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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

2002 OCT 22 A 9 20

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SECRETARY OF STATE

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October 21, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Andrew Brown
Labor, Division of
Capitol Complex
Building 6, Room B-709

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Regulation of Trade - Weights and Measures, 42CSR22**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Labor

Subject: Regulation of Trade Weights and Measures, 42CSR22

PERTINENT DATES

Filed for public comment: June 17, 2002

Public comment period ended: July 18, 2002

Filed following public comment period: July 19, 2002

Filed LRMRC: July 19, 2002

Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 3 defines terms. It has been amended to delete unused terms.

Section 6 relates to uniform regulation for motor fuel. It has been amended to adopt the National Conference on Weights and Measures Handbook 130, as published by the National Institute of Standards and Technology, as the applicable standard for motor fuels, and heating and fuel oils, with the exception of the "fuel injector cleanliness test" within the handbook.

AUTHORITY

Statutory authority: W.Va. Code, §47-1-3, which provides, in part, as follows:

The state commissioner of labor is the commissioner of weights and measures. He may

appoint such deputies and inspectors as may be required to carry out the provisions and purposes of this article within the limits of such appropriation as may be made by the Legislature for the maintenance of the work of the division of labor.

The commissioner shall:

... (c) Promulgate rules for the enforcement of this article, which rules shall have the force and effect of law...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.