

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code 21-6-11

AMENDMENT TO AN EXISTING RULE: YES NO

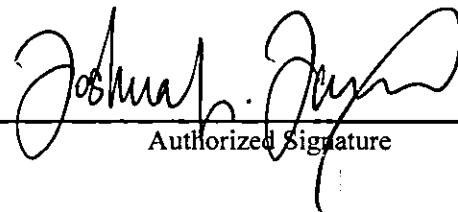
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Child Labor

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 9
CHILD LABOR

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SECRETARY OF STATE

§42-9-1. General.

1.1. Scope. -- This rule is for the enforcement of all matters concerning the Child Labor Act, W. Va. Code §21-6 -1, *et seq.*

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule. -- This rule repeals and replaces 42 CSR 9, "Child Labor" filed July 19, 2002 and effective August 1, 2002.

§42-9-2. Application and Enforcement.

2.1. Application. This rule applies to all persons, employers, employees, and minor children governed or otherwise within the purview of the Child Labor Act, W. Va. Code §21-6 -1, *et seq.*

2.2. Enforcement. The enforcement of the Child Labor Act, W. Va. Code §21-6 -1, *et seq.* and this rule is vested with the West Virginia Division of Labor.

§42-9-3. Definitions.

3.1. The "Act" means the Child Labor Act, W. Va. Code §21-6 -1, *et seq.*

3.2. "Age certificate" or "certificate of age" means the form authorized by the Division of Labor for the employment of a 16 or 17 year old minor that is issued by the superintendent of schools for the purpose of certifying the minor's age and place and date of birth.

3.3. "Bar" means an establishment where the serving of alcoholic beverages is the main or primary business activity.

3.4. "Blanket work permit" means the form authorized and issued by the Division of Labor for the employment of 25 or more minor children for a period of 90 days or less, which includes an acknowledgment from the prospective employer stating that he or she is familiar with and will abide

by the Child Labor Act, W. Va. Code §21-6 -1, *et seq.*, and this rule, and which lists the names, birth dates, ages, and job description for each minor child.

3.5. "Board of education" means the board of education in the county where the minor child resides.

3.6. "Business owner" means an individual who owns at least a 20% interest in the business or enterprise that employs minor children.

3.7. "Certified birth certificate" means a birth certificate issued by the West Virginia Department of Health and Human Resources, Office of Vital Statistics, by the County Clerk of the West Virginia county in which the minor was born, or by an office listed on the National Vital Statistics System maintained by the United States Centers for Disease Control and Prevention.

3.8. "Code of Federal Regulations" or "CFR" refers to the codification of the rules and regulations of an agency of the United States government.

3.9. "Commissioner" means the Commissioner of the Division of Labor, or his or her authorized designee.

3.10. "County" means the county where the minor child resides.

3.11. "Dangerous or injurious occupation" or "oppressive occupation" means an occupation identified in W. Va. Code §21-6-2, any occupation that the Commissioner determines is detrimental to a minor's health or well-being, or that interferes with a minor's education and any occupation identified by the Secretary of the United States Department of Labor as oppressive.

3.12. "Division" means the West Virginia Division of Labor.

3.13. "Employ" means to hire, permit, or suffer to work.

3.14. "Employer" means any person, firm, or corporation employing a minor child.

3.15. "Grain handling facility" means a facility that receives, handles, stores, processes or ships bulk raw agricultural commodities such as corn, wheat, oats, barley, sunflower seeds and soybeans.

3.16. "Hazardous Occupations Orders" or "HO" mean the 17 orders issued by the Secretary of the United States Department of Labor restricting the types of jobs and industries in which minors under the age of 18 years may be employed, codified at 29 C.F.R. §§570.51 through 570.55 and 570.57 through 570.68.

3.17. "Immediate supervision" or "direct supervision" means supervision by a responsible

party who is within the immediate physical proximity of the minor and is responsible for managing, overseeing and directing the minor's work activities.

3.18. "Issuing officer" means the person who has been authorized in writing by the county superintendent of schools to review and approve work permit applications and age certificate applications.

3.19. "NFPA" refers to the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169.

3.20. "Parent" means and includes a minor's parent, guardian, custodian or other person standing in the place of the minor's parent.

3.21. "Personal protective equipment" or "turnout gear" means NFPA-compliant boots, coats, pants, helmets, hoods, gloves and self-contained breathing apparatus with face piece.

3.22. "Responsible party" means a regular, full-time, qualified and experienced adult employee or business owner, or, pursuant to W. Va. Code §21-6-2(c), a fire line officer.

3.23. "Restaurant" means an establishment where the serving of food is the main or primary business activity, even if alcoholic beverages are also served.

3.24. "School hours" or "while school is in session" means the hours during which county public schools are in session.

3.25. "School week" means Monday through Sunday while county schools are in session.

3.26. "Special circumstances," means and includes a minor child's particular situation, life experiences, abilities, training, or any other conditions or facts that the Commissioner may consider in determining whether to issue a supervision permit.

3.27. "Superintendent of schools" means the superintendent of schools for the county where the minor child resides, or an individual who has been designated in writing to act for the superintendent in reviewing and issuing work permits and age certificates.

3.28. "Supervision permit" means the form authorized and issued by the Division of Labor for the employment of a minor child under special circumstances that promote the best interests of the minor child.

3.29. "Work experience program," "work-study program," or "work-based learning program" means a school-supervised and school-administered program for 14 and 15 year old minors enrolled in a college preparatory curriculum that meets the educational standards established by the WV Department of Education, and has been approved by the Administrator of the Wage and Hour

Division of the United States Department of Labor.

3.30. "Work experience and career exploration program" or "WECEP" means a school-supervised and school-administered program for 14 and 15 year old minors that meets the educational standards established by the WV Department of Education and has been approved by the Administrator of the Wage and Hour Division of the United States Department of Labor.

3.31. "Work permit" means the form authorized by the Division of Labor for the employment of a 14 or 15 year old minor child and issued by the county superintendent of schools.

§42-9-4. Adoption of Federal Regulations Concerning Child Labor.

The following regulations from the Code of Federal Regulations are adopted and incorporated by reference:

- 4.1. 29 C.F.R. §570.5, "Certificates of age and their effect," effective December 16, 2004;
- 4.2. 29 C.F.R. §570.6, "Contents and disposition of certificate of age," except for (b)(1) and (2), effective December 16, 2004;
- 4.3. 29 C.F.R. §570.7, "Documentary evidence required for issuance of a certificate of age," effective December 16, 2004;
- 4.4. 29 C.F.R. §570.31, "Secretary's determinations concerning the employment of minors 14 and 15 years of age," effective May 20, 2010;
- 4.5. 29 C.F.R. §570.32, "Effect of this subpart," effective May 20, 2010;
- 4.6. 29 C.F.R. §570.33, "Occupations that are prohibited to minors 14 and 15 years of age," effective May 20, 2010;
- 4.7. 29 C.F.R. §570.34, "Occupations that may be performed by minors 14 and 15 years of age," effective May 20, 2010;
- 4.8. 29 C.F.R. §570.35, "Hours of work and conditions of employment permitted for minors 14 and 15 years of age," effective May 20, 2010;
- 4.9. 29 C.F.R. §570.36, "Work experience and career exploration program," effective May 20, 2010;
- 4.10. 29 C.F.R. §570.37, "Work-study program," effective May 20, 2010;
- 4.11. 29 C.F.R. §570.38, "Effect of a certificate of age under this subpart," effective May

20, 2010;

4.12. 29 C.F.R. §570.50, "General," effective December 29, 1971;

4.13. 29 C.F.R. §570.51, "Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1)," effective December 16, 2004;

4.14. 29 C.F.R. §570.52, "Occupations of motor-vehicle driver and outside helper (Order 2)," effective December 16, 2004;

4.15. 29 C.F.R. §570.53, "Coal-mine occupations (Order 3)," effective December 29, 1971;

4.16. 29 C.F.R. §570.54, "Forest fire fighting and forest fire prevention occupations, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill (Order 4)," effective May 20, 2010;

4.17. 29 C.F.R. §570.55, "Occupations involved in the operation of power-driven woodworking machines (Order 5)," effective May 20, 2010;

4.18. 29 C.F.R. §570.57, "Exposure to radioactive substances and to ionizing radiations (Order 6)," effective December 29, 1971;

4.19. 29 C.F.R. §570.58, "Occupations involved in the operation of power-driven hoisting apparatus (Order 7)," effective May 20, 2010;

4.20. 29 C.F.R. §570.59, "Occupations involved in the operation of power-driven metal forming, punching, and shearing machines (Order 8)," effective December 29, 1971;

4.21. 29 C.F.R. §570.60, "Occupations in connection with mining, other than coal (Order 9)," effective December 29, 1971;

4.22. 29 C.F.R. §570.61, "Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering (Order 10)," effective May 20, 2010;

4.23. 29 C.F.R. §570.62, "Occupations involved in the operation of bakery machines (Order 11)," effective May 20, 2010;

4.24. 29 C.F.R. §570.63, "Occupations involved in the operation of balers, compactors, and paper-products machines (Order 12)," effective May 20, 2010;

4.25. 29 C.F.R. §570.64, "Occupations involved in the manufacture of brick, tile, and kindred products (Order 13)," effective December 29, 1971;

4.26. 29 C.F.R. §570.65, "Occupations involving the operation of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs (Order 14)," effective May 20, 2010;

4.27. 29 C.F.R. §570.66, "Occupations involved in wrecking, demolition, and shipbreaking operations (Order 15)," effective December 29, 1971;

4.28. 29 C.F.R. §570.67, "Occupations in roofing operations and on or about a roof (Order 16)," effective December 16, 2004;

4.29. 29 C.F.R. §570.68, "Occupations in excavation operations (Order 17)," effective December 29, 1971;

4.30. 29 C.F.R. §570.70, "Purpose and scope," effective December 29, 1971;

4.31. 29 C.F.R. §570.71, "Occupations involved in agriculture," effective December 29, 1971;

4.32. 29 C.F.R. §570.72, "Exemptions," effective December 29, 1971;

4.33. 29 C.F.R. §570.117, "General," effective December 29, 1971; and

4.34. 29 C.F.R. §570.121, "Age certificates," effective December 29, 1971.

§42-9-5. Application for and Issuance of a Work Permit for a 14 or 15 Year Old Minor Child.

5.1. When a 14 or 15 year old minor wants to work in a permissible occupation as set forth in the Act and this rule, the Division's work permit form, available from the county superintendent of schools, shall be completed by the minor's prospective employer, the minor's parent, the minor's school principal or registrar, and the county superintendent of schools.

5.2. The Division's work permit form consists of 4 parts, as follows:

5.2.1. The minor's prospective employer shall complete Part A, to include a description of the minor's intended work activities and any equipment or machines the minor will use, the minor's intended hours of employment, the minor's total hours of work per day and per week, and the minor's total work days per week;

5.2.2. After the minor's prospective employer completes Part A, the minor's parent shall complete Part B, giving permission for his or her child to work for the prospective employer

and shall attach the minor's certified birth certificate;

5.2.3. After Parts A and B are completed, the minor's school principal or registrar shall complete Part C, certifying that the minor is currently attending school; and

5.2.4. After Parts A, B, and C are completed, the county superintendent of schools shall review the information completed by the minor's prospective employer, the minor's parent, and the minor's school principal or registrar, and shall certify that the minor personally appeared before him or her, and shall either issue, modify, or reject the work permit.

5.3. The superintendent of schools shall retain the original work permit, shall provide the Division with a copy within 4 days of its issuance, and shall furnish copies to the minor's parent and to the minor's employer.

5.4. If required by the minor's prospective employer or the superintendent of schools, the minor's parent shall attach documentation of a current physical examination to the application for a work permit.

§42-9-6. Employer Responsibilities When Employing a 14 or 15 Year Old Minor Child Pursuant to a Work Permit.

6.1. Before allowing or permitting a 14 or 15 year old minor to work, an employer shall first have in his or her possession a properly issued work permit as set forth in W. Va. Code §21-6-4 and this rule.

6.2. An employer is responsible for complying with the terms and conditions of the minor's employment as set forth in the work permit.

6.3. When school is in session, an employer shall ensure that the minor does not work:

6.3.1. Before 7 a.m. or after 7 p.m.;

6.3.2. For more than 3 hours a day; or

6.3.3. For more than a total of 18 hours per week during a school week.

6.4. When school is in session, an employer shall ensure that the minor does not work during the hours that school is in session, unless the minor is participating in an approved school-supervised work experience program or in a school-administered WECEP program.

6.4.1. An employer shall ensure that a 14 or 15 year old minor enrolled in a work experience program or WECEP program works no more than 3 hours a day on a school day.

6.4.2. An employer shall ensure that a 14 or 15 year old minor enrolled in a work experience program or WECEP program works no more than 23 hours during a school week.

6.5. During those times when school is not in session, an employer shall:

6.5.1. Limit the minor's work hours to a maximum of 8 hours per day and a maximum of 40 hours per week;

6.5.2. Limit the minor's work hours to between 7 a.m. and 9 p.m.; and

6.5.3. Ensure that the minor does not work continuously for 5 hours or more without at least a 30 minute meal break.

§42-9-7. Work Permit for a Child Under 14 Years of Age.

The Commissioner may approve a work permit for a minor under 14 years of age only when the minor plans to work in the school he or she regularly attends and only during regular school hours.

§42-9-8. Application for and Issuance of an Age Certificate for a 16 or 17 Year Old Minor Child.

8.1. A prospective employer may obtain the Division's age certificate form for a 16 or 17 year old minor from the county superintendent of schools, and shall provide the employer's name and address, a brief description of the employer's business or industry, and a brief description of the minor's occupation or job.

8.2. The minor shall furnish a certified birth certificate to the county superintendent of schools as proof his or her age.

8.3. Upon receipt of the minor's certified birth certificate establishing that he or she is 16 years old or older, and a determination that the employer's business or industry and the minor's occupation or job are permissible under the Act and this rule, the superintendent of schools shall issue an age certificate to the employer.

8.4. The superintendent of schools shall retain the original age certificate, shall provide copies to the Division, the minor's parent, and the minor's employer.

§42-9-9. Application for and Issuance of a Supervision Permit.

9.1. When a minor child wants to be employed under special circumstances, the Division's supervision permit form, available from the Commissioner, shall be completed by the minor's prospective employer and the minor's parent.

9.2. The Division's supervision permit consists of 3 parts, as follows:

9.2.1. The minor's prospective employer shall complete Part A, to include the following information:

9.2.1.a. A description of the employer's business;

9.2.1.b. A detailed description of proposed terms and conditions of the minor's job, including the minor's work schedule, the days and hours of work each week, and total hours of work each week;

9.2.1.c. A detailed description of the proposed tasks the minor will perform, and specification of the machines and equipment the minor will use;

9.2.1.d. The name and job title of the person who is going to supervise the minor, the length of time the responsible supervisor has been employed by the employer, the specifics of the responsible supervisor's work schedule and a description of how the responsible supervisor will supervise the minor;

9.2.1.e. An explanation of the minor's special circumstances that are relevant to the proposed tasks the minor will perform and the machines and equipment the minor will use;

9.2.1.f. An explanation of how and why the proposed job will be in the minor's best interests; and

9.2.1.g. A statement that the employer is not subject to federal regulation regarding child labor;

9.2.2. After the prospective employer has completed Part A, the minor's parent shall complete Part B, to include the following information:

9.2.2.a. An explanation of how and why the proposed job will be in the minor's best interests;

9.2.2.b. A statement in support of the minor's proposed job;

9.2.2.c. A description of the minor's previous work experience or training relevant to the proposed job; and

9.2.2.d. A statement of any concerns, restrictions or conditions regarding the proposed job that the parent or guardian believes are necessary to ensure that the minor's best interests will be met, including any training the parent or guardian believes the employer must

provide.

9.3. Upon receipt of a properly completed application for a supervision permit, the Commissioner shall timely investigate the request, including interviewing the prospective employer and any other matters the Commissioner considers necessary.

9.4. If, after review of the supervision permit and the investigation, the Commissioner finds the application to be in the minor's best interests, he or she may issue or modify the supervision permit to the employer and set forth the employer's responsibility to comply with all terms and conditions of the supervision permit. The Commissioner shall provide a copy of the supervision permit to the minor's parent or guardian.

9.5. If, after review, the Commissioner finds that the application is not in the minor's best interests, he or she shall provide the employer and the minor's parent or guardian with a written explanation for denying the application.

§42-9-10. Application for and Issuance of a Blanket Work Permit; Employer Responsibilities.

10.1. When an employer wants to employ 25 or more children ages 14 through 15 for a short term period of 90 days or less, the employer shall apply for a blanket work permit directly to the Commissioner.

10.2. The application for a blanket work permit shall include the following:

10.2.1. A letter from the employer acknowledging his or her familiarity with the Child Labor Act, W. Va. Code § 21-6-1, *et seq.*, and this rule, and his or her intent to abide by and comply with the Act and this rule; and

10.2.2. A list of the names, birth dates, ages, date the employment will begin and end, and job description or tasks for each child to be included in the blanket work permit.

10.3. Upon receipt of the required information, the Commissioner shall issue a letter to the employer, approving, modifying or denying the blanket work permit.

10.4. An employer shall only employ children under a blanket work permit after receiving the Commissioner's approval, and only for the approved children, dates of employment, and jobs and tasks specified.

§42-9-11. Revocation of a Work Permit, Age Certificate, Supervision Permit, or Blanket Work Permit.

11.1. If the Commissioner determines that a work permit, an age certificate, a supervision permit or a blanket work permit was improperly issued, or contains inaccurate or false information,

he or she may revoke it.

11.2. If the Commissioner revokes a work permit, an age certificate, a supervision permit or a blanket work permit, he or she shall immediately notify the superintendent of schools and the employer in writing of the revocation.

11.3. Upon receipt of the revocation, the employer shall immediately end the minor's employment.

§42-9-12. Minors Ages 16 and 17 Engaging in Volunteer Fire Department Activities; Responsibilities of the Volunteer Fire Department; Prohibited and Permitted Activities.

12.1. If a 16 or 17 year old minor wants to volunteer for a volunteer fire department, he or she shall :

12.1.1. Have successfully completed the minimum training requirements of one of the following: the West Virginia University Fire Service Training Program, Section One; the West Virginia State Fire Marshal's Office; a Regional Education Service Agency ("RESA"); or an equivalent program; and

12.1.2. Have the written consent of his or her parent to volunteer for a volunteer fire department.

12.2. The volunteer fire department is responsible for and shall ensure that:

12.2.1. The minor has provided documentation of his or her successful completion of one of the training programs in subsection 12.1.1. of this section;

12.2.2. The minor has provided an Age Certificate;

12.2.3. The minor is under the direct supervision and control of trained and qualified fire protection personnel; and

12.2.4. The minor's parent's consent is on file as long as the minor's name appears on the volunteer fire department's roster of volunteers.

12.3. A minor shall not:

12.3.1. Drive any fire apparatus, ambulance or other official fire vehicle;

12.3.2. Operate flashing lights, a siren or other audible signal when responding to an alarm in his or her own personal vehicle or any other vehicle;

12.3.3. Operate or climb an aerial ladder, aerial platform or hydraulic jack at a fire scene or an emergency scene;

12.3.4. Use rubber electrical gloves, insulated wire gloves, insulated wire cutters, life nets, acetylene cutting units, K-12 fire rescue saws, air chisels, jaws of life or other hydraulic rescue tools or other equipment related to rescue and fire operations at a fire scene or an emergency scene;

12.3.5. Operate the pumps or high-pressure hoses of any fire vehicle while at a fire scene or an emergency scene; or

12.3.6. Enter a burning structure.

12.4. As long as a minor is wearing personal protective equipment, he or she may:

12.4.1. Participate in training activities of the West Virginia University Fire Service Training Program, Section One, the West Virginia State Fire Marshal's Office, a Regional Education Service Agency ("RESA") or an equivalent program approved by the Commissioner;

12.4.2. Administer first-aid at a fire scene or an emergency scene, but only at a safe distance away from any building or structure;

12.4.3. Clean up the outside area of a fire or emergency scene, but not the inside area of a building or structure, after a fire has been declared by the official in charge to be under control; and

12.4.4. Provide coffee and food service at a fire scene or an emergency scene, if needed, but only at a safe distance away from any building or structure.

12.5. A minor may not respond to a fire while school is in session or during school hours, unless the fire official in charge has obtained permission from the minor's school principal.