

**WEST VIRGINIA  
SECRETARY OF STATE**

**JOE MANCHIN, III**

**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

**FILED**

2002 JUL 19 A 11:00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: WV Code 47-1-3 (c)

AMENDMENT TO AN EXISTING RULE: YES  NO

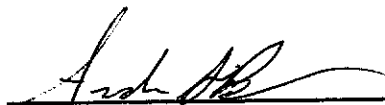
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 22

TITLE OF RULE BEING AMENDED: Regulation of Trade - Weights and Measures

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

**SCANNED**

\$4.40

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 19, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor

Room B-709, Bldg. #6, State Capitol Complex

Charleston, WV 25305 (304) 558-7890

LEGISLATIVE RULE TITLE: Regulation of Trade - Weights and Measures

1. Authorizing statute(s) citation WV Code 47-1-3 (c)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 17, 2002

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

July 18, 2002

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received  X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:  
(be exact)

July 19, 2002

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Andrew A. Brown, Asst. to the Commissioner

West Virginia Division of Labor

Room B-709, Bldg. #6, State Capitol Complex

Charleston, WV 25305 ph:(304) 558-7890 FAX: (304) 558-2273

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

same as "f"

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

N/A

- a. Give the date upon which you filed in the State Register a notice of the time and place of a

hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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d. Attach findings and determinations and reasons:

Attached None

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2002 JUN 17 A 9:38

WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative CITE AUTHORITY: WV Code 47-1-3(c)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 22

TITLE OF RULE BEING AMENDED: Regulation of Trade- Weights and Measures

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 18, 2002 AT 5:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Andrew A Brown

WV Division of Labor

Rm B-709, Building #6

State Capitol Complex

Charleston, WV 25305

**Legislative Rule Making**

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE **JUN 17 2002**

**Review Committee**

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulation of Trade - Weights and Measures

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WV Division of Labor

Address: Room B-709, Building #6

State Capitol Complex

Charleston, WV 25305

1. Effect of Proposed rule:

NO FISCAL IMPACT

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates: No fiscal impact

3. Objectives of These Rules: This amendment became as a result of changes in the federal inspection guidelines as adopted by this rule.

Rule Title: Regulation of Trade - Weights and Measures

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:


None

C. Economic Impact on Citizens/Public at Large.

None

Date: 6-17-02

Signature of Agency Head or Authorized Representative:



# WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-3797

[HTTP://WWW.STATE.WV.US/LABOR](http://WWW.STATE.WV.US/LABOR)

BOB WISE  
Governor



JAMES R. LEWIS  
Commissioner

## FACTS AND CIRCUMSTANCES

When this rule, 42 CSR 22, Regulation of Trade was amended in 1995, the only acceptable standards for motor fuel regulation was the America Society for Testing Materials (ASTM) Publication D-396 and that publication was adopted as the West Virginia standards. The National Conference on Weights and Measures (NCWM) handbook 130 is adopted by W.Va. Code section eleven, article one, chapter forty-seven [§47-1-11] as the state's applicable standards for motor fuel quality. Recently, the NCWM incorporated ASTM publication D-396 into handbook 130. This rule change recognizes that adoption. The proposed rule change eliminates references to ASTM publication D-396.

Of most importance, is the proposed elimination of one of the five testing methods in the determination of premium diesel fuel. In the past, "fuel injector cleanliness" has been examined by the Cummins L-10 Injector Depositing Test as endorsed by the ASTM L-10 Injector Depositing Test Surveillance Panel. This ASTM panel is no longer in existence and this leaves the "fuel injector cleanliness" test without the required over-site. Therefore, the Division of Labor can no longer accept the "fuel injector cleanliness" test in the determination of premium diesel fuel. Further, the labeling properties of premium diesel fuel requirements related to this unacceptable test are no longer required.

In the current rule, premium diesel fuel determination requires acceptable results from two of the five testing methods. With the elimination of one of those methods, "fuel injector cleanliness", the new standard shall be acceptable results on two of the four testing methods.

Two definitions have been eliminated. Both definitions were terms which are not used in the content of the rule.



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[HTTP://WWW.STATE.WV.US/LABOR](http://WWW.STATE.WV.US/LABOR)

BOB WISE  
Governor



JAMES R. LEWIS  
Commissioner

## SUMMARY OF CHANGES

3.1. The term "Department" is not used in the rule. It has been changed to define the term "Commissioner".

3.2. The term "Director" is not used in the rule and is therefore eliminated.

3.3. The term "remanufactured devices" has been renumbered as 3.2. in the proposed rule.

3.4. The term "repaired devices" is not used in the rule and is therefore eliminated.

6.1. This subsection adopts the regulatory standards for motor fuel, heating and fuel oils. In the existing rule, the American Society for Testing Materials (ASTM) publication D-396 was adopted as the standard. W.Va. Code §47-1-11 adopts the National Conference on Weights and Measures (NCWM) handbook 130 as a universal standard. Recently, the NCWM incorporated the ASTM D-396 publication into handbook 130 as a standard. In order to be consistent with Code, the reference in this rule to ASTM D-396 has been eliminated and specific reference made to NCWM handbook 130 as adopted by W.Va. Code §47-1-11.

6.2. This subsection is new. It relates to the determination of "premium diesel fuel". Previously, there were five tests for determining premium diesel fuel and acceptable results on two of the five tests constituted a premium diesel fuel determination. One of those five test, "fuel injector cleanliness" is no longer acceptable. The new acceptable determination shall be acceptable results on two of the four remaining tests.

6.3. The previous subsection 6.2. has been renumbered.

FILED

TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR

2002 JUL 19 A 11:00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 22  
REGULATION OF TRADE  
WEIGHTS AND MEASURES

**§42-22-1. General.**

1.1. Scope. -- This rule governs the enforcement of WV Code §47-1-1, et seq, Regulation of Trade, Weights and Measures as it relates only to the definition of terms, Uniform Regulation for National Type Evaluation, uniform regulation of the voluntary registration of servicepersons and service agencies for commercial weighing and measuring devices, and uniform regulation for motor fuel.

1.2. Authority. -- W. Va. Code §47-1-3(c).

1.3. Filing Date. -- ~~March 29, 1995.~~

1.4. Effective Date. -- ~~April 1, 1995.~~

**§42-22-2. Application and Enforcement.**

2.1. Application. This legislative rule applies to the West Virginia Division of Labor and all persons, materials and transactions governed by or otherwise within the jurisdiction of the Division.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor.

**§42-22-3. Definition.**

3.1. The term "~~Department~~" "commissioner" means the commissioner of the West Virginia Division of Labor.

~~3.2. The term "Director" means the Commissioner of the West Virginia Division of Labor.~~

~~3.3.~~ 3.2. The term "remanufactured devices" means the overhaul, or replacement of parts to a weighing or measuring device which enable a device to be sold to a new owner, in a new location.

~~3.4. The term "repaired devices" means the maintenance or replacement of parts for a device where ownership remains the same.~~

**§42-22-4. Uniform Regulation For National Type Evaluation.**

4.1. All new weighing and measuring devices placed into commercial service in West Virginia after March 31, 1994, must have a National Type Evaluation Program (NTEP) Certificate of Conformance as required by

the National Institute of Standards and Technology (NIST) Handbook 130.

4.2. All weighing and measuring devices, in commercial use in West Virginia prior to March 31, 1994, are not required to have an NTEP Certificate of Conformance, provided:

- (a) The device meets or exceeds all applicable requirements of NIST Handbook 44;
- (b) The device is suitable for its intended use;
- (c) The device is registered with the Weights and Measures Section of the West Virginia Division of Labor under the provisions of WV Code §47-1-21; and
- (d) The device remains the property of the original registered owner and/or in the original registered location.

4.3. Effective January 1, 1996, "remanufactured devices" are required to have an NTEP Certificate of Conformance. Remanufactured devices with an original manufacture date prior to March 31, 1994, may be sold for commercial use until January 1, 1996, provided:

- (a) The device meets or exceeds all applicable requirements of NIST Handbook 44;
- (b) The device is suitable for its intended use; and
- (c) Sellers of the devices make a statement on the bill of sale to the buyer that the device is capable of being approved by the Weights and Measures Section of the West Virginia Division of Labor if properly installed.

4.4. Where replacement components are used to repair or modify a commercial weighing or measuring device, which affect the metrological integrity of the device, the components used must have an NTEP Certificate of Conformance, provided that the repair of the device does not require the original manufacturers parts, where NTEP approval is either not required or not applicable.

4.5. Where repair or modification of devices with an NTEP Certificate of Conformance alters the device to deviate from the original Certificate of Conformance, the original Certificate is invalid, and the device must be resubmitted for a new NTEP Certificate of Conformance.

**§42-22-5. Uniform Regulation of the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices.**

5.1. The Commissioner shall establish minimum qualifications with regards to, but not limited to, training and experience for service agencies and service persons, and establish testing relative to West Virginia Code §47-1-1, et seq, REGULATION OF TRADE, WEIGHTS AND MEASURES, and REGULATION OF TRADE, WEIGHTS AND MEASURES 42 CSR 22. Further, the Commissioner may require remedial or continuing education as considered necessary to maintain minimum levels of competency.

**§42-22-6. Uniform Regulation For Motor Fuel.**

6.1. ~~As standards and specifications for testing of heating and fuel oils, there is hereby adopted the~~

references listed in Section 2 of ASTM D-396 The National Conference on Weights and Measures (NCWM) handbook 130, as published by the National Institute of Standards and Technology (NIST), has been adopted by W.Va. Code section eleven, article one, chapter forty-seven [§47-1-11] as the applicable standards for the regulation of motor fuels, heating and fuel oils.

6.2. Within handbook 130, Uniform Engine Fuels, Petroleum Products, and Automotive Lubricants regulations, sub-section one of section seven adopts five test methods to be used to determine compliance with the applicable premium diesel parameters: (a) energy content, (b) Cetane number, (c) low temperature operability, (d) thermal stability, and (e) fuel injector cleanliness. The division of labor does not adopt (e), "fuel injector cleanliness" as an acceptable testing method. Selection and proven analysis as per the stated test methods of two (2) of the four (4) remaining properties shall constitute premium diesel fuel for the state.

~~6.2.~~ 6.3. Test results which are in error exceeding the reproducibility limits for that value in the applicable ASTM publication, will be considered to be in violation of West Virginia Code §47-1-11, Requirements For Motor Fuel.

**§42-22-7. Severability.**

7.1. If any provision of this rule or its application to any person is held invalid, the invalidity shall not affect the provisions or application of the rule which can be given effect without the invalid provisions or application, and to this end, the provisions of this rule are declared to be severable.