

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF LABOR
CHAPTER 21-6
SERIES IX

Title: Child Labor

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Title 42

Interpretive
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF LABOR
CHAPTER ~~21-6-e~~
SERIES ~~129~~

Title: Child Labor

Section 1. General

1.1 Scope - This ~~legislative~~ *interpretive* rule relates to Chapter 21, Article 6 - Child Labor Law.

1.2 Authority - W. Va. Code 21-6-11

1.3 Filing Date - December 31, 1982

1.4 Effective Date - April 14, 1975

Section 2. General Requirements

2.1 Work permits must be obtained for minors aged 14 through 15 before they can be legally employed. Work permits allow a minor to work between the hours of 5 a.m. and 8 p.m., but not during school hours, nor for more than eight hours on a non-school day, nor for more than 40 hours in a non-school week.

2.2 Age certificates can be required of minors aged 16 through 17 before they can be employed in many occupations.

2.3 Permits and certificates may be obtained from the County Board of Education in the county in which the minor resides. A written promise of intent to employ and proof of age are required for both work permits and age certificates. The minor in question, or the applicant, must personally present both to the county board office.

Section 3. No Permit Or Certificate Necessary

3.1 Minors of any age may be legally employed without a permit or certificate in the following occupations:

(a) Delivery of newspapers;

(b) Occasional babysitting;

(c) Acting or performing in motion pictures, theatrical, radio, or television productions;

(d) Working for his/her own parents in jobs other than manufacturing, mining or nonagricultural "hazardous" occupations as defined herein.

3.2 Minors aged 16 through 17 are not required to have an age certificate if employed in any of the occupations listed above, or if employed in

domestic service in private homes, in farm work, or in street trades. A street trade is a job in which no explicit employer-employee relationship exists. This includes occupations such as delivering of newspapers and shoe shining.

Section 4. Minors Aged 14 Through 15

4.1 Work Permits - Minors aged 14 through 15 must obtain a work permit before they can be legally employed. A three-part application for said permit may be obtained from the local County Board of Education or the West Virginia Department of Labor. Part A, an intent to employ, must be filled out by the employer. Part B is to be signed by the parent or guardian. Part C is to be completed by the local school principal, counselor, or teacher. Upon completion of this application, the applicant or minor seeking employment, must take the application and his/her birth certificate or other proof of age to the local board office.

Physical examinations are not required by the West Virginia Department of Labor; however, they may be required by the employer or the County Superintendent of Schools. Parents and applicants should ask about local requirements.

4.2 Work Permit To Minor Under 14 - Work permits are not generally issued to anyone under age 14. The only exception would be minors working in the school during school hours. The Department of Labor must give its approval in each individual case.

4.3 Supervision Permits - Minors aged 14 through 15 may not be employed during school hours on the days when school is in session. Otherwise, they may be employed between the hours of 5 a.m. and 8 p.m., not to exceed eight hours on a non-school day nor 40 hours in a non-school week.

To meet special circumstances, the Commissioner of Labor has the authority to issue supervision permits allowing minors aged 14 through 15 to work until 11 p.m. Supervision permits may be obtained only from the West Virginia Department of Labor. A valid work permit and an explanation of why work hours should be extended are the only requirements. The applicant, or the minor seeking employment, must apply. The permissible hours of work will then be stated on the supervision permit.

A new work permit or supervision permit must be obtained for each and every job.

4.4 Blanket Work Permit - A blanket work permit may be obtained when a large number of minors are employed for a short term (90 days or less), and separate work permits would be unwieldy and time-consuming.

Blanket work permits may be obtained only from the Commissioner of Labor and must be filled out by the employer. Required information consists of:

- (a) A letter from the employer stating his/her familiarity with the

Child Labor Law and intent to abide by this law; and

(b) A list containing the names, birthdates, ages, and job classifications of each minor.

This information must be sent to the Commissioner of Labor. Said listed minors may not be employed until this permit is received and acknowledged by the Commissioner. The employer will receive a letter of acknowledgement from the Commissioner of Labor, and must keep said acknowledgement on file for as long as these minors are in his/her employ.

4.5 Lifeguards - Minors may be employed as a lifeguard provided that he or she has completed a senior lifesaving course conducted by a qualified association such as the Red Cross and provided that he or she completed the ninth grade or reached the age of 15.

Work permits, or supervision permits, are further required as applicable.

4.6 Work Permitted For Minors Aged 14 And 15 - Fourteen and fifteen-year-old minors may be employed in:

- (a) Office and clerical work (including operation of office machines).
- (b) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.
- (c) Price marking and tagging by hand or machine.
- (d) Bagging and carrying out customers' orders.
- (e) Errand and delivery work by foot, bicycle, and public transportation.
- (f) Clean-up work, including the use of vacuum cleaners and floor waxers.
- (g) 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, dumb waiters, popcorn poppers, milk-shake blenders, and coffee grinders.
- (h) Work in connection with cars and trucks if confined to the following:

- Dispensing gasoline and oil
- Courtesy service
- Car cleaning, washing, and polishing
- Other occupations permitted by this section

But you may not do 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.

(i) Cleaning vegetables and fruits and wrapping, sealing, labeling, weighing, pricing, and stocking goods when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

(j) Use of a power driven lawn mower if all safety precautions are carefully followed.

4.7 Work Not Permitted Minors Aged 14 And 15 - Fourteen and fifteen-year-old minors may not be employed in the excluded occupations listed below:

(a) Manufacturing;

(b) Mining;

(c) Processing (except in a retail, food service, or gasoline service establishment in those specific occupations expressly permitted there in accordance with the foregoing list);

(d) Occupations requiring the performance of any duties in workrooms or workplaces where goods are manufactured, mined, or otherwise processed (except to the extent expressly permitted in retail, food service, or gasoline service establishments in accordance with the foregoing list);

(e) Public messenger service;

(f) Operation or tending of hoisting apparatus or of any power-driven machinery (other than office machines or machines in retail, food service, and gasoline service establishments which are specified in the foregoing list as machines which such minors may operate in such establishments);

(g) Any occupations found and declared to be hazardous by the Commissioner of Labor;

(h) Occupations in connection with:

1. transportation of persons or property by rail, highway, air, on water, pipeline or other means;
2. warehousing and storage;
3. communications and public utilities;
4. construction (including repair);

However, you may do office or sales work in connection with these occupations (not performed on transportation media or at the actual construction site).

(h) Any of the following occupations in a retail, food service, or gasoline service establishment:

1. work performed in or about boiler or engine rooms;
2. work in connection with maintenance or repair of the establishment, machines or equipment;
3. outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds or their substitutes;
4. cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking;
5. operating, setting-up, adjusting, cleaning, oiling or repairing power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers;
6. work in freezers and meat coolers and all work in preparation of meats for sale (except wrapping, sealing, labeling, weighing, pricing, and stocking when performed in other areas);
7. loading and unloading goods to and from trucks, railroad cars or conveyors.

Section 5. Minors Aged 16 And 17

5.1 Age Certificates - All minors aged 16 and 17 employed in any gainful occupation, can be required to have an age certificate, except when employed in domestic service in private homes, in farm work, or street trades.

The West Virginia Department of Labor does not require age certificates as a condition of legal employment of minors aged 16 and 17. Age certificates are recommended, however, to ensure the full rights of both employers and employees under the West Virginia Workmen's Compensation Law.

Minors aged 16 and 17 need only present proof of age and a promise of employment in order to obtain an age certificate. These certificates may be obtained at the County Board of Education in the county in which the minor resides.

Section 6. Minor Volunteer Fire Activities

6.1 Under no circumstances can any minor under age 16 participate in any fire activities.

6.2 Volunteer Fire Departments

(a) Minors aged 16 and 17 who have successfully completed a course of training in fire protection and related safety techniques may engage in limited fire-fighting activities provided that such minors are under the direct supervision and control of trained and qualified fire protection personnel. Written permission of the minor's parent or guardian is required and this written permission must be kept on file as long as the minor's name appears on the volunteer fire department's roster as a potential minor volunteer.

(b) No person under eighteen years of age shall be permitted to:

1. Drive any fire apparatus, ambulance, or other official fire vehicle; and/or operate red lights, siren, or an audible signal in responding to an alarm on their own personal vehicles or any other vehicle;
2. Operate an aerial ladder, aerial platform or hydraulic jack at a fire scene;
3. Use rubber electrical gloves, insulated wire gloves, insulated wire cutters, life nets, acetylene cutting units, K-12 power saws, air chisels, portapowers, hurst tools, or other equipment related to rescue and fire operations at a fire scene.
4. Operate the pumps of any fire vehicle while at the scene of a fire;
5. Enter a burning structure, except at designated training sessions at specified training schools conducted by the West Virginia Fire Service Training Program of West Virginia University or the West Virginia State Fire Marshal's office.

(c) Minors attending school shall not be permitted to respond to a fire during school hours unless such a request is made by the fire official in charge to the principal of the school.

(d) Minors shall be afforded the minimal personal protective equipment; i.e., boots, bunker coats, helmet, gloves, etc., as it relates to their work outlined in subsection (e) 3 and during training exercises that require such protective equipment.

(e) The activities of these minors shall be limited to:

1. Training;
2. First-aid;
3. Clean-up service at the scene of a fire, outside the structure, after the fire has been declared by the official in charge to be under control;

4. Coffee wagon and food service.

(f) In no case, however, shall these minors be permitted to:

1. Operate high pressure hose lines, except during training;
2. Ascend ladders, except during training activities.

6.3 Junior Forest Fire Crew Members

(a) Forest fire fighting is considered emergency work which must be performed. These minors must be sixteen or older, the consent of the minor's parents is required, and if the minor is in school, the consent of the school principal must be obtained before employing the individuals for emergency work during school hours.

(b) Such minors are to be under the direct supervision and control of a forest fire warden or fire official.

NOTE: All other provisions of the West Virginia Child Labor Law and the regulations promulgated thereunder affecting the employment of minors shall be applicable in all cases.

Section 7. Hazardous Occupations

7.1 These regulations provide a minimum age of 18 years for any non-agricultural occupation which the Commissioner of Labor "shall find and by order declare" to be particularly hazardous for 16 through 17 year-old persons, or detrimental to their health and well-being.

In addition to those hazardous occupations specifically listed in Article 6, Section 2 of the Code, the 17 hazardous occupations orders listed below apply either on an industry basis, specifying the occupations in the industry that are not covered, or in an occupational basis irrespective of the industry in which found. They cover nonagricultural occupations declared to be particularly hazardous for minors aged 16 through 17.

No minors under 18 years of age shall be employed in the following occupation:

7.2 Hazardous Occupations Orders in Nonagricultural Occupations

- (a) Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.
- (b) Occupations of motor vehicle driver and outside helper.
- (c) Coal mine occupations.

(d) Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

(e) Occupations involved in the operation of power-driven wood-working machines.

(f) Occupations involving exposure to radioactive substances and to ionizing radiations.

(g) Occupations involved in the operation of elevators and other power-driven hoisting apparatus.

(h) Occupations involved in the operation of power-driven metal-forming, punching, and shearing machines.

(i) Occupations in connection with mining, other than coal.

~~Part~~ (j) Occupations involving slaughtering, meat-packing or processing, or rendering.

(k) Occupations involved in the operation of certain power-driven bakery machines.

(l) Occupations involved in the operation of certain power-driven paper products machines.

(m) Occupations involved in the manufacture of brick, tile and kindred products.

(n) Occupations involved in the operation of circular saws, band saws, and guillotine shears.

(o) Occupations involved in wrecking, demolition, and ship-breaking operations.

(p) Occupations involved in roofing operations.

(q) Occupations in executive operations.

7.3 Exemptions - Nonagricultural Hazardous Occupations No's 5, 8, 10, 12, 14, 16, and 17 contain exemptions for student-learners provided they are employed under the following conditions:

~~(a) Student-Learners:~~ ^a (1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school; and ^b (2) each student-learner is employed under a written agreement which provides: ~~(a)~~ that the work of the student-learner is the occupations declared particularly hazardous

shall be incidental to his training; ²(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 instructions shall be given by the school and correlated by the employer with on-the-job training; and (d) that a schedule or organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of the student-learner and shall be kept on file by both the school and the employer. This exemption for the employment of student-learner may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder.

A high school or vocational school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner even though he is not yet 18 years of age.

Section 8. Text Of The Hazardous Occupations Orders In Nonagricultural Occupations Of The Fair Labor Standards Act -- Child Labor Provisions -- As Revised January, 1969, And Now Adopted By The West Virginia Department Of Labor

8.1 Manufacturing Or Storage Occupations Involving Explosives (Order No. 1) - The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components:

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

(b) The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

1. 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;
2. 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;
3. All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

4. All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.
5. All occupations involved in the loading, inspecting, packing, shipping, and storage of blasting caps.

(c) Definitions:

1. 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.
2. The terms "explosives" and "articles containing explosive components" mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers.
3. An area meeting all of the following criteria shall be deemed a "non-explosive area":
 - a. None of the work performed in the area involves the handling or use of explosives;
 - b. 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;
 - c. The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and
 - d. Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria (a) through (c).

8.2 Motor Vehicle Occupations (Order No. 2)

(a) Except as provided in paragraph (b). The occupations of motor vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type that is particularly hazardous for the employment of minors between 16 and 18 years of age.

(b) Exemptions

1. Incidental and occasional driving. The finding and declaration in paragraph (a) shall not apply to the operation of automobile or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours; provided, such operation is only occasional and incidental to the child's employment; that the child holds a state license valid for the type of driving involved in the job which he performs and has completed a state approved driver education course; and provided further, that the vehicle is equipped with a seat belt or similar device for the driver and for the each helper, and the employer has instructed each child that such belts or other devices must be used. This subparagraph shall not be applicable to any occupation of motor vehicle driver which involves the towing of vehicles.
2. School bus driving. The finding and declaration in paragraph (a) shall not apply to driving a school bus during the period of any exemption which has been granted in the discretion of the Secretary of Labor on the basis of an application filed and approved by the governor of the state in which the vehicle is registered. The secretary will notify any state which inquires of the information to be furnished in the application. Neither shall the finding and declaration in paragraph (a) apply in a particular state during a period not to exceed the first 40 days after this amendment is effective while application for such exemption is being formulated by such state seeking merely to continue in effect unchanged its current program such drivers, nor while such application is pending action by the secretary.

(c) Definitions

1. The term "motor vehicle" shall mean any automobile, truck, truck-tractor, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.
2. The term "driver" shall mean any individual who, in the course of his employment, drives a motor vehicle at any time.
3. The term "outside helper" shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.
4. The term "gross vehicle weight" includes the truck chassis with lubricants, water and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body, and special chassis and body equipment, and payload.

8.3 Coal Mine Occupations (Order No. 3)

(a) All occupations in or about any coal mine, except the occupation of slate or other refuse picking at a picking table or picking chute in a tippie or breaker and occupations requiring the performance of duties solely in offices or in repair or maintenance shops located in the surface part of any coal mining plant.

(b) Definitions

1. The term "coal" shall mean any rank of coal, including lignite, bituminous, and anthracite coals.
2. The term "all occupations in or about any coal mine" shall mean all types of work performed in any underground working, open pit, or surface part of any coal mining plant that contributes to the excavation, grading, cleaning, or other handling of coal.

8.4 Logging And Sawmill Occupations (Order No. 4) - All occupations in logging and all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill except the following:

(a) Exceptions applying to logging:

1. Work in offices or in repair or maintenance shops;
2. Work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps;
3. Work in timber cruising, surveying, or logging-engineering parties; work in forest protection, such as clearing fire trails or roads piling and burning slash, maintaining fire-fighting equipment, constructing and maintaining telephone lines, or acting as fire lookout or fire patrolman away from the actual logging operations: Provided, that the provisions of this paragraph shall not apply to the felling 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 testles;
4. Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cord-wood, or similar products, when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by this section;
5. Work in the feeding or care of animals.

(b) Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill: Provided,

that these exceptions do not apply to a portable sawmill, the lumber yard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained; and further provided, that these exceptions do not apply to work which entails entering the sawmill building:___

1. Work in offices or in repair or maintenance shops;
2. Straightening marking or tallying lumber on the dry chain or the dry drop sorter;
3. Pulling lumber from the dry chain;
4. Clean-up in the lumberyard;
5. Piling, handling, or shipping or cooperage-stock in yards or storage sheds, other than operating or assisting in the operation of power-driven equipment;
6. Clerical work in yards or shipping sheds, such as done by ordermen, tallymen, and shipping clerks;
7. Clean-up work outside shake and shingle mills, except when the mill is in operation;
8. Splitting shakes manually from pre-cut and split blocks with a froe and mallet, except inside the mill building or cover;
9. Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover;
10. Manual loading of bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury to himself.

(c) Definitions

1. The term "all occupations in logging" shall mean all work performed in connection with the felling of timber; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cord-wood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting, and unloading of such products in connection with logging; the constructing, repairing, and maintenance of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging;

and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timber-stand improvement, or in emergency firefighting.

2. The term "all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill" shall mean all work performed in or about any such mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, 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. The term shall not include work performed in the planing-mill department or other manufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill.

8.5 Power-Driven Woodworking Machine Occupations (Order No. 5) - The following occupations involved in the operation of power-driven woodworking machines:

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

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

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

(d) Definitions

1. The term "power-driven woodworking machines" shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stamping, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer.
2. The term "off-bearing" shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include: (a) 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 (b) the following operations when they do not involve the removal of material or refuse directly from a saw table

or from the point of operation: the carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

8.6 Occupations Involving Exposure To Radioactive Substances And To Ionizing Radiations (Order No. 6)

(a) Any work in any workroom in which (1) radium is stored or used in the manufacture of self-luminous compound; (2) self-luminous compound is made, processed, or packaged; (3) self-luminous compound is stored, used or worked upon; (4) incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; (5) other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee of Radiation Protection, as set forth in the 40-hour week column of Table One of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," issued June 5, 1959.

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

(b) Definitions

1. As used in this section: the term "self-luminous compound" shall mean any mixture of phosphorescent material and radium, mesothorium, or other radioactive element; the term "workroom" shall include the entire area bounded by walls of solid material and extending from floor to ceiling; the term "ionizing radiations" shall mean alpha and beta particles, electrons, protons, neutrons, gamma, and X-ray and all other radiations which produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and X-ray.

8.7 Power-Driven Hoisting Apparatus Occupations (Order No. 7)

(a) The following occupations involved in the operation of power-driven hoisting apparatus:

1. Work operating an elevator, crane, derrick, hoist, or highlift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding 1 ton capacity.
2. Work which involves riding on a manlift or on a freight elevator,

except a freight elevator operated by an assigned operator.

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

(b) Definitions

1. The term "elevator" shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators, (including portable elevators or tiering machines) but shall not include dumbwaiters.
2. The term "crane" shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, hammerhead, ingot-pouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semigantry, semiportal, storage bridge, tower, walker jib, and wall cranes.
3. The term "derrick" shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys and braces, with or without a boom, for use with a hoisting mechanism and operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, ginpole, guy, and stiff-leg derricks.
4. The term "hoist" shall mean a power-driven apparatus for raising or lowering a car or platform running in guides. The term shall include all types of hoist, such as base-mounted electric, clevis suspension, hock suspension, monorail, overhead electric, simple drum, and trolley suspension hoists.
5. The term "high-lift truck" shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork, or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift truck known under such names as fork-lifts, fork trucks, forklift trucks, tiering trucks, or stacking trucks, but shall not mean lowlift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.
6. The term "manlift" shall mean a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or

attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable, or chain operation in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top or bottom.

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

1. Definitions as used in this exception:

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

8.8 Power-Driven Metal Forming, Punching, And Shearing Machine Occupations (Order No. 8.)

(a) The occupations of operator of or helper on 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 or punching machines, such as punch presses, except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator

from entering the area between the dies; power presses; and plate punches.

3. All bending machines, such as apron brakes and press brakes.
4. All hammering machines, such as drop hammers and power hammers.
5. All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.

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

(b) Definitions

1. The term "operator" shall mean a person who operates a machine covered by the Order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.
2. The term "helper" shall mean a person who assists in the operation of a machine covered by this Order by helping place materials into or remove them from the machine.
3. The term "forming, punching, and shearing machines" shall mean power driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching, and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

8.9 Occupation In Connection With Mining, Other Than Coal (Order No. 9)

(a) All occupations in connection with mining other than coal, except the following:

1. Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground.
2. Work in the operation and maintenance of living quarters.
3. Work outside the mine in surveying, in the repair and maintenance of roads, and in general clean-up about the mine property such as clearing brush and digging drainage ditches.

4. Work of track crews in the building and maintaining of sections of railroad track located in those areas of open-cut metal mines where mining and haulage activities are not being conducted at the time and place that such building and maintenance work is being done.
5. Work in or about surface placer mining operations other than placer dredging operations and hydraulic placer mining operations.
6. The following work in metal mills other than in mercury-recovery mills or mills using the cyanide process: (a) Work involving the operation of jigs, sludge tables, flotation cells, or drier-filters; (b) Work of hand sorting at picking table or picking belt, (c) General clean-up work.

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

(b) Definitions

1. As used in the section: The term "All occupations in connection with mining, other than coal" shall mean all work performed underground in mines and quarries; on the surface at underground mines and underground quarries; in or about 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 where such operations are performed as a part of manufacturing process. The term shall not include work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded, and further processed, or plants manufacturing clay, glass, or ceramic products. Neither shall the term include work performed in connection with coal mining, in petroleum production, in natural gas production, nor in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes.

8.10 Occupations Involving Slaughtering, Meat-Packing Or Processing, Or Rendering (Order No. 10)

- (a) The following occupations in or about slaughtering and meat-packing establishments, rendering plants, or wholesale, retail, or service establishments:

immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

4. The term "curing cellar" shall include that workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include that workroom or workplace where meats are smoked.
5. The term "hide cellar" shall include that workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.
6. The term "boning occupations" shall mean the removal of bones from meat cuts. It shall not include work that involves cutting, scraping, or trimming meat from cuts containing bones.

(c) Exemptions - This Order shall not apply to the killing and processing of poultry, rabbits, or small game in areas physically separated from the killing floor.

*NOTE: The term "bacon-slicing machine" as used in this Order refers to those machines which are designed 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.

8.11 Power-Driven Baker Machine Occupations (Order No. 11)

(a) The following occupations involved in the operation of power-driven bakery machines:

1. The occupations of operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or verticle dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machine; or cake-cutting band saw.
2. The occupation of setting up or adjusting a cookie or craker machine.

8.12 Power-Driven Paper Machine Occupations (Order No. 12)

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

1. Arm-type stitcher or stapler, circular or band saw, corner cutter or mitering machines, corrugating and single or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting

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1. All occupations on the killing floor, in curing cellars, and in hide cellars, except the work of messengers, runners, hand-truckers, and similar occupations which require entering such workrooms or workplaces infrequently and for short periods of time.
2. All occupations involved in the recovery of lard and oils, except packaging and shipping of such products and the operation of lard-roll machines.
3. All occupations involved in tackage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer, ingredients, and similar products.
4. All occupations involved in the operation or feeding of the following power-driven meat-processing machines, including the occupation of setting up, adjusting, repairing, oiling, or cleaning such machines: meat patty-forming machines, meat and bone-cutting saws, knives (except bacon-slicing machines), head splitters, and guillotine cutters; snout pullers and jaw pullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping, and finishing machines; grinding, mixing, chopping, and hashing machines; and presses (except belly-rolling machines).
5. All boning occupations.
6. All Occupations that involve the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.
7. All occupations involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

(b) Definitions

1. The term "slaughtering and meat-packing establishments" shall mean places in or about which cattle, calves, hogs, sheep, lambs, goats or horses are killed, butchered, or processed. Term shall also include establishments which manufacture or process meat products or sausage casings from such animals.
2. The term "rendering plants" shall mean establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.
3. The term "killing floor" shall include that workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are

machine, scrap-paper baler, or vertical slotter.

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

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

(b) Definitions

1. The term "operating or assisting to operate" shall mean all work which involves starting or stopping a machine covered by this Order, placing materials into or removing them from the machine, or any other work directly involved in operating the machine.
2. The term "paper products machine" shall mean power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. The term is understood to apply to such machines whether they are used in establishments that manufacturer converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

8.13 Occupations Involved In The Manufacturing Of Brick, Tile, And Kindred Products (Order No. 13)

(a) The following occupations involved in the manufacture of clay construction products and of silica refractory products:

1. All work in or about establishment in which clay construction products are manufactured, except (a) work in storage and shipping; (b) work in offices, laboratories, and store rooms; and (c) work in the drying departments of plants manufacturing sewer pipe.
2. All work in or about establishment in which silica brick or other silica refractories are manufactured, except work in offices.
3. Nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupations order issued by the Secretary of State.

(b) Definitions

1. The term "clay construction products" shall mean the following clay products: bricks, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. The term shall not include the following nonstructural-bearing clay products:

ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor shall the term include nonclay construction products such as sand-lime brick, glass brick, or nonclay refractories.

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

8.14 Occupations Involved In The Operation Of Power-Driven Circular Saws, Band Saws, And Guillotine Shears (Order No. 14)

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

1. Circular saws.
2. Band saws.
3. Guillotine shears.

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

(b) Definitions

1. The term "operator" shall mean a person who operates a machine covered by this Order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machines, or any other functions directly involved in operation of the machine.
2. The term "helper" shall mean a person who assists in the operation of a machine covered by this Order by helping place materials into or remove them from the machine.
3. The term "machines equipped with full automatic feed and ejection" shall mean machines covered by this Order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.
4. The term "circular saw" shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery mounted on shafting, and used for sawing materials.
5. The term "band saw" shall mean a machine equipped with an endless

steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

6. The term "guillotine shear" shall mean a machine equipped with a moveable 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.

8.15 Occupations Involved In Wrecking, Demolition, And Shipbreaking Operations (Order No. 15)

- (a) All occupations in wrecking, demolition, and shipbreaking operations.

- (b) Definitions

1. The term "wrecking, demolition, and shipbreaking operations" shall mean all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, or other structure, ship, or vessel.

8.16 Occupations In Roofing Operations (Order No. 16)

- (a) All occupations in roofing operations.

- (b) Definitions

1. The term "roofing operations" shall mean all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate, metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term shall also include all work performed in connection with:
 - (a) the installation of roofs, including related metal work such as flashing, and
 - (b) alterations, additions, maintenance, and repair, including painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

8.17 Occupations In Excavation Operations (Order No. 17)

- (a) The following occupations in excavation operations:

1. Excavating, working in, or backfilling (refilling) trenches, except
 - (a) manually excavating or manually backfilling trenches that do not

exceed four feet in depth at any point, or (b) working in trenches that do not exceed four feet in depth at any point.

2. Excavating for buildings or other structures or working in such excavations, except (a) manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or (b) working in an excavation not exceeding such depth, or (c) working in an excavation where the side walls are shored or sloped to an angle of repose.
3. Working within tunnels prior to the completion of all driving and shoring operations.
4. Working within shafts prior to the completion of all sinking and shoring operations.

Section 9. Responsibilities As An Employer

9.1 An employer is responsible that each minor in his employ has procured an appropriate employment or age certificate or that the minor is the proper age for the occupation and hours for which he is employed.

The employer must keep on file in his establishment a copy of such certificate as long as the minor is in his employ.

The employer is also responsible that the minors in his employ do not, with or without his knowledge or consent, engage in hazardous occupations prohibited to certain young workers.

9.2 Workmen's Compensation Insurance - Illegally employed minors are excluded from the compensation act.

9.3 Age Certificates - All minors between sixteen and eighteen years of age, employed in any gainful occupation, can be required to have an age certificate except when employed in domestic service in private homes, in farm work or street trades.

9.4 Work Permits - All minors under sixteen years of age, employed in any gainful occupation, must obtain a work permit, except during out of school hours in domestic service in private homes, or farm work.

Any minor between fourteen and sixteen years of age who desires to work after 8:00 p.m. due to extenuating circumstances must obtain a supervision permit from the West Virginia Department of Labor.

9.5 Obtaining A Certificate - Minors under sixteen years of age must first obtain a promise of employment in writing from an employer, stating the

nature of employment offered and the hours of the day to be employed. Accompanied by his/her parent or guardian, the minor must apply in person for the appropriate certificate to the County Superintendent of Schools or such other person as may be designated by him to issue certificates. The promise of employment and proof of age, such as a birth certificate or other valid evidence of age, must be presented when making application. A record of physical examination MAY be required.

Minors sixteen years of age or over need only present a promise of employment and proof of age in order to obtain an age certificate.

Section 10. Instructions For Local Officials Issuing Work Permits and Age Certificates

10.1 Information For Issuing Officers

(a) Work permits and age certificates are issued by the County Superintendent of Schools where the minor resides or by some persons authorized by him in writing.

(b) Forms are prepared and furnished by the Commissioner of Labor, Charleston, West Virginia, to the County Superintendent of Schools.

(c) State work permits and age certificates are acceptable as proof of age under the child-labor provision of the Fair Labor Standards Act through cooperative arrangements with the United States Department of Labor.

(d) The minor must appear in person before the issuing officer to obtain a work permit or age certificate.

10.2 Procedure For Issuing A Work Permit Or Age Certificate

(a) Issuing officer will interview minor to discuss:

1. The job minor wants to do and why he wants to work;
2. The child labor and school attendance laws;
3. The importance of completion of high school;
4. What minor must do to obtain a work permit or age certificate.

(b) Application for Employment Certificates - Form 1

1. One copy of Form 1 will be completed when minor applies for a Work Permit or Age Certificate and kept in issuing officer's files. A new permit or certificate is required for each change in job and place of employment.

2. Instructions for completing the application: (a) Intention to Employ - minor will have this section completed and signed first. The extra line under the hours section is for reporting variations in scheduled hours of employment; (b) Parent's Consent - After Intention to Employ has been completed, minor will have parent or guardian complete this section, (c) School Record - (NOTE: A school record is required except for high school graduates or vacation employment) Minor will have the principal or teacher of the last school he/she attended to complete this section.

(c) Proof of Age - (NOTE: This must be obtained before a work permit or age certificate is issued.)

1. The Issuing Officer should have minor submit an unaltered birth certificate or an attested transcript thereof. The Issuing Officer will explain how a birth certificate can be obtained if minor does not have one.
2. The following documents may be accepted when the issuing officer has been thoroughly convinced that a birth certificate is not available:
 - a. Baptismal record or certificate or an attested transcript thereof that shows minor's date of birth and place of baptism;
 - b. A bona fide family Bible record of the date and place of minor's birth;
 - c. Documentary evidence approved by the State Commissioner of Labor such as a passport or a life insurance policy at least one year old.

(d) Issuing Officer will instruct minor to return to his office with the completed application and proof of age.

(e) Issuing Officer will review the completed application and proof of age submitted.

1. A determination will be made whether the employment is legal under both the State and Federal Child Labor Laws. Additional information on child labor may be found in the Federal Fair Labor Standards Act which may be secured from your district office of the United States Department of Labor.
2. The issuing officer may check with the prospective employer on any points in his Statement of Intention To Employ that need to be clarified.

10.3 Work Permit -- Form II

(a) Form II will be used to issue a work permit to minors aged 14 and 15 for employment in any gainful occupation, except agriculture, horticulture, or domestic service in a private home.

1. Full-time employment is work during school hours.
2. Outside school hours employment is work outside school hours when school is in session.

(b) The permit will be made out in triplicate.

1. Copy for the employer.
2. Copy for the Commissioner of Labor.
3. Copy for the issuing officer's files.

(c) Completion of form.

1. The type of permit will be designated by a check in one of the two boxes at the top of the permit.
2. All items should be completed.
3. Minor should sign the permit in the presence of the issuing officer.
4. Signature of issuing officer must appear on the permit.

10.4 Age Certificate -- Form III

(a) Form III will be used to issue an age certificate, upon request, to minors sixteen and over for agricultural as well as nonagricultural employment.

(b) The certificate will be made out in triplicate. The distribution is the same as for the work permit.

(c) Completion of form.

1. All items should be completed when the age certificate is issued.
2. Hours of employment are not required on the age certificate.
3. Minor should sign the permit in the presence of the issuing officer.
4. Signature of issuing officer should appear on the certificate.

10.5 Revocation

(a) The Commissioner of Labor may at any time revoke a certificate or permit, if in his judgement, it was improperly issued.

(b) The issuing officer will be notified of such action; the minor may not be employed until a new certificate has been legally obtained.

10.6 Supervision Permit

(a) The Commissioner of Labor prescribes the conditions and terms of this permit and is the only person authorized to issue it.

(b) Issued to meet special circumstances such as extending the hours for a 14 and 15-year-old minor past 8:00 p.m.

(c) Conditions of issuance after a careful investigation by the Commissioner of Labor:

1. Minor's work will be supervised by a responsible party;
2. The best interests of the child will be promoted.

(d) A supervision permit is valid only by complete compliance with the prescribed terms and conditions.

10.7 Enforcement

(a) Powers of the Commissioner - The Commissioner of Labor may make, amend, alter, or rescind any rules and regulations for the effective administration and enforcement of the West Virginia Child Labor Laws.

The Commissioner of Labor or his authorized representatives may make any inspection or investigation which in his judgement, is necessary to administer and enforce the Child Labor Law and these rules and regulations. They have authority to enter and inspect establishments and have access to all files and records of employers which may concern minors in their employ.

(b) Rights to Petition and Hearing - Any person wishing a revision of any of these regulations may submit a petition to the Commissioner of Labor setting forth the changes desired and the reasons for proposing them.

The Commissioner of Labor, upon inspection of the petition, and believing that the grounds are reasonable, may schedule a hearing with due notice to interested persons, or make other provisions for affording interested persons the opportunity to present data, views, and arguments relating to any proposed changes.

(c) Penalty for Violation - Any person, firm or corporation violating any provision of these rules and regulations shall be subject to the penalties prescribed in Chapter 21-6-11 of the West Virginia Code.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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SECRETARY OF STATE
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JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: Andy Brown
AGENCY: Dept. of Labor
FROM: JUDY COOPER, DIRECTOR ADMINISTRATIVE LAW DIVISION
DATE: Nov. 20, 1990

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 9 TITLE Labor

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Shelby B. Leary
TITLE OF PERSON SIGNING: Director, Wage & Hour
DATE: 12-3-90

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

TITLE 42
INTERPRETIVE RULE
DEPARTMENT OF LABOR

SERIES 9
CHILD LABOR

§42-9-1. General.

1.1. Scope. -- This interpretive rule relates to article six, chapter twenty-one of the West Virginia Code -- Child Labor Law.

1.2. Authority. -- W. Va. Code §21-6-11

1.3. Filing Date. -- December 31, 1982

1.4. Effective Date. -- April 14, 1975

§42-9-2. General Requirements.

2.1. Work permits must be obtained for minors aged fourteen (14) through fifteen (15) before they can be legally employed. Work permits allow a minor to work between the hours of five a.m. and eight p.m., but not during school hours, nor for more than eight (8) hours on a nonschool day, nor for more than forty (40) hours in a nonschool week.

2.2. Age certificates can be required of minors aged sixteen (16) through seventeen (17) before they can be employed in many occupations.

2.3. Permits and certificates may be obtained from the County Board of Education in the county in which the minor resides. A written promise of intent to employ and proof of age are required for both work permits and age certificates. The minor in question, or the applicant, must personally present both to the county board office.

§42-9-3. No Permit Or Certificate Necessary.

3.1. Minors of any age may be legally employed without a permit or certificate in the following occupations:

(a) Delivery of newspapers;

(b) Occasional babysitting;

(c) Acting or performing in motion pictures, theatrical, radio or television productions;

(d) Working for his/her own parents in jobs other than manufacturing, mining or nonagricultural "Hazardous" occupations as defined herein.

3.2. Minors age sixteen (16) through seventeen (17) are not required to have an age certificate if employed in any of the occupations listed above, or if employed in domestic service in private homes, in farm work or in street trades. A street trade is a job in which no explicit employer-employee relationship exists. This includes occupations such as delivering of newspapers and shoe shining.

§42-9-4. Minors Aged Fourteen (14) Through Fifteen (15).

4.1. Work permits. Minors aged fourteen (14) through fifteen (15) must obtain a work permit before they can be legally employed. A three (3) part application for said permit may be obtained from the local County Board of Education or the West Virginia Department of Labor. Part A, an intent to employ, must be filled out by the employer. Part B is to be signed by the parent or guardian. Part C is to be completed by the local school principal, counselor or teacher. Upon completion of this application, the applicant or minor seeking employment, must take the application and his/her birth certificate or other proof of age to the local board office.

Physical examinations are not required by the West Virginia Department of Labor; however, they may be required by the employer or the County Superintendent of Schools.

Parents and applicants should ask about local requirements.

4.2. Work permit to minor under fourteen (14). Work permits are not generally issued to anyone under age fourteen (14). The only exception would be minors working in the school during school hours. The Department of Labor must give its approval in each individual case.

4.3. Supervision permits. Minors aged fourteen (14) through fifteen (15) may not be employed during school hours on the days when school is in session. Otherwise, they may be employed between the hours of five a.m. and eight p.m., not to exceed eight (8) hours on a nonschool day nor forty (40) hours in a nonschool week.

To meet special circumstances, the Commissioner of Labor has the authority to issue supervision permits allowing minors aged fourteen (14) through fifteen (15) to work until eleven p.m. Supervision permits may be obtained only from the West Virginia Department of Labor. A valid work permit and an explanation of why work hours should be extended are the only requirements. The applicant, or the minor seeking employment, must apply. The permissible hours of work will then be stated on the supervision permit.

A new work permit or supervision permit must be obtained for each and every job.

4.4. Blanket work permit. -- A blanket work permit may be obtained when a large number of minors are employed for a short term (ninety (90) days or less), and separate work permits would be unwieldy and time consuming.

Blanket work permits may be obtained only from the Commissioner of Labor and must be filled out by the employer. Required information consists of:

(a) A letter from the employer stating his/her familiarity with the Child Labor Law and intent to abide by this law; and

(b) A list containing the names, birthdates, ages and job classifications of each minor.

This information must be sent to the Commissioner of Labor. Said listed minors may not be employed until this permit is received and acknowledged by the Commissioner. The employer will receive a letter of acknowledgement from the Commissioner of Labor, and must keep said acknowledgement on file for as long as these minors are in his/her employ.

4.5. Lifeguards. -- Minors may be employed as a lifeguard: **Provided**, That he or she has completed a senior lifesaving course conducted by a qualified association such as the Red Cross: **And provided**, That he or she completed the ninth grade or reached the age of fifteen (15).

— Work permits, or supervision permits, are further required as applicable.

4.6. Work permitted for minors age fourteen (14) and fifteen (15). -- Fourteen (14) and fifteen (15) year old minors may be employed in:

(a) Office and clerical work (including operation of office machines).

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

(c) Price marking and tagging by hand or machine.

(d) Bagging and carrying out customers' orders.

(e) Errand and delivery work by foot, bicycle and public transportation.

(f) Clean-up work, including the use of vacuum cleaners and floor waxers.

(g) 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, dumb waiters, popcorn poppers, milk-shake blenders and coffee grinders.

(h) Work in connection with cars and trucks if confined to the following:

Dispensing gasoline and oil

Courtesy service

Car cleaning, washing and polishing

Other occupations permitted by this section

But you may not do 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.

(i) Cleaning vegetables and fruits and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

(j) Use of a power driven lawn mower if all safety precautions are carefully followed.

4.7. Work not permitted minors aged fourteen (14) and fifteen (15). -- Fourteen (14) and fifteen (15) year old minors may not be employed in the excluded occupations listed below:

(a) Manufacturing;

(b) Mining;

(c) Processing (except in a retail, food service or gasoline service establishment in those specific occupations expressly permitted there in accordance with the foregoing list);

(d) Occupations requiring the performance of any duties in workrooms or workplaces where goods are manufactured, mined or otherwise processed (except to the extent expressly permitted in retail, food service or gasoline service establishments in accordance with the foregoing list);

(e) Public messenger service;

(f) Operation or tending of hoisting apparatus or of any power-driven machinery

(other than office machines or machines in retail, food service and gasoline service establishments which are specified in the foregoing list as machines which such minors may operate in such establishments);

(g) Any occupations found and declared to be hazardous by the Commissioner of Labor;

(h) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, on water, pipeline or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including repair);

However, you may do office or sales work in connection with these occupations (not performed on transportation media or at the actual construction site).

(i) Any of the following occupations in a retail, food service or gasoline service establishment:

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

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

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

(4) Cooking (except at soda fountains, lunch counters, snack bars or cafeteria serving counters) and baking;

(5) Operating, setting-up, adjusting, cleaning, oiling or repairing power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers;

(6) Work in freezers and meat coolers and all work in preparation of meats for sale (except wrapping, sealing, labeling, weighing, pricing and stocking when performed in other areas);

(7) Loading and unloading goods to and from trucks, railroad cars or conveyors.

§42-9-5. Minors Aged Sixteen (16) And Seventeen (17).

5.1. Age certificates. -- All minors aged sixteen (16) and seventeen (17) employed in any gainful occupation, can be required to have an age certificate, except when employed in domestic service in private homes, in farm work, or street trades.

The West Virginia Department of Labor does not require age certificates as a condition of legal employment of minors aged sixteen (16) and seventeen (17). Age certificates are recommended, however, to ensure the full rights of both employers and employees under the West Virginia Workmen's Compensation Law.

Minors aged sixteen (16) and seventeen (17) need only present proof of age and a promise of employment in order to obtain an age certificate. These certificates may be obtained at the County Board of Education in the county in which the minor resides.

§42-9-6. Minor Volunteer Fire Activities.

6.1. Under no circumstances can any minor under age sixteen (16) participate in any fire activities.

6.2. Volunteer fire departments.

(a) Minors aged sixteen (16) and seventeen (17) who have successfully completed a course of training in fire protection and related safety techniques may engage in limited fire-fighting activities: **Provided**, That such minors are under the direct supervision and control of trained and qualified fire protection personnel. Written permission of the minor's parent or guardian is required, and this written permission must be kept on file as long as the minor's name appears on the volunteer fire

department's roster as a potential minor volunteer.

(b) No person under eighteen (18) years of age shall be permitted to:

(1) Drive any fire apparatus, ambulance or other official fire vehicle; and/or operate red lights, siren or an audible signal in responding to an alarm on their own personal vehicles or any other vehicle;

(2) Operate an aerial ladder, aerial platform or hydraulic jack at a fire scene;

(3) Use rubber electrical gloves, insulated wire gloves, insulated wire cutters, life nets, acetylene cutting units, K-12 power saws, air chisels, portapowers, hurst tools or other equipment related to rescue and fire operations at a fire scene;

(4) Operate the pumps of any fire vehicle while at the scene of a fire;

(5) Enter a burning structure, except at designated training sessions at specified training schools conducted by the West Virginia Fire Service Training Program of West Virginia University or the West Virginia State Fire Marshal's office.

(c) Minors attending school shall not be permitted to respond to a fire during school hours unless such a request is made by the fire official in charge to the principal of the school.

(d) Minors shall be afforded the minimal personal protective equipment; i.e., boots, bunker coats, helmet, gloves, etc., as it relates to their work outlined in subsection (e)(3) and during training exercises that require such protective equipment.

(e) The activities of these minors shall be limited to:

(1) Training;

(2) First-aid;

(3) Clean-up service at the scene of a fire, outside the structure, after the fire has been

declared by the official in charge to be under control;

(4) Coffee wagon and food service.

(f) In no case, however, shall these minors be permitted to:

(1) Operate high pressure hose lines, except during training;

(2) Ascend ladders, except during training activities.

6.3. Junior forest fire crew members.

(a) Forest fire fighting is considered emergency work which must be performed. These minors must be sixteen (16) or older, the consent of the minor's parents is required, and if the minor is in school, the consent of the school principal must be obtained before employing the individuals for emergency work during school hours.

(b) Such minors are to be under the direct supervision and control of a forest fire warden or fire official.

NOTE: All other provisions of the West Virginia Child Labor Law and the regulations promulgated thereunder affecting the employment of minors shall be applicable in all cases.

§42-9-7. Hazardous Occupations.

7.1. These regulations provide a minimum age of eighteen (18) years for any nonagricultural occupation which the Commissioner of Labor "shall find and by order declare" to be particularly hazardous for sixteen (16) through seventeen (17) year old persons, or detrimental to their health and well-being. In addition to those hazardous occupations specifically listed in section two, article six of the Code, the seventeen (17) hazardous occupations orders listed below apply either on an industry basis, specifying the occupations in the industry that are not covered, or in an occupational basis irrespective of the industry in which found. They cover nonagricultural occupations declared to be particularly

hazardous for minors aged sixteen (16) through seventeen (17).

No minors under eighteen (18) years of age shall be employed in the following occupation:

7.2. Hazardous occupations orders in nonagricultural occupations.

(a) Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.

(b) Occupations of motor vehicle driver and outside helper.

(c) Coal mine occupations.

(d) Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill or cooperage-stock mill.

(e) Occupations involved in the operation of power-driven wood-working machines.

(f) Occupations involving exposure to radioactive substances and to ionizing radiations.

(g) Occupations involved in the operation of elevators and other power-driven hoisting apparatus.

(h) Occupations involved in the operation of power-driven metal-forming, punching and shearing machines.

(i) Occupations in connection with mining, other than coal.

(j) Occupations involving slaughtering, meat-packing or processing, or rendering.

(k) Occupations involved in the operation of certain power-driven bakery machines.

(l) Occupations involved in the operation of certain power-driven paper products machines.

(m) Occupations involved in the manufacture of brick, tile and kindred products.

(n) Occupations involved in the operation of circular saws, band saws and guillotine shears.

(o) Occupations involved in wrecking, demolition and ship-breaking operations.

(p) Occupations involved in roofing operations.

(q) Occupations in executive operations.

7.3. Exemptions. -- Nonagricultural hazardous occupations numbers 5, 8, 10, 12, 14, 16 and 17 contain exemptions for student-learners: **Provided**, That they are employed under the following conditions:

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

(b) Each student-learner is employed under a written agreement which provides:

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

(2) 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;

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

(4) That a schedule or organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of the student-learner and shall be kept on file by both the school and the employer. This exemption for the employment of student-learner may be revoked in any individual situation where it is

found that reasonable precautions have not been observed for the safety of minors employed thereunder.

A high school or vocational school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner even though he is not yet eighteen (18) years of age.

§42-9-8. Text Of The Hazardous Occupations Orders In Nonagricultural Occupations Of The Fair Labor Standards Act - Child Labor Provisions - As Revised January, 1969, And Now Adopted By The West Virginia Department Of Labor.

8.1. Manufacturing or storage occupations involving explosives (Order No. 1). -- The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components:

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

(b) The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(1) 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;

(2) 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;

(3) All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(4) All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.

(5) All occupations involved in the loading, inspection, packing, shipping and storage of blasting caps.

(c) Definitions:

(1) 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.

(2) The terms "Explosives" and "Articles Containing Explosive Components" mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers.

(3) An area meeting all of the following criteria shall be deemed a "Nonexplosive Area:"

(A) None of the work performed in the area involves the handling or use of explosives;

(B) 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;

(C) The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and

(D) Satisfactory controls have been established to prevent employees under eighteen (18) years of age within the area from entering any area in or about the plant which does not meet criteria (A) through (C) above.

8.2. Motor vehicle occupations (Order No. 2).

(a) Except as provided in paragraph (b). The occupations of motor vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type that is particularly hazardous for the employment of minors between sixteen (16) and eighteen (18) years of age.

(b) Exemptions.

(1) Incidental and occasional driving. -- The finding and declaration in Paragraph (a) shall not apply to the operation of automobile or trucks not exceeding six thousand (6,000) pounds gross vehicle weight if such driving is restricted to daylight hours: **Provided**, That such operation is only occasional and incidental to the child's employment; that the child holds a state license valid for the type of driving involved in the job which he performs and has completed a state approved driver education course: **And provided further**, That the vehicle is equipped with a seat belt or similar device for the driver and for each helper, and the employer has instructed each child that such belts or other devices must be used. This subparagraph shall not be applicable to any occupation of motor vehicle driver which involves the towing of vehicles.

(2) School bus driving. -- The finding and declaration in Paragraph (a) shall not apply to driving a school bus during the period of any exemption which has been granted in the discretion of the Secretary of Labor on the basis of an application filed and approved by the governor of the state in which the vehicle is

registered. The secretary will notify any state which inquires of the information to be furnished in the application. Neither shall the finding and declaration in Paragraph (a) apply in a particular state during a period not to exceed the first forty (40) days after this amendment is effective while application for such exemption is being formulated by such state seeking merely to continue in effect unchanged its current program such drivers, nor while such application is pending action by the secretary.

(c) Definitions.

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

(2) The term "Driver" means any individual who, in the course of his employment, drives a motor vehicle at any time.

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

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

8.3. Coal mine occupations (Order No. 3).

(a) All occupations in or about any coal mine, except the occupation of slate or other refuse picking at a picking table or picking chute in a tippie or breaker and occupations requiring the performance of duties solely in offices or in repair or maintenance shops located in the surface part of any coal mining plant.

(b) Definitions.

(1) The term "Coal" means any rank of coal, including lignite, bituminous and anthracite coals.

(2) The term "All Occupations In Or About Any Coal Mine" means all types of work performed in any underground working, open pit or surface part of any coal mining plant that contributes to the excavation, grading, cleaning or other handling of coal.

8.4. Logging and sawmill occupations (Order No. 4). --- All occupations in logging and all occupations in the operation of any sawmill, lath mill, shingle mill or cooperage-stock mill except the following:

(a) Exceptions applying to logging:

(1) Work in offices or in repair or maintenance shops;

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

(3) Work in timber cruising, surveying or logging-engineering parties; work in forest protection, such as clearing fire trails or roads piling and burning slash, maintaining fire-fighting equipment, constructing and maintaining telephone lines or acting as fire lookout or fire patrolman away from the actual logging operations: **Provided**, That the provisions of this paragraph shall not apply to the felling of bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives and work on testles;

(4) Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cord-wood or similar products, when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by this section;

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

(b) Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill or cooperage-stock

mill: **Provided**, That these exceptions do not apply to a portable sawmill, the lumber yard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained: **And further provided**, That these exceptions do not apply to work which entails entering the sawmill building:

(1) Work in offices or in repair or maintenance shops;

(2) Straightening marking or tallying lumber on the dry chain or the dry drop sorter;

(3) Pulling lumber from the dry chain;

(4) Clean-up in the lumberyard;

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

(6) Clerical work in yards or shipping sheds, such as done by ordermen, tallymen and shipping clerks;

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

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

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

(10) Manual loading of bundles of shingles or shakes into trucks or railroad cars: **Provided**, That the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury to himself.

(c) Definitions.

(1) The term "All Occupations In Logging" means all work performed in connection with the felling of timber; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cord-wood, fence posts or similar products; the collecting, skidding yarding, loading, transporting and unloading of such products in connection with logging; the constructing, repairing and maintenance of roads, railroads, flumes or camps used in connection with logging; the moving, installing, rigging and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timber-stand improvement or in emergency firefighting.

(2) The term "All Occupations in the Operation of Any Sawmill, Lath Mill, Shingle Mill or Cooperage-stock Mill" means 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, 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. The term shall not include work performed in the planning-mill department or other manufacturing departments of any sawmill, or in any planning mill or remanufacturing plant not a part of a sawmill.

8.5. Power-driven woodworking machine occupations (Order No. 5). -- The following occupations involved in the operation of power-driven woodworking machines:

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

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

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

(d) Definitions.

(1) The term "Power-driven Woodworking Machines" means all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stamping, wire stitching, fastening or otherwise assembling, pressing or printing wood or veneer.

(2) The term "Off-bearing" means the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include: (A) 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 explosion roller, and (B) the following operations when they do not involve the removal of material or refuse directly from a saw table or from the point of operation: The carrying, moving or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling or loading of materials.

8.6. Occupations involving exposure to radioactive substances and to ionizing radiations (Order No. 6).

(a) Any work in any workroom in which:

(1) Radium is stored or used in the manufacture of self-luminous compound; (2) Self-luminous compound is made, processed or packaged; (3) Self-luminous compound is stored, used or worked upon; (4) Incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; (5) other radioactive substances are present in the air in average concentrations exceed ten percent (10%) of the maximum permissible concentrations in the air recommended for occupational exposure by the National

Committee of Radiation Protection, as set forth in the forty (40) hour week column of Table One of the National Bureau of Standards Hand Book No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," issued June 5, 1959.

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

(b) Definitions.

(1) As used in this section the term "Self-Luminous Compound" means any mixture of phosphorescent material and radium, mesothorium or other radioactive element; the term "Workroom" includes the entire area bounded by walls of solid material and extending from floor to ceiling; the term "Ionizing Radiations" means 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.

8.7. Power-driven hoisting apparatus occupations (Order No. 7).

(a) The following occupations involved in the operation of power-driven hoisting apparatus:

(1) Work operating an elevator, crane, derrick, hoist or highlift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one (1) ton capacity.

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

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

(b) Definitions.

(1) The term "Elevator" means any power-driven hoisting of lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators, (including portable elevators or tiering machines) but shall not include dumbwaiters.

(2) The term "Crane" means a power-driven machine for lighting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term includes all types of cranes, such as cantilever, gantry, hammerhead, ingot-pouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semigantry, semiportal, storage bridge, tower, walker job and wall cranes.

(3) The term "Derrick" means a power-driven apparatus consisting of a mast or equivalent members held at the top by guys and braces, with or without a boom, for use with a hoisting mechanism and operating ropes. The term includes all types of derricks, such as A-frame, breast, Chicago boom, ginpole, guy and stiff-leg derricks.

(4) The term "Hoist" means a power-driven apparatus for raising or a car or platform running in guides. The term includes all types of hoist, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

(5) The term "High-Lift Truck" means a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork, or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork or other attachments for handling specific loads. The term shall mean and include high-lift trucks known under such names as fork-lifts, fork trucks, forklift trucks, tiering trucks or stacking trucks, but shall not mean lowlift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.

(6) The term "Manlift" means a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable or chain operation in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top or bottom.

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

(1) Definitions as used in this exception:

(A) For the purpose of this exception, the term "Automatic Elevator" means 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.

(B) For the purpose of this exception, the term "Automatic Signal Operation Elevator" means 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.

8.8. Power-driven metal forming, punching and shearing machine occupations (Order No. 8).

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

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

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

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

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

(b) Definitions.

(1) The term "Operator" means a person who operates a machine covered by the order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine or any other functions directly involved in operation of the machine.

(2) The term "Helper" means a person who assists in the operation of a machine covered by this order by helping place materials into or remove them from the machine.

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

8.9. Occupation in connection with mining, other than coal (Order No. 9).

(a) All occupations in connection with mining other than coal, except the following:

(1) Work in offices, in the warehouse or supply house, in the change house, in the laboratory and in repair or maintenance shops not located underground.

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

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

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

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

(6) The following work in metal mills other than in mercury-recovery mills or mills using the cyanide process: (A) Work involving the operation of jigs, sludge tables, flotation cells or drier-filters; (B) Work of hand sorting at picking table or picking belt, (C) general clean-up work: **Provided, however,** That nothing in this section shall be construed as permitting employment of minors in any

occupation prohibited by any other hazardous occupations order issued by the Commissioner of Labor.

(b) Definitions.

(1) As used in this section, the term "All Occupations in Connection with Mining, Other Than Coal" means 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 where such operations are performed as a part of manufacturing process. The term does not include work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded and further processed, or plants manufacturing clay, glass or ceramic products. Neither does the term include work performed in connection with coal mining, in petroleum production, in natural gas production nor in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes.

8.10. Occupation involving slaughtering, meat packing or processing or rendering (Order No. 10).

(a) The following occupations in or about slaughtering and meat-packing establishments, rendering plants or wholesale, retail or service establishments:

(1) All occupations on the killing floor, in curing cellars and in hide cellars, except the work of messengers, runners, hand-truckers and similar occupations which require entering

such workrooms or workplaces infrequently and for short periods of time.

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

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

(4) All occupations involved in the operation or feeding of the following power-driven meat-processing machines, including the occupation of setting up, adjusting, repairing, oiling or cleaning such machines: Meat patty-forming machines, meat and bone-cutting saws, knives (except bacon-slicing machines), head splitters and guillotine cutters; snout pullers and jaw pullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping and finishing machines; grinding, mixing, chopping and hashing machines; and presses (except belly-rolling machines).

(5) All boning occupations.

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

(7) All occupations involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork or horse, or any quarter carcass of beef or horse.

(b) Definitions.

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

(2) The term "Rendering Plants" means establishments engaged in the

conversion of dead animals, animal offal, animal fats, scrap meats, blood and bones into stock feeds, tallow, inedible greases, fertilizer ingredients and similar products.

(3) The term "Killing Floor" includes that workroom or workplace where cattle, calves, hogs, sheep, lambs, goats or horses are immobilized, shackled or killed, and the carcasses are dressed prior to chilling.

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

(5) The term "Hide Cellar" includes that workroom or workplace where hides are graded, trimmed, salted and otherwise cured.

(6) The term "Boning Occupations" means the removal of bones from meat cuts. It does not include work that involves cutting, scraping or trimming meat from cuts containing bones.

(c) Exemptions. -- This order does not apply to the killing and processing of poultry, rabbits or small game in areas physically separated from the killing floor.

NOTE: The term "Bacon Slicing Machine" as used in this order refers to those machines which are designed 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.

8.11. Power-driven baker machine occupations (Order No. 11).

(a) The following occupations involved in the operation of power-driven bakery machines:

(1) The occupations of operating, assisting to operate or setting up, adjusting, repairing, oiling or cleaning any horizontal or

vertical dough mixer; batter mixer; bread dividing, rounding or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machine; or cake-cutting band saw.

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

8.12. Power-driven paper machine occupations (Order No. 12).

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

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

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

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

(b) Definitions.

(1) The term "Operating or Assisting to Operate" means all work which involves starting or stopping a machine covered by this order, placing materials into or removing them from the machine, or any other work directly involved in operating the machine.

(2) The term "Paper Products Machine" means power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. The term is understood to apply to such machines whether they are used in establishments that manufacturer converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

8.13. Occupations involved in the manufacturing of brick, tile and kindred products (Order No. 13).

(a) The following occupations involved in the manufacture of clay construction products and of silica refractory products:

(1) All work in or about establishment in which clay construction products are manufactured, except (A) work in storage and shipping; (B) work in offices, laboratories and store rooms; and (C) work in the drying departments of plants manufacturing sewer pipe.

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

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

(b) Definitions.

(1) The term "Clay Construction Products" means the following clay products: Bricks, hollow structural tile, sewer pipe and kindred products, refractories and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping and drain tile. The term shall not include the following nonstructural-bearing clay products: Ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience and similar tile, nor does the term include nonclay construction products such as sand-lime brick, glass brick or nonclay refractories.

(2) The term "Silica Brick or Other Silica Refractories" means refractory products produced from raw materials containing free silica as their main constituent.

8.14. Occupations involved in the operation of power-driven circular saws, band saws and guillotine shears (Order No. 14).

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

(1) Circular saws.

(2) Band saws.

(3) Guillotine shears.

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

(b) Definitions.

(1) The term "Operator" means a person who operates a machine covered by this order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machines or any other functions directly involved in operation of the machine.

(2) The term "Helper" means a person who assists in the operation of a machine covered by this order by helping place materials into or remove them from the machine.

(3) The term "Machines Equipped with Full Automatic Feed and Ejection" means machines covered by this order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.

(4) The term "Circular Saw" means a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery mounted on shafting, and used for sawing materials.

(5) The term "Band Saw" means a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

(6) The term "Guillotine Shear" means a machine equipped with a movable blade

operated vertically and used to shear materials. The term does not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

8.15. Occupations involved in wrecking, demolition and shipbreaking operations (Order No. 15).

(a) All occupations in wrecking, demolition and shipbreaking operations.

(b) Definitions.

(1) The term "Wrecking, Demolition and Shipbreaking Operations" means all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing or dismantling of a building, bridge, steeple, tower, chimney or other structure, ship or vessel.

8.16. Occupations in roofing operations (Order No. 16).

(a) All occupations in roofing operations.

(b) Definitions.

(1) The term "Roofing Operations" means all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate, metal, translucent materials and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term also includes all work performed in connection with: (A) The installation of roofs, including related metal work such as flashing, and (B) alterations, additions, maintenance and repair, including painting and coating, of existing roofs. The term does not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment or similar appliances attached to roofs.

8.17. Occupations in excavation operations (Order No. 17).

(a) The following occupations in excavation operations:

(1) Excavating, working in or backfilling (refilling) trenches, except: (A) Manually excavating or manually backfilling trenches that do not exceed 4 feet in depth at any point, or (B) working in trenches that do not exceed 4 feet in depth at any point.

(2) Excavating for buildings or other structures or working in such excavations, except (A) Manually excavating to a depth not exceeding 4 feet below any ground surface adjoining the excavation, or (B) working in an excavation not exceeding such depth, or (C) working in an excavation where the side walls are shored or sloped to an angle of repose.

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

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

§42-9-9. Responsibilities As An Employer.

9.1. An employer is responsible that each minor in his employ has procured an appropriate employment or age certificate or that the minor is the proper age for the occupation and hours for which he is employed.

The employer must keep on file in his establishment a copy of such certificate as long as the minor is in his employ.

The employer is also responsible that the minors in his employ do not, with or without his knowledge or consent, engage in hazardous occupations prohibited to certain young workers.

9.2. Workmen's compensation insurance. -- Illegally employed minors are excluded from the compensation act.

9.3. Age certificates. -- All minors between sixteen (16) and eighteen (18) years of age, employed in any gainful occupation, can be required to have an age certificate except when

employed in domestic service in private homes, in farm work or street trades.

9.4. Work permits. -- All minors under sixteen (16) years of age, employed in any gainful occupation, must obtain a work permit, except during out of school hours in domestic service in private homes, or farm work.

Any minor between fourteen (14) and sixteen (16) years of age who desires to work after eight p.m. due to extenuating circumstances must obtain a supervision permit from the West Virginia Department of Labor.

9.5. Obtaining a certificate. -- Minors under sixteen (16) years of age must first obtain a promise of employment in writing from an employer, stating the nature of employment offered and the hours of the day to be employed. Accompanied by his/her parent or guardian, the minor must apply in person for the appropriate certificate to the county superintendent of schools or such other person as may be designated by him to issue certificates. The promise of employment and proof of age, such as birth certificate or other valid evidence of age, must be presented when making application. A record of physical examination may be required.

Minors sixteen (16) years of age or over need only present a promise of employment and proof of age in order to obtain an age certificate.

§42-9-10. Instructions For Local Officials Issuing Work Permits And Age Certificates.

10.1. Information for issuing officers.

(a) Work permits and age certificates are issued by the county superintendent of schools where the minor resides or by some persons authorized by him in writing.

(b) Forms are prepared and furnished by the Commissioner of Labor, Charleston, West Virginia, to the county superintendent of schools.

(c) State work permits and age certificates are acceptable as proof of age under the child-labor provision of the Fair Labor

Standards Act through cooperative arrangements with the United States Department of Labor.

(d) The minor must appear in person before the issuing officer to obtain a work permit or age certificate.

10.2. Procedure for issuing a work permit or age certificate.

(a) Issuing officer will interview minor to discuss:

(1) The job minor wants to do and why he wants to work;

(2) The child labor and school attendance laws;

(3) The importance of completion of high school;

(4) What minor must do to obtain a work permit or age certificate.

(b) Application for Employment Certificates -- Form 1.

(1) One (1) copy of Form 1 will be completed when minor applies for a Work Permit of Age certificate and kept in issuing officer's files. A new permit or certificate is required for each change in job and place of employment.

(2) Instructions for completing the application: (A) Intention to employ - minor will have this section completed and signed first. The extra line under the hours section is for reporting variations in scheduled hours of employment; (B) Parent's Consent - After Intention to Employ has been completed, minor will have parent or guardian complete this section; (C) School Record - (NOTE: A school record is required except for high school graduates or vacation employment) Minor will have the principal or teacher of the last school he/she attended to complete this section.

(c) Proof of age (NOTE: This must be obtained before a work permit or age certificate is issued.)

(1) The issuing officer should have minor submit an unaltered birth certificate or an attested transcript thereof. The issuing officer will explain how a birth certificate can be obtained if minor does not have one.

(2) The following documents may be accepted when the issuing officer has been thoroughly convinced that a birth certificate is not available:

(A) Baptismal record or certificate or an attested transcript thereof that shows minor's date of birth and place of baptism;

(B) A bona fide family Bible record of the date and place of minor's birth;

(C) Documentary evidence approved by the State Commissioner of Labor such as a passport or a life insurance policy at least one (1) year old.

(d) Issuing officer will instruct minor to return to his office with the completed application and proof of age.

(e) Issuing officer will review the completed application and proof of age submitted.

(1) A determination will be made whether the employment is legal under both the state and federal child labor laws. Additional information on child labor may be found in the Federal Fair Labor Standards Act which may be secured from your district office of the United States Department of Labor.

(2) The issuing officer may check with the prospective employer on any points in his Statement of Intention to Employ that need to be clarified.

10.3. Work Permit -- Form 2.

(a) Form 2 will be used to issue a work permit to minors aged fourteen (14) and fifteen (15) for employment in any gainful occupation, except agriculture, horticulture or domestic service in a private home.

(1) Full-time employment is work during school hours.

(2) Outside school hours employment is work outside school hours when school is in session.

(b) The permit will be made out in triplicate.

(1) Copy for the employer.

(2) Copy for the Commissioner of Labor.

(3) Copy for the issuing officer's files.

(c) Completion of form.

(1) The type of permit will be designated by a check in one (1) of the two (2) boxes at the top of the permit.

(2) All items should be completed.

(3) Minor should sign the permit in the presence of the issuing officer.

(4) Signature of issuing officer must appear on the permit.

10.4. Age Certificate -- Form 3.

(a) Form 3 will be used to issue an age certificate, upon request, to minors sixteen (16) and over for agricultural as well as nonagricultural employment.

(b) The certificate will be made out in triplicate. The distribution is the same as for the work permit.

(c) Completion of form.

(1) All items should be completed when the age certificate is issued.

(2) Hours of employment are not required on the age certificate.

(3) Minor should sign the permit in the presence of the issuing officer.

(4) Signature of issuing officer should appear on the certificate.

10.5. Revocation.

(a) The Commissioner of Labor may at any time revoke a certificate or permit, if in his judgment, it was improperly issued.

(b) The issuing officer will be notified of such action; the minor may not be employed until a new certificate has been legally obtained.

10.6. Supervision Permit.

(a) The Commissioner of Labor prescribes the condition and terms of this permit and is the only person authorized to issue it.

(b) Issued to meet special circumstances such as extending the hours for a fourteen (14) and fifteen (15) year old minor past eight p.m.

(c) Conditions of issuance after a careful investigation by the Commissioner of Labor:

(1) Minor's work will be supervised by a responsible party;

(2) The best interests of the child will be promoted.

(d) A supervision permit is valid only by complete compliance with the prescribed terms and conditions.

10.7. Enforcement.

(a) Powers of the Commissioner. -- The Commissioner of Labor may make, amend, alter or rescind any rules and regulations for the effective administration and enforcement of the West Virginia Child Labor Laws.

The Commissioner of Labor or his authorized representatives may make any inspection or investigation which, in his judgment, is necessary to administer and enforce the Child Labor Law and these rules and regulations. They have authority to enter and inspect establishments and have access to all files and records of employers which may concern minors in their employ.

(b) Rights to petition and hearing. -- Any person wishing a revision of any of these regulations may submit a petition to the Commissioner of Labor setting forth the changes desired and the reasons for proposing them.

The Commissioner of Labor, upon inspection of the petition, and believing that the grounds are reasonable, may schedule a hearing with due notice to interested persons, or make other provisions for affording interested persons the opportunity to present data, views and arguments relating to any proposed changes.

(c) Penalty for violation. -- Any person, firm or corporation violating any provisions of these rules and regulations shall be subject to the penalties prescribed in section eleven, article six, chapter twenty-one of the West Virginia Code.