

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF 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: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 22

TITLE OF RULE BEING PROPOSED: Regulation of Trade, Weights and  
Measures

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

## STATEMENT OF CIRCUMSTANCES

This rule is submitted as a means to enhance newly enacted Legislation. During the 1994 Regular Legislative Session, the Legislature amended and re-enacted WV Code §47-1, Regulation of Trade, Weights and Measures. This amendment reaffirmed some existing Code but primarily adopted a national uniform code for weights and measures enforcement. The model law, as adopted is relative complete for enforcement purposes. However, because it somewhat generic in nature, some clarification by legislative rule is necessary. The rule is relatively short so each aspect is summarized individually.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulation of Trade, Weights and Measures

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Division of Labor

Address: Room #319, Building #3  
Capitol Complex  
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates: No effect.

3. Objectives of these rules: The 1994 Legislature re-encated WV Code 47-1 (Weights and Measures). This rule repalces existing rules made ineffective by the code change. This rule provides administrative process to the enforcement of the new code. Also, the new code was a national model law and was generic in nature. This rule makes it West Virginia specific.

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: August 12, 1994

Signature of Agency Head or Authorized Representative



A handwritten signature in cursive script, appearing to read "A. M.", is written over a horizontal line.

DATE: August 12, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Labor

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

July 12, 1994 (Public comment period only)

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

Trade associations

c. Date of Hearing(s) None

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

Attached None No comments received None

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

August 12, 1994

f. Name and phone number(s) of agency person(s) to contact for additional information:

Andrew A. Brown (304) 558-7890

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

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b. Date of hearing: 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 N/A

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## SUMMARY OF RULE

The following is a summary of the provisions of this rule. The rule is relatively short, therefore, each aspect is summarized.

§42-22-3. Definitions. The Uniform Code as adopted by SB #360, is a national "model law". Therefore, it contains some generic terms and their definitions. It is necessary that these terms be made West Virginia specific. The term "department" must be defined as the WV Division of Labor and the term "director" must be defined as the Commissioner of Labor.

Within the Code, there are provisions that regulate the sale or transfer of commercial weighing and measuring devices. These devices must conform to certain standards of performance to be sold or transferred. Therefore, it is necessary to make certain that pre-owned devices meet the performance standards. This compliance enforcement requires a line to be drawn between the terms "repaired" and "remanufactured". Definitions are offered which will make this distinction.

§42-22-4. Uniform Regulation for National Type Evaluation. This provision of the Uniform Code requires that all weighing and measuring devices in commercial use must meet certain national standards and hold a certificate of conformance as issued by the National Institute of Standards and Technology. This requirement became effective on March 31, 1994, with the passage of SB #360. The purpose of Section 4 of this rule is to establish a "grandfather" or phase-in period for the West Virginia business community.

§42-22-5. Uniform Regulation of the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices. This aspect of the Uniform Code establishes a "voluntary" registration program for persons who specialize in the repair and remanufacture of weighing and measuring devices. An individual qualified under this registration process would have limited powers similar to those of a state inspector. The purpose of Section 5 of this rule is to require that minimum qualifications be required and that all applicants be knowledgeable concerning West Virginia Code.

§42-22-6. Uniform Regulation for Motor Fuels. The Uniform Code as adopted by SB #360 details testing procedures for motor fuel but only makes recommendations as to acceptable test result levels. Sections 6.1 and 6.2 adopt two of the recommended publications into WV Code.

## FISCAL NOTE

This rule seeks to enhance the operational and administrative procedures applicable to WV Code §47-1, Regulation of Trade, Weights and Measures (SB #360) as passed by the 1994 Regular Legislative Session. SB #360 was a complete re-write of the Code which has been in existence since the turn of the century. This rule, in itself, will neither add nor subtract responsibility, and therefore, it will have no fiscal impact. For this reason, no fiscal note is submitted.

RECEIVED

TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR

1994 AUG 15 AM 11:19

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 22  
REGULATION OF TRADE  
WEIGHTS AND MEASURES

\$42-22-1. GENERAL.

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

1.2. Authority. -- WV Code \$47-1-3(c).

1.3. Filing Date. --

1.4. Effective Date. --

\$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. DEFINITIONS.

3.1. The term "Department" shall mean the West Virginia Division of Labor.

3.2. The term "Director" shall mean the Commissioner of the West Virginia Division of Labor.

3.3. 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, will not be 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" will be 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 such 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 effect 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, REGULATION OF TRADE, WEIGHTS AND MEASURES, and 42 CSR 22 Legislative Rules. Further, the Commissioner may require remedial or continuing education as deemed 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 American Society for Testing and Materials (ASTM) Publication D-396, and associated ASTM references listed in Section 2 of ASTM D-396.

6.2. 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, such 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.