLSA and, with a limited statutory exception, specifically prohibits the employment of persons under the age of 18 as motor vehicle operators and as outside helpers on any public road, highway, and in or about any mine (including open-pit mine or quarry); place where logging or sawmill operations are in progress; or in any excavation covered by HO 17. However, driving on private property (other than described

above) is permitted. These provisions apply whether the employee is driving a personal or business-owned vehicle.

(2) The Drive for Teen Employment Act, effective 10/31/1998, amended the FLSA by creating section 13(c)(6) and established the conditions under which 17-year-olds (but not those under 17 years of age) may drive certain automobiles and trucks on the job.

(3) *Definitions*

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

1. The above definition is not dependent upon the source of energy; vehicles may be propelled by gasoline, propane, electricity, etc.

2. This definition does not require that the motor vehicle be licensed or outfitted with special equipment, nor is the size of the vehicle a factor. Golf carts, ATVs, and riding mowers, *designed or used as a means of transportation*, meet the definition of motor vehicles and fall within the scope of HO 2 when operated on any public road or highway (*see* 75 FR 28409).

3. The term "similar vehicle" includes buses, vans, mopeds, pickup trucks, panel trucks, recreational vehicles, ice cream and chuck wagon type trucks, motorized trail bikes, jeeps, and other ATVs.

b. The term "driver" shall mean any individual who, in the course of employment, drives a motor vehicle at any time.

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

d. The term "gross vehicle weight" includes the truck chassis with lubricants, water, and a full tank or tanks of fuel; the weight of the cab or driver's compartment, body, special chassis, and body equipment; and payload.

e. The term "occasional and incidental driving" is now defined in the FLSA as driving that involves no more than ⅓ of the worktime in any workday and no more than 20 percent of the worktime in any workweek.

f. 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 timelines, schedules, and/or turnaround 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 customers; the delivery of materials under a deadline (such as deposits to

a bank at closing, or parts to a job site for the completion of an emergency repair job); and the shuttling of passengers to and from transportation depots to meet transport schedules. *Urgent, time sensitive deliveries* do not depend on the delivery's points of origin and termination, and include the delivery of people and things *to* the employer's place of business as well as *from* that business to some other location.

g. To define the term "public road," the WHD uses the generally accepted definition of a public road as "a road or way established and adopted (or accepted as a dedication) by the proper authorities for the use of the general public, and over which every person has a right to pass and to use it for all purposes of travel or transportation to which it is adapted and devoted. The proper test in determining whether [a] road is a 'public' or 'private road' is [the] use to which such roadway is put, and [the] fact that [the] road has been constructed at public expense is not conclusive" (*Bush & Burchett, Inc. v. Reich*, 117 F.3d 932, 938 n. 11 (6th Cir. 1997), citing Black's Law Dictionary 1329 (6th ed. 1990)). Under this standard, a pathway or road in or at the perimeter of a city park would not be considered a public road, if it is used only by pedestrians, bicyclists, golf carts, and similar traffic to access parts of the park grounds for recreational purposes. But if the pathway or road is used by automobiles or trucks to traverse the park or to access park facilities for purposes such as delivery of goods, then it would be considered a public road.

(b) Occupations prohibited

(1) Driving any type of motor vehicle on *public* roads or highways and in or about any mine (including open-pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation covered by HO 17, except as authorized by FLSA section 13(c)(6)

(2) Riding outside the cab of a vehicle as an outside helper

(3) Towing of any vehicles

(c) Occupations not specifically banned

(1) 16- and 17-year-olds may operate motor vehicles on *private property* other than any mine (including open-pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation covered by HO 17.

(2) *Other motorized vehicles to which HO 2 does not apply*

a. HO 2 does *not* apply to self-propelled vehicles that are designed to perform work as distinguished from being used as a means of transportation. This includes certain types of riding mowers, farm tractors, bulldozers, road scrapers, and other vehicles not suitable for travel on public streets, geared only for off-the-road use, and only designed for use on construction sites, grassy areas, and along walk paths. When it is necessary to move such vehicles any distance, they are generally loaded on a lowboy type flatbed trailer and transported from job site to job site. Some of these vehicles,

however, may be prohibited under HO 17 when used in excavation. Note: *see* "Enforcement positions" (FOH 33h02(e)(3)) regarding riding mowers and golf carts that must cross public roads to complete a work assignment.

b. Trucks that have equipment permanently mounted on them (such as mobile drilling rigs) or equipment that has its own built-in means of transport are considered *motor vehicles* under HO 2 and fall under the prohibitions of the HO when operated on public roads. Some of these trucks and pieces of equipment can travel at speeds in excess of 30 miles per hour.

c. Certain electric carts are used as a means of transportation in large industrial plants, and at railroad stations and airport terminals. Generally, such vehicles are outside the scope of HO 2 unless employees use these vehicles as a means of transportation on a public street. Thus, 16- and 17-year-old minors may operate motorized vehicles such as riding mowers or golf carts as long as they are not driven on public roads.

(d) Exemptions

(1) HO 2 *does not* contain an exemption for apprentices or student-learners. Furthermore, none of the limited exemptions applicable to HOs 5, 8, 10, 12, 14, 16, and 17 permit apprentices or student-learners to drive motor vehicles as part of their training programs.

(2) *Occasional and incidental driving by 17-year-olds*

The Drive for Teen Employment Act, enacted on 10/31/1998, amended the FLSA to permit 17-year-olds (but not those under 17 years of age) to drive automobiles and trucks as part of their employment if *all* of the following criteria are met:

a. The automobile or truck does not exceed 6,000 pounds gross vehicle weight.

b. The driving is restricted to daylight hours.

c. The minor holds a state license valid for the type of driving involved in the job performed.

d. The minor has successfully completed a state approved driver education course.

e. The minor has no records of any moving violation at the time of hire.

f. The vehicle is equipped with a seat belt for the driver and any passengers and the employer has instructed the youth that the seat belts must be used when driving the vehicle.

g. The driving does not involve:

1. towing vehicles;

2. route deliveries or route sales;

3. transportation for hire of property, goods, or passengers;

4. urgent, time-sensitive deliveries;

5. transporting more than 3 passengers, including employees of the employer;

6. driving beyond a 30-mile radius from the minor's place of employment;

7. more than two trips away from the primary place of employment in any single day to deliver the employer's goods to a customer (other than urgent, time-sensitive deliveries which are prohibited); or

8. more than two trips away from the primary place of employment in any single day to transport passengers, other than employees of the employer.

h. Such driving is only occasional and incidental to the minor's employment. This means that the youth may spend no more than ⅓ of the worktime in any workday and no more than 20 percent of the worktime in any workweek driving.

(e) Enforcement positions

(1) *Ambulance attendants*

Minors 16 and 17 years of age who have completed the necessary training as emergency medical technicians (EMTs) and are employed as qualified ambulance attendants are not "outside helpers" within the meaning of HO 2 and may ride in the rear of the ambulance while attending the patient being transported.

(2) *Cart caddy*

The operation of battery operated cart caddy machines used by grocery stores to move large strings of shopping carts back to the front area of the store would be a permissible occupation for minors 16 and 17 years of age. This machine is not considered a motor vehicle and does not fall within the scope of HO 2. However, as it is a power-driven machine, its use by 14- and 15-year-olds is prohibited under Child Labor Reg. 3.

(3) *Golf carts and riding mowers*

a. Golf carts, riding mowers, and similar motorized vehicles fall within the scope of HO 2 if used as a means of transportation on public roads. Because these motorized vehicles are not automobiles or trucks, operation of such vehicles would not fall under the limited exemption contained in FLSA section 13(c)(6).

b. There are certain situations where a public road traverses a golf course or other establishments where motorized vehicles are used off the roadway. It

may be necessary for golf carts, riding mowers, or other motorized vehicles to cross the public road in order to reach a particular worksite or return to the clubhouse. Although a strict interpretation of HO 2 would prohibit those under 18 years of age from driving the carts and mowers across public roads, the WHD *will not* assert a violation of HO 2 if the contact with the public road involves only the crossing of that road, and such crossings occur only at marked cross walks and pathways.

(4) *Messengers*

14- and 15-year-olds may, under certain conditions, be employed as messengers and errand boys and/or girls by firms other than public messenger services to pick up and deliver messages or packages in passenger type vehicles operated by someone other than the minor (*see* FOH 33c(19)(b) and 29 CFR 570.34(o)).

33h03 HO 3: Coal mine occupations.

Name: coal mine occupations

Originally adopted: 09/01/1940

(a) Scope of HO 3

(1) The report that established HO 3 found accident rates (including death and dismemberment) for adults employed in and about coal mines far exceed accident rates in other industries. This report did not address long-term occupational illnesses such as black lung. As of the last census before the report was issued (1930), three percent of workers employed in coal mines were under the age of 18 (approximately 16,000 minors). Typically, if employed underground, young people worked as miner's helpers loading coal, or as trappers or door boys opening and closing doors (regulating air flow) to allow the passage of coal cars. If employed above ground, they worked as slate pickers, as helpers in repair shops, or in general clean-up work. The report concluded that the risk of injury to youths employed in coal mines was great due to the rate of accidents involving adults, and due to their lack of experience and good judgment.

(2) HO 3 is industry specific. Its scope includes all types of work performed in or about an underground mine, an open-pit (strip) mine, or at the surface part of the mining plant that contributes to the extraction, grading, cleaning, or other handling of coal. The scope of this HO does not cover slate or refuse picking at certain designated areas, and work solely in offices, or in repair and maintenance shops located in the surface area of any coal mining plant.

(3) *Definitions*

a. "Coal" shall mean any rank of coal, including lignite, bituminous, and anthracite coals.

1. "Lignite coal" is a brownish-black coal intermediate between peat and bituminous coal.

2. "Bituminous coal" is of medium age (geologically). It is soft and after burning it leaves bitumen (a tar like substance). It makes up the majority of the coal reserves in the United States (U.S.).

3. "Anthracite coal" is the oldest coal (geologically). It is hard and burns clean. It is found almost exclusively in Pennsylvania.

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

c. The term "tipple" refers to a place where, or an apparatus by which, cars of coal are loaded or emptied.

(b) Occupations prohibited

(1) All work in underground coal mines, such as miner, miner's helper, loader, shearing-machine operator, loading machine operator, driller, shot firer, motorman, trackman, or timberman, etc.

(2) All work in an open-pit coal mine, such as miner, shovel operator, electrician, etc.

(3) All work on the surface part of an underground or open-pit mine (or mining plant) except that permitted in FOH 33h03(c)

(c) Occupations not specifically banned

On the surface part of the coal mining plant, 16- and 17-year-olds may:

(1) engage in slate or other refuse picking at a picking table, or at a picking chute in a tipple or a breaker.

(2) engage in occupations where the work occurs solely in offices, or in repair or maintenance shops, which are located above ground.

(d) Enforcement positions

(1) *Stock clerk working on the premises of a coal mine*

This occupation is prohibited for 16- or 17-year-olds if it involves moving about the mine premises delivering supplies, crossing railroad tracks, being in the vicinity of loading chutes, or otherwise working outside of the warehouse. Conversely, this work is permitted if it is confined solely to the warehouse structure on the surface part of the mining plant.

(2) *Motor vehicle operator and outside helper*

HO 3 prohibits almost all work in or about a mine, which would include the occupations of motor vehicle driver and outside helper. HO 2 also specifically prohibits 16- and 17-year-olds from performing the occupations of motor vehicle driver and outside helper in or about any mine, including open-pit mine or quarry.

(3) *Cleaning under a coal tipple or breaker*

This work is prohibited by HO 3, as is the pining of railroad cars onto the main spur track, and the cleaning of railroad cars.

(4) *Watchman*

HO 3 prohibits 16- or 17-year-olds from working as watchmen if they work in or about the surface part of the mining operation *(i.e.*, working around railroad tracks, loading chutes, etc.). However, if the area where the work is performed is sufficiently removed (one mile or more) from the site of the mining operation, then it would not be work in or about a mine, and such work would be permissible for 16- and 17-year-olds. For example, 16- or 17-year-olds may work as watchmen at the front gate of the mine, or at an office, if they are located more than one mile from the site of the mining operation.

(5) *Surveying*

Surveying work to plan future mining fields that is done well in advance of any mining operation and at least one mile from current mining operations is not work in the surface part of any coal mining plant. Consequently, such work is permitted for 16- and 17-year-olds.

(6) *Screening Coal*

The screening of coal is an occupation prohibited by HO 3.

(e) Exemptions

There are no provisions in HO 3 for apprentices or student-learners. There are no other exemptions applicable to this HO.

33h04 HO 4: Forestry occupations, logging, and sawmilling.

Name: forest fire fighting and forest fire prevention occupations, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill

Originally adopted: 08/01/1941

(a) Scope of HO 4

(1) The many accidents and injuries in logging made it the most hazardous manufacturing industry at the time of the original HO. Sawmilling ranked second. This was based on both the frequency with which accidents occurred as well as the severity of the resulting injuries. A December 1994 NIOSH Alert, Request for Assistance in Preventing Injuries and Deaths of Loggers, confirmed the earlier finding of the risks involved in logging. During the period from 1980 to 1989, the National Traumatic Occupational Fatalities Surveillance System reported 1,492 deaths of workers in the logging industry, resulting in an annual fatality rate more than 20 times that for all workers (164 deaths per 100,000 workers compared with 7

per 100,000 for all workers). Most of these deaths occurred in four occupational groups: logging occupations (*e.g.*, fellers, limbers, buckers, and choker setters), truck drivers, general laborers, and material machine operators.

(2) HO 4 prohibits, with a few exceptions, the performance of all occupations in the logging industry, in sawmills, lath mills, and cooperage stock mills. HO 4 was amended several times and new sections were added during World War II (on 09/11/1942 and 06/24/1943) to permit the employment of 16- and 17-year-olds in saw filing and certain occupations in logging for the duration of the war and six months afterwards.

(3) On 02/02/1948, and again on 04/15/1967, HO 4 was revised to permit 16- and 17-year-olds to perform specific tasks in logging, logging camps, and outside shake and shingle mills.

(4) The DOL Appropriations Act, 2004 (Pub. L. No. 108-199) amended the FLSA by creating a limited exemption from the child labor provisions for minors 14 to 18 years of age who are excused from compulsory school attendance beyond the eighth grade.

a. The exemption, contained in section 13(c)(7) of the FLSA, allows eligible youth to be employed by businesses that use machinery to process wood products, but does not allow such youth to operate or assist in operating power-driven woodworking machines.

b. The provisions of FLSA section 13(c)(7) impact Reg. 3 (*see* FOH 33c01) and HO 4 (*see* FOH 33h04(d)). A Final Rule was published on 05/20/2010 (*see* 75 FR 28404) that incorporated the provisions of the amended section 13(c)(7) by revising subparts C and E of 29 CFR 570.

(5) The 2010 Final Rule (*see* 75 FR 28429) also expanded HO 4 to prohibit most work in forest fire fighting and forest fire prevention, timber tract occupations, and forestry service operations (*see* 29 CFR 570.54).

(6) *Definitions*

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

b. The term “all occupations in forestry services” shall mean all work involved in the support of timber production, wood technology, forestry economics

and marketing, and forest protection. The term includes such services as timber cruising, surveying, or logging engineering parties; estimating timber; timber valuation; forest pest control; forest fire fighting and forest fire prevention as defined in this section; and reforestation. The term shall not include work in forest nurseries, establishments primarily engaged in growing trees for purposes of reforestation. The term shall not include the gathering of forest products such as balsam needles, ginseng, huckleberry greens, maple sap, moss, Spanish moss, sphagnum moss, teaberries, and tree seeds; the distillation of gum, turpentine, and rosin if carried on at the gum farm; and the extraction of pine gum.

c. The term "all occupations in logging" shall mean all work performed in conjunction with the felling of timber; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting and unloading of such products in connection with logging; the constructing, repairing and maintaining of roads, railroads, flumes, or camps used in connection with logging; and other work performed in connection with logging.

d. The term "all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill" shall mean all work performed in or about any such mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, or cooperage stock, or other products of such mills; and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill. The term *shall not* include work performed in the planing mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill (this work could be prohibited under HO 5 if the minor operated power-driven wood working machines).

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

f. The terms "remanufacturing plant" and "remanufacturing departments" as used in FOH 33h04(a)(6)d. above refer to those manufacturing departments of a sawmill where lumber products such as boxes, lawn furniture, and the like are remanufactured from previously cut lumber. The kind of work performed in a remanufacturing plant or department is similar to that done in the planing mill department in that rough lumber is surfaced or made into other finished products. The term is not intended to denote those operations in a sawmill where rough lumber is cut to dimensions. The mere cutting of rough wood into smaller size pieces would not constitute remanufacturing under HO 4.

(b) Occupations prohibited

(1) The following occupations in *logging* are prohibited:

a. Logging engineering (work involving the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles)

b. Work in the construction of railroads, roads, or flumes (any work that involves the construction of railroads, roads, or flumes, and any work that involves the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles)

c. <u>Felling and bucking trees in the woods</u>

The following occupations fall within this category:

1. Faller: cuts down the tree

2. Bucker: cuts tree into length

3. Sealer: measures the amount of lumber in the log

4. Swamper: laborer, cuts brush, etc.

5. Limber: cuts limbs from fallen trees

6. Saw filer: keeps saws and axes filed and ground

d. <u>Skidding or yarding logs into place for loading on trucks or train</u>

The following occupations fall within this category:

1. Power skidding

A. Rigging slinger: installs equipment for yarding, helps yard logs

B. Choke setter: places choker (*i.e.*, wire sling) about log to be moved and attaches sling to cable

C. Chaser: removes the sling after log has been moved

D. Whistle punk: transmits signals to yarder engineer for starting and stopping yarder engines

E. Hook tender: foreman of yarding crew

F. Sniper: rounds off end of log to be moved

G. Yarder, engineer, or skidder leverman: operates the yarder engine used to move logs

H. Swamper: laborer, cuts away brush, etc.

I. Fireman: fires the boiler on yarder engine

2. Tractor skidding

A. Tractor operator or cat skinner: operates tractors used to move logs

B. Choke setter: places choker about log to be moved

C. Tongs hooker: places tongs on log when tongs are used instead of slings

D. Swamper: laborer who clears away brush and helps make landing for logs

3. Animal skidding

The following occupations fall within this category:

A. Loader: loads logs for transportation

B. Swamper: laborer who clears away brush and helps make landing for logs

C. Log snaker: drives animals used in skidding logs

e. Loading logs on trucks or trains for transportation

The following occupations fall within this category:

1. Tongs hooker or loader: places tongs or hooks on log to be loaded

2. Loader engineer or jammer operator: operates loading engine

3. Top loader: foreman of loading crew

4. Fireman: fires the boiler or loader

f. Transportation of logs by truck, train, or water

The following occupations fall under this category:

1. Train crew: engineer and/or fireman

2. Truck driver

3. Boom crewman: crew which transports logs by water

4. Unloader: unloads truck or train

5. Teamster: drives animals when used for hauling logs

6. Sealer: measures number of board feet in logs of truck

g. Maintenance or repairs of equipment

Any maintenance or regular work on equipment other than in shops

h. Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when done in conjunction with and at the same time and place as jobs declared hazardous

(2) *Sawmills*

The following occupations in *sawmills* are prohibited:

a. All occupations are prohibited in permanent sawmills when the work entails entering the sawmill building. All minors under 18 years of age are prohibited from operating or assisting in the operation of power-driven woodworking machines under HO 5. In addition, minors under 18 years of age are generally prohibited from performing the following occupations inside a sawmill building (some youth may be exempt from certain of these prohibitions under FLSA section 13(c)(7) (*see* FOH 33h04(d))).

1. Scaler: measures logs on log deck and rolls log into position for the head saw

2. Log deckman or log turner: the scaler's assistant

3. Head sawyer: operates the head saw

4. Dogger: operates the log holding mechanism on the head saw log carriage

5. Block setter: operates mechanism controlling thickness of the cut of head saw

6. Tail sawyer: removes boards and refuse at rear of lead saw

7. Edger man: operates the edger saw that cuts off bark from side of boards

8. Edger line-up man or edger spotter: lines up boards for edger man

9. Edger off-bearer: separates good boards from scrap at rear of edger

10. Slasher man: operates slasher saw cutting up waste lumber

11. Trimmer man: operates trimmer saw that cuts lumber to length

12. Trimmer spotter: lines up boards for trimmer saw

13. Gang sawyer: operates gang saw that saws large lumber into small boards

14. Gang loader: lines up lumber for the gang sawyer

15. Gang saw tailer: removes lumber at rear of gang saw

16. Resaw operator: operates saw for resawing boards

17. Resaw line-up: lines up lumber for resaw operator

18. Resaw tailer: removes lumber at rear of resaw

19. Hog feeder: operates hog mill to grind up scrap lumber

20. Clean-up man: sweeps sawdust and refuse into refuse conveyors

21. Saw filer: sharpens saws in the filing room

b. Portable sawmills

HO 4 prohibits 16- and 17-year-olds (except those exempt under FLSA section 13(c)(7)) from performing any work in portable sawmills (sawmills that are readily dismantled and moved from one tract of timber to another) in which the lumber yard is used only for the temporary storage of green lumber and in connection with which no office, repair shop or maintenance shop is ordinarily maintained.

c. Log pond and log storage yard

HO 4 prohibits 16- and 17-year-olds from performing the following occupations (the exemption contained in FLSA section 13(c)(7) may apply to some of this work):

1. Pondman: poles logs into the log ship for moving to log deck

2. Dragsaw operator: cuts long logs in half

3. Yardman: rolls logs to log deck

d. On the green or dry chain, the dry kiln and in the lumber yard

HO 4 prohibits 16- and 17-year-olds from performing the following occupations (the exemption contained in FLSA section 13(c)(7) may apply to some of this work):

1. Grader, tallyman, and puller on the green chain and all other work on the green chain

2. Lumber stacker, unstacker, loader, and unloader: stacks lumber or lumber products, unstacks lumber, loads or unloads cars

3. Crane operator: operates a crane for handling lumber

4. Crane hooker: hooks lumber on the crane for moving

5. Jitney operator, truck driver, carrier operator: operates a lumber carrier or lumber truck for moving lumber

e. In a lath mill, shingle mill, or cooperage stock mill

HO 4 prohibits 16- and 17-year-olds from performing the following occupations (the exemption contained in FLSA section 13(c)(7) may apply to some of this work):

1. Handling and shipping of laths

2. Stock picker (lath mill): picks pieces from conveyor for making into laths

3. Bolterman (lath mill): operates a small gang saw

4. Lath-feeder (lath mill): operates lath machines

5. Lath tier: ties laths into bundles

6. Shingle packer (shingle mill): packs shingles into bundles

7. Cut-off sawyer (shingle mill): cuts logs into shingle lengths

8. Knee bolter (shingle mill): outs shingle bolts in quarters

9. Block piler (shingle mill): piles blocks for shingle sawyer

10. Shingle sawyer (shingle mill): operates shingle saw

11. Splitter (cooperage stock mill): splits bolts of cooperage stock

12. Knee bolter, head turner, equalizer operator, cut-off sawyer, jointer operator, matcher operator, stave-saw operator, etc. (cooperage stock mill): operates various machines

13. Off-bearers, gluers, etc. (cooperage stock mill): off-bearing form machines and other hand work

f. Miscellaneous work about a sawmill

HO 4 prohibits 16- and 17-year-olds from performing the following occupations (The exemption contained in FLSA section 13(c)(7) may apply to some of this work):

1. Millwright and maintenance work in the sawmill

2. Work in the boiler house or power house

3. Work in the sawdust storage bins

(3) The following occupations are prohibited in forest fire fighting and forest fire prevention:

a. The controlling and extinguishing of fires in all forest and timber tract locations, and in logging and sawmilling operations, including all buildings within such areas

b. The wetting down of areas or extinguishing of spot fires

c. Patrolling of burned areas to assure the fire has been extinguished

d. The following activities are prohibited when performed in conjunction with or in support of the extinguishing of an actual fire:

1. The piling and burning of slash

2. The clearing of fire trails or roads

3. The construction, maintenance, and patrolling of fire lines

4. Acting as a fire lookout or fire patrolman

5. The maintaining of firefighting equipment

(4) The following occupations in forestry services are prohibited except for that work which is specifically permitted in 29 CFR 570.54(a) and discussed in FOH 33h04(c)(2):

a. All work involved in the support of timber production, wood technology, forestry economics and marketing, and forest protection *except* that work which is specifically permitted in 29 CFR 570.54(a) and discussed in FOH 33h04(c)

b. All work in timber cruising, survey, logging, and engineering parties

c. All work in timber estimations and timber valuation

d. All work in forest pest control

e. All work in forest firefighting and forest fire prevention, except certain tasks discussed in FOH 33h04(c)(2) dealing with forest fire prevention when not performed in support of or in conjunction with extinguishing an actual fire

f. All work in reforestation, including but not limited to, tree planting and tree thinning

(5) The following work in timber tracts is prohibited:

a. All work performed in or about establishments that cultivate, manage, or sell standing timber, *except* for that work which is specifically permitted in 29 CFR 570.54(a) and discussed in FOH 33h04(c)(1)

b. Work performed in timber culture, timber tracts, and timber stand improvement

c. All work in forest fire fighting and forest fire prevention, except that work permitted by FOH 33h04(c)(2) and not performed in support of or in conjunction with the extinguishing of an actual forest fire

(c) Occupations not specifically banned

(1) HO 4 does not prohibit the following work in forest firefighting and forest fire prevention, in timber tracts, in forestry services, logging, and the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill, except when prohibited by any other HO:

a. Work in offices or in repair or maintenance shops

b. Work in the construction, operation, repair, or maintenance of living and administrative quarters, including logging camps and firefighting base camps (occupations that fall within this category include cooks, cook house crew, janitors, and carpenters)

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

(2) The following tasks in forest fire prevention *provided* none of these tasks may be performed in conjunction with or in support of efforts to extinguish a forest fire:

a. The clearing of fire trails or roads

b. The construction, maintenance, and patrolling of fire lines

c. The piling and burning of slash

d. The maintaining of firefighting equipment

e. Acting as a fire lookout or patrolman

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

(4) Work in the feeding or care of animals

(5) HO 4 does *not* apply to the following logging occupations:

a. Repair and maintenance of railroads, roads, or flumes (but not construction work) as performed by section hands, grade and track crews, laborers, swampers, and carpenters, as long as the work is not prohibited by any other HO

b. Any work done in the maintenance and repair shop such as blacksmith, mechanic, and carpenter, and other maintenance and repair work as long as the work is not prohibited by any other HO

c. Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, including the jobs of peeler, barker, and rosser, when not done in conjunction with, and at the same time as, other jobs declared hazardous under HO 4

(6) HO 4 does *not* apply to the following sawmilling occupations provided such work does not entail entering the sawmill *except* for those minors whose employment meets the requirements of the limited exemptions discussed in 29 CFR 570.34(m) and 29 CFR 570.54:

a. The following occupations on the green or dry chain, the dry kiln and in the lumber yard:

1. Grader, tallyman, and puller on a dry chain or on a drop sorter-grader

2. Shipping clerk tallyman, orderman, and other clerical work in yards or shipping sheds

3. Clean-up in yard

b. The following occupations in a lath mill, shingle mill, or cooperage stock mill:

1. Handling and shipping of cooperage stock in yards or storage sheds except operating or assisting in the operation of power-driven equipment

2. Clean-up work outside shake and shingle mills, except when mill is in operation

3. Splitting shakes manually from pre-cut split blocks with a froe and mallet, except inside the mill building or cover

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

5. Manual loading of bundles of shingles or shakes into trucks or railroad cars (provided employer has on file a statement from a

licensed doctor of medicine or osteopathy certifying the minor is capable of performing this work without injury to himself or herself)

6. Clean-up in the lumberyard

7. Clerical work in yards or shipping sheds, such as done by ordermen, tallymen, and shipping clerks

(d) Exemptions

(1) There is *no* provision in HO 4 for apprentices or student-learners. The logging section of the HO was reviewed in 1974 in response to a request for a student-learner exemption in logging operations. It was determined that the industry had not substantially changed, the hazards remained the same, and the request was denied.

(2) *FLSA section 13(c)(7): employment of certain minors in places of business that use machinery to process wood products*

a. The DOL Appropriations Act of 2004 amended the FLSA by creating a limited exemption from the child labor provisions for certain minors 14 to 18 years old which allows them to be employed inside and outside places of businesses that use machinery to process wood products (such as sawmills, furniture manufacturers, cabinet makers, garden shed and gazebo manufacturers, and pallet shops).

b. With regard to such establishments, this amendment overrides the general Child Labor Reg. 3 prohibitions regarding the employment of 14- and 15-year-olds in manufacturing occupations, processing occupations, and in work places where goods are manufactured or processed. It also overrides the HO 4 prohibition regarding the employment of youth in occupations that entail entering the sawmill building. This exemption, however, does not excuse compliance with the remaining Child Labor Reg. 3 occupations standards and all of the Child Labor Reg. 3 hours standards in regards to the employment of 14- and 15-year-olds; nor does it excuse compliance with the provisions of all of the other HOs in regards to the employment of youths aged 14 through 17 (*see* 29 CFR 570.34(m)(2)).

c. Under this exemption, contained at FLSA section 13(c)(7), an eligible youth is one who is under the age of 18 and at least the age of 14 who by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade. In addition, the youth must be supervised on the job by an adult relative or by an adult of the same religious sect or division as the youth.

1. An adult is someone who has reached his or her eighteenth birthday.

2. A relative, for purposes of this exemption, includes at a minimum a parent or person standing in place of a parent, a grandparent, an aunt or uncle, or a sibling.

3. Such supervision must be close, direct, constant, and uninterrupted (*see* 29 CFR 570.54(b)).

d. Such minors are still prohibited from operating or assisting in the operation of power-driven woodworking machines by virtue of section 13(c)(7) and HO 5. Power-driven woodworking machines include all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing or printing wood, veneer, trees, logs, or lumber (*see* FOH 33h05(a)(5)a.).

e. In addition, the employer must ensure that the minors are protected from wood particles or other flying debris within the work place by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation. The minors must also use personal protective equipment to prevent exposure to excessive levels of noise and saw dust. Compliance with these provisions will be accomplished when the employer is in compliance with the requirements of the applicable governing standards issued by the U.S. DOL's OSHA or, in those states where OSHA has authorized the state to operate its own occupational safety and health plan, the applicable standards issued by the office charged with administering the state occupations safety and health plan.

(e) Enforcement positions

(1) *Veneer mills*

Veneer mills expose minors to similar, if not identical, hazards that are present in sawmills (saws, sharp blades, heavy logs, hoisting apparatus, cranes, forklifts, as well as dust and noise pollution). Veneer mills are treated the same as sawmills under HO 4.

(2) *Firewood*

Cutting and splitting logs and the collecting, stacking, and loading of firewood are considered "converting of timber into pulpwood, cordwood, or similar products," and therefore, this work is prohibited by HO 4 (*see* WHD Director A.W. Motley's letter of 05/20/1959). The prohibition against the employment of youth under 18 years of age to cut, split, collect, stack, and load firewood applies to all covered employment (not just work in forestry, sawmilling, or logging).

(3) *Power-driven wood chipping machines*

Occupations in connection with the operation of wood chipping machines when used in the woods in logging operations would be subject to the 18-year minimum age under both HO 4 and HO 14. Child labor violations involving wood chipping machines, in any non-agricultural occupation or industry, will be recorded as being a violation of HO 14.

(4) *Stump removal*

Stump pulling using tractors in non-agricultural situations is *not* subject to HO 4.

(5) *Christmas trees*

An ordinary household-size Christmas tree is not considered to be timber, nor is it cut into log lengths or converted into lumber products (therefore, HO 4 does not apply) (*see* Director of Children's Bureau Industrial Division McConnell's letter of 10/29/1942).

(6) *Clearing right-of-way for power lines, highways*

Activities in connection with the clearing of a right-of-way would *not* be within the scope of HO 4 since these are not logging operations. HO 4 does not cover the clearing of land in preparation for highway construction (*see* Regional Solicitor Barnes' memorandum of 06/25/1959).

33h05 HO 5: Power-driven woodworking machine operations.

Name: occupations involved in the operation of power-driven woodworking machines

Originally adopted: 08/01/1941

(a) Scope of HO 5

(1) Power-driven woodworking machines are among the most hazardous of all machine tools. Although great strides have been made by manufacturers and OSHA to improve the safety of such machines through design changes and guarding, the risk of injury to operators or workers assisting to operate such machines has not been eliminated. Several hazardous factors are inherent to woodworking machines (extremely high speeds of operation, sharpness of cutting tools, and the lightness of material being cut making "kick-backs" possible). The fact that many woodworking machines are hand-fed increases the hazards.

(2) This HO is very broad in scope and is applied on a machine basis. Basically, if a minor, while performing covered employment, is operating, setting up, adjusting, repairing, oiling, and/or cleaning a power-driven wood working machine, HO 5 most likely applies.

(3) HO 5 does not apply when the machinery or tools are designed to be used, and are used exclusively, on materials *other than wood* (such as metal, plastic or stone). Another HO (such as HO 8, 14, 16, or 17) may prohibit such work.

(4) HO 5 applies in any industries where power-driven woodworking tools are used (including furniture plants; sawmills, cabinet makers and other woodworking plants and shops; construction sites; packing sheds; retail and service establishments such as hardware and lumber stores; state and local government entities; and other industries which use power-driven woodworking machines, but which may not directly manufacture wood products). Even though FLSA section 13(c)(7) exempts certain minors 14 to 17 years of age from the HO 4 prohibition concerning the performance

of work that entails entering a sawmill building, the HO 5 prohibitions regarding operating and assisting to operate power-driven woodworking machines are applicable to the employment of those youth who may now legally work in a sawmill.

(5) *Definitions*

a. The term "power-driven woodworking machine" shall mean all fixed or portable machines or tools driven by power and *used or designed* for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood, veneer, trees, logs, or lumber. This definition is broad and includes machines used at the time the HO was issued as well as all power-driven woodworking machines developed in subsequent years. It may also apply to multiple-use woodworking machines as well as those designed for a single woodworking purpose. A machine that was *designed* to be used on wood is prohibited by HO 5 even when *used* to cut, shape, form, etc., a material other than wood.

b. The term "driven by power" shall mean machines driven by electrical, animal, mechanical, water, or other power such as steam or hydraulic. It also includes battery-operated and pneumatic-operated machines and tools, but does not apply to machines or tools driven by foot or hand power, such as foot-powered jigsaws or hand-operated saws or drills.

c. The term "off-bearing" shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations *not* considered as off-bearing within the intent of HO 5 include:

1. the removal of material or refuse from a circular saw or guillotine action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller; and

2. the following operations when they do not involve the removal of material or refuse directly from a saw or from the point of operation:

A. The carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another

B. The piling, stacking, or arranging of materials for feeding into a machine by another person

C. The sorting, tying, bundling, or loading of materials

(6) The following examples of power-driven machines and tools, when used for "cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood, veneer, trees, logs, or lumber," are subject to HO 5. This list is not all-inclusive (other machines exist or may be developed which meet the definition of power-driven woodworking machines):

a. Cutting

Circular saw, band saw, jigsaw, drag saw, chain saw, and veneer clipper

b. Shaping and forming

Shaper, molder, heel turner, lathe, tenoner, mortiser, sticker, drill, boring machine, and hole cutter

c. Surfacing

Planer, jointer, sander, and barker

d. Nailing

Nailer, box nailer, cleat nailer, roofing gun, drywall gun (when used to attach drywall to wood studs), siding gun, and finishing nail gun

e. Stapling

Stapler

f. Wire stitching

Wire stitcher, berry-basket machine, and bushel-tub machine

g. Fastening, or otherwise assembling

Corrugator or other similar type machine for fastening two pieces of wood together by means of a metallic fastener of some type

h. Pressing

Veneer press, boxboard squeezer, and printing press used on wood

(7) HO 5 prohibits minors from operating power-driven woodworking equipment in sawmills, lath mills, shingle mills, and cooperage stock mills (industries that are covered by HO 4). HO 5 (rather than HO 4) applies to the planing mill department or other remanufacturing departments of these enterprises when contained in buildings separate from the sawmill, lath mill, shingle mill, or cooperage stock mill. HO 5 also applies to the employment of minors between the ages of 14 and 17 who, although now permitted to work in sawmills because of the exemption contained in FLSA section 13(c)(7), are found to have operated or assisted in the operation of power-driven woodworking machines.

(8) *Guards*

The fact that a machine is guarded has no effect on the application of HO 5. Woodworking machines are the most difficult to guard and guards alone cannot be relied upon to protect minors from the hazards of woodworking machines.

(b) Occupations prohibited

(1) HO 5 prohibits minors under 18 years of age from the occupation of operating power-driven woodworking machines, including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines.

a. The occupations of operating woodworking machines includes starting and stopping the machine, adjusting for the type of work being performed, and placing the wood stock on the machine. Machines may be automatic, hand-fed or power-fed.

b. HO 5 does not prohibit these minors from placing materials on a moving chain or in a hopper or slide for automatic feeding.

(2) HO 5 prohibits minors under 18 years of age from the occupation of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.

(3) HO 5 prohibits minors under 18 years of age from the occupation of off-bearing (unloading materials) from circular saws when the material is not conveyed away from the machine by some mechanical means.

(4) HO 5 prohibits minors under 18 years of age from the occupation of off-bearing (unloading materials) from guillotine action veneer clippers when the material is not conveyed away from the point of operation by a moving belt or gravity chain.

(5) The following is a partial list of power-driven woodworking machines prohibited by HO 5. This equipment may be stationary or portable and may be powered by batteries:

a. Band saws

b. Circular saws (table saws, swing saws, portable saws, etc.)

c. Surfacing machines (planers, shapers, jointers, molders, matchers, stickers, panel raisers, tenoners, etc.)

d. Lathes

e. Drills, boring machines, and mortisers

f. Sanding machines (belt sanders, disc sanders, drum sanders, cone sanders, etc.)

g. Nailing and stapling machines, wire stitchers, and berry box machines

h. Veneer presses, other pressing machines, and machines designed to print on wood

i. Wood chippers when used to shape the wood for pressing into fiberboard such as in mills

j. Veneer lathe

k. Veneer clipper

l. Veneer press

m. Nail guns (as used to attach drywall to wood studs, roofing materials to wooden roof decks, siding to studs, millwork to doors, windows, corners, rails, etc.)

n. Power line AO nailer used to attach wire to power poles

o. Chuckers used for tapering one end of a wooden handle, and "threaders" used to cut a screw thread on the other end for later insertion into the threaded hole of a brush or broom

p. Air clamps used to assemble furniture

q. Routers designed to be used on wood and used to finish countertops, molding, and other wood products

r. Struct-O-matic and similar machines used to press clamps into trusses during the manufacturing pre-assembled roofing trusses

(c) Occupations not specifically banned

(1) The following work in a planing mill, box factory, or other remanufacturing department is permitted:

a. Off-bearing or tailing from:

1. Band saws

2. Circular saws when the material is conveyed away from the saw table by some mechanical means such as an expulsion roller (cleat saw), moving belt, or gravity chute

3. Planers, molders, or other surfacing machines

4. Sanding machines

5. Nailing or wire-stitching machines

6. Presses, such as glue presses and boxboard squeezers

b. Placing material on a moving chain or in hopper or slide for automatic feeding of machines so equipped, such as:

1. Band resaw with a chain feed

2. Automatic nailing machine with hopper, belt, or chain feed

3. Automatic wire-stitching machines with hopper or chain feed

4. Boxboard squeezers (Linderman machines with chain feed)

c. Carrying or moving material from one machine to another (hike-a-way)

d. Arranging materials for another person to feed into machine (table-up)

e. Work in preparation for shipment (tying-up, bundling, wrapping, etc.)

f. Handling or shipping of lumber products

g. Operating machines or tools that are *not* woodworking machines such as:

1. Screwdrivers

2. Wood polishing machines

3. Machines for tightening bolts

(2) The following work in the manufacturing of veneer is permitted:

a. Work about the soaking pit

b. Off-bearing from:

1. veneer lathe

2. guillotine action veneer clipper when material is conveyed away from the point of operation by moving belt or gravity chute

3. other machines as listed under planing mill (*see* FOH 33h05(c)(1))

c. Operating or assisting to operate:

1. veneer taping machine

2. glue spreader

3. veneer drier

d. Carrying or moving material from one machine to another or otherwise handling or shipping veneer

(d) Exemptions

HO 5 does provide an exemption for apprentices and student-learners. There are no other exemptions applicable.

(e) Enforcement positions

(1) *Chain saws*

HO 14 prohibits minors under 18 years of age from operating chain saws (regardless of the material being processed). HO 5 also prohibits the operation of chain saws to cut wood, veneer, trees, logs, or lumber because chain saws, when used as such, are power-driven woodworking machines. HO 4 also prohibits the use of chain saws by minors in logging and sawmilling operations.

(2) *Power-driven machines used to cut materials other than wood, veneer, trees, logs, or lumber*

a. HO 5 applies to any power-driven machines *used* or *designed* for cutting or shaping wood, veneer, trees, logs, or lumber (regardless of what material is cut by it).

b. HO 5 does not prohibit minors from operating machines *designed* and *used* exclusively to cut or shape plastic, leather, or items other than wood. HO 14, however, may prohibit minors from using circular saws, band saws, guillotine shears, wood chippers, reciprocating saws, chain saws, and abrasive cutting discs to cut these materials.

c. Certain machine tools are designed to cut or shape metal. These tools may have the same name as woodworking tools and may share many characteristics of woodworking tools. But if they are designed to be used on metal, they are not subject to HO 5. Such tools include metal drills, lathes, planers, grinders, borers, etc. (*see* FOH 33h08 for a list of these machines).

(3) The following situations were determined not to fall under HO 5, mainly because the power-driven woodworking machines were not *used* or *designed to be used* for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing or printing wood, veneer, trees, logs, or lumber:

a. Operation of staple machines in the upholstery department of furniture manufacturers, in boat yards or automobile repair shops, when used to attach vinyl, plastic film, webbing straps, Velcro, plastic molding, or fabric to a wooden or plastic seat

b. Operation of drywall screw guns when used only to attach drywall to metal studs

c. Operation of belt sanders when the sandpaper is designed for use on products other than wood

d. Operation of rivet machines used to attach hardware to other objects

e. Operation of portable electric drills used to bore holes in products other than wood, such as metal

f. Operation of tumbler machines used to polish wood products

g. Operation of electric, pneumatic, and battery-operated screwdrivers which tighten screws but perform no work on the wood itself

h. Operation of routers designed to be used on metal and used to finish metal countertops and other products *not* made of wood (HO 8 does not apply to metal routers)

33h06 HO 6: Radioactive substances.

Name: exposure to radioactive substances and to ionizing radiations

Originally adopted: 05/01/1942

(a) Scope of HO 6

(1) Many deaths from radiation poisoning were reported in 1929. A number of these cases involved young women who were engaged in manufacturing luminous compounds. Their exposure to radiation began before they were 18 years of age. The hazards of radiation exposure have been found to be greater for young persons since they are less likely to exercise care to avoid contamination. Moreover, according to the Occupational Safety and Health Division of the National Institute of Science and Technology, several studies have shown that radiation exposure caused more injury to rapidly growing and dividing cells than to mature cells. The significant health risk connected with exposing young people to radiation is highlighted by the fact that the OSHA has recognized this risk by making it its only age specific standard.

(2) HO 6 was issued to protect people under the age of 18 from exposure to radiation in the workplace, and it applies to manufacturing plants, storage facilities, hospitals, clinics, laboratories, dental offices, colleges and universities, and all other covered locations where there are X-ray machines or other sources of radiation contamination.

(3) HO 6 was issued before the development of atomic energy as a weapon during World War II and later as an energy source. Consequently, HO 6 does not address problems related to exposure to atomic energy. Workers are protected from such hazards by regulations issued and enforced by the Department of Energy.

(4) HO 6 adopted as its tolerance to the exposure to radioactive substance in the air the occupational standards established by the National Committee on Radiation Protection. This tolerance was set forth in 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. The rules on annual intake of radiation were changed in 1993, and the maximum permissible concentrations in the air for exposure have been replaced by what is known as the derived air concentration. These requirements, which do not apply to naturally formed radiation or to medical radiation, are found in 10 CFR 20, Standards for Protection Against Radiation.

(5) *Definitions*

a. The term "self-luminous compound" shall mean any mixture of phosphorescent material and radium, mesothorium, or other radioactive element.

b. The term "workroom" shall include the entire area bounded by walls of solid material and extending from floor to ceiling.

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

(b) Occupations prohibited

(1) Any work in any workroom in which:

a. radium is stored or used in the manufacture of self-luminous compound;

b. self-luminous compound is made, processed, or packaged;

c. self-luminous compound is stored, used, or worked on;

d. incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; or

e. 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 and Exposure, as set forth in 10 CFR 20.1207.

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

(c) Occupations not specifically banned

(1) Work in medical facilities, such as X-ray rooms and laboratories, where exposure to ionizing radiation is less than 0.5 rem per year

(2) Work involving exposure to naturally occurring radiation, such as radiation in soil or sunlight radiation

(d) Exemptions

There are no provisions in HO 6 for apprentices or student-learners. There are no other exemptions applicable to this HO.

(e) Enforcement positions

(1) Compliance with the National Committee on Radiation Protection updates and clarifications of Handbook No. 69, including compliance with the standards of 10 CFR 20, is considered compliance with the radiation exposure requirements of HO 6.

(2) Although HO 6 still applies, the manufacture of products containing radium and radium compounds used to make self-luminous parts, such as but not limited to watch dials that glow at night, is no longer a problem. This type of manufacturing was discontinued a number of years ago and seldom are any products manufactured using such lumination. With regard to thorium salts used to make incandescent gas mantles such as those used on Coleman Lanterns, this also is no longer an exposure problem. The radiation level is so low on each mantle that one would have to concentrate hundreds of these mantles together to achieve an exposure level even approaching a health risk.

33h07 HO 7: Power-driven hoisting apparatus occupations.

Name: occupations involved in the operation of power-driven hoisting apparatus

Originally adopted: 07/16/1946

(a) Scope of HO 7

(1) The investigation of occupations involved in the operation of hoisting apparatus was initiated because of the generally accepted belief that such equipment presented a high degree of accident risk and was inappropriate for young workers. Accidents have involved improper rigging where loads have fallen on people and crushed them; persons falling from stacked materials or down elevator shafts; and people coming into contact with overhead electrical conductors. These injuries not only occurred during the operation of the equipment, but also while assisting in the operation of hoisting apparatus.

(2) HO 7 originally prohibited 16- and 17-year-olds from operating (or, in some cases, assisting to operate) all power-driven hoisting apparatus which consist of elevators, cranes, derricks, hoists and high-lift trucks and portable elevators, and tiering or piling machines. HO 7 is broadly written and prohibits the operation of this equipment no matter where located.

(3) Revisions to HO 7 in 2010 (*see* FOH 33h07(b) and 75 FR 28433) more broadly prohibited 16- and 17-year-olds from operating, tending, riding upon, working from, repairing, servicing, or disassembling such equipment.

(4) *Definitions*

a. The term “elevator” shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. This term includes both passenger and freight elevators (including portable elevators or tiering machines), but shall not include dumbwaiters.

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

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

d. The term “crane” shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. This term includes all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot pouring, jib, locomotive, motor-truck, overhead traveling, pillar jib, pintle, portal, semi-gantry, semi-portal, storage bridge, tower, walking jib, and wall cranes.

e. The term “derrick” shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. This term includes all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

f. The term “hoist” shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. This term includes all types of hoists, such as base mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

g. The term “high-lift truck” shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or a platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or a platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift trucks known under such names as forklifts, fork trucks, forklift trucks, tiering trucks, backhoes, front-end loaders, skid loaders, skid-steer loaders, Bobcat loaders, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of but not the tiering of materials.

h. The term “manlift” shall mean a device intended for the conveyance of persons that consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; with such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves, or sprockets at the top and bottom. The term shall also include truck- or equipment-mounted aerial

platforms commonly referred to as scissor lifts, boom type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks.

i. The term "regular operator" shall mean a person whose regular and practical duty is the operation of the elevator.

j. The term "assigned operator" shall mean a person who has been specifically designated to operate the elevator. Such a person may be a regular operator. "Assigned operator" may also mean a person who is designated to operate the elevator in addition to his or her regular job. More than one person may be assigned to operate the same elevator.

(b) Occupations prohibited

(1) Work of operating, tending, riding upon, working from, repairing, servicing, or disassembling an elevator, crane, derrick, hoist, or high-lift truck, except 16- and 17-year-olds may operate or ride inside an unattended automatic operation passenger elevator. Tending such equipment includes assisting in the hoisting tasks being performed by the equipment.

(2) Work of operating, tending, riding upon, working from, repairing, servicing, or disassembling a manlift or freight elevator, except 16- and 17-year-olds may ride upon a freight elevator operated by an assigned operator. Tending such equipment includes assisting in the hoisting tasks being performed by the equipment. Child Labor Reg. 3 prohibits 14- and 15-year-olds from operating most power-driven equipment, including automatic freight elevators and automatic combination passenger and/or freight elevators. Such youth may operate and ride in fully automatic passenger elevators as found in most office buildings.

(3) Operator of a portable elevator or tiering machine

(4) Operator of a crane or derrick

(5) Tending, riding upon, working from, repairing, servicing, or disassembling a crane or derrick, including such work as performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and the like

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

b. Members of an oil well drilling crew are considered as assisting in the operation of such equipment (*see* FOH 33h07(e)(4)).

(6) Operating, tending, riding upon, working from, repairing, servicing, or disassembling a hoist (including hoists that do not exceed a one-ton capacity)

a. Prior to 07/19/2010, 16- and 17-year-olds were permitted to operate certain electric or air-operated hoists that did not exceed a one-ton capacity (*see* 75 FR 28433).

b. This prohibition includes hoists commonly used on tow trucks. HO 2 prohibits minors from operating a motor vehicle while towing another vehicle.

(7) Operating, tending riding upon, working from, repairing, servicing, or disassembling a high-lift truck such as a forklift, fork truck, forklift truck, tiering truck, backhoe, front-end loader, skid loader, skid-steer loader, stacking truck, and a Bobcat loader

a. Prior to 07/19/2010, HO 7 only prohibited the work of *operating* a high-lift truck. The 2010 Final Rule added the tasks of tending, riding upon, working from, repairing, servicing, and disassembling such equipment.

b. "Tending" includes assisting in the hoisting tasks being performed by the equipment. Minors under 18 years of age may not be employed as "spotters" of forklifts (workers who provide signals or cues to forklift operators to assist in the safe operation of forklifts) as such work is "tending" (*see* 75 FR 28434).

c. The prohibitions of HO 7 apply even if the minors operating such equipment do not use or activate the equipment's hoisting apparatus.

1. For example, in *Lynnville Transport, Inc. v. Chao*, 316 F.Supp. 2d 790 (S.D. Iowa 2004), the District Court affirmed DOL's position that minors who operated a skid loader as a "scraper" to muck out a cattle transport vehicle were still employed in violation of HO 7 even though they never raised or lowered the shovel (the hoisting apparatus) of the equipment. The court cited the administrative law judge's reasoning that *"although the minors testified that they did not lift the shovel of the skid loader to high levels in performing their duties, the fact that they had the opportunity to do so, either intentionally or unintentionally, by moving the levers, placed the minors and other minors in the area in a potentially hazardous position."* (316 F.Supp.2nd at 800).

2. This same reasoning would prohibit minors from simply moving such power-driven hoisting equipment from one location to another, such as around a job site or from the back of an equipment dealer showroom to the front of the showroom.

(8) Work of operating, tending, riding upon, working from, repairing, servicing, or disassembling a manlift. The definition of a "manlift" includes, since 07/19/2010, truck- or equipment-mounted aerial platforms commonly referred to as scissor lifts, boom type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks.

(9) Operating, tending, riding upon, working from, repairing, servicing, or disassembling a freight elevator, *except* 16- and 17-year-olds may ride on a freight elevator when the elevator is operated by an assigned operator

(c) Occupations not specifically banned

(1) *Automotive and truck servicing establishments*

a. Grease rack lifts used in gasoline service stations, tire stores, and other establishments servicing automobiles are not power-driven hoisting apparatus covered by HO 7.

b. Service jacks, hand jacks, air compressors, tire changers, truck tire changers, and wheel balancers are all outside the scope of HO 7.

(2) *Operation of amusement park rides*

a. The operation of amusement park rides is not prohibited by HO 7.

b. Although a number of rides in amusement and theme parks have characteristics similar to certain machines that minors under 18 years of age are prohibited from operating under HO 7, a careful review of these rides, which have a variety of names, has concluded that none of the machines are derricks, cranes, hoists, elevators, or manlifts within the meaning of the HO.

1. Swing type rides appear very similar to a stiff-leg derrick or various types of cranes including a jib crane. However, these rides only swing or rotate and lack any hoisting apparatus.

2. A number of roller coasters and similar rides are connected cars operated on a rail and driven by a chain pull. They are not operated by hoists, nor are they considered elevators or manlifts.

3. Water rides often follow the flow of the water down a trough and are repositioned at a higher level by a conveyor belt. Since the boats carrying the riders remain within the trough, these rides are not considered elevators or manlifts.

(3) *Operation of motorized hand trucks*

Motorized hand trucks, such as the Yale Low Lift Pallet Walkie Motorized Hand Truck, models MPW 040 and 060, are not considered to be “high-lift trucks.” Designed for transportation but not the tiering of materials, they are low-lift trucks and not subject to HO 7.

(4) *Hanglines*

Hanglines in poultry processing plants and dry cleaners are considered to be “chain conveyors” and are not covered by HO 7. These apparatus do not have hoists to raise and lower the loads.

a. <u>Hanglines in poultry processing plants</u>

Hanglines in poultry processing plants are usually made up of a metal I-beam, a continuous chain, and shackles attached to the chain. The chain may

be powered by an electric motor or other means, and generally runs from the loading dock or platform, through the plant where the poultry is processed, and back to the loading dock in a continuous loop. Crews on the platform (or sometimes in a darkened room nearby) attach the live poultry to the shackles by their feet where they hang upside down. The hangline then moves to the killing area within the plant and may, in the course of its route, rise or descend within the plant to different levels. The speed of the chain is coordinated with the loading crew's ability to hang a fowl on each shackle and not leave any without a bird on it. HO 11, as of 07/19/2010, prohibits the employment of youth under 18 in most occupations in or about poultry slaughtering and processing establishments.

b. Hanglines in dry cleaners

Hanglines in dry cleaners that hold finished garments to be picked up operate in a similar manner as the hanglines in poultry processing plants.

(5) *Cart Caddy and QuicKART*

a. The Cart Caddy and QuicKART are two types of machines often used by grocers and other retail stores to move large strings of shopping carts. These machines are hooked to the last shopping cart in a string and then the operator guides the string of carts back to the store while commanding the machine to move by means of a handheld remote control. The operator walks behind the machine and operates the manual throttle when returning to the parking lot to collect more carts.

b. These machines do not fall within the definitions of any of the hoists prohibited by HO 7; nor are these machines considered to be "motor vehicles" as defined in HO 2. 16- and 17-year-old minors are permitted to operate these machines.

c. Since the Cart Caddy and QuicKART are both power-driven machines, 29 CFR 570.33(b) would prohibit 14- and 15-year-olds from operating or tending such machines (*see* FOH 33c06(e)(5)).

(d) Exemptions

(1) There is *no* provision in HO 7 for apprentices or student-learners.

(2) 16- and 17-year-olds may operate an automatic elevator and an automatic signal operation elevator provided that all the following conditions have been met:

a. The exposed portion of the car interior, the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend.

b. All hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked.

c. The elevator is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks.

d. The elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over travel by the car.

(e) Enforcement positions

(1) *Chairlifts at ski resorts*

Chairlifts at ski resorts which operate in a substantially vertical direction (where the lifts travel in a vertical direction that is greater than the horizontal distance traveled) are manlifts subject to HO 7 and may not be operated by minors under 18 years of age. Those chairlifts which travel a greater distance horizontally than vertically are outside the scope of HO 7.

(2) *Airport baggage handling equipment*

a. A “conveyor belt loader” is a wheeled vehicle, equipped with a movable conveyor belt, used to load and unload individual baggage items from the cargo hold of aircraft. The front end of the conveyor is raised and lowered by a hydraulic piston located under the conveyor belt. The operation of the conveyor belt loader is not prohibited by HO 7.

b. A “canister loader truck” is a wheeled vehicle with a lifting device which moves baggage between the terminal and the aircraft. Baggage is placed in canisters which hold 50 to 70 bags and suitcases. The canisters are then pushed onto the bed of the loader which is equipped with rollers. The canisters are rolled onto the loader and are rolled off onto the plane. Most of the time, this function is automated; however, sometimes, hand loading and/or unloading of the canisters is required. The load is raised and lowered by hydraulics to and from the ground level to the cargo hold of the airplane. The reverse process takes place during the unloading of the plane. Canister loader trucks are high-lift trucks as defined in 29 CFR 570.58(b), and therefore, HO 7 prohibits 16- and 17-year-olds from operating, loading, and unloading such equipment.

(3) *Power winches*

The WHD has opined since as early as 1961 that HO 7 prohibits minors under the age of 18 from operating power winches, including those affixed to tow trucks or wrecker trucks. Although HO 7 does not specifically state that winches are covered, the HO does state that the term “hoist” shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The definition further adds that the term shall include all types of hoists.

(4) *Drilling rig crews*

Members of a well drilling crew are considered as assisting in the operation of hoists and therefore fall under the provisions of HO 7.

(5) *Assisting in the operation of power-driven patient/resident hoists or lifts*

a. The WHD issued a Final Rule on 05/20/2010, which removed from HO 7 the exemption that allowed 16- and 17-year-olds to operate air or electric powered hoists that did not exceed a lift capacity of one ton (*see* 75 FR 28404 and 75 FR 28434). With the elimination of that exemption, minors under the age of 18 were prohibited from operating or assisting in operating all power-driven hoists in any workplace, including power-driven hoists/lifts used to elevate and transport patients/residents in hospitals, nursing homes, and residences. Prohibited equipment includes floor-based vertical powered patient/resident lift devices; ceiling-mounted vertical powered patient/resident lift devices; and powered sit-to-stand patient/resident lift devices.

b. On 07/13/2011, the WHD issued Field Assistance Bulletin No. 2011-3, Assisting in the Operation of Power-Driven Patient/Resident Hoists/Lifts under the Child Labor Provisions of the Fair Labor Standards Act, which states that the WHD will not charge a child labor violation when properly trained 16- and 17-year-olds, under specific conditions, assist a trained adult in the operation of power-driven patient/resident lifts/hoists. The field assistance bulletin (FAB) is available at www.dol.gov/whd/FieldBulletins/index.htm.

c. The WHD will exercise its enforcement discretion, and not assert child labor violations involving 16- and 17-year-olds who *assist* a trained adult worker in the operation of floor-based vertical powered patient/resident lift devices, ceiling-mounted vertical powered patient/resident lift devices, and powered sit-to-stand patient/resident lift devices only when *all* of the following conditions are met:

1. The child (16- or 17-year-old) has successfully completed the 75 clock hours of nurse aide training required by the Federal Nursing Home Reform Act from the Omnibus Budget Reconciliation Act of 1987, as outlined in 42 CFR 483.152, or a higher state standard where applicable, and has successfully completed the nurse aide competency evaluation detailed in 42 CFR 483.154, or a higher state standard where applicable. The WHD will not assert a violation of HO 7 when 16- and 17-year-olds engage in the limited operation of patient lifts as required by this nurse aide training.

2. The child is not operating by himself or herself floor-based vertical powered patient/resident lift devices, ceiling-mounted vertical powered patient/resident lift devices, and powered sit-to-stand patient/resident lift devices, and the child is assisting in the use of lifting devices as a junior member of at least a two-person team that is headed by an employee who is at least 18 years of age. All

members of the team must be trained in the safe operation of the lifting devices being used.

3. As a junior member of the team, the child may set up, move, position, and secure unoccupied lifting devices. The child may assist trained adult employees in attaching slings to and un-attaching slings from lifting devices prior to and after the lift/transfer of the patient/resident is completed. The child may also assist trained adult employees in operating the controls that activate the power to lift/transfer the patient/resident. The child may act as a spotter/observer and may position items such as a chair, wheelchair, bed, and commode under the patient/resident who is being lifted/transferred.

4. As a junior member of the team, the child may not independently engage in hands on physical contact with the patient/resident during the lifting/transferring process (such as placing or removing the sling, including pushing or pulling the sling under/around the patient/resident; adjusting the sling under/around the patient/resident; and manipulating the patient/resident when placing, adjusting, or removing a sling under/around the patient/resident), and may only assist in these hands on activities when assisting a trained adult employee while the adult employee is simultaneously engaged in such activities. The child may similarly assist a trained adult employee who is manipulating, guiding, rotating, or otherwise maneuvering the patient while the patient is being lifted/transferred. In addition, the child may similarly assist a trained adult employee who is pushing, pulling, or rotating lifting devices when the device is engaged in the process of lifting/transferring a patient/resident.

5. The child is not injured while operating or assisting in the operation of a lifting device.

6. The employer has provided to each 16- and 17-year-old, who will assist in the operation of lifting devices, a copy of the document that was forwarded with this FAB as Attachment A. Attachment A advises the young worker of what tasks he or she may and may not perform while assisting in the operation of a power-driven patient/resident lift/hoist.

d. The above enforcement position will not apply when the WHD determines that a 16- or 17-year-old employee has assisted in the operation of a power-driven patient/resident lifting device and the requirements discussed in FOH 33h07(e)(5)c.1. -6. above have not been met. In such instances, the WHD will charge appropriate child labor violations and the employer will be subject to the assessment of child labor civil money penalties (CMPs) as permitted by FLSA section 16(e)(1).

e. As noted in FOH 33h07(e)(5)c.5. above, this enforcement policy is also not applicable if a child is injured while operating or assisting in the operation of power-driven patient hoists/lifts. If a child is injured while engaged in such

activities, even if the child was employed in compliance with this non-enforcement policy, the WHD will generally charge a violation of HO 7 and assess a CMP. Notwithstanding this enforcement policy, the WHD will investigate reports of children being injured while assisting in the operation of power-driven patient hoists/lifts, as well as complaints that the employer has not complied with the requirements in FOH 33h07(e)(5)c.1. -6. above.

33h08 HO 8: Power-driven metal forming, punching, and shearing machine occupations.

Name: occupations involved in the operation of power-driven metal forming, punching, and shearing machines

Originally adopted: 10/30/1950

(a) Scope of HO 8

(1) The report establishing HO 8 concluded that metal forming, punching, and shearing machines are dangerous because they utilize a heavy crushing or powerful cutting action to perform their work, and because the operator is required in many cases to place his or her hands close to the point of operation in feeding them. Even with guards and better feeding methods, the report continued, these machines are extremely dangerous. In light of the preceding and the fact that state child labor laws varied greatly and did not reflect "an awareness of the hazards of operating" these machines, the report recommended the establishment of HO 8.

(2) HO 8 is machine specific, and it prohibits the operation, helping to operate, setting up, adjusting, repairing, oiling, or cleaning power-driven metal forming, punching, and shearing machines. The scope of this HO is narrow and does not include a very large group of metalworking machines known as machine tools.

(3) *Definitions*

a. The term "operator" shall mean a person who operates a machine covered by this HO by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

b. The term "helper" shall mean a person who assists in the operation of a machine covered by this HO by helping place materials into or removing them from the machine.

c. The term "forming, punching, and shearing machines" shall mean power-driven metalworking machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts.

d. A "rolling machine" is a machine used to change the size or shape of metal by running it between rolls under pressure.

e. The term "pressing or punching machines" shall mean any machine falling within one of the three following types of machines:

1. A “punch press” is a machine fitted with a ram or plunger and a die for the purpose of blanking, trimming, drawing, punching, or stamping metal.

2. A “power press” is a large, slow acting press which performs an operation similar to a punch press, but is intended to handle very large or very heavy work.

3. A “plate punch” is a machine for punching holes (such as for rivets) in heavy metal plate.

A. A **“**bending machine” is a machine for bending metal plate between a stationary bed and a moving ram (metal bending machines are known as brakes).

B. A “hammering machine” is a machine which employs a ram or plunger to pound the material being worked on into the desired shape.

C. A “shearing machine” is a machine for cutting metal by the shearing action of a movable blade or blades.

D. A “guillotine shear” is a machine used for cutting heavy metal plates which consists of a movable upper blade and a stationary lower blade. The upper blade comes down vertically to meet the lower stationary blade.

E. An “alligator shear” is a machine used for cutting barstock which consists of a movable upper blade and a stationary lower blade operating like scissors.

F. A **“**circular shear” is a machine with revolving disks which cut the material when it passes through the point where the revolving disks meet. It is used for cutting light metal sheets such as those used in tin cans.

G. “Machine tools” are power-driven complete metalworking machines having one or more tool- or work-holding devices, and are used for progressively removing metal in the form of chips. The following are the five principal types of machine tools classified by their function:

i. *Milling machine tools*

Milling machine tools consist of machining a piece of metal by bringing it into contact with a rotating cutter with multiple cutting edges

ii. *Planing machine tools*

Planing machine tools consist of machining a surface by moving the work back and forth under a stationary cutting tool

iii. *Turning machine tools*

Turning machine tools consist of shaping a rotating piece by means of a cutting tool to generate a cylindrical surface

iv. *Boring machine tools*

Boring machine tools consist of cutting a round hole by means of a rotating cutting tool

v. *Grinding machine tools*

Grinding machine tools consist of shaping a piece by bringing it into contact with a rotating abrasive wheel

(b) Occupations prohibited

All occupations as an operator of, helper on, or in setting up, adjusting, repairing, oiling, or cleaning the following power-driven metal forming, punching, and shearing machines:

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

(2) All pressing and punching machines (except as an operator or helper on a punch press with automatic feeding and ejection as discussed in FOH 33h08(c)(1) below) such as punch press, blanking press, forming press, drawing press, stamping press, extrusion press, embossing press, coining press, assembling press, bending press, power press, riveting press, eyeletting machine, and plate punch

(3) All bending machines such as apron breaks and press breaks

(4) All hammering machines such as drop hammer, helve hammer, board drop hammer, rope drop hammer, air drop hammer, steam drip hammer, power hammer, air hammer, and steam hammer

(5) All shearing machines such as guillotine shears, squaring shears, alligator shears, and rotary shears

(c) Occupations not specifically banned

(1) Occupations as an operator of or as helper on a punch press equipped with full automatic feed and ejection 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

(2) HO 8 does not apply to the operation of machine tools. The following is a list of machine tools classified by function:

a. Milling machines

Horizontal milling machines, vertical milling machines, universal milling machines, planer type milling machines, gear cutting machines, profilers, routers, and circular saws (circular saws are subject to HO 14)

b. Planing machines

Planers, shapers, slotters, broaches, keyseaters, and hack and band saws (all band saws are subject to HO 14)

c. Turning machines

Engine lathes, turret lathes, hollow spindle lathes, automatic lathes, and automatic screw machines

d. Boring machines

Vertical boring mills, horizontal boring mills, jig borers, drilling machines, pedestal drills, radial drills, gang drills, upright drills, drill presses, multiple spindle drills, centering machines, reamers, and honers

e. Grinding machines

Grinders, abrasive wheels, abrasive belts, abrasive discs, abrasive points, buffing wheels, polishing wheels, stroppers, and lapping machines (abrasive cutting discs are subject to HO 14)

(d) Exemptions

There *is* a provision in HO 8 for apprentices and student-learners. There are no other exemptions applicable to this HO.

(e) Enforcement positions

(1) The following is a list of power-driven machines that have been determined *to be covered* by HO 8:

a. Automatic Bulkan Assembler (the Bulkan)

This power-driven machine performs a bending or crimping action on metal and is covered by HO 8. The machine attaches pre-formed metal edged paper disks to the top and bottom of cylindrical paper sidewalls.

b. Hager press

This hydraulic press, designed to install a broad range of fasteners in flat or pre-formed sheet metal assemblies, is covered by HO 8.

c. Metal bottom seamer

This power-driven machine performs a rolling and bending action on metal and is covered under HO 8.

(2) The following is a list of power-driven machines that have been determined *not to be covered* by HO 8:

a. Wheel crusher or rim removing machine

This machine separates a rim from a tire by using three dies attached to three rams to bend the tire and the metal rim. The rim is circular metal structure specially formed to fit the shape of a wheel, and not a metal plate or a flat piece of (sheet) metal as required by the HO. Moreover, the purpose of the machine is to separate the tire from its rim and not to form the rim into another shape (which would be the purpose of a bending machine). In light of the preceding, a wheel crusher is not a bending machine, or any other kind of metal forming, punching, and shearing machine, and it is not covered by HO 8.

b. Walco Precision Roller (series 60 and 67)

This machine is used to coat metal and other materials with paint, various adhesives, and other substances. The machine does not form, shape, or reduce the thickness of metal (the function of a rolling machine), and it is not covered by HO 8.

c. Injection molding press

When used to manufacture plastic parts (as opposed to cutting or shaping metal), this machine is not covered by HO 8.

d. Flox wire cut electrical discharge machine

This machine cuts metal using a brass wire as an electrode. When the wire is brought near metal, an arc is created eroding the metal. Since this technology does not cut or shape metal with tools mounted on rams, plungers, or other moving parts, it is not a power-driven metal forming, punching, or shearing machine, and is not covered by HO 8.

(3) The following is a list of *machine tools* which are not covered by HO 8:

a. Key duplicating machines

These machines, often located in hardware stores and other retail establishments, duplicate keys by using a metal cutter. These machines are machine tools and therefore outside the scope of HO 8. An example of a key duplicating machine that has been determined to be a machine tool is the Axxess PC key machine (serial #0595187FP).

b. Ridgid 535 pipe and bolt threading machine

This machine is classified as machine tool and not a shearing machine, even though the cutting knife has a rotary motion. Since it is a machine tool, it is not covered by HO 8.

c. Landis pipe nipple and automatic pipe nipple machines

These machines are considered to be machine tools and not covered under HO 8.

d. Brake drum and brake disc lathes

These lathes (used to repair brakes in automotive and truck repair shops) are turning machines and are considered machine tools. They are outside the scope of HO 8.

e. Pipe threading equipment

Turning machines, such as the RIGID Model 1234 Threading Machine, are machine tools and not covered under HO 8.

33h09 HO 9: Occupations in mining, other than coal.

Name: occupations in connection with mining, other than coal

Originally adopted: 01/06/1951

(a) Scope of HO 9

(1) Prior to the enactment of HO 9, only coal mining (HO 3) was covered by a HO. Since the issuance of HO 9, all mining, with the exception of mining in the petroleum and natural gas industries, falls within the scope of a HO. An investigation of the mining industry concluded, in an April, 1950 report, that all work in this industry involved an “exceptionally high degree of accident risk” and the employment of young people should be prohibited in the vast majority of mining occupations. Moreover, the report cited inadequate state child labor laws, which in many instances allowed children as young as 14 years of age to work in underground mines, as an additional reason for establishing HO 9.

(2) HO 9 is industry specific. It applies to metal mines, nonmetal mines, ore-dressing plants, quarries, clay pits and clay mines, and sand and gravel operations. In terms of product mined, the HO covers iron, copper, lead, zinc, and other metals, barite, gypsum, salt, sulfur, and other nonmetals, limestone, marble, granite, and other minerals. Its scope includes all occupations in connection with mining, other than coal, with the exception of certain surface occupations not directly concerned with the extraction or haulage of the mined material.

(3) Many occupations prohibited by HO 9 may also be prohibited by other HOs. Examples include operating motor vehicles (HO 2), using a power-driven chain saw

to cut timber (HO 5), and operating some earth moving equipment while working in a tunnel (HO 17).

(4) HO 9 does not cover work in coal mines which is prohibited by HO 3; in petroleum production; or in the production of natural gas. The HO also does not prohibit work involving most manufacturing or processing operations applied to the extracted materials.

(5) *Definitions*

a. The term "all occupations in connection with mining, other than coal" shall mean:

1. all work performed underground in mines and quarries; on the surface at underground mines and underground quarries; in or about opencut 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* when those operations are performed as part of a manufacturing process.

2. the term shall not include work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded and further processed, or plants manufacturing clay, glass, or ceramic products.

3. neither shall the term include work performed in connection with coal mining (*see* HO 3 at FOH 33h03), in petroleum production, in natural gas production, nor in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes.

b. The term "placer mining" shall mean the mining of a placer deposit (a surface deposit of loose particles of certain heavy minerals (frequently gold)) utilizing the following methods:

1. Placer dredging operations

Operating in a pond, a placer dredge (a kind of floating washer plant) utilizes a series of buckets connected by a chain to scoop gravel from the bottom of the pond. The dredge is also equipped with machinery to recover the heavy metal from the gravel and dispose of the refuse.

2. Surface placer operations

This method, often called sluicing, requires a source of water large enough to make a fast-flowing stream in a sluice box. At the upper

end of the sluice, there is a screen onto which gravel is shoveled or dumped. Water runs over the gravel on the screen, washing the fine gravel through it, and the heavy metal is caught on a bar fastened across bottom of the sluice box.

3. Hydraulic placer operations

In this method, a powerful stream of water is used to break down earth and rock and guide the particles through channels into long sluices. Diesel power is used extensively for pumps, tractors, or for drag lines, and some operations use tractors equipped with a blade to push the material to the sluice box.

c. The term "bore-hole mining" shall mean a method of recovering some minerals (most notably sulfur and salt) by pumping compressed air into the holes bored down to the deposit to force the mineral to the surface.

d. The term "metal mill operations" shall mean a highly automated operation requiring few employees consisting of three distinct steps:

1. Preparation (crushing, grinding, cleaning, and classifying)

2. Separation (jigging, tabling, heavy-media separation, and froth flotation)

3. Finishing (including settling, filtering, drying, and otherwise preparing the concentrates for shipment)

e. The term "washer plant operations" shall mean an operation performed to the ore after it is mined to remove clay and dirt form the solids.

f. The term "grinding mill operations" shall mean the reduction of the concentrate into a powder form at a grinding mill. This operation that occurs after the ore is cleansed at a washer plant.

(b) Occupations prohibited

(1) All occupations involving underground work in mines or underground quarries

(2) All surface occupations at underground mines unless otherwise permitted by FOH 33h09(c)(1)

(3) All occupations involving work in or about opencut mines, open quarries (including crushing, screening, and washing), clay pits (including dredging), and sand and gravel operations (including dredging, washing, and screening), unless otherwise permitted by FOH 33h09(c)(2)

(4) All occupations involving work at or about placer mining and bore-hole mining operations, unless otherwise permitted by FOH 33h09(c)(1)

(5) All occupations involving work in metal mills, unless otherwise permitted by FOH 33h09(c)(2)

(6) All occupations involving work in washer plants or grinding mills, unless otherwise permitted by FOH 33h09(c)(1)

(c) Occupations not specifically banned

(1) The following occupations are permitted for 16- and 17-year-olds when performed *at the surface* of underground mines; in or about open-pit mines, open quarries, clay pits, and sand and grave operations; in surface placer mines, including placer dredging operations, hydraulic placer mining operations, and bore-hole mining operations; and in washer plants or grinding mills:

a. Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground. In the case of open quarries and other types of open-pit operations, this work is permitted in the pit or quarry proper, but not outside of the building itself.

b. Work in the operation and maintenance of living quarters (some of this work may be prohibited by another HO)

c. Work outside of the mine in surveying, in the repair and maintenance of roads, and in general clean-up about the mine property (such as clearing brush and digging drainage ditches). This work is not permitted when done underground or in an open quarry or pit. For example, maintenance of roads in an opencut mine would only be allowed if it was done outside of the opencut.

(2) The following work is permitted in metal mills:

a. Work involving the operation of jigs, sludge tables, flotation cells, or drier-filters

b. Hand-sorting work at picking table or a picking belt

c. General clean-up work

d. Work of track crews in the building and maintenance of railroad tracks located in an area of an opencut *metal mine*, if haulage and mining activities are not being conducted where the track crew is working. This exception applies only to metal mines, since such operations are vast in scale, much of the track work is physically removed from the extractive operation, and the track crew can work without undue exposure to hazard.

e. The only work permitted in mercury recovery mills or mills using the cyanide process is the kind of work stated in FOH 33h09(c)(1) above.

(d) Exemptions

There are no provisions in HO 9 for apprentices or student-learners. There are no other exemptions applicable to this HO.

(e) Enforcement positions

(1) *Peat moss*

HO 9 *does not* apply to cutting, gathering, piling or any other occupation performed on peat moss. ”Peat moss” is defined as partially decomposed sphagnum; consequently, it is not a mineral within the meaning of this HO and any activities performed on it or to it would not be “occupations in connection with mining.”

(2) *Motor vehicle operator and outside helper*

HO 9 prohibits almost all work in or about a mine, which would include the occupations of motor vehicle driver and outside helper. HO 2 also specifically prohibits 16- and 17-year-olds from performing the occupations of motor vehicle driver and outside helper in or about any mine, including an open-pit mine or quarry.

(3) *Weighing trucks*

The weighing of trucks filled with gravel, crushed stone, or other minerals *is prohibited* by HO 9. This work is prohibited even if the minors spend only a small percentage of their time weighing trucks and the majority of their work is confined to an office environment.

(4) *Processing stockpiled limestone into lime*

HO 9 *does not* apply to occupations involved in the processing of stockpiled limestone into hydrated lime. This process is deemed to be manufacturing and not mining: the crushed, stockpiled limestone is heated at extreme temperatures to create quicklime; water is then added to the quicklime to make hydrated lime, which is shipped to the consumer. The prohibitions of HO 9 would cease to apply when the extracted, crushed, and screened limestone was stockpiled.

(5) *Railroad track work*

Track work performed three miles from the open quarry is *not* an occupation prohibited by HO 9 as the work is not in close proximity to the mining haulage or to mining activities.

(6) *Processing marble into a finished building product*

a. The prohibitions of HO 9 apply to occupations in the processing of marble into a finished building material when it involves the following steps: the marble is quarried, run through a primary crusher, through a secondary crusher or grinding operation, and then into elevated storage bins. The finished product is loaded from these bins into bulk trucks or it is sacked and stored for later shipment.

b. This process is not deemed to be manufacturing since the marble has not been chemically changed and nothing was manufactured from the crushed marble (*i.e.*, bricks, blocks, tile, etc.).

33h10 HO 10: Slaughtering, meat and poultry packing, processing, and rendering.

Name: occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering

Originally adopted: 05/08/1952

(a) Scope of HO 10

(1) Meat packing was one of the most hazardous industries at the time HO 10 was promulgated. The Bureau of Labor Statistics issued Bulletin No. 855 *(Injuries and Accident Causes in the Slaughtering and Meat-Packing Industries, 1943)*, which documented the hazards in this industry. Dangers included slips and falls on slippery floors, injuries from live animals, strains from overlifting, cutting hazards from sharp knives, and injuries from power-driven equipment. More recent publications issued by the NIOSH confirm the continued existence of these hazards and also cite the danger of steam burns, electric shock, and ergonomic injuries and illnesses.

(2) HO 10 originally applied only to occupations in the slaughtering, rendering, and meat packing industries. When Congress amended the FLSA in 1961 to cover certain retail and service enterprises, the WHD amended HO 10 to cover work in such firms. Thus, HO 10 applies both on an industry basis (slaughtering, rendering, and meat packing) and to the use of certain power-driven meat-processing machines (including meat slicers) whenever located in covered establishments and regardless of the material being processed. In 1981, HO 10 was again amended to clarify that restaurants, fast food establishments, and other retail and service establishments are subject to HO 10 and that 16- and 17-year-olds are prohibited from using power-driven meat processing equipment in those establishments.

(3) HO 10 was amended in 1960 to add the occupations of setting up, adjusting, repairing, oiling, or cleaning certain power-driven meat-processing machines. Prior to this, only the occupations of operating or feeding the various named machines were prohibited by HO 10. The 2010 revisions to HO 10 clarified that youth under 18 may not clean power-driven meat processing equipment, including the disassembled parts. This is true even if the equipment is disassembled and reassembled by an adult. Such youth may operate a commercial dishwasher to run a self-contained rack containing parts of or attachments to a power-driven meat processing machine through the dishwasher as long as the youth does not actually handle or touch the machine parts or attachments (*see* 75 FR 28435 and 29 CFR 570.61(a)(4)).

(4) HO 10 was revised in 2010 and its prohibitions were extended to the slaughtering and processing of poultry. The term “slaughtering and meat packing establishments” was redefined to include places where poultry, buffalo, or deer, are killed, butchered, or processed. The term now also includes establishments which manufacture or process meat or poultry products including sausage or sausage casings from animals (*see* 75 FR 28434 and 29 CFR 570.61(b)).

(5) HO 10 does *not* apply to the killing and processing of rabbits or small game in areas physically separated from the "killing floor", or in separate establishments. It also does *not* apply to fish and seafood processing plants. These establishments were not included in the original study of meat packing plants and were specifically excluded from the HO when it was issued. Amendments to the HO have not incorporated these establishments.

(6) *Definitions*

a. The term "retail/wholesale or service establishments" includes establishments where meat or meat products, including poultry, are processed or handled, such as butcher shops, grocery stores, restaurants and quick service food establishments, hotels, delicatessens, and meat-locker (freezer-locker) companies, and establishments where any food product is prepared or processed for serving to customers using machines prohibited by this HO.

b. The term "slaughtering and meat packing establishments" means places in or about which such animals as cattle, calves, hogs, poultry, sheep, lambs, goats, buffalo, deer, or horses are killed, butchered, or processed. The term also includes establishments which manufacture or process meat products or sausage casings from such animals.

c. The term "rendering plants" means establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

d. The term "killing floor" includes a workroom or workplace where such animals as cattle, calves, hogs, poultry, sheep, lambs, goats, buffalo, deer, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling. The killing floor does not include coolers.

e. The term "curing cellar" includes a workroom or workplace which is primarily devoted to the preservation and flavoring of meat, including poultry, by curing materials. It does not include a workroom or workplace solely where meats are smoked. The curing cellar may be located above or below ground.

f. The term "hide cellar" includes a workroom or workplace where hides are graded, trimmed, salted, and otherwise cured. The hide cellar may be located above or below ground.

g. The term "boning occupations" means the removal of bones from meat cuts. It does not include work that involves cutting, scraping, or trimming meat from cuts containing bones.

(b) Occupations prohibited

(1) HO 10 prohibits 16- and 17-year-olds from employment in all occupations involving the operation or feeding of the following power-driven machines, including setting up, adjusting, repairing, oiling, or cleaning of such machines or the individual parts

of such machines, regardless of the product being processed by these machines (including, for example, the slicing in a retail restaurant of bread, cheese, vegetables, or poultry):

a. Meat patty forming machines, meat and bone cutting saws, poultry scissors or shears, meat slicers, knives (except bacon-slicing machines), head splitters, and guillotine cutters

b. Snoutpullers and jawpullers

c. Skinning machines

d. Horizontal rotary washing machines

e. Casing-cleaning machines such as crushing, stripping, and finishing machines

f. Grinding, mixing, chopping, and hashing machines

g. Presses (except belly-rolling machines)

(2) HO 10 prohibits 16- and 17-year-olds from performing all occupations on the killing floor, in curing cellars, and in hide cellars except the work of messengers, runners, handtruckers, and similar occupations which require entering the killing floor area infrequently and for short periods of time. HO 10 also prohibits these minors from performing all boning occupations, all occupations that involve the pushing or dropping of any suspended carcass, half-carcass, or quarter-carcass; and all occupations involving the handlifting or handcarrying of any carcass or half-carcass of beef, pork, horse, deer or buffalo or any quarter-carcass of beef, horse, or buffalo.

a. The following is a list of occupations customarily performed on killing floors (place where animals are immobilized, or shackled, or killed; blood drained from the carcass; the hide, hair, head, and entrails removed; and the carcass divided into halves and further dressed prior to chilling) and prohibited under HO 10:

1. Immobilizer (stuns animal prior to shackling and killing)

2. Shackler, slinger (shackles animal)

3. Sticker, bleeder (severs larger blood vessels of neck)

4. Dropper (drops slaughtered hogs from overhead conveyor into scalding tanks)

5. Scalder (pushes hogs through scalding tanks)

6. Dehairing machine attendant (feeds hogs into dehairing machines)

7. Header, head skinner, scalper (skins hides from heads and removes head from carcass)

8. Toe puller (pulls nails from hoof)

9. Gambrel man, sinew cutter (cuts incision in hind legs and places ends of gamb stick in incision so carcass can be suspended from trolley)

10. Hanger, hand-off man (suspends carcasses from overhead rail. May use mechanical hoist)

11. Rosin man (covers hog carcasses with rosin)

12. Scraper (removes rosin)

13. Singer (uses blow torch to remove hair)

14. Shaver, benchman (uses knives to shave off hair)

15. Washer (washes carcass)

16. Steamer (sprays steam on carcass)

17. Leg skinner, leg breaker (cuts hide from legs and severs legs)

18. Floorsman, sider (removes hides from bellies)

19. Aitchbone breaker, crotch sawer (saws or splits pelvis bone)

20. Breast sawer, brisket cutter, brisket opener (opens chest cavity by sawing through breast bone)

21. Rumper, rump skinner (skins hide from rump)

22. Bung dropper (cuts bunghole from surrounding flesh)

23. Bruise trimmer (cuts away bruised sections on carcass)

24. Belly opener (opens bellies with knife)

25. Gutter, gut snatcher (cuts and pulls entrails from carcass)

26. Pluck snatcher (removes liver, heart, and lungs from carcass)

27. Kidney puller (cuts kidney from carcass. May also insert kidney and neck rags)

28. Gut truck jumper (pushes gut truck from place to place on killing floor)

29. Backer (skins hide from back)

30. Hide dropper (completes removal of hide)

31. Slunk skinner (skins unborn animals)

32. Splitter (cuts carcass into halves)

33. Sawer (similar to splitter)

34. Chuck splitter (similar to splitter)

35. Scribe sawer (partially saws through ribs)

36. Facer (shapes carcass by cutting away skin and surplus fat)

37. Head dropper (severs strip of skin holding hog head to carcass)

38. Leaf fat puller (pulls strips of fat from carcass)

39. Fat scraper (scrapes fat from suspended carcass)

40. Stamper (stamps carcass with inspection seal)

41. Neck pinner (pins up loose flesh on carcass)

42. Neck Washer (washes neck with water hose)

43. Shrouder, clother, bagger (covers sides with white shrouds or cloths)

44. Retaining room man (cuts out and disposes of condemned meat)

45. Scaler, weigher (records weights of dressed carcasses. May push carcasses on to weighing rail)

46. Cooler man, pusher (pushes carcasses from killing floor into cooler)

b. HO 10 prohibits 16- and 17-year-old minors from performing all work on the killing floor in the fancy meats unit, selected meats unit, or rough tallow unit (also known as viscera unit or offal (other than hides and casings) department). This is the place where viscera and heads are separated and processed. HO 10 also prohibits the following related occupations even if not done on the killing floor:

1. Head splitter, brainer, skull cracker (uses power-driven machine to split skull)

2. Snout puller, head snooter, snout pulling machine operator (uses power-driven machine to remove snouts from heads)

3. Jaw puller (uses power-driven machine to remove jaws from heads)

4. Washing machine operator (washes tripe, tongues, stomachs, etc. in horizontal rotary washing machine)

c. HO 10 prohibits 16- and 17-year-old minors from performing the following work in coolers or chill rooms (place where carcasses and other meats are chilled):

1. Cooler man, pusher (pushes carcasses into cooler)

2. Spacer (space carcasses)

3. Poleman (uses pole to transfer carcasses from storage rails to conveyor rail. Some cutting department occupations (*see* FOH 33h10(b)(2)(e) below) are also sometimes performed in coolers.)

d. HO 10 prohibits 16- and 17-year-old minors from performing the following work in the cutting department (place where carcasses are portioned, boned, and trimmed):

1. Pusher, lugger, chain feeder (pushes or carries carcasses into cutting department)

2. Dropper, blocker, trolley unloader (drops carcass from overhead conveyor)

3. Cutdown man (assists dropper)

4. Ham cutter, ham sawer (uses power-driven saw to cut hams from carcass)

5. Band saw operator (uses handsaw to cut meat)

6. Loin scriber (uses power-driven saw to cut ribs)

7. Shoulder chopper (uses power-driven saw or power-driven knife to remove shoulder from carcass)

8. Foot sawer (saws feet with power-driven saw)

9. Skinning machine operator, skinner (uses power-driven machine to skin cuts)

10. Boner, neck boner, shoulder boner, ham boner beef boner (debones cuts)

11. Sawer, butcher, ribber (quarters beef and sides and may also cut up the quarter with power-driven equipment)

12. Butt presser (flattens hog butts on power-driven press)

e. HO 10 prohibits 16- and 17-year-old minors from performing the following work in the casings department (place where animal casings are processed):

Casing machine operator, casing crusher, casing stripper, casing finisher (cleans casing by running them through power-driven rolls)

f. HO 10 prohibits 16- and 17-year-old minors from performing the following work in the sausage department (place where sausage is prepared or manufactured):

1. Guillotine cutter, frozen meat cutter (uses a power-driven guillotine cutter to cut up meat)

2. Grinder, grinding machine operator (operates power-driven machine which grinds up meat)

3. Mixer, mixing machine operator (operates power-driven machine which mixes meat)

4. Chopper, cutting machine operator, silent-cutter operator (operates power-driven machine which chops and mixes meat)

g. HO 10 prohibits 16- and 17-year-old minors from performing the following work in the curing cellar (place where cuts are preserved or flavored by the absorption of curing materials prior to smoking or shipment). The curing cellar may be located above or below ground level and does not include places where meats are smoked.

1. Grader (grades cuts prior to curing)

2. Dry cure man, dry curer, packer, vat packer (coats cuts with dry curing mixture and packs in boxes or vats)

3. Pickle maker, pickle man, pickle mixer (prepares and cooks pickling solution)

4. Pumper, pickle pumper (pumps curing solution into cuts)

5. Pickler packer, pickling man, sweet pickle curer (packs cuts in vats for curing and fills vat with pickle solution)

6. Piler, over hauler (piles cuts for dry salt cure)

7. Salter, dry salter (rubs salt into cuts)

8. Overhauler, overhaul man, tester (transfers cuts from one vat to another)

9. Vat unloader, vat puller (removes cuts from vat after draining off solution)

10. Vat washer (washes vat)

h. HO 10 prohibits 16- and 17-year-old minors from performing the following work in the smoked meat processing area (place where meat is prepared for smoking, is smoked, and further processed prior to shipment):

1. Neck machine feeder (operates power-driven machine which compresses and stuffs neck meat into cotton bags for smoking)

2. Boner (bones cuts)

3. Ham presser, ham packer, floorman, presser (operates power-driven machine which compresses the tops on the meat-filled molds)

4. Bacon skinner, skinning machine operator, belly skinner (operates power-driven skinning machine)

5. Bacon molder, bacon former, bacon mold loader, bacon presser, bacon press operator (operates power-driven press which compresses bacon into uniformly shaped slabs. Such work is permitted if it is done by hand)

i. HO 10 prohibits 16- and 17-year-old minors from performing the following work in the hide cellar (place where hides are cured and prepared for shipment to leather manufacturers (may be located above or below ground level)):

1. Hide inspector, pelt grader (inspects and grades hides)

2. Hide trimmer (trims hides with knife)

3. Hide salter (sprinkles salt over hides and piles them)

4. Hide shaker, hide spreader (shakes salt from hides)

5. Hide bundler (folds and ties hides into bundles)

(3) HO 10 prohibits 16- and 17-year-old minors from performing all occupations in the recovery of lard and oils, except packaging and shipping of such products and the operation of lard-roll machines. The following work in the lard and oil refining department (place where fats are converted into lard and various edible oils) is prohibited.

a. Hasher (chops fat in power-driven machine)

b. Lard cooker, lard renderer (cooks fat)

c. Refiner, bleacher (refines and bleaches cooked fat)

d. Cracklings press operator (operates press which presses cracklings)

e. Grinding mill operator (grinds cracklings in power-driven grinder)

(4) HO 10 prohibits 16- and 17-year-old minors from performing the following occupations involved in the tankage or inedible rendering departments and in independent rendering plants (these are places where dead animals, animal offal, animal fats, scrap meats, blood and bones are rendered into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products):

a. Skinner (skins dead animals)

b. Hasher operator, gut hasher, hash man (operates hashing machine which chops up offal)

c. Bone sawer (cuts up bones with band saw)

d. Bone crusher, bone grinder (operates bone crushing machine)

e. Tank loader, melter loader (feeds offal into cooking tanks)

f. Cooker, extractor, tank changer, tanker (boils refuse in extractor tanks to obtain grease)

g. Tankage press operator, hydraulic press operator, tank pressman (operates press to recover grease from tankage). Drier, drying machine feeder (operates machine which dries tankage)

h. Cooker, cook box filler, tankman (dry cooks refuse)

i. Expeller, oil expeller, pressman, press operator (operates press which expels soap fats from refuse)

j. Mill operator, tankage grinder (operates crusher which pulverizes refuse prior to bagging)

k. Mixer (operates machine which mixes pulverized materials)

l. Sacker, draw-off man (fills bags from spouts of grinding or mixing machine)

m. Blood cooker, blood pumper (cooks blood in a tank)

n. Hoof trimmer, sinew cutter (trims hoofs)

o. Neatsfoot oil cooker (cooks bones in cooker)

p. Tallow pumper (cooks viscera and bones to recover tallow)

q. Tallow refiner (refines tallow by bleaching and running through filter press)

r. Tallow chandler (fills barrels with tallow)

s. Tallow pumpman (pumps tallow)

(5) HO 10 prohibits 16- and 17-year-old minors from performing the following work in the shipping department:

The work of pushers, luggers, platform men, lumpers, and carriers are prohibited occupations if the work involves pushing or dropping any suspended carcass, half-carcass, or quarter-carcass, or involves the hand-lifting or hand-carrying of any carcass or half-carcass of beef, pork, or horse, or any quarter-carcass of beef or horse.

(c) Occupations not specifically banned

(1) 16- and 17-year-olds may operate bacon-slicing and belly-rolling machines in wholesale, retail and service establishments.

(2) HO 10 places no limitations on the occupations that may be performed in the livestock departments of slaughtering establishments. 16- and 17-year-olds may work as livestock handlers, livestock punchers, drivers, penners, and tenders (workers who drive, feed, and water livestock; clean pens and drive livestock to holding pens outside of killing floor).

(3) HO 10 prohibits 16- and 17-year-olds from performing all occupations on the killing floor, in curing cellars, and in hide cellars except they may perform the work of messengers, runners, handtruckers, and similar occupations which require entering these areas infrequently and for short periods of time.

(4) HO 10 permits 16- and 17-year-olds to work in the following occupations in the fancy meats unit, selected meats unit, or rough tallow unit (*i.e.*, viscera unit or offal department, other than hides and castings: this is the place where viscera and heads are separated and processed) provided no work is performed on the killing floor:

a. Gut and pluck separator (separates guts (stomach and intestines) from pluck (liver, hearts, lungs, and windpipe))

b. Bladder trimmer (removes fat from bladder)

c. Stomach or paunch washer (opens and washes stomach)

d. Paunch opener, belly dumper (opens stomachs and dumps contents)

e. Paunch trimmer, tripe trimmer (trims stomachs)

f. Caul and ruffle fat remover or puller (cuts fat from stomachs)

g. Head Skinner (skins heads)

h. Ear cleaner (trims ears)

i. Head chiseler (loosens meat on heads)

j. Head trimmer, head boner (trims meat from heads)

k. Tonguer, tongue puller (removes and trims tongue)

l. Head splitter (hand) (splits skull with cleaver and removes brain)

m. Gullet Splitter or trimmer (trims or splits gullets)

n. Liver trimmer (trims and brands livers)

o. Saver (removes brains from split skulls)

p. Hock trimmer (removes fat from hocks)

q. Chitterling cleaner or washer (washes chitterlings (large intestine))

r. Pluck trimmer, giblet meat trimmer (trims pluck and separates parts)

s. Leaf fat hanger (loads racks with leaf fat)

t. Black gut puller (separates intestines)

u. Small gut puller (straightens out intestines)

v. Bung puller (removes bung from intestines)

w. Bung flusher (washes bungs)

x. Bung trimmer (trims bungs)

y. Fat washer (washes fat)

z. Cap gut trimmer (trims fat from part of intestine)

aa. Jaw-bone trimmer (trims meat from jawbone)

bb. Tripe or paunch cooker (cooks tripe)

(5) HO 10 permits 16- and 17-year-olds to work in the following occupations in the cooler or chill rooms (place where carcasses and other meats are chilled):

a. Stamper (stamps carcasses)

b. Runners, truckers (trucks meat products into and out of coolers)

c. Grader (establishes sales values)

(6) HO 10 permits 16- and 17-year-olds to work in the following occupations in the cutting department (place where carcasses are portioned, boned and trimmed):

a. Clod puller (removes clods with knife and meat hook)

b. Steak cutter (cuts meat into cubes)

c. Trimmer (trims various cuts)

d. Wrapper (wraps cuts of meat)

e. Loin scriber, scriber (cuts ribs with hand saw (not permitted if power-driven saw is used))

f. Shoulder chopper (uses cleaver or hand saw to remove shoulder (not permitted if power-driven saw or power-driven knife is used))

g. Ham cutter, ham sawer (uses hand saw to saw hams from carcass (not permitted if power-driven saw is used or work involves hand-lifting the half carcass))

h. Loin puller (cuts out loins)

i. Grader (grades various cuts)

j. Butt puller (cuts fat from butts)

k. Foot sawer (uses hand saw to remove feet (not permitted if power-driven saw is used))

l. Foot cleaner, foot trimmer, foot washer (trims and cleans feet)

m. Ham blocker, ham shaper (trims hams)

n. Ribber (uses knife to sever ribs from belly)

o. Belly roll feeder (feeds bellies into belly-rolling machine)

p. Cutter off, fat back splitter (cuts fat from bellies)

q. Trucker (trucks materials in and about departments)

(7) HO 10 permits 16- and 17-year-olds to work in the following occupations in the casings department (place where animal casings are processed):

a. Bung puller (tears bung from intestines)

b. Bung grader (grades bungs)

c. Bung trimmer (trims fat from bungs)

d. Bung flusher (washes bungs)

e. Casing puller (cuts intestine from viscera)

f. Casing soaker (washes casings)

g. Casing selector (inspects and grades intestines)

h. Rounds runner (cuts small intestines from viscera)

i. Bung and middle fatter (cuts fat from intestine)

j. Casing tier (ties one end of intestine)

k. Casing measurer, casing bundler (measures and ties casings in bundle)

l. Slimer (cleans casings by hand)

m. Casing salter (covers casings with salt and packs in barrels)

n. Casing sewer (uses power-driven sewing machine to sew casings together)

(8) HO 10 permits 16- and 17-year-olds to work in the following occupations in the sausage department (place where sausage is prepared or manufactured):

a. Trimmer, piece meat trimmer (trims meat)

b. Spice mixer (mixes spices by hand)

c. Sausage maker, cooker (cooks meat)

d. Loaf man, sausage molder (packs ground meat in pans to be cooked)

e. Stuffer (operates sausage-stuffing machine which forces meat into casings)

f. Linker, linking machine operator (links sausages either by hand or machine)

g. Tier (ties end of stuffed casings)

h. Sausage roper (ties heavy cord around large sausages)

i. Hanger, tree loader (hangs pieces of meat on tree arms or on conveyor studs)

j. Bander (prepares skinless sausages and bands them for sale)

k. Sealer and cooker (seals and cooks sausages in glass jars or other containers)

l. Sausage cooker (cooks sausage in cooking tanks)

m. Packer, packager (packs sausages in cartons or other containers)

(9) HO 10 permits 16- and 17-year-olds to work in the following occupations in the smoked meat processing departments (place where meat is prepared for smoking, is smoked, and further processed prior to shipment):

a. Soaker, thrower (soaks cuts in water vats to clean them for smoking)

b. Trimmer (trims cuts prior to smoking)

c. Washer (washes cuts)

d. Scraper, scrubber (scrapes cuts with bell scraper)

e. Stringer (strings cord through cuts for handing)

f. Hanger (hangs cuts on trees for smoking)

g. Brander, stamper (brands or stamps cuts)

h. Stockinette man, bagger (places cuts in cotton bags)

i. Ripper (cuts slits in cotton bags)

j. Comber, sciver (attaches slabs of bacon to combs)

k. Tier, lacer (wraps smoked cuts)

l. Stapling machine operator, stitching machine operator (operates stapling machine)

m. Smoker, smokehouse man (operates smokehouse)

n. Meat puller (pulls meat-loaded equipment from smokehouse)

o. Stuffer (stuffs meat into casing for smoking)

p. Tree washer (washes trees or racks)

q. Trier, testor, inspector (inserts a trier (similar to ice pick) into cuts to detect sourness by smelling trier)

r. Sewer, stitcher, tier (sews up edges and openings in ham)

s. Fatter (slices excess fat from cuts)

t. Mold packer, ham molder (hands packs boned hams into metal molds)

u. Ham rolling machine operator (operates power-driven machine which winds cord around hams)

v. Ham cooker, cooker, ham boiler (cooks hams)

w. Ham washer (removes hams from molds and washes them)

x. Bacon skin lifter (prepares slabs of bacon for skinning by slicing between the fat and skin at one end of slab)

y. Bacon slicer (operates power-driven bacon-slicing machine)

z. Bacon scaler (weighs bacon)

aa. Bacon packer, wrapper (wraps and packs bacon)

(10) HO 10 permits 16- and 17-year-olds to work in the following occupations in the lard and oil refining department (place where fats are converted into lard and various edible oils):

a. Roll man, lard roller man (operates lard roll machine that chills and congeals lard-oil preparatory to packaging)

b. Lard filling machine operator, filler operator (operates machine which feeds lard into containers)

c. Carton forming machine operator (operates carton forming machines)

d. Conveyor tender (picks up cartons from conveyor belt)

e. Carton packer (packs containers of lard into large cartons or boxes)

(11) HO 10 permits 16- and 17-year-olds to work in the following occupations in the tankage or inedible rendering department or independent rendering plants (places where dead animals, animal offal, animal fats, scrap meats, and bones are rendered into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products):

a. Office and clerical occupations

b. Occupations concerned with repair and maintenance of the buildings and grounds

(12) HO 10 permits 16- and 17-year-olds to work in the following occupations in the shipping department:

a. Icer, car icer (ices refrigerator cars or trucks)

b. Runner, trucker (trucks meat from various departments)

c. Carton folder, carton former (operates carton closing machine)

d. Checker (checks quantity and weight of products)

e. Order filler (selects and prepares products for shipment)

f. Scaler, weigher (weighs products)

g. Labeler, marker (labels containers)

h. Packer (packs meat into containers)

i. Wrapper (wraps meats products)

(13) HO 10 permits 16- and 17-year-olds to perform all occupations in the boiler rooms, engine rooms, laboratories and offices of slaughtering and meat packing establishments, rendering plants, or wholesale, retail or service establishments, except those prohibited by another HO.

(14) HO 10 permits 16- and 17-year-olds to perform all occupations in the cooperage and box department except as prohibited by HO 5, HO 12, and HO 14.

(15) HO 10 permits 16- and 17-year-olds to perform all occupations in the rabbit, seafood, small game or egg departments except those prohibited by other HOs.

(16) HO 10 permits 16- and 17-year-olds to perform the occupations of operating, feeding, setting up, adjusting, repairing, oiling, or cleaning power-driven bacon-slicing machines and belly-rolling machines. The term “bacon-slicing machine” as used in HO 10 refers to those machines which are designed solely for the purpose of

slicing bacon and are equipped with enclosure or barrier guards that prevent the operator from coming in contact with the blade or blades, and with devices for automatic feeding, slicing, shingling, stacking, and conveying the sliced bacon away from the point of operation.

(d) Exemptions

HO 10 does contain an exemption for apprentices and student-learners. No other exemptions are applicable to this HO.

(e) Enforcement positions

(1) *Application of HO 10 to handling of hot oils*

a. The original HO 10 banned, among other things, employment of minors in occupations involved in the recovery of lard and oils from slaughtered animals, and the rendering of animal fat. When Congress amended the FLSA in 1961 to cover certain retail and service enterprises, the DOL amended HO 10 to extend to retail establishments, including fast food and full-service restaurants. Many such restaurants use commercial deep fat fryers which have various attachments or built-in features to facilitate the refining and/or recycling of cooking fats or oils.

b. The refining, removing and/or recycling of cooking fats or oils in restaurants is not a process of "rendering" or "recovery" as described in the original HO 10 (*see* 29 CFR 570.61(a)(2) -(3)); neither is such refining, removing, and/or recycling of cooking fats or oils covered by any other provision of HO 10. Furthermore, there was no specific change in the FLSA in 1961 to indicate any Congressional intent to include within the HO 10 prohibition, the handling of cooking fats or oils in restaurants.

c. Consequently, HO 10 *does not* prohibit minors under age 18 from being employed to clean such restaurant machines, to remove cooking fats or oils from them, or to clean the screening or filtering equipment.

d. However, Child Labor Reg. 3 does prohibit 14- and 15-year-olds from cleaning kitchen equipment (not otherwise prohibited), removing oil or grease filters, pouring oil or grease through filters, and moving receptacles containing hot grease or hot oil, when the equipment, surfaces, containers, and liquids exceed a temperature of 100 °F (*see* FOH 33c05(b)(1)a.).

(2) *Application of HO 10 to power-driven meat processing machines and bakery machines with attachments*

a. A meat slicer with a chute attachment for processing hard-to-handle foods is covered by HO 10 as long as the meat-cutting blades are used, even though only non-meat items are being processed. Consequently, a 16- or 17-year-old *may not* operate, dismantle, reassemble, or clean this machine.

b. Food processors are prohibited if used to process meat. Likewise, bakery machines such as vertical dough mixers that have meat-processing

attachments are covered by HO 10 when used to process meat; and HO 11 when used to process dough.

(3) *Cleaning of power-driven meat-processing machines*

a. HO 10 prohibits minors under 18 years of age from cleaning power-driven meat processing machines. This prohibition includes the cleaning of the individual parts of such machines, including the blades (even if the machine is dismantled and reassembled by an adult) (*see* 29 CFR 570.61(a)(4)). However, such youth may operate a dishwasher to run a self-contained rack containing such individual parts through the dishwasher if the youth does not handle or touch the parts (*see* FOH 33h10(a)(3)).

b. 29 CFR 570.33(e) prohibits the employment of 14- and 15-year-olds in occupations which involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, food processors, food cutters, and food mixers.

(4) *Power-driven machines determined to be subject to HO 10:*

a. Food processors when used to process meats

b. Food grinders, pureeing wands, and mixers if designed to be used or used on meat. This same equipment could be prohibited by HO 11 if used to mix items such as batter.

c. Meat choppers when used to grind or chop cheese or other products

d. Liver-skinning machine used to skin squid or other seafood products

e. Meat slicers with tubular feeding attachments

(5) Power-driven machines determined *not to be subject* to HO 10:

a. Meat tenderizers and meat cubers

b. Food processors with attachments used only for processing vegetables

c. Lightweight, small capacity, portable, countertop mixers discussed in 29 CFR 570.62(b)(1) and in FOH 33h11(d) when not used to process meat

d. Prawnto Shrimp Machine used to devein and cut shrimp

e. Jonsson Shrimp Peeling Machine used to peel shrimp

f. Vegetable slicers

g. Colton Granulator used to force products through a set of grinder bars, and forces the reduced-size products through a preset mesh screen (note: a granulator is *not* a meat grinder)

33h11 HO 11: Power-driven bakery machine occupations.

Name: occupations involved in the operation of bakery machines

Originally adopted: 07/21/1952

(a) Scope of HO 11

(1) Historically, many occupational injuries occurring in bakeries are caused by a few specific machines. These injuries are often serious, producing a disproportionate share of deaths or permanent disabilities. HO 11 was issued to prohibit 16- and 17-year-olds from operating certain power-driven bakery machines. This HO is machine-specific as discussed in FOH 33h00. The operation by 16- and 17-year-olds of other bakery machines not specifically prohibited by the HO, while not encouraged, is permitted.

(2) This HO became effective prior to the 1961 and 1966 FLSA amendments which brought many previously uncovered retail bakeries and stores under the child labor provisions. Some machines prohibited by HO 11 are found in retail bakeries, pizzerias, restaurants, and other food service establishments (others are only found in wholesale bakeries). Violations often occur in small bakeries where there is little division of labor and most jobs are performed by all employees.

(3) The scope of this HO includes, among other activities, *operating, assisting to operate and cleaning* the named machines wherever found in a covered establishment. Manually operated (not power-driven) machines are outside the scope of HO 11. *Assisting to operate* the named machines includes the loading of ingredients into the machines (such as the placing of flour into a mixer) even when the machines are turned off when the loading is performed.

(4) HO 11 was revised in the 2010 Final Rule to include two exceptions related to certain lightweight, countertop food mixers and certain pizza-dough rollers (*see* FOH 33h11(d)(2) -(3)).

(b) Occupations prohibited

16- and 17-year-olds are prohibited from operating, assisting to operate, setting up, adjusting, repairing, oiling, or cleaning the following power-driven bakery machines:

(1) *Horizontal dough mixer*

A horizontal cylinder with a horizontal shaft with mixing arms revolves to mix the flour with water, yeast, salt, etc. to make dough. This prohibition includes operating a dough auger/feeder used to process masa for tortillas or tamales.

(2) *Vertical dough mixer*

A large bowl in which a vertical spindle with paddles attached mixes flour, water, etc. to make dough (often used in small bakery and some pizzerias).

(3) *Batter mixer*

Very similar to vertical dough mixer, except different shaped paddles are used; often used for making cake batter. Power-driven wands used to mix items such as batters are also prohibited.

(4) *Bread and/or roll dividing, rounding, or molding machines*

In the past, separate machines performed the operation of dividing, rounding, and molding of dough for bread and rolls. More modern machines are multifunctional and may perform two or all three of these operations. The process involves cutting dough into lumps (for one loaf or batch of rolls), rolling each lump into a ball, and after proofing, forming a loaf or a batch of rolls. The operation is often continuous, dough being carried from one machine to another by conveyor.

(5) *Dough brake*

A machine which rolls dough into sheets.

(6) *Dough sheeter*

A machine which rolls dough into very thin sheets. This prohibition includes pizza-dough rollers and tortilla roller/molders (also called *moulders*); but *see* special exception for operators of pizza-dough rollers discussed in FOH 33h11(d)(3).

(7) *Combination bread-slicing and wrapping machin*e

A machine that slices a loaf of bread and wraps it in a continuous process (generally only found in large, wholesale type bakeries).

(8) *Cake cutting band saw*

A machine for cutting baked cakes into squares or rectangles.

(9) *Cookie and cracker machine*

Combination machines which form cookies or crackers from dough. The operation is continuous, dough entering at one end and complete cookies or crackers, ready for baking, emerging at the other end. 16- and 17-year-olds may serve on a cookie and cracker machine crew which actually operates the machine while producing cookies or crackers. These minors, however, may not *set up or adjust* these machines (*see* FOH 33h11(c)(7)).

(c) Occupations not specifically banned

There are a number of occupations involving the operation of power-driven machines in industrial and retail bakeries that are permitted for 16-and 17-year-old minors, including the following:

(1) Ingredient preparation and mixing: flour-sifting machine operator, flour-blending machine operator, and sack-cleaning machine operator

(2) Product forming and shaping: batter-sealing machine operator, depositing machine operator, cookie or cracker machine crew member (but not involving the setting up or adjusting of the machine), wafer machine operator, pretzel-stick machine operator, pie-dough sealing machine operator, pie-dough rolling machine operator, pie-crimping machine operator, and wedge press operator

a. A wedge press is a machine that uses two plates, often one of which is heated, to press balls of dough into the desired shape. Such presses are often used to shape tortillas.

b. Because the original study that led to HO 11 did not address such presses which do not utilize rollers, and subsequent rulemaking did not expand the scope of the HO in this respect, HO 11 does not prohibit 16- and 17-year-olds from operating such machines.

(3) Finishing and icing: depositing machine operator, enrobing machine operator, spray machine operator, icing mixing machine operator

(4) Slicing and wrapping: roll slicing and wrapping machine operator, cake wrapping machine operator, carton packing and sealing machine operator

(5) Pan washing: spray type pan washing machine operator, tumbler type pan washing machine operator

(6) Donut and pastry filling: donut and pastry filling machines, including Homogenette and similar machines which automatically inject fillings into donuts and pastries

(7) Cookie or cracker machine crew member: 16- and 17-year-olds may work on a crew operating a cookie or cracker machine. These machines, found in some wholesale bakeries, usually require crews of two to six persons. But minors may not perform work involving the setting up or adjusting of the cookie or cracker machine. These tasks, more hazardous than the operation of the machine during production, are usually performed by the crew chief (*see* FOH 33h11(b)(9)).

(8) Bread slicing: 16- and 17-year-old bakery or deli clerks may operate bread slicing and roll slicing machines of the type usually found in retail bakeries

(9) Cleaning individual parts of power-driven bakery machines

a. HO 11 prohibits minors under 18 years of age from cleaning power-driven bakery machines, but this prohibition does not apply to the cleaning of the individual parts of such machines. Only employees over 18 years of age may dismantle or reassemble such machines.

b. 29 CFR 570.33(e) prohibits the employment of 14- and 15-year-olds in occupations which involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing power-driven food mixers. Such minors may, however, clean the disassembled parts of such machines.

(d) Exemptions

(1) There are no provisions in HO 11 for apprentices or student-learners. There are no other exemptions applicable to this HO.

(2) *Application of HO 11 to lightweight, small capacity, countertop food mixers*

a. 29 CFR 570.62(b)(1), effective 07/19/2010, provides an exception that allows 16- and 17-year-olds to operate, set up, adjust, repair, oil, and clean lightweight, small capacity, portable countertop power-driven food mixers that are, or comparable to, models intended for household use.

b. For purposes of this exemption, a lightweight, small capacity mixer is one that is not hardwired into the establishment's power source, is equipped with a motor that operates at no more than $\frac{1}{2}$ horsepower, and is equipped with a bowl with a capacity of no more than five quarts.

c. This exemption shall not apply when the mixer is used, with or without attachments, to process meat or poultry products as prohibited by 29 CFR 570.61(a)(4).

d. This exemption *does not extend* to the employment of 14- and 15-year-old workers. Minors under 16 years of age are prohibited from operating or tending power-driven machinery, including mixers, by Child Labor Reg. 3 (s*ee* 29 CFR 570.33(e)). That regulation prohibits such minors from operating, tending, setting up, adjusting, cleaning, oiling, or repairing food mixers.

e. The WHD has determined that the following mixers are the type that would normally fall within this limited exemption contained at 29 CFR 570.62(b)(1).

f. The K-Tec Batter Mixer Model LJS developed for the Long John Silvers quick service restaurant chain. The Model LJS weighs about eight pounds, is 11 inches in height, has a three quart capacity, and operates at $\frac{1}{16}$ horsepower.

g. The Kitchen Aide countertop mixer Model K5SSWH, which is available for home use, weighs 29 pounds, is 16.4 inches in height, has a five quart capacity, and operates at $\frac{6}{15}$ horsepower.

(3) *Application of HO 11 to certain power-driven pizza-dough rollers*

a. <u>Pizza-dough rollers</u>

Pizza-dough rollers, a type of dough sheeter, are normally prohibited under HO 11. But 29 CFR 570.62(b)(2) contains an exception that permits the employment of 16- and 17-year-olds to *operate* certain pizza-dough rollers that meet the following conditions:

1. they are constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers;

2. they have gears that are completely enclosed; and

3. they have microswitches that disengage the machinery if the backs or sides of the rollers are removed.

b. This exception applies only when all the safeguards in FOH 33h11(d)(3)a.1. - 3. above are present on the machine, are operational, and have not been overridden.

c. The policy described in FOH 33h11(d)(3)a. above does not extend to minors who set up, adjust, repair, oil, or clean the assembled machine.

(e) Enforcement positions

(1) *Operation and cleaning of power-driven bagel slicers*

a. Bagel slicers which operate as electric knives

16- and 17-year-old employees may operate and clean power-driven bagel slicers, such as the *Edgecraft Chef's Choice Bagel Pro Bagel Slicer*, which have two blades mounted next to each other running in opposing directions.

b. Bagel slicers with circular cutting blades

1. Some power-driven bagel slicers, like the *Oliver Products Bagel and Bun Slicer* (Model 702), meet the definition of a "circular saw" under HO 14. These machines saw bagels in half by means of a thin steel disc, having a continuous series of notches or teeth on the periphery, mounted on shafting. Although HO 11 does not address such bagel slicers, HO 14 would normally prohibit employees under 18 years of age from operating, setting up, adjusting, repairing, oiling, or cleaning such machines.

2. At the request of the WHD, NIOSH has examined the operation of these machines and has advised the WHD that employees 16 and 17 years of age who operate and clean such slicers (with circular blades and enclosed feed chutes) are exposed to low safety risks. NIOSH cited the machine's adjustable guard and the manufacturer's warning sign as important contributors to this low degree of risk.

3. The WHD *will not assert a violation* of HO 14 when 16- and 17-year-old employees operate a power-driven bagel slicer with a circular blade and enclosed feed chute when the machine is equipped with an adjustable guard that covers the feed chute and the manufacturer's warning sign is affixed to the machine. The WHD *will not assert a violation* of HO 14 when 16- and 17-year-old employees clean such machines. Such minors, however, continue to

be prohibited from setting up, adjusting, repairing, or oiling such machines.

c. All power-driven bagel slicers are "food slicers" under Child Labor Reg 3, and therefore, minors under 16 years of age may not operate, tend, set up, adjust, clean, oil, or repair such equipment (*see* 29 CFR 570.33(e)).

(2) *Operation of pie-dough rollers by 16- and 17-year olds*

a. The original investigative report establishing HO 11 determined that the operation of pie-dough rollers by 16- and 17-year-olds is safe; however, this determination applies only to those pie-dough rollers which involve a *completely automated process* as used in large wholesale bakeries.

1. This process includes the use of a pie-dough scaling machine which automatically cuts a predetermined portion of pie dough and drops it into the "hopper feed" of the pie-dough roller. The pie-dough roller then flattens the dough and automatically rotates the dough through an arc of 90 degrees. The pie dough is again flattened to form the desired final shape. The entire process eliminates any hand contact by the operator with the rollers during operation.

2. If a pie-dough roller operates as described above (in an entirely automatic process with a machine that cuts the dough into predetermined portions and drops it into a hopper feed or chute attachment that prevents an operator from making contact with any in-running points of the rollers), 16- and 17-year olds may operate this equipment.

3. If the pie-dough roller does not operate as described above, it is prohibited by HO 11.

b. Certain pie-dough rolling machines are very similar to pizza-dough roller machines in appearance and function (*see* FOH 33h11(d)(3) for a discussion about pizza-dough rollers). HO 11 prohibits the operation of all pie-dough rollers except those described in FOH 33h11(e)(2)(a) above. However, the WHD will not charge a violation of HO 11 regarding the employment of 16- and 17-year-olds who *operate* pie-dough rollers that are constructed with safeguards contained in the basic design that prevent fingers, hands, and clothing from being caught in the in-running point of the rollers; have gears that are completely enclosed; and have microswitches that disengage the machinery if the backs or sides of the rollers are removed. The policy applies to such machinery provided that all safeguards are present on the machine, are operational, and have not been overridden. This no-violation policy does not extend to minors who set up, adjust, repair, oil, or clean this equipment.

(3) *Application of HO 11 to dough mixers used to mix ingredients other than dough or batter and to attachments designed for uses other than dough or batters*

a. Under HO 11, the function of the agitators determines coverage of the HO. Therefore, a dough mixer used to mix vegetables is covered by HO 11 if the same agitators are used as for mixing dough. Agitators such as the flat beater, heavy-duty wire whip, dough arm, and sweet dough arm are covered by HO 11 because they are designed for use with dough and batter.

However, if the machine is equipped with separate agitators designed for use with vegetables or with icing, the functional use of the machine would be different and it would not be covered.

b. D-Wire Whip

Occasionally, manufacturers will report that some attachments are designed solely for use on products lighter than dough or batters such as whipping cream, egg whites, light icings, and meringues. This was the case with the D-Wire Whip manufactured by Hobart. Field experience has documented that employers are using the D-Wire-Whip to mix batters and other items like cream cheese despite the intentions or statements of the manufacturer. It is a violation of HO 11 for 16- and 17-year-olds to mix batter, cream cheese, or dough using a power-driven batter mixer or dough mixer, regardless of the design specifications or intentions of the manufacturer.

c. I-Wire Whip

The I-Wire Whip attachment, which is used for heavier products such as cake batter and heavy whipping cream, is also prohibited by HO 11 for use by 16- and 17-year-olds.

d. Cheese grater or cheese/vegetable slicer attachments

1. HO 11 prohibits 16- and 17-year-olds from placing attachments on vertical dough mixers (such as the cheese grater or vegetable slicer) or removing such attachments because those activities constitute the setting up and adjusting of a power-driven bakery machine.

2. HO 11 does not, however, prohibit 16- and 17-year-olds from operating attachments to vertical dough mixers that grate cheese or slice cheese and/or vegetables as long as someone at least 18 years of age sets up or adjusts the attachment. This is because these attachments negate the operation of the machine as a vertical dough mixer. The machine cannot be used as a power-driven bakery machine (a dough mixer) when such attachments are being used. However, such minors would be prohibited from operating any attachment to the mixer that processes meat, such as a meat chopper or sausage maker, because of HO 10.

33h12 HO 12: Power-driven balers, compactors, and paper products machines.

Name: occupations involved in the operation of balers, compactors, and paper products machines

Originally adopted: 09/11/1954

(a) Scope of HO 12

(1) HO 12 was issued in response to the finding that the paper products industry experienced a somewhat higher general frequency of injury rate than all manufacturing industries as a whole, and a somewhat higher frequency of the more serious types of injuries and of deaths. The prohibitions regarding scrap paper balers were established to combat the dangers of being caught in the plungers during the compression process and suffering strains and other injuries while moving the compressed bales.

(2) HO 12 prohibits those under 18 years of age from operating and assisting to operate certain power-driven machines used in the manufacture or conversion of paper or pulp into a finished product or in the preparation of such products for recycling or disposal. The HO applies wherever the machines are located when operated by a covered employee.

(3) HO 12 was revised, effective 02/14/2005 (*see* 69 FR 75393 for more information). The major revisions included:

a. Incorporating the provisions of the Compactors and Balers Safety Standards Modernization Act (08/06/1996) which created FLSA section 13(c)(5). This section, among other things, prohibits minors under 18 years of age from operating and unloading balers and compactor, and permits 16- and 17-year-olds to load, but not operate or unload, certain balers and compactors under specific conditions.

b. Expanding the prohibitions of the HO to include balers and compactors that process other materials in addition to paper. Prior to 02/14/2005, only balers and compactors that processed paper products *exclusively* fell under the prohibitions of HO 12 (*see* FOH 33h12(b)(1)a. for information regarding the impact of this revision).

(4) HO 12 was again revised by a Final Rule, effective 07/19/2010. That revision brought all power-driven compactors and balers, regardless of the materials being processed, under the prohibitions of HO 12. The revision also clarified that the limited exemption contained in FLSA section 13(c)(5) that allows 16- and 17-year-olds to load, but not operate or unload, certain equipment applies only to scrap paper balers and paper box compactors.

(5) *Definitions*

a. The term “operating or assisting to operate” means all work that involves starting or stopping a machine covered by this section, placing materials into or removing materials from a machine, including clearing a machine of

jammed materials, paper, or cardboard, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

b. The term "paper products" machine shall mean all power-driven machines used in:

1. the remanufacture or conversion of paper or pulp into a finished product, including preparation of materials for recycling; or

2. the preparation of such materials for disposal (whether the machines are used in establishments that manufacture converted paper or pulp products or in any other type of establishment).

c. Compactors

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

2. The term "compactor that is designed or used to process materials other than paper" means a powered machine that remains stationary during operation, designed or used to compact refuse other than paper or cardboard boxes into a detachable or integral container or into a transfer vehicle.

d. Balers

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

2. The term "baler that is designed or used to process materials other than paper" means a powered machine designed or used to compress materials other than paper and cardboard boxes, with or without binding, to a density or form that will support handling and transportation as a material unit without requiring a disposable or reusable container.

e. The term "applicable American National Standards Institute (ANSI) standard" means one of the standards listed in the chart contained in FOH 33h11(d)(2)a.1. The ANSI standard for scrap paper balers and paper box compactors govern the manufacturing and modification of the equipment, the operation and maintenance of the equipment, and employee training. The Secretary may add more recent standards to the chart upon finding that the newer standards are as protective of the safety of minors as those already on the list.

(b) Occupations prohibited

(1) HO 12 prohibits 16- and 17-year-olds from operating, assisting to operate, setting up, adjusting, repairing, oiling, or cleaning the following power-driven paper products machines, including those which do not involve hand-feeding, as well as balers and compactors:

a. <u>All balers and compactors, regardless of the materials being processed</u>

This prohibition includes equipment designed to process only paper, equipment designed to process materials other than paper, and equipment that can process both paper and other materials.

1. HO 12 was revised, effective 02/14/2005, to expand the prohibitions of the HO to include balers and compactors that process other materials in addition to paper. Prior to 02/14/2005, only those balers and compactors that processed paper products *exclusively (no other materials placed in the machine)* fell under the prohibitions of HO 12.

2. HO 12 was again revised, effective 07/19/2010, to prohibit youth under 18 years of age from operating, assisting to operate, setting up, adjusting, repairing, oiling, or cleaning all compactors and balers, regardless of the materials being processed.

3. Other materials which are 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.

b. <u>Arm type wire stitcher or stapler</u>

A power-driven machine, operated by a foot treadle, which stitches cartons together. The carton is held by the operator during the operation. May be single action or it may operate continuously.

c. <u>Circular or band saw</u>

Similar to and operating the same as woodworking saws, used for sawing fiber or corrugated paper stock. It is hand-fed.

d. <u>Corner cutter or mitering machine</u>

A type of punch press used for cutting away corners for set-up box blanks. May be horizontal or vertical, cutting one corner (single) or two corners (double) at a time. It is hand-fed, treadle operated, operating continuously when pedal is depressed.

e. Corrugating and single- or double-facing machine

A large machine which combines plain paperboard (liners) with corrugated paper (filler) to form corrugated paperboard. Single facing means a liner on one side; double facing means liners on both sides. Machine consists of a series of rolls which corrugates the center and glues the facing to it. Operating continuously from rolls of paper stock cutting to size as the last operation.

f. Envelope die-cutting press

A machine for cutting envelope blank. A die is placed by hand on a stack of paper and a plunger forces the die through the paper. May be single acting or continuous in operation.

g. Guillotine paper cutter or shear

A machine consisting of a heavy knife blade held vertically by the headwork of the machine used for cutting flat paper stock. Paper is placed on the bed of the machine by hand and the machine operated by a foot treadle, hand lever, or two-handed tripping device. Machine is single action, making one stroke at a time.

h. Horizontal bar scorer

A little used machine for scoring (cutting part-way through) heavy fiber stock. A die is supported by a head frame and when operated, descends into the fiber. The machine is foot operated and hand-fed.

i. Laminating or combining machine

A machine for gluing together two or more piles of paper to make a fiberboard. It operates in same manner as corrugating and single- or double-facing machine.

j. Sheeting machine

A machine for cutting sheets of paper from a roll of paper. Knives, mounted on revolving arms, cut the paper as it goes through the machine. It operates continuously, the operator threading the paper through the machine and taking away the cut sheets.

k. Vertical slotter

A machine for cutting slots in fiber or box board stock by means of a die which descends when the machine is operated. It is hand-fed, foot or hand operated. The eccentric type employs a toothed die, actuated by a horizontal eccentric-revolving shaft. It operates continuously and is hand-fed.

(2) HO 12 prohibits 16- and 17-year-olds from operating platen die-cutting presses, platen printing presses, and punch presses which involve hand-feeding of the

machines. It also prohibits these minors from setting up, adjusting, repairing, oiling, or cleaning these types of machines.

a. Platen die-cutting press

A machine for cutting paper stock by means of a die mounted on the frame of the press (the chase). Paper is placed on the platen which swings up against the die. It operates continuously.

b. Platen printing press

A machine similar to a platen die-cutting press, except that type for printing is mounted in the chase, instead of a die.

c. Punch press

A machine for cutting out paper stock by means of a die, mounted on a plunger, which descends when the press is operated. May be operated by foot treadle, lever, or two-handed tripping device. May be single acting or continuous.

(c) Occupations not specifically banned

(1) There are many machines used in the paper products industries which are not covered by this HO. The most important of these machines are the following:

- Bag machine, bag-making machine
- Bottoming machine (bags)
- Box-making machine (collapsible boxes)
- Bundling machine
- Calendar roll and plating machine
- Cigarette carton opener and tax stamping machine
- Clasp machine
- Counting, stacking, and ejecting machine
- Corner stayer
- Covering, lining, or wrapping machines (set-up boxes)
- Creping machine
- Dornbusch machine (wall paper)
- Ending machine (set-up boxes)

- Envelope machine
- Folding machine
- Gluing, scaling, or gumming machine
- Inter-folding machine
- Jogging machine
- Lacer machine
- Parchmentizing, waxing, or coating machines
- Partition assembling machine
- Quadruple stayer
- Rewinder
- Rotary printing press
- Ruling machine
- Slitting machine
- Straw winder
- Stripping machine
- Taping machine
- Tube cutting machine
- Tube machine (paper bags)
- Tube winder
- Window patch machine
- Wire or tag stringing machine

(2) HO 12 does not apply to machines which exclusively process leather or any substances other than paper or paper products (other than balers and compactors discussed below).

(d) Exemptions

(1) HO 12 contains an exemption for student-learners and apprentices.

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(2) *Loading of certain scrap paper balers and paper box compactors*

a. Pub. L. No. 104-174, signed 08/06/1996, amends section 13(c) of the FLSA to permit minors 16 and 17 years of age to *load (but not operate or unload)* certain scrap paper balers and paper box compactors *if all of the requirements listed below are met*. This exemption covers only the loading of such equipment, and only scrap paper balers and paper box compactors. No youth under 18 years of age may load any other type of compactor or baler. HO 12 (29 CFR 570.63) reflects this statutory language.

1. The employer must ensure that the equipment meets, and continues to meet, one of the ANSI standards listed in the chart below. One column of standards is specific to scrap paper balers and the other is specific to paper box compactors.

In order for employers to take advantage of the limited exception discussed in FOH 33h12(d), the scrap paper baler must meet one of the following ANSI standards:	In order for employers to take advantage of the limited exception discussed in this FOH 33h12(d), the paper box compactor must meet one of the following ANSI standards:
ANSI Standard Z245.5-1990	ANSI Standard Z245.2-1992
ANSI Standard Z245.5-1997	ANSI Standard Z245.2-1997
ANSI Standard Z245.5-2004	ANSI Standard Z245.2-2004
ANSI Standard Z245.5-2008	ANSI Standard Z245.2-2008

2. The ANSI standards are industry standards which govern the design, manufacture, operation, and maintenance of the equipment.

3. The FLSA does permit the Secretary to adopt any newer ANSI standards under HO 12 once it is determined that they are at least as protective of the safety of minors as the standards listed above.

4. The employer must provide notice and post a notice on each piece of equipment stating that the equipment meets the appropriate ANSI standard named above; that 16- and 17-year-olds may only load the equipment; and that any employee under 18 may not operate or unload such equipment.

A. The WHD has determined that posting a prominent and easily visible notice will also satisfy the requirement that notice be provided (*see* 29 CFR 570.63(c)(1)(iv)).

B. There is no one format that the notice must follow to satisfy the posting requirement, but the WHD believes that the intent of FLSA section 13(c)(5) will be satisfied if each notice:

i. 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 FLSA section 13(c)(5)(B)(i)(I);

ii. cites the specific ANSI standard, including the year of issuance, that the employer is providing notice that the equipment meets;

iii. includes a clear statement that 16- and 17-year-olds may only load the scrap paper balers and paper box compactors; and

iv. includes a clear statement that no employee under the age of 18 may operate or unload the scrap paper balers and paper box compactors.

C. The WHD has been advised that industry associations such as the Food Marketing Institute (FMI) and the National Grocers Association (NGA) have developed and marketed to their members notices or stickers believing that such notices or stickers comport with the requirements of FLSA section 13(c)(5).

i. The WHD has examined the sample notices or stickers created by both the NGA and the FMI and, as discussed in the preamble to the final rule that became effective on 02/14/2005, noted that these stickers do not satisfy the posting requirements of FLSA section 13(c)(5) (*see* 69 FR 75394). The stickers do not clearly identify the applicable ANSI standard as required. 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.

ii. The WHD will 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.

iii. The NGA and the FMI have also developed stickers to be placed on equipment that *do not* meet the requirements of the limited exemption contained in FLSA section 13(c)(5) 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 FLSA 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.

D. <u>Community-owned or -operated balers and compactors</u>

In certain situations, such as at a shopping mall, industrial park, office building, or military base, multiple employers may have access to and use community balers and compactors that the facilities manager or owner has made available to the tenants or contractors.

i. In these situations, it is not necessary for every employer (tenant) to post a notice as required by FLSA section 13(c)(5). The facilities manager or owner, or the owner of the equipment, may make the necessary postings and satisfy each employer's (tenant's) posting obligations under the exception.

ii. But should the notice not be accurate or complete (*i.e.*, the baler or compactor fails to meet the appropriate ANSI standard, or the notice fails to fully identify the appropriate ANSI standard) the burden of compliance remains with the employer (tenant) of any youth who loaded the equipment. An incomplete or inaccurate posting by the facilities manager or owner will not relieve a tenant from being charged with a violation of HO 12.

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iii. Employers cannot delegate their responsibilities for compliance by relying on the accuracy of notices posted by others.

5. The equipment must 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 at least 18 years of age. The other system may be a numerical touchpad but the passcode may not be shared with employees under the age of 18 years.

6. The on-off switch of the equipment must be maintained in an off position when the equipment is not in operation.

7. The equipment cannot be operated while it is being loaded.

b. The language and legislative history of the amendment make it clear that it is the responsibility of the employer to make the initial determination that the equipment to be loaded by 16- and 17-year-olds meets the appropriate ANSI standards. It is also the employer's responsibility to provide the notice and post it on each piece of equipment which is loaded by 16- and 17-year-olds. For enforcement purposes, the posting of the notice will also satisfy the requirement that notice be provided.

c. Loading of scrap paper balers and paper box compactors not only encompasses the placing of materials into the machines, but also includes placing materials into chutes that, by gravity, feed the materials to the machines. Loading also includes placing materials onto conveyors that, by power or gravity, then feed the materials into the balers or compactors.

(e) Enforcement positions

(1) *Laminators and packaging machines*

a. The type of laminators prohibited by HO 12 are those used to laminate or combine two or more sheets of paper or cardboard to form a multiple-ply product by applying an adhesive and running the paper through various pressure rolls.

b. Laminators, such as the GBC Pouch Laminator, which are designed to encase a document such as an identification card between two pieces of plastic by using heat in a simple process, are not subject to HO 12.

c. Machines designed to enclose and seal products (*e.g.*, pills and capsules) in packaging consisting primarily of plastic or foil and some cardboard or paperboard are not within the scope of HO 12. Names for this type of machine include dry mounting/laminating press, jumbo sealer, and the euclid cadet or cadet twin unit dose strip packaging machine.

(2) *Silk screen printing press*

This equipment, when designed to function in the same manner as the platen printing press, is prohibited for use by persons under the age of 18.

(3) *Three spindle paper drill* (*e.g.,* Challenge Model EH-3A)

This equipment, used for die-cutting or embossing operations, operates in the same manner as a hand-fed punch press. Minors under 18 years of age are prohibited from operating this equipment.

(4) *Kansmacker*

The kansmacker is a power-driven machine that sorts, counts, and flattens beverage cans. It is not covered by HO 12.

(5) *Decollators and bursters*

A decollator is a machine which separates stacks of multi-part paper into individual stacks (for each copy) while removing the carbon paper. It is often capable of trimming the pin feed holes from one or both sides. A burster is a machine that takes continuous single copy and bursts it into individual sheets or pages. These machines do not come within the definition of paper products machines and are not covered under HO 12.

(6) *Cylinder press*

HO 12 does not prohibit the operation of a cylinder press. Such machines are considered much less hazardous than platen presses, where feeding takes place at the point of operation.

(7) *Paper shredders*

The operation of paper shredders is not prohibited by HO 12. In addition, paper shredders of the type normally used in offices may be operated by minors 14 and 15 years of age.

(8) *Stitcher-trimmer machine*

a. A stitcher-trimmer machine automatically collates, stitches (inserts wire staples), and trims such things as pamphlets, periodicals, and other paper products. The WHD has examined stitcher-trimmer machines and has determined that HO 12 does not prohibit minors from operating those stitcher-trimmer machines that do not use a guillotine paper cutter or shear to trim the product. This machine is not to be confused with an arm type wire stitcher or stapler (a power-driven machine prohibited by HO 12, operated by a foot treadle, and used to stitch or staple cartons together (*see* FOH 33h12(b)(1)b.)).

b. HO 12 does prohibit youth under 18 years of age from operating those stitcher-trimmers that use a guillotine paper cutter or shear to trim the product. Such prohibited equipment includes the *STAHL ST-90* and the *Stitchmaster ST-100*, both manufactured by Heidelberg.

(9) *LiftPak compactor*

a. The LiftPak Compactor Model 1000, manufactured by LiftPak, L.C., is an indoor compactor that processes material, including paper products, by use of a ram. This equipment is often used by quick service restaurants. When it is time to unload the machine, a built-in cart containing the compacted waste is detached from the machine and manually wheeled to the dumpster. The operator then pushes a button on the cart and an electric lift raises the compacted refuse to the height of the dumpster. After the lift tray is released, the refuse is allowed to fall into the dumpster by gravity. The operator then lowers the lift and wheels the cart back to the main machine for reattaching.

b. Because the LiftPak Compactor Model 1000 is a compactor that processes materials such as food waste and plastic, in addition to paper products, youth under 18 years of age are prohibited from operating and unloading such equipment (as of 02/14/2005) and may only load such equipment if they meet the requirements of the exemption contained in HO 12 (*see* 29 CFR 570.63(c) and FOH 33h12(d)(2)). The prohibition on unloading includes all the activities associated with depositing the compacted refuse into the dumpster, including returning and reattaching the built-in cart to the equipment.

c. The WHD learned that LiftPak, L.C. has marketed the Model 1000 as a compactor that "*employees don't have to be 18 to operate…*" and has stated on its Webpage that the DOL has approved the equipment for use by employees 16 and older. Although such advertisements may have been proper prior to the publication of the Final Rule that modified HO 12, effective 02/14/2005, this information is no longer correct.

d. The electric lift that raises the detached compaction compartment to the height of the dumpster during the unloading process cannot be considered a hoisting apparatus prohibited under HO 7. But as mentioned in FOH 33(h)12(e)(9)b. above, the detaching, emptying, and reattaching of the container containing the waste is prohibited as "unloading" under HO 12.

33h13 HO 13: Brick, tile, and kindred products.

Name: occupations involved in the manufacture of brick, tile, and kindred products

Originally adopted: 09/01/1956

(a) Scope of HO 13

(1) The rate of injuries in the clay/silica construction products industry (as determined by the report establishing HO 13) exceeded the injury rate (including serious injuries) found in the majority of manufacturing establishments. The report attributed the higher frequency of worker injuries in this industry to lifting, carrying, and pushing heavy objects; bricks falling on workers, from stacks, or out of the workers' hands onto themselves; vehicle (*i.e.*, pedestrian accidents); machine injuries; and falls caused by slippery floors. The report recommended that an HO be created to ban the

employment of minors in most occupations in the clay/silica construction products industry.

(2) HO 13 is industry specific. It applies to all work in or about plants manufacturing clay construction products (except work in the drying departments of plants manufacturing sewer pipe, in storage and shipping, in offices, in laboratories, and in storerooms). It also applies to work in or about plants manufacturing silica brick, or other silica refractories, except work in offices.

(3) *Definitions*

a. The term "clay construction products" includes the following: brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products, such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. The term *does not* include non-structural clay products, such as ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience and similar tile. Nor does the term include non-clay construction products such as sand-lime brick, glass brick, or non-clay refractories.

b. The term "silica brick or other silica refractories" means refractory products produced from raw materials containing free silica as their main constituent.

c. The terms "drawing and wheeling" shall mean the process of removing brick, after it has cooled, from the kiln to storage.

(b) Occupations prohibited

(1) All occupations (except those permitted in FOH 33h13(c)(1)) in or about establishments engaged in manufacturing clay construction products. Examples of prohibited occupations/machines include crushers, granulators, dry pans, and screens; storage bin work; operators of pug mills, auger or extrusion machines; cutting machines; hackers; car pushers; sewer pipe press crew; brick forming machine crew; glaziers; setters, tossers; burners; and drawers.

(2) All work/occupations (except in offices) in establishments engaged in manufacturing silica brick or other silica refractories.

(c) Occupations not specifically banned

(1) The following are permissible occupations for establishments in the clay construction products industry:

a. Work in storage and shipping

b. Work in offices

c. Work in the drying departments of plants manufacturing sewer pipe

(2) Work in offices in establishments manufacturing silica brick or other silica refractories

(d) Exemptions

There are no provisions in HO 13 for apprentices or student-learners. There are no other exemptions applicable to this HO.

(e) Enforcement positions

(1) *Glazing of cylinders*

Work in and about a plant where silica, lime, and asbestos are mixed together to form a glaze (subsequently used to coat the inside of cylinders) is work prohibited by HO 13. The glaze contains free silica as a main constituent; consequently, the area where it is produced meets the definition of an establishment where silica refractories are manufactured (*see* 29 CFR 570.64(a)(2) and 29 CFR 570.64(b)(2)). In light of the preceding, work in or about such an establishment is prohibited.

(2) *Asbestos*

Asbestos is a form of magnesium silicate; however, it does not contain any free silica. Since it does not contain free silica, establishments manufacturing asbestos are not making a silica refractory and are not covered by HO 13.

(3) *Shipping and storage of brick*

a. Preparing bricks for storage, inside the manufacturing building and adjacent to the kilns (even after the bricks have been removed from the kiln and placed on flat cars) is work covered by HO 13. For example, stacking the bricks on skids, and strapping them down in order to move them to a storage area outside the building is work considered to be within the drawing and wheeling department and not within the purview of storage and shipping.

b. Removing bricks from inside the kiln in the process of loading them or moving them to storage is not work in storage and shipping, and therefore, is covered by HO 13.

(4) *Clay drain tile*

The setting and drawing of tile in clay drain tile plant is *prohibited* by HO 13.

33h14 HO 14: Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs.

Name: occupations involved in the operation of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs

Originally adopted: 11/15/1960

(a) Scope of HO 14

(1) HO 14 is broad and embraces the use of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs wherever they are used (other than in the industries where they are already prohibited by earlier

HOs). This HO differs from most other HOs in that it recognizes that the above named machines are banned irrespective of the specific industry in which they are used or the specific materials (*e.g.*, paper, meat, metal, etc.) upon which they are being used. The use of most saws and shears is prohibited by HO 4, HO 5, HO 8, HO 10, HO 11, and HO 12. HO 14 was issued to close the gap and protect youths working in other industries where such machines are used.

a. Examples include:

1. HO 4 prohibits the use of chain saws by minors in logging operations.

2. HO 5 prohibits the use of saws in woodworking operations such as furniture factories and construction sites.

3. HO 8 prohibits the use of guillotine shears on metal.

4. HO 10 prohibits the use of saws to cut meat and bones.

5. HO 11 prohibits the use of saws to cut bakery products.

6. HO 12 prohibits the use of saws and shears to cut paper products.

(2) HO 14 became effective before the 1961 and 1966 amendments to the FLSA that made previously non-covered retail stores subject to the child labor provisions. It was revised by the 2010 Final Rule (*see* 75 FR 28404), which added more types of prohibited machines. Since the scope of HO 14 is broad, it can be applied to circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs found in all establishments covered by the FLSA.

(3) Generally, the WHD will only charge a single violation when the same piece of equipment is prohibited by HO 14 and another HO (*e.g.*, HOs 5, 11, 12, etc.). The WHD normally will apply the provisions of HO 14 whenever a piece of equipment named in HO 14 is the subject of the violation. For example, wood chippers meet the definition of power-driven woodworking machines contained in 29 CFR 570.55(b), and therefore, are prohibited by HO 5. But because such equipment is specifically named in HO 14, and is used in a variety of establishments (saw milling, pallet shops, mulch manufacturing, landscape services, waste disposal, and recycling, etc.), the WHD will generally charge violations regarding the operating and assisting in the operation of wood chippers under HO 14.

(4) The scope of this HO includes operating, assisting to operate, setting up, adjusting, repairing, oiling, and/or cleaning the named equipment wherever found in a covered establishment.

(5) HO 14 covers only power-driven equipment; any occupation that involves only manually operated saws, cutting discs, or shears (not power-driven) is outside the scope of the HO.

(6) *Definitions*

a. The term "abrasive cutting disc" shall mean a machine equipped with a disc embedded with abrasive materials used for cutting materials.

b. The term "band saw" shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

c. The term "chain saw" shall mean a machine that has teeth linked together to form an endless chain used for cutting materials.

d. The term "circular saw" shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

e. The term "guillotine shear" shall mean a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

f. The term "reciprocating saw" shall mean a machine equipped with a moving blade that alternately changes direction on a linear cutting axis used for sawing materials. Jigsaws are reciprocating saws.

g. The term "wood chipper" shall mean a machine equipped with a feed mechanism, knives mounted on a rotating chipper disc or drum, and a power plant used to reduce to chips or shred such materials as tree branches, trunk segments, landscape waste, and other materials.

h. The term "operator" shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

i. The term "helper" shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

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

(b) Occupations prohibited

(1) HO 14 prohibits minors from performing the occupations of operator of or helper on power-driven circular saws, band saws, and guillotine shears, which are *not* equipped with full automatic feed and ejection.

(2) HO 14 prohibits minors from performing the occupations of operator of or helper on power-driven chain saws, reciprocating saws, wood chippers, and abrasive cutting discs; it does not matter if the machines are fixed or portable.

(3) HO 14 prohibits minors from performing the occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, or abrasive cutting discs regardless of the manner items are fed into or ejected from the machines.

(c) Occupations not specifically banned

Minors may operate or help in the operation of circular saws, band saws, and guillotine shears when the equipment is fitted with devices for full automatic feeding and ejection and with a fixed guard which prevents operators or helpers from placing any part of their bodies in the point-of-operation area. There is no such provision for operating or assisting in the operation of chain saws, reciprocating saws, wood chippers, or abrasive cutting discs.

(d) Exemptions

HO 14 does provide an exemption for student-learners and apprentices. No other exemptions apply.

(e) Enforcement positions

(1) HO 14 does not apply to the following machines as they fail to meet the specific definitions of circular saws, band saws, or guillotine shears:

- Alligator shears
- Circular knives
- Circular shears
- Friction saws
- Paper shredders
- Wire saws

(2) *Bagel slicers*

The WHD will not charge a violation of HO 14 when 16- or 17-year-old employees operate or clean certain types of bagel slicers that meet the HO's definition of a *circular saw* (*see* FOH 33h11(e)(1)b.3.).

33h15 <u>HO 15: Wrecking, demolition, and shipbreaking operations.</u>

Name: occupations involved in wrecking, demolition, and shipbreaking operations

Originally adopted: 11/15/1960

(a) Scope of HO 15

(1) The study promulgating HO 15 noted that wrecking and demolition work is fraught with many hazards including those involved with maintaining and operating power equipment; falls from many levels while working on scaffolds, on insecure walls and around unguarded material chutes; being struck by falling objects or swinging loads; collapse of walls; and other hazards such as the dangers of high voltage, fire, explosions, and muscle strains from handling heavy materials.

(2) HO 15 is industry-wide and deals with occupations performed on site of total or partial razing, demolishing, or dismantling of buildings, bridges, steeples, towers, chimneys, other structures, ships or other vessels, including clean-up and salvage work.

(3) *Definitions*

The term "wrecking, demolition, and shipbreaking operations" shall mean all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel.

(b) Occupations prohibited

All work, including clean-up and salvage work, performed at the site of the wrecking, demolition, or shipbreaking operations.

(c) Occupations not specifically banned

None.

(d) Exemptions

HO 15 does not contain an exemption for student-learners or apprentices. No other exemptions are applicable.

(e) Enforcement positions

(1) *Demolition work*

To be subject to HO 15, demolition work must be extensive, not just in conjunction with remodeling or repair work.

(2) *Asbestos removal*

The removal of asbestos or other hazardous materials from a building or other structure prior to demolition is not uncommon (it makes the work safer). Such work is subject to HO 15. But if the hazardous materials are being removed from the building or components of the building, such as pipes, and the building or the components remain in place to be re-insulated or recovered, the removal work will not constitute "demolition work" and is not covered by HO 15.

33h16 HO 16: Roofing operations and work on or about a roof.

Name: occupations in roofing operations and on or about a roof

Originally adopted: 12/27/1961

(a) Scope of HO 16

(1) At the time HO 16 was written, roofing had long been recognized as one of the most hazardous occupations in the building construction industry. The report establishing HO 16 determined the hazards associated with roofing (such as falling from roofs and leaning out over the edge of a roof to receive hoisted materials) were difficult to control and the resulting injuries were frequently very serious. In light of this, the report concluded that "all work performed in connection with the application of weatherproofing materials and substances to the roofs of buildings and structures is too hazardous for the employment of 16 and 17 year old persons."

(2) HO 16 was originally specific to the roofing industry, prohibiting all roofing industry operations, including those operations not performed on a roof. HO 16 was revised, effective 02/14/2005, to also prohibit all work on or about a roof (*see* 69 FR 75397 - 98).

(3) *Definitions* (*see* 29 CFR 570.67(b))

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

b. 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; 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.

1. 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.

2. Generally, 16- and 17-year-olds may legally perform certain occupations that require them to work at heights, such as painting, window washing, installing siding, and the power washing of walls. But such occupations would be prohibited when the minor is required to work in close proximity to a roof. The WHD has adopted two enforcement positions that provide guidance as to when the employment of a youth performing such occupations violates HO 16 because he or she is working *in close proximity to a roof* (*see* FOH 33h16(d)(1)).

(b) Occupations prohibited

(1) HO 16 prohibits all occupations in roofing operations. This includes work done on the ground such as material handling, tending tar kettles, and clean-up work.

(2) As of 02/14/2005, HO 16 also prohibits the performance of any work *on or about a roof.*

(3) Minors under 18 years of age are also prohibited from using a roof as a point of access, egress, or a platform from which to access or perform other work such as window washing or the rigging of window washing equipment.

(c) Exemptions

HO 16 does contain an exemption for student-learners and apprentices. There are no other exemptions applicable to this HO.

(d) Enforcement positions

(1) *Working in close proximity to a roof*

a. Single-story building

1. The WHD will not charge a violation of HO 16 when a minor is working in proximity to a roof of a one-story building as long as the minor's feet are never more than three feet off the ground level. *The three-foot tolerance is measured from the ground or pavement at the base of the building to the bottom of the minor's feet*.

2. The minor is still prohibited from performing any work described in FOH 33h16(a)(3) above.

b. Multistory building

1. The WHD will not charge a violation of HO 16 when a minor is working in proximity to a roof of a multistory building (a building of more than one story) if the minor always maintains a distance of at least three feet (36 inches) from the roof edge. *The 36 inches is measured from the top of the youth's head to bottom edge of the roof that is directly over (perpendicular to) the youth's head.*

2. A distance of three feet ensures that the working minor, no matter how long his or her reach, will not come into contact with the bottom edge of the roof of a multistory building.

3. Using a straight, vertical line from the top of the minor's head to the bottom of the roof's edge to measure the 36 inch allowance permits minors to work at various heights on buildings that do not have horizontal or single-level roof lines, such as split-level buildings, gabled buildings, and sheds.

c. The enforcement positions discussed in FOH33h16(d)(1)a. -b. above apply only as long as the minor does not use the roof to egress the work area and is not performing work that is prohibited by HO 16 or any other HO.

(2) *Removal of an old roof*

The tearing off of the old roof in conjunction with the installation of a new roof is considered a "roofing operation" and is *covered* under HO 16, notwithstanding that different mechanics may perform this work in various geographic areas.

(3) *Metal buildings*

a. Prior to 02/14/2005, the installation of metal roofs generally did not fall within the prohibitions of HO 16 because such work was normally performed entirely by ironworkers, steelworkers, or sheet metal mechanics (not by roofers). Consequently, in most instances, this work was not considered a "roofing operation" prohibited by HO 16. On 02/14/2005, HO 16 was revised to prohibit youth under 18 years of age from installing metal roofs, including those on metal buildings (*see* 29 CFR 570.67(b)).

b. Roofing companies do occasionally remove existing all-metal roofs and replace them, and the purlins, with a new roof. The work continues to be considered a "roofing operation" covered by HO 16.

(4) *Weatherproofing the top of television transmitting towers*

The definition of a "roofing operation" includes the application of weatherproofing materials to roofs of buildings, *or other structures* (*see* 29 CFR 570.67(b)). Consequently, weatherproofing the top of television transmitting towers is covered by HO 16.

(5) *Measuring a roof*

The measuring of a roof to estimate the cost of a new roof is work "performed in connection with the installation of roofs…" and it is covered by HO 16.

33h17 HO 17: Excavation operations.

Name: occupations in excavation operations

Originally adopted: 05/09/1963

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(a) Scope of HO 17

(1) Individuals employed in excavation operations (which includes trenching, building excavation, tunneling, and shaft sinking) are exposed to injury producing hazards such as cave-ins, falls climbing in and out of the excavated site, working in close proximity with heavy earth moving machines, and the fall of rock from the sides and roof of the site. Excavation operations were selected for study, according to the report establishing HO 17, because several states had requested an investigation by the department and because the department had received many reports concerning minors being injured while employed in excavation operations. Fatalities and injuries resulting from cave-ins are still a problem in the construction industry. On 04/17/1998, NIOSH issued a warning concerning the danger of cave-ins. This report stated that six workers were killed by cave-ins in the first 4 months of 1998, and that, on average, 60 people die each year in accidents caused by cave-ins.

(2) HO 17 is process specific. The scope of HO 17 includes all work excavating, working in, and backfilling trenches; excavating for buildings or other structures and working in such excavations; driving tunnels; and sinking shafts, except in certain specified situations (*see* FOH 33h17(c)). It does not include site clearing or surface grading operations, dredging and bore-hole drilling operations, and mining and quarrying operations covered by HO 3 and HO 9.

(3) *Definitions*

a. The term “excavation operation” means the removal of earth, rock, or other material to form a cavity below the surface of the ground.

b. The term “trenches” includes ditches (*see* Acting Administrator Flynn's letter of 01/24/1990).

c. The term “angle of repose” is that angle where the soil comprising the cut side walls no longer moves or it is at rest.

(b) Occupations prohibited

(1) HO 17 prohibits minors from working in occupations in excavating, working in, or backfilling (refilling) trenches (except they may *manually* excavate and/or backfill and work in trenches which do not exceed four feet in depth at any point (*see* FOH 33h17(c)(1))).

(2) HO 17 prohibits minors from working in occupations in excavating for buildings or other structures, or working in such excavations (except they may *manually* excavate to a depth not exceeding four feet below any ground surface adjoining the excavation and they may work in any excavation not exceeding four feet or where the side walls are shored or sloped to the angle of repose (*see* FOH 33h17(c)(2))).

(3) HO 17 prohibits minors from working in tunnels prior to the completion of all driving and shoring operations.

(4) HO 17 prohibits minors from working within shafts prior to the completion of all sinking and shoring operations.

(c) Occupations not specifically banned

(1) *Trenches*

16- and 17-year-olds may manually excavate, manually backfill, and work in trenches which do not exceed four feet in depth at any point.

(2) *Excavating for buildings and other structure*

a. 16- and 17-year-olds may manually excavate to a depth not exceeding four feet below any ground surface adjoining the excavation.

b. 16- and 17-year-olds may work in an excavation not exceeding a depth of four feet.

c. 16- and 17-year-olds may work in an excavation where the side walls are shored or sloped to the angle of repose.

(3) HO 17 *does not* apply to site clearing or surface grading operations, nor to dredging and bore-hole drilling operations.

(d) Exemptions

HO 17 does contain an exemption for student-learners and apprentices. There are no other exemptions applicable to this HO.

(e) Enforcement positions

Road graders

The use of road graders (power-driven earth moving equipment) in excavation operations is prohibited by HO 17. The study conducted by the department that established HO 17 did not include surface grading operations (*i.e.*, use of road graders). However, as HO 17 only permits *manual* excavation or backfilling and only at a depth of up to four feet (and road graders constitute mechanized excavation, often in ditches up to six feet in depth), the use of road graders is prohibited.