

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

**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: W. Va. Code 47-1-3 (c)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Method of Sale of Commodities

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

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: August 26, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Method of Sale of Commodities

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 17, 2008

b. What other notice, including advertising, did you give of the hearing?
Public comment period only.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 18, 2008

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)

August 26, 2008

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

David W. Mullins, Commissioner phone: 304.558.7890 x 111

West Virginia Division of Labor fax: 304.558.2273

State Capitol Complex email: david.w.mullins@wv.gov

Building 6, Room B-749
Charleston, WV 25305

- 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)

John Junkins, Director phone: 304.722.0602

Weights and Measures Section fax: 304.722.0605

West Virginia Division of Labor email: john.j.junkins@wv.gov

570 MacCorkle Avenue
St. Albans, WV 25177

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:

- 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

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

FACTS AND CIRCUMSTANCES FOR THE PROPOSED RULE CHANGE

The Division of Labor proposes to have this rule repealed in its entirety. The contents of this rule are covered by § 42-16, which adopts the National Bureau of Standards Handbook 130, 1987 Edition. In addition, this rule is no longer current with national standards.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Method of Sale of Commodities

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Labor

Address: State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

Phone Number: (304) 558-7890 Email: david.w.mullins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed repeal of this rule will have no fiscal impact on the Division of Labor.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: Method of Sale of Commodites

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 7-15-08

Signature of Agency Head or Authorized Representative

David W. Mullis

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TITLE 42
LEGISLATIVE RULES 2008 AUG 26 AM 11:30
DEPARTMENT OF LABOR

SERIES 11
METHOD OF SALE OF COMMODITIES
SECRETARY OF STATE
STATE OF WEST VIRGINIA

~~42-11-1. General.~~

~~1.1. Scope. — These legislative rules and regulations are for the purpose of regulating the method of sale of commodities.~~

~~1.2. Authority. — W. Va. Code 47-1-19 and 47-1-24~~

~~1.3. Filing Date. — May 2, 1976~~

~~1.4. Effective Date. — June 1, 1976~~

~~42-11-2. Food Products.~~

~~2.1. Berries and Small Fruits — Shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of 1/2 dry pint, 1 dry pint, or 1 dry quart, and when sold by measure, the containers shall be deemed not to be packages for labeling purposes.~~

~~2.2. Butter, Oleomargarine, and Margarine — Shall be offered and exposed for sale and sold by weight only in units of 1/4 pound, 1/2 pound, 1 pound, or multiples of 1 pound.~~

~~2.3. Flour, Corn Meal, and Hominy Grits — Wheat flour, whole wheat flour, graham flour, self rising wheat flour, phosphated wheat flour, bromated flour, corn flour, corn meal, and hominy grits, whether enriched or not, shall be packaged, kept, offered or exposed for sale, or sold only in units of 2, 5, 10, 25, 50, or 100 pounds. Provided, That packages in units of less than 2 pounds or more than 100 pounds shall be permitted.~~

~~2.4. Meat, Poultry, and Seafood — Shall be sold by weight, except the following, which may be sold by weight, measure, or count:~~

~~(a) Shellfish~~

~~(b) Items sold for consumption of the premises.~~

~~(c) Items sold as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold.~~

~~(d) Items sold as part of a sandwich.~~

~~When meat, poultry, or seafood is combined with some other food element to form a distinctive food product, the quantity representation may be in terms of the total weight of the product or combination, and a quantity representation need not be made for each element.~~

In the case of ready to cook, stuffed poultry products, the label must show the total net weight of the poultry product and the minimum net weight of the poultry in the product.

~~2.5. Fluid Milk Products—All fluid milk products including but not limited to milk, lowfat milk, skim milk, cultured milks and cream shall be packaged for retail sale only in units of 1 gill, 1/2 liquid pint, 1 liquid pint, 1 liquid quart, 1/2 gallon, 1 gallon, 1 1/2 gallons, 2 gallons, 2 1/2 gallons, or multiples of 1 gallon: Provided, That packages in units of less than 1 gill shall be permitted.~~

~~2.6. Other Milk Products—Cottage cheese, cottage cheese products, and other milk products which are solid, semi-solid, viscous or a mixture of solid and liquid, as defined in the Pasteurized Milk Ordinance of the United States Public Health Service, as amended in 1965, shall be sold in terms of weight: Provided that cottage cheese, cottage cheese products, sour cream, and yogurt shall be packaged for retail sale only in units of 8, 12, 16, 24, 32, 64, 80, and 128 ounces avoirdupois: And provided further, That multipack or single serving sizes of 6 ounces or less shall be sold only in even ounce increments (Standard package sizes shall apply to lowfat and dry curd cottage cheese products as of July 1, 1976.)~~

~~2.7. Pickles—The declaration of net quantity of content on pickles and pickle products, including relishes but excluding one or two whole pickles in a transparent wrapping which may be declared by count, shall be expressed in terms of fluid measure. Sales of pickles from bulk may be by count.~~

~~42-11-3. Non-Food Products.~~

~~3.1. Coatings—Asphalt paints, coatings, and plastics shall be sold in terms of liquid measure.~~

~~3.2. Peat and Peat Moss—Applies only with respect to organic matter of geological origin, excluding coal and lignite, originating principally from dead vegetative remains through the agency of water in the absence of air and occurring in a bog, swampland, or marsh, and containing an ash content not exceeding twenty-five (25) percent on a dry weight basis (dried in an oven at 105 degrees C. (221 degrees F.) until no further weight loss can be determined).~~

~~(a) Declaration of Quantity—The declaration of quantity of peat and peat moss shall be expressed in weight units or in cubic measure units.~~

~~(b) Units~~

~~(1). Weight—Peat and peat moss sold in terms of weight shall be offered and exposed for sale only in units of fifty (50) pounds, forty (40) pounds, twenty (20) pounds, ten (10) pounds, or three (3) pounds.~~

~~(2). Cubic Measure—Peat and peat moss sold in terms of cubic measure shall be offered and exposed for sale only in units of 6, 5.5, 4, 2, 1, 0.5, 0.3, or 0.2 cubic feet. If the commodity is labeled in terms of compressed cubic measurement, the quantity declaration shall represent the quantity in the compressed (the latter declaration not exceeding the actual amount of material that can be recovered).~~

~~3.3. Roofing and Roofing Material—Shall be sold either by the square or by the square foot only.~~

~~(a) Definitions~~

~~(1). Square—The term "square" shall mean the quantity of roofing or roofing material that, when applied according to directions or instructions of the manufacturer, will cover an area of one hundred (100)~~

square feet exclusive of side laps or side joints. ~~Provided, That, in the case of roofing or roofing material of corrugated design, the side lap or side joint shall be one full corrugation.~~

~~(2) Square Foot — The term "square foot" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover 1 square foot (144 square inches) exclusive of side laps or side joints.~~

~~(b) Declaration of Quantity — When the declaration of quantity on a package of roofing or roofing material contains the term "square" it shall include, plainly and conspicuously, a numerical definition of the term "square" for example, "One square covers one hundred (100) square feet of roof area."~~

~~(1). Common Fractions — The use of the common fraction one third (1/3) is specifically authorized in the quantity statement of a package of roofing or roofing material when, and only when used as the common fraction of the "square".~~

~~(2). Quantity Statement — The primary declaration shall only be in terms of a square or square feet. There is no prohibition against the use of supplementary quantity declarations, such as shingle dimensions, but in no case shall the weight of the material be stated or implied. However, the use of numerical descriptions for rolls of felt roofing material may continue to be used.~~

~~3.4. Sealants — Caulking compounds, glazing compounds, and putty shall be sold in terms of liquid measure.~~

~~42-11-4. Application.~~

~~4.1. Presentation of Price — Whenever an advertised, posted, or labeled price per unit of weight, measure, or count for any commodity includes a fraction of a cent, all elements of the fraction shall be prominently displayed, and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one half the height and width of numerals representing the whole cent.~~

~~4.2. Machine Vended Commodities — All vending machines dispensing packaged commodities shall indicate:~~

~~(a) Product identity.~~

~~(b) Net quantity.~~

~~(c) Name, address, and telephone number of responsible party.~~

~~The requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.~~

~~4.3. Combination Quantity Declaration — Whenever the method of sale for a bulk or packaged commodity requires the use of a statement including two or more declarations of weight and measure, or count, or size, or other appropriate combinations, the following shall apply to the particular commodity:~~

~~(a) Beverageware: Pressed and Blown Tumblers and Stemware — The allowable difference between actual and declared capacity shall be:~~

1. ~~Plus or minus 1/4 ounce for items of five (5) ounce capacity or less;~~
2. ~~Plus or minus five (5) percent of the stated capacity for items over five (5) ounce capacity.~~

~~(b) Paper Plates—The allowable difference between actual and declared dimensions shall be minus 1/8 inch to plus 1/4 inch.~~

~~(c) Sanitary Paper Products—The allowable difference between actual and declared dimensions for toilet tissue shall be plus or minus 1/16 inch. The allowable difference for paper towels, paper napkins, and facial tissue shall be plus or minus 1/8 inch.~~

~~4.4. Railroad Car Tare Weights—Whenever stenciled tare weights on freight cars are employed in the sale of commodities or the assessment of freight charges, the following conditions and requirements shall apply:~~

~~(a) All newly stenciled or restenciled tare weights shall be accurately represented to the nearest one-hundred (100) pounds and the representation shall include the date of weighing.~~

~~(b) The allowable difference between actual tare weight and stenciled tare weight on freight cars in use shall be:~~

1. ~~Plus or minus three hundred (300) pounds for cars fifty thousand (50,000) pounds or less;~~
2. ~~Plus or minus four hundred (400) pounds for cars over fifty thousand (50,000) pounds to and including sixty thousand (60,000) pounds;~~
3. ~~Plus or minus five hundred (500) pounds for cars over sixty thousand (60,000) pounds.~~

~~(c) Tare weight determinations for verification or change of stenciled weights shall only be made on properly prepared and adequately cleaned freight cars.~~

~~(d) The provisions in Section 4 shall be effective as of July 1, 1973 for all railroad cars stenciled or restenciled with a tare weight after that date and for all railroad cars as of January 1, 1978.~~

~~(e) Tank cars, covered hopper cars, flat cars equipped with multi-deck racks, or special superstructure, mechanical refrigerator cars, and house-type cars equipped with special lading protective devices must be reweighed and restenciled only by owners or their authorized representatives:~~

1. ~~When car bears no lightweight (empty weight) stenciling;~~
2. ~~When repairs or alterations result in a change of weight in excess of the permissible lightweight tolerance.~~

~~4.5. Fireplace and Stove Wood—For the purpose of this regulation, this section shall apply to the sale of all wood, natural and processed, for use as fuel.~~

~~(a) Definitions~~

1. ~~Fireplace and Stove Wood—Any kindling, logs, boards, timbers or other wood, split or not~~

split, advertised, offered for sale, or sold as fuel.

~~2. Cord—The amount of wood which is contained in a space of one hundred twenty-eight cubic feet, when the wood is ranked and well stowed. For the purpose of this regulation, "ranked and well stowed" shall be construed to mean when pieces of wood are placed in a line or row, with individual pieces touching and parallel to each other, and stacked in a compact manner.~~

~~3. Representation—A "representation" shall be construed to mean any advertisement, offering, invoice, or the like that pertains to the sale of fireplace or stove wood.~~

~~(b) Identity—A representation may include a declaration of identity that indicates the species group (Example: fifty percent (50%) hickory, fifty percent (50%) miscellaneous softwood). Such a representation shall indicate, within ten percent accuracy, the percentage of each group.~~

~~(c) Quantity—Wood, of any type, for use as fuel shall be advertised, offered for sale and sold only by measures, using the term "cord" and fractional parts of a cord; except that wood, natural or processed, offered for sale in packaged form shall display the quantity in terms of cubic feet, to include fractions of cubic feet.~~

~~(d) Prohibition of Terms—The terms "face cord", "rack", "pile", "truckload", or terms of similar import shall not be used when advertising, offering for sale, or selling wood for use as fuel.~~

~~(e) Delivery Ticket or Sales Invoice—A delivery ticket or invoice shall be presented by the seller to the purchaser whenever any nonpackaged fireplace or stove wood is sold. The delivery ticket or sales invoice shall contain at least the following information:~~

~~1. The name and address of the vendor~~

~~2. The name and address of the purchaser~~

~~3. The date delivered~~

~~4. The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity~~

~~5. The price of the amount delivered~~

~~6. The identity of the most descriptive terms commercially practicable, including any quality representation made in connection with the sale~~

~~4.6. Prefabricated Utility Buildings—These buildings shall be offered for retail sale on the basis of usable inside space as follows:~~

~~(a) Length, measured from inside surface of wall panels at the base;~~

~~(b) Width, measured from inside surface of wall panels at the base;~~

~~(c) Height, measured from the base to the top of the shortest wall panel.~~

~~Note 1. Inside dimension shall be declared to the nearest inch.~~

~~Note 2. If total usable inside space is declared in a supplemental declaration, it shall be to the nearest cubic foot.~~

~~42-11-5. Revocation of Conflicting Regulations.~~

~~All provisions of all orders and regulations heretofore issued on this same subject that are contrary to or inconsistent with the provisions of this regulation, and specifically West Virginia Administrative Regulations, Commissioner of Labor, Chapter 21-2, Series 1, (1972), Section 13, are hereby revoked.~~