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

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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December 9, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Beth Marquart  
Health & Human Resources  
Capitol Complex  
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Food Establishments, 64CSR17**

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Health

**Subject:** Food Establishments, 64CSR17

PERTINENT DATES

Filed for public comment: June 30, 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: None

OFFICE OF THE CLERK  
LEGISLATIVE SERVICE CENTER

SEP 21 4 05 PM '99

ABSTRACT

The proposed rule repeals and replaces two current Division of Health rules: Food Service Sanitation Regulations, 64CSR17, and Retail Food Store Sanitation, 64CSR20. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 relates to incorporation by reference of the Federal Model Food Code. It adopts the U.S. Public Health Service Food Code of 1999 as published by the U.S. Department of Health and Human Services with certain specified exceptions and additions. It also provides the Internet site at which the Food Code is available.

Section 3 defines terms. An altered definition of the term "food establishment" is provided in lieu of the one provided in the Food Code.

Section 4 relates to exceptions. It sets forth those types of facilities in which a domestic-type kitchen with residential-style equipment is acceptable. These include a family day care facility, a residential care facility with a maximum capacity of 12 occupants, and a bed and breakfast, depending upon the number of

sleeping accommodations or the aggregate use of those accommodations.

Section 5 relates to fees. It states that all fees established in the Division's rule, "Fee for Permits", 64CSR30, for mobile food units, temporary food establishments, retail food stores and food service establishments are applicable to those establishments governed by the proposed rule.

Section 6 relates to hearings and administrative due process. It references the Division's rule for contested case hearings and declaratory rulings for persons adversely affected by an action of the Director.

Section 7 relates to the penalty for violating provisions of the rule. It sets forth the statutory penalty.

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#### AUTHORITY

Statutory authority: W.Va. Code, §16-1-7, which provides, in part, as follows:

The secretary of the department of health and human resources shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code...

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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.

Counsel has technical modifications to suggest.