

WEST VIRGINIA DIVISION OF LABOR

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Regulatory Review Report

Name of Rule	Date Rule First Promulgated	Dates of Subsequent Modifications	Agency Recommendation: Rule Be Continued As Is, Be Modified, or Be Repealed	Reasons for Agency Recommendation, and Stakeholders That May Be Impacted by the Rule
42 CSR 1 Supervision of Private Employment Agencies	12/31/1982	None	DOL recommends that this rule be repealed.	<p>DOL recommends that the Employment Agencies Act, W. Va. Code §21-2-1 <i>et seq.</i>, should be repealed because it is archaic and no longer serves any purpose.</p> <p>The Employment Agencies Act was first enacted in 1901. The statutory responsibilities are now largely under the jurisdiction of WorkForce West Virginia and the Tax Department.</p> <p>Stakeholders include private employment agencies and agents.</p>
42 CSR 3 Steam Boiler Inspection	07/01/1945	01/01/1963 09/03/1982 04/01/1988 05/01/2000 07/01/2002 07/01/2008	DOL recommends that this rule be modified to reflect current practice.	<p>This rule is essential to the operation of the steam boiler inspection program.</p> <p>W. Va. Code §21-3-7(c) requires the agency to promulgate the rule.</p> <p>Stakeholders include owners of buildings equipped with steam boilers and the general public.</p>

42 CSR 4 Hazardous Chemical Substances	12/31/1982	04/25/1984	DOL recommends the repeal of this rule.	<p>This rule has been superceded by the U.S. Department of Labor’s rule, 29 CFR 1910, Subpart Z, “Toxic and Hazardous Substances.”</p> <p>DOL recommends that W. Va. Code §21-3-18 (a and b), which requires the agency to promulgate the rule, should be amended to eliminate the Commissioner’s obligation to promulgate the rule and instead adopt the rule promulgated by the U.S. Secretary of Labor, 29 CFR 1910, Subpart Z.</p> <p>Stakeholders include employers and employees whose work involves hazardous chemical substances, and the general public.</p>
42 CSR 5 Wage Payment and Collection	11/19/1981	04/01/1988 03/29/1990 05/05/2014 05/01/2016	<p>DOL recommends that the rule be continued with proposed amendments to be taken up by the Legislature during the 2019 Regular Session.</p> <p>The proposed rule amendments address the amendments made to the Wage Payment and Collection Act during the 2018 Regular Legislative Session (HB 2546 and HB 4368).</p>	<p>This rule is essential to the administration of the Wage Payment and Collection Act.</p> <p>W. Va. Code §§21-5-9 and 21-5-13 requires the agency to promulgate this rule.</p> <p>Stakeholders include all employers and employees in WV.</p>
42 CSR 6 Psychophysiological Detection of Deception Examinations, Limitations of Use, Requirements, Licenses, and Penalties	02/02/1984	07/07/1985 06/01/2004	DOL recommends that this rule be continued as is.	<p>This rule is essential to the administration of the relevant sections of the Wage Payment and Collection Act, W. Va. Code §§21-5-5a through 21-5-5d.</p> <p>W. Va. Code §21-5-5c (e and f) require the agency to promulgate this rule.</p> <p>Stakeholders include individuals who must be licensed to administer polygraph tests.</p>

42 CSR 6, continued				DOL recommends that these statutory responsibilities be transferred to a law enforcement agency such as the State Police.
42 CSR 8 Minimum Wages and Maximum Hours Standards	12/31/1982	05/01/2016	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Minimum Wages and Maximum Hours Standards Act.</p> <p>W. Va. Code §21-5C-6(a) requires the agency to promulgate the rule.</p> <p>Stakeholders include employers who hire 6 or more workers at any one location at an hourly rate of pay and employees who are paid by the hour. Specific stakeholders include restaurant employers and employees who customarily receive tips, employers who hire employees for 24 hour+ shifts, and employers who provide living quarters and meals for employees.</p>
42 CSR 9 Child Labor	04/14/1975	08/01/2002 07/01/2015	<p>DOL recommends that the rule be continued with proposed amendments to be taken up by the Legislature during the 2019 Regular Session.</p> <p>The proposed rule amendments address the amendments made to the Child Labor Act passed during the 2018 Regular Legislative Session (HB 2799 and HB 4436).</p>	<p>This rule is essential to the administration of the Child Labor Act.</p> <p>W. Va. Code §21-6-11 requires the agency to promulgate this rule.</p> <p>Stakeholders include employers who want to employ minors between the ages of 14 and 17, 14 and 15 year old minors needing a work permit issued by his or her county superintendent of schools, 16 and 17 year old minors interested in becoming a junior fire fighter, and 16 and 17 year old minors needing an age certificate.</p>
42 CSR 10 Zipline and Canopy Tour Responsibility Act	06/23/2011	03/30/2018	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Zipline and Canopy Tour Responsibility Act.</p> <p>W. Va. Code §21-15-6 requires the agency to promulgate this rule.</p>

42 CSR 10, continued Zipline and Canopy Tour Responsibility Act				Stakeholders include businesses or organizations that operate zipline and canopy tours and patrons who participate in zipline and canopy tour activities.
42 CSR 12 Bedding and Upholstered Furniture	12/31/1982	07/01/2013 03/30/2018	DOL recommends that the rule be continued with proposed amendments to be taken up by the Legislature during the 2019 Regular Session. The proposed rule amendments address the amendments made to the Regulation and Control of Bedding and Upholstery Businesses Act during the 2018 Regular Legislative Session (HB 4350).	This rule is essential to the administration of the Regulation and Control of Bedding and Upholstery Businesses Act. W. Va. Code § 47-1A-15 requires the agency to promulgate this rule. Stakeholders include businesses that manufacture and sell bedding and upholstered furniture to the general public, sterilizers that sterilize bedding and upholstered furniture, and the general public who purchase bedding and upholstered furniture.
42 CSR 13 Safety Glazing Act	08/06/1971	None	DOL recommends that this rule be repealed.	W. Va. Code §§47-5-1(e) and 47-5-2 permit, but do not require, the agency to promulgate this rule. Other than the agency's discretion regarding the promulgation of a rule, the agency has no other responsibilities or authority under the statute. Stakeholders include owners of residential, commercial or public buildings where safety glazing materials are used. The safety glazing materials must meet the requirements of the American National Standards Institute (ANSI Standard Z97.1) and be properly labeled.

<p>42 CSR 15</p> <p>WV Occupational Safety and Health Act</p>	04/01/1988	04/15/1998	DOL recommends that the rule be modified to conform to current practice.	<p>This rule is essential to the operation of the WV Occupational Safety and Health Act.</p> <p>W. Va. Code §21-3A-6 requires the agency to promulgate the rule.</p> <p>Stakeholders include public employers and public employees in WV (other than the Legislature, the Department of Corrections, and the Department of Health) and counties or municipalities who opt into coverage.</p> <p>DOL recommends that the 1987 definition of “workplace” (W. Va. Code §21-3A-2(g)) may need to be updated with the current names of state agencies that the Legislature intended to be exempt from coverage under the statute. The agencies currently exempt are the department of corrections (now the Division of Corrections and Rehabilitation) and the department of health (now the Department of Health and Human Resources).</p>
<p>42 CSR 16</p> <p>Standards for Weights and Measures Inspectors – Adoption of NBS Handbook 130, 1987</p>	04/01/1988	06/01/2009	DOL recommends that the rule be modified to conform to current practice.	<p>This rule is essential to the administration of the Weights and Measures Act.</p> <p>W. Va. Code §47-1-3(c) requires the agency to promulgate this rule.</p> <p>Stakeholders include commercial businesses in WV that use weighing and measuring devices in selling goods or commodities to consumers, and consumers who purchase goods and commodities by weight or measure.</p>

<p>42 CSR 17</p> <p>Amusement Rides and Amusement Attractions Safety Act</p>	06/15/1989	<p>05/01/2000</p> <p>06/01/2009</p> <p>07/01/2012</p> <p>07/01/2013</p> <p>07/01/2015</p> <p>03/30/2018</p>	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Amusement Rides and Amusement Attractions Safety Act.</p> <p>W. Va. Code §21-10-3 requires the agency to promulgate the rule.</p> <p>Stakeholders include owners and operators of amusement rides and amusement attractions, and patrons who ride on an amusement ride or amusement attraction.</p>
<p>42 CSR 18</p> <p>WV Manufactured Housing Construction and Safety Standards Board – Procedures</p>	03/05/1990	None	DOL recommends that the rule be modified to reflect current practice before the Manufactured Housing Construction and Safety Standards Board.	<p>This rule is essential to the operation of the Manufactured Housing Construction and Safety Standards Board.</p> <p>W. Va. Code §21-9-4(a)(2) requires the WV Manufactured Housing Construction and Safety Standards Board to promulgate this rule.</p> <p>Stakeholders include Board licensees, individuals who have been issued cease and desist orders, and the general public who may choose to appear before the Board.</p>
<p>42 CSR 19</p> <p>WV Manufactured Housing Construction and Safety Standards Board</p>	04/08/1991	<p>06/09/1993</p> <p>04/01/1995</p> <p>07/01/1997</p> <p>07/01/2002</p> <p>04/05/2003</p> <p>07/01/2005</p> <p>07/01/2006</p> <p>07/01/2009</p>	DOL recommends that the rule be modified to reflect the Manufactured Housing Construction and Safety Standards Board's current practice and to comply with recent directives from HUD regarding installation standards for new manufactured homes and initial training requirements for manufactured home installers.	<p>This rule is essential to the administration of the Manufactured Housing Construction and Safety Standards Act.</p> <p>W. Va. Code §21-9-4(a)(2) requires the WV Manufactured Housing Construction and Safety Standards Board to promulgate this rule.</p> <p>Stakeholders include Board licensees, persons or businesses interested in becoming licensed by the Board to manufacture, sell, or install manufactured homes in WV, and consumers who purchase HUD Code manufactured homes.</p>

42 CSR 20 Rules of Procedure for Contested Case Hearings	10/28/1992	None	DOL recommends that the rule be modified to reflect current practice.	<p>This rule is essential for the establishment of the procedures for conducting contested case hearings under the Wage Payment and Collection Act, the Minimum Wage and Maximum Hours Standards Act, and the Nurse Overtime and Patient Safety Act.</p> <p>This rule is authorized by the following: W. Va. Code §21-5-13, W. Va. Code §21-5C-6, and W. Va Code §21-5-4(a).</p> <p>Stakeholders include employers and employees in WV who are contesting the findings of DOL that a violation of one of statutes noted above has occurred.</p>
42 CSR 21 Elevator Safety Act	06/01/1994	04/07/2003 07/01/2005 06/01/2009 05/02/2011 05/01/2016 03/30/2018	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Elevator Safety Act.</p> <p>W. Va. Code §21-3C-11 requires the agency to promulgate the rule.</p> <p>Stakeholders include owners of buildings equipped with elevators and the general public who use elevators.</p>
42 CSR 21A Supervision of Elevator Mechanics and Apprentices	06/01/2009	05/02/2011 07/01/2012 07/01/2013 05/01/2016	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Elevator Safety Act.</p> <p>W. Va. Code §21-3C-11 requires the agency to promulgate the rule.</p> <p>Stakeholders include licensed elevator mechanics, technicians, and apprentices, and individuals who want to become licensed as an elevator mechanic or technician, or who want to work as an elevator apprentice.</p>

42 CSR 22 Regulation of Trade, Weights and Measures	04/01/1995	04/05/2003	DOL recommends that the rule be modified to conform to current practice.	<p>This rule is essential to the administration of the Weights and Measures Act.</p> <p>W. Va. Code §47-1-3(c) requires the agency to promulgate this rule.</p> <p>Stakeholders include commercial businesses in WV that use weighing and measuring devices for the sale of goods and commodities to the public, and consumers who purchase goods or commodities by weight or measure.</p>
42 CSR 23 Commercial Bungee Jumping Safety Act	04/01/1996	None	DOL recommends that this rule be modified to conform to current practice.	<p>This rule is essential to the administration of the Commercial Bungee Jumping Act.</p> <p>W. Va. Code §21-12-3 requires the agency to promulgate the rule.</p> <p>Stakeholders include owners and operators of commercial bungee jumping facilities and the individuals who participate in commercial bungee jumping activities.</p>
42 CSR 24 Crane Operator Certification Act	05/01/1999	05/01/2001 05/02/2011 07/01/2013	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Crane Operator Certification Act.</p> <p>W. Va. Code §21-3D-3 requires the agency to promulgate this rule.</p> <p>Stakeholders include crane operators and individuals who want to become certified as a crane operator.</p>

42 CSR 25 Crane Operator Certification Act – Practical Examination	05/01/2001	05/02/2011 07/01/2013	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Crane Operator Certification Act.</p> <p>W. Va. Code §21-3D-3 requires the agency to promulgate this rule.</p> <p>Stakeholders include crane operators and individuals who want to become certified as a crane operator.</p>
42 CSR 26 Weights and Measures Calibration Fees	07/01/2005	06/01/2009 07/01/2015	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Weights and Measures Act.</p> <p>W. Va. Code §47-1-3(c) requires the agency to promulgate this rule.</p> <p>Stakeholders include any commercial business that uses weighing or measuring devices and has the devices periodically calibrated and certified at the state measurement laboratory.</p>
42 CSR 27 Rules of Procedure for Contested Case Hearings – Weights and Measures	09/29/2008	None	DOL recommends that the rule be continued as is.	<p>This rule is essential for conducting hearings concerning civil penalties for violations of the Weights and Measures Act.</p> <p>W. Va. Code §47-1-3(c) requires the agency to promulgate the rule.</p> <p>Stakeholders include any commercial business that has been issued a citation and wishes to contest the proposed civil penalty or wishes to make a statement before the Commissioner regarding the notice of violation.</p>
42 CSR 30 Nurse Overtime Complaints	07/01/2006	None	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Nurse Overtime and Patient Safety Act.</p>

42 CSR 30, continued Nurse Overtime Complaints				<p>W. Va. Code §21-5F-4(a) requires the agency to promulgate the rule.</p> <p>Stakeholders include hospitals, nurses providing direct patient care, and patients.</p>
42 CSR 31 Verifying the Legal Employment Status of Workers	07/01/08	07/01/15	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Verifying Legal Employment Status of Workers Act.</p> <p>W. Va. Code §21-1B-3 requires the agency to promulgate the rule.</p> <p>Stakeholders include employers and employees working in WV.</p>
42 CSR 32 Supervision of Plumbing Work	07/01/2008	07/01/2015	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the Supervision of Plumbing Work Act.</p> <p>W. Va. Code §21-14-4 requires the agency to promulgate this rule.</p> <p>Stakeholders include plumbers and individuals who desire to become licensed to perform plumbing work.</p>
42 CSR 33 Employer Wage Bonds	07/01/2014	03/30/2018	DOL recommends that the rule be continued as is.	<p>This rule is essential to the administration of the wage bond provisions of the Wage Payment and Collection Act.</p> <p>W. Va. Code §21-5-13 requires the agency to promulgate this rule.</p> <p>Stakeholders include employers engaged in commercial construction or the mining or transportation of minerals, and their employees.</p>

<p>42 CSR 34</p> <p>Regulation of Heating, Ventilating and Cooling Work</p>	07/01/2015	None	<p>DOL recommends that the rule be continued with proposed amendments to be taken up by the Legislature during the 2019 Regular Session.</p> <p>The proposed rule amendments address the amendments made to the Regulation of Heating, Ventilating and Cooling Work Act during the 2018 Regular Legislative Session (SB 506).</p>	<p>This rule is essential to the administration of the Regulation of Heating, Ventilating and Cooling Work Act.</p> <p>W. Va. Code §21-16-5 requires the agency to promulgate the rule.</p> <p>Stakeholders include licensed HVAC technicians, HVAC residential technicians, and HVAC technicians in training, and individuals who want to become licensed HVAC technicians, HVAC residential technicians, or HVAC technicians in training.</p>
<p>42 CSR 35</p> <p>Registration of Service Persons and Service Agencies</p>	03/30/2018	None	<p>DOL recommends that the rule be continued as is.</p>	<p>This rule is essential to the administration of the voluntary registration of service persons or service agencies section of the Weights and Measures Act.</p> <p>W. Va. Code §§47-1-3(c) and 47-1-8 requires the agency to promulgate this rule.</p> <p>Stakeholders include service persons and service agencies, and individuals who want to register as service persons or service agencies.</p>
<p>42 CSR 36</p> <p>Registration of Weighing Measuring Devices Used by Businesses in Commercial Transactions</p>	03/30/2018	None	<p>DOL recommends that the rule be continued as is.</p>	<p>This rule is essential to the administration of registration of weighing and measuring devices section of the Weights and Measures Act.</p> <p>W. Va. Code §47-1-3(c) requires the agency to promulgate this rule.</p> <p>Stakeholders include commercial businesses that use weighing and measuring devices for the sale of goods and commodities to</p>

<p>42 CSR 36, continued</p> <p>Registration of Weighing Measuring Devices Used by Businesses in Commercial Transactions</p>				<p>the public, and the public who purchase goods and commodities from commercial businesses.</p>
<p>42 CSR 37</p> <p>Jobs Act Procedures</p>	03/01/2018	08/31/2018	<p>DOL recommends that the rule be continued as is.</p>	<p>This rule is essential to the administration of the West Virginia Jobs Act.</p> <p>W. Va. Code §21-1C-5(e) requires the agency to promulgate the rule.</p> <p>Stakeholders include public authorities that use state funds to construct public improvements and contractors and subcontractors that work on public improvements that are funded with state monies. Any public improvement that is funded in whole or in part by federal funds is not covered under the Jobs Act.</p>