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**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

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September 15, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Andrew A. Brown  
Division of Labor  
Capitol Complex  
Building 3, Room 319

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Steam Boiler Inspection, 42CSR3**

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

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2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
 

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3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
 

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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.
 

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5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.
 

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** West Virginia Division of Labor

**Subject:** Steam Boiler Inspection, 42CSR3

OFFICE OF LEGISLATIVE SERVICES  
JUN 29 12 11 PM 1999

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PERTINENT DATES

Filed for public comment: June 29, 1999  
Public comment period ended: July 30, 1999  
Filed following public comment period: August 4, 1999  
Filed LRMRC: August 4, 1999  
Filed as emergency:

Fiscal Impact: No Impact

ABSTRACT

The proposed rule amends a current legislative rule. Throughout the rule, references to "certificate" have been changed to "permit", references to the "Department of Labor" have been changed to the "Division of Labor" and references to national standards have been updated. The following is a synopsis of the substantive amendments.

Section 2 relating to boilers of all types has been amended by deleting all language relating to fusion welding. Language has been added requiring individuals repairing or altering boilers to be accredited by the Nation Board of Boiler and Pressure Vessel Inspectors Inspection Board.

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AUTHORITY

Statutory authority: W.Va. Code, §21-3-7, which provides, in part, as follows:

...The commissioner of labor or state boiler inspector shall have the authority to inspect steam boilers in this state. To carry

out the provisions of this section, the commissioner of labor shall prescribe rules and regulations under which boilers may be constructed and operated, according to their class...

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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 PROVISION OF THE CODE?

Yes.

VIII. OTHER.

The proposed rule needs substantial revision to bring it into conformity with the Committee's standards for the drafting of rules. It contains obsolete language, some of which does merely repeat the code, but could be eliminated in the proposed rule.

Additionally, the Division noted that they were unable to incorporate changes suggested by several power companies relating to supercritical boilers, because the code does not provide specifically for these types of boilers. Because the statute does not specifically set forth the various types of boilers and allows the Commissioner to promulgate rules under which boilers may be constructed and operated, according to their class, Counsel is of the opinion that these types of boilers could perhaps be dealt with in the proposed rule.