

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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NOV 3 10 46 AM '84

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY WV Code 47-1-3(c)

AMENDMENT TO AN EXISTING RULE: YES NO

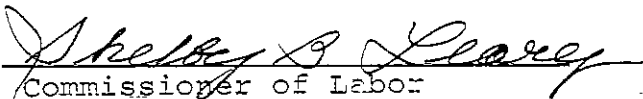
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Commissioner of Labor

2.80

FILED

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

NOV 3 10 46 AM '94

SERIES 22
REGULATION OF TRADE
WEIGHTS AND MEASURES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

\$42-22-1. GENERAL.

1.1. Scope. This rule ~~shall govern~~ governs the enforcement of WV Code ~~\$47-1-1~~ \$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 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~~ means the West Virginia Division of Labor.

3.2. The term "Director" ~~shall mean~~ means 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~~ 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 and/or in the original registered location.

4.3. Effective January 1, 1996, "remanufactured devices" ~~will be~~ 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 ~~such~~ 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. 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 ~~\$47-1-1~~ \$47-1-1, et seq., REGULATION OF TRADE, WEIGHTS AND MEASURES, and REGULATION OF TRADE, WEIGHTS AND MEASURES 42 CSR 22. ~~Legislative Rules~~. Further, the Commissioner may require remedial or continuing education as ~~deemed~~ considered 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~~ the 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.



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OCT 11 10 08 AM '94

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

October 2, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Mr. Andrew A. Brown
Division of Labor
Bg. 3, Room 19, State Capitol
Charleston, WV 25305
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: Regulation of Trade, Weights and Measures
and Safety Standards Board

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 X
- 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 rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.