

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

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY West Virginia Division of Labor NUMBER: 42

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 316

SECTION 64-10-2(b), PASSED ON March 7, 2003

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 5, 2003


Authorized Signature

\$2.80

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 22
REGULATION OF TRADE
WEIGHTS AND MEASURES

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§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. -- April 4, 2003

1.4. Effective Date. -- April 5, 2003

§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 "commissioner" means the commissioner of the West Virginia Division of Labor.

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.

§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, shall 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 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. The original Certificate is invalid, and the device must be resubmitted for a new NTEP Certificate of Conformance when repair or modification of devices with an NTEP Certificate of Conformance alters the device to deviate from the original 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. 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 §47-1-11 as the applicable standards for the regulation of motor fuels and heating and fuel oils, with the following exception: 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. Test results which are in error exceeding the reproducibility limits for that value in the applicable ASTM publication, shall be considered to be in violation of West Virginia Code §47-1-11, Requirements For Motor Fuel.