

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED IN THE OFFICE OF THE SECRETARY OF STATE THIS DATE July 6 1990 ADMINISTRATIVE LAW DIVISION

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Attorney General TITLE NUMBER: 142

RULE TYPE: Legislative; CITE AUTHORITY Code 47-18-20

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 15

TITLE OF RULE BEING PROPOSED: Defining Federal Antitrust Laws; Comparability and Activities Presumed to be Anticompetitive.

DATE OF PUBLIC HEARING: August 6, 1990 TIME: 11:00 am

LOCATION OF PUBLIC HEARING: Antitrust Division 812 Quarrier Street, Sixth Floor Charleston, West Virginia 25301

COMMENTS LIMITED TO: ORAL, WRITTEN, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Constance R. Tsokanis

812 Quarrier Street Fifth Floor - L & S Bldg. Charleston, West Virginia

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

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FISCAL NOTE FOR PROPOSED RULES

Rule Title: Defining Federal Antitrust Laws; Comparability and Activities Presumed to be Anticompetitive.

Type of Rule:  Legislative  Interpretive  Procedural

Constance R. Tsokanis

Agency Attorney General Address 812 Quarrier Street

L & S Building 5th Floor

Charleston, West Virginia  
25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

No additional personnel, equipment, or facilities will be required to implement the provisions of this rule.

3. Objectives of these rules:

The objective of these rules is to clarify the application of the West Virginia Antitrust Act.



TITLE 142

LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 15  
DEFINING FEDERAL ANTITRUST LAWS; COMPARABILITY  
AND ACTIVITIES PRESUMED TO BE ANTICOMPETITIVE.

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§ 142-15-1. General.

1.1 Scope - This rule shall apply to (a) any action brought by the Attorney General as parens patriae in federal court for violations of the federal antitrust laws under W. Va. Code § 47-18-17 (1986); (b) any anticompetitive activity under W. Va. Code § 47-18-3(a) performed by persons doing business or affecting commerce within the State; and (c) any action brought by the Attorney General of the State pursuant to W. Va. Code § 47-18-1 through -23.

1.2 Authority - This rule is authorized by W. Va. Code § 47-18-20.

1.3 Filing Date -

1.4 Effective Date -

1.5 Purpose - The purpose of this rule is to define the term "federal antitrust laws" as used within W. Va. Code § 47-18-17 (1986); clarify the meaning of the word "comparable" as used within -18-16, and the meaning of -18-3(a) in keeping with the beneficial purpose of the West Virginia Antitrust Act to foster competition in this State.

1.6 Construction - This rule shall be liberally construed to effectuate the beneficial purposes of the West Virginia Antitrust Act.

1.7 Severability - If, for any reason, any section, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, sentences, clauses, phrases, or provisions or their application to any other person or circumstance, and to this end, each and every section, sentence, clause, phrase, or provision of this rule is hereby declared severable.

Attorney General  
Legislative Rule  
§ 142-15-2

§ 142-15-2. Definition of "Federal Antitrust Laws"  
As Used in W. Va. Code § 47-18-17.

The term "federal antitrust laws" as used within W. Va. Code § 47-18-17 shall include the provisions of 15 U.S.C. §§ 1, 2, 3, 8, 13, 14, 18, 19, and 45(a) as they currently exist or as they may be amended from time to time.

§ 142-15-3. Comparability of state and federal antitrust law pursuant to W. Va. Code § 47-18-16.

Where the language of Article 18 of Chapter 47 of the West Virginia Code and the language of a federal antitrust statute are not substantially comparable, in terms of language or legislative intent, on issues of law or procedure, federal precedent shall not be applicable to interpretations of Article 18 of Chapter 47 of the West Virginia Code.

§ 142-15-4. Unlawful activities contemplated under the prohibition of "contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade" as used in W. Va. Code § 47-18-3 (1986).

4.1 It shall be unlawful under W. Va. Code § 47-18-3 for a person or group of persons to engage in activities which restrain trade or commerce by entering into tie-in agreements. Such agreements include, but are not limited to, agreements which condition or have the effect of conditioning the sale of one distinct product or service upon the purchase of another distinct product or service.

4.2 It shall be deemed unlawful under W. Va. Code § 47-18-3 for any person or persons to overtly or tacitly enter into agreements resulting in reciprocity. Such agreements include, but are not limited to agreements in which the sale of a product or service is conditioned upon the seller's purchase of products or services produced or performed by the buyer.



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

ROGER W. TOMPKINS  
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOTLINE  
(800) 368-8808

July 6, 1990

The Honorable Ken Hechler  
Secretary of State  
State Capitol, Room 157  
Charleston, West Virginia 25305

Re: Promulgation of Proposed Legislative Rule  
pertaining to the definition of federal  
antitrust laws; comparability and activities  
presumed to be anticompetitive.

Dear Secretary Hechler:

Enclosed please find for filing each of the following documents:

- One (1) copy of the proposed rule;
- One (1) copy of the fiscal note for the proposed rule; and
- One (1) copy of the Notice of Public Hearing for the proposed rule.

Your attention and courtesies in this matter are greatly appreciated. If you or your staff have any questions regarding this matter, please do not hesitate to call Daniel N. Huck, Deputy Attorney General, Antitrust Division at 348-0246.

Sincerely,

  
ROGER W. TOMPKINS  
ATTORNEY GENERAL

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Enclosures