

**NOVEMBER** 8

**TENTATIVE AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Sunday, November 8, 1992, 5:00 - 7:00 p.m.

SENATE FINANCE COMMITTEE MEETING ROOM, M-451

1. Approval of Minutes - Meeting August 3, 1992
2. Review of Legislative Rules:
  - a. Consolidated Public Retirement Board - Teachers' Defined Benefit Retirement System, Series 4
  - b. Consolidated Public Retirement Board - Public Employees Retirement System, Series 5
  - c. Consolidated Public Retirement Board - Benefit Determination and Appeal
  - d. Division of Energy - Operator's Designation of Bona Fide Future Use of Oil and Gas Wells - Qualification for Inactive Status
  - e. Air Pollution Control Commission - Regulations to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds
  - f. State Emergency Response Commission - SERC Legislative Rules
  - g. Dept. of Health and Human Resources - Infectious Medical Waste
  - h. Dept. of Health and Human Resources - Residential Board and Care Homes
  - i. Dept. of Health and Human Resources - Trauma Center or Facility Designation
  - j. State Fire Commission - Electrician Licensing
  - k. Division of Labor - West Virginia Manufactured Housing Construction and Safety Standards Act
  - l. West Virginia Cable Television Advisory Board - Implementing Regulations

- m. Division of Motor Vehicles - Motor Vehicle Dealers, Wreckers/Dismantlers/Rebuilders and License Services
- n. Insurance Commissioner - Filing Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in this State

3. Other Business:

- a. Workmen's Compensation - Definition of Employer
- b. Division of Tax - Sales Tax Interpretive Rules

Sunday, November 8, 1992

5:00 - 7:00 p.m.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher (absent)

The meeting was called to order by Mr. Grubb, Co-Chairman.

The minutes of the August 3, 1992 meeting were approved.

Mike Mowery, House Judiciary Counsel, told the Committee that at its last meeting it had reviewed a legislative rule promulgated by the Worker's Compensation, Enforcement of Reporting and Payment Requirements and that the Committee had requested the staff to compile a list of statutes which allow the State to pierce the corporate veil and to compare them with the provisions of the Workers' Compensation rule. He stated that he was still researching the issue. Paul Clay, an attorney from Beckley and Andy Richardson, Workers' Compensation Commissioner addressed the Committee regarding the rule and responded to questions. Mr. Grubb stated that since counsel had not finished researching the issue that further consideration of the rule would lie over until the Committee's December meeting.

Mr. Mowery told the Committee that at its August meeting it had requested that representatives from the Division of Tax appear at the next Committee meeting to discuss four interpretive rules being promulgated by Division of Tax relating to the State Consumers Sales and Service and Use Tax which may, in fact, be legislative rules. Mr. Grubb told the Committee that the Secretary of Tax and Revenue was unable to attend the meeting and that he had sent a written statement. Mr. Grubb stated that further consideration of the proposed rule would lie over until the Committee's meeting Monday evening.

Debra Graham, Committee Counsel, told members of the Committee that the rule proposed by the Consolidated Public Retirement Board, Teachers' Defined Benefit Retirement System, had been laid over to allow the Board to completely restructure the proposed rule. Ms. Graham stated that she had reviewed the proposed modifications. Jim Sims, Executive Director of the Consolidated Public Retirement System, addressed the proposed modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham told the Committee that the rule proposed by the Consolidated Public Retirement Board, Public Employees Retirement System, had also be laid over to allow for restructuring and stated that she had reviewed the proposed modifications. Mr. Sims reviewed the proposed modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham told the Committee that the rule proposed by the Consolidated Public Retirement Board, Benefit Determination and Appeal was approved by the Committee at its August Meeting, but that the Board had indicated the need for further modifications. She said the Board has not taken any further action therefor no further action is required by the Committee.

Mike Mowery, Counsel to the House Judiciary Committee, reviewed the rule proposed by the Division of Environmental Protection, Operator's Designation of Bona Fide Future Use of Oil and Gas Wells - Qualification for Inactive Status and he stated that the Division has agreed to technical modifications. Ted Streit, Chief of the Office of Oil and Gas, further explained the proposed rule and answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Grubb stated that the rule proposed by the Air Pollution Control Commission, Regulations to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds had been moved to the Committee's Monday night agenda.

Mr. Mowery explained the rule proposed by the State Emergency Response Commission, SERC Legislative Rules and told the Committee that the Commission had not responded to suggested technical modifications. Carl Bradford, Chairman of the Commission, stated that the Commission had not finished reviewing counsel's suggested modifications and that they were requesting that the Committee lay the proposed rule over until its December meeting.

Mr. Wooton moved that the proposed rule lie over until the Committee's December meeting. The motion was adopted.

Mr. Mowery reviewed the rule proposed by the Department of Health and Human Resources, Infectious Medical Waste and stated that the Department has agreed to technical modifications and also that the Department had requested to be allowed to make several additional modifications which he had reviewed and to which he had no objections.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Health and Human Resources, Residential Board and Care Homes and stated that the Department has agreed to technical modifications. Kay Howard and Sandra Daubman, representing the Department, responded to questions from the Committee. Sandy Harless, representing the West Virginia Personal Care Provider Association, addressed the Committee and responded to questions.

Mr. Love moved that the proposed rule lie over until the Committee's December meeting. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Department of Health and Human Resources, Trauma Center or Facility Designation and told the Committee that the Department has agreed to technical modifications. Dr. Fred Cooley, Office of Emergency Medical Services, answered the Committee's questions. Bob Whitler, West Virginia Hospital Association, made a statement regarding the proposed rule.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the State Fire Commission, Electrician Licensing and stated that the Commission has agreed to technical modifications. Darl Cross, representing the State Fire Marshal, Bob Carvell, Home Builders Association of West Virginia, and Leff Moore, West Virginia Heating, Ventilating, Air Conditioning and Electrical Contractors Association, made statements regarding the proposed rule and answered questions from the Committee. Andy Brown, Department of Labor, responded to a question from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Labor, West Virginia Manufactured Housing Construction and Safety Standards Act and stated that the Division has agreed to technical modifications. Andy Brown answered questions from the Committee. Leff Moore, representing the manufactured housing industry, stated that there are many gray areas between the Contractors Licensing Board and the Board of Manufactured Housing Construction and Safety and he requested that the Committee lay the proposed rule over until its December meeting to allow him to prepare suggested modifications.

Mr. Wooton moved that the proposed rule lie over until the Committee's December meeting. The motion was adopted.

Ms. Graham explained the rule proposed by the West Virginia Cable Television Advisory Board, Implementing Regulations and stated that the Board has agreed to technical modifications. Tim Winslow, Attorney for the Board, responded to questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Division of Motor Vehicles, Motor Vehicle Dealers, Wreckers/Dismantlers/Rebuilders and License Services and stated that the Division has agreed to technical modifications.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Marjorie Martorella, Counsel to the House Government Organization Committee, reviewed the rule proposed by the Insurance Commissioner, Filing Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in this State, and stated that the Commissioner has asked that the Committee request that the Secretary of State issue an Emergency Rule Decision approving an emergency rule implementing the proposed rule. Linda Gay, Counsel to the Commissioner, responded to questions from the Committee.

Mr. Wooton moved that Counsel draft a memorandum to the Chairmen regarding the emergency status of the proposed rule and that Counsel forward a copy of the memorandum to the Secretary of State and he further moved that the proposed rule lie over until the Committee's December meeting. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 11/8/92

TIME: 5:00 pm

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
	✓		
✓			
✓			
✓			
✓			
✓			
✓			
✓			
	✓		

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Gallagher, Brian A.

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William R., Co-Chair

Boley, Donna

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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 \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review Committee DATE: November 8, 1992

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
✓ Sandy Harless	1113 Washington St Ranenswood, WV 26164	WV Personal Care Providers Assoc.	
✓ Paul O. Clay	Po. Drawer 958 Fayetteville, W. Va 25840	Small Business	✓
✓ Darl Cross	2100 Washington St E. Chas.	State Fire Marshal	
✓ Bob Whitler	Charleston	WVHA	<del>✓</del>
Tim Winslow	812 Quamers St. Cash Pt Chas	Cable TV Advisory Bd	✓
David McMath	1073 Quamers St #702	WV Legal Services Bd	
✓ TED STREET	#10 McJunkin	WV Office Oil & Gas DEP	✓
✓ CARL H BRADFORD	ROOM EB-60 MAIN CAPITOL	CHM. WV EMERGENCY RESPONSE COMM	✓
JANE CLINE	Capitol Building	Div. Motor Vehicles	
Andy Brown	Bldg 3 Rm 319	Division of Labor	
Ollie Harney	Bldg. 3 Rm 732	Div. of Nat. Resources	
HANK KARAWAN	CHARLESTON	CHAS. RYAN ASSOC	
Dale Steger	Charleston	Dept Tax & Revenue	
✓ Andy Richardson	Charleston	Bureau of Employment Programs-Workers' Comp	
Ann Cates	Charleston	OHFLAC	if needed
Sandy & Dawson	Charleston	CAFAC	
✓ BOB CARVILL	PERRYBURG	IBB OF WV	✓ ALSC. CIOERSE

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review Comm DATE: Nov. 8, 1992

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly ✓ Kay Howard	Charleston	DHHR	If needed
Joe Wyatt	Charleston	DHHR ENV Health	If needed
James L. Sims	State Capital	CRRS	

Dist'd 11/8/92

STATE OF WEST VIRGINIA



WALTER SMITTLE III  
State Fire Marshal  
  
L. DARL CROSS  
Deputy State Fire Marshal

GASTON CAPERTON  
Governor  
  
STATE FIRE MARSHAL  
CHARLESTON, W. VA. 25305

2100 WASHINGTON STREET, E.  
PHONE: (304) 348-2181

August 11, 1992

Mr. Leff Moore  
Executive Director  
HVAC and Electrical Contractors  
205 First Avenue  
Nitro, WV 25143

Re: PUBLIC HEARING, AUGUST 3, 1992

Dear Mr. Moore:

The following recommendations submitted by you on behalf of the associations you represent have been reviewed and considered. The recommendations, actions and substantiations regarding the proposed rule are included for your review. Thank you for your time and input in the development of the Electrician Licensing Rules.

**RECOMMENDATION (1)** - Delete new language in Section 2:02 at the end of the paragraph.

**ACTION** - Accept

**SUBSTANTIATION** - Design Layout is the significant difference between a Master and Journeyman electrician and accepting the recommendaton continues to maintain a level of competency expected for a Master and Journeyman electrician.

**RECOMMENDATION (2)** - Delete 2:04 (C) in it's entirety.

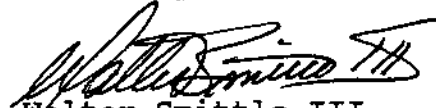
**ACTION** - Reject

**SUBSTANTIATION** - The recommendation supports the idea that the electrician with this level of competency is less qualified than a Master or Journeyman electrician. However, the proposed examination is designed to ensure that individuals passing this test are competent in this limited area of expertise and are adequately trained.

Mr. Leff Moore  
August 11, 1992  
Page Three

Again, I wish to thank you for your participation during the revision of these legislative rules.

Sincerely,



Walter Smittle III  
State Fire Marshal

WSIII/nlo

cc: David R. Darnold  
cc: Charles E. Bolyard, Sr.

Ref: 081092-1

COMMENTS BEFORE THE  
WEST VIRGINIA STATE FIRE COMMISSION

PUBLIC HEARING  
REVISION OF THE  
ELECTRICIAN LICENSING RULES

August 3, 1992  
Conference Center Room C  
Capitol Complex  
Charleston, WV

These comments submitted on  
behalf of

West Virginia Heating, Ventilating,  
Air Conditioning and Electrical  
Contractors Association  
205 First Avenue  
Nitro, WV 25143

Good Morning! My name is Leff Moore and I am appearing here as the Executive Director of the WV Heating, Ventilating, Air Conditioning and Electrical Contractors Association, Inc. This Association represents several hundred contractors from throughout West Virginia. These contractors are, in many cases, licensees of this board. Thousands of licenses of this board are the employees of our contractor members. As electricians and the employees of electricians, we have an important interest in the revision of the electrician licensing rule.

I am grateful that the state fire marshall included me, as a member of this Association, in an advisory capacity during the formative stages of the revision of the regulations. Our Association is also grateful for the commission and its staff and the cooperative way we worked to achieve a compromise change in the authorizing legislation. Business, labor and this agency worked closely to achieve consensus during the legislative process. It is our desire to achieve that same consensus in the finalization of the emergency rule and the ultimate adoption as permanent rules by this board and by the legislature.

While most West Virginia electricians did not seek a change in the law or regulations, we cooperated with those representatives of the fire marshalls office and particularly labor unions in their efforts to modify the law to address certain restrictive problem areas. We believe that the new law is well conceived and provides a basis for regulations that is in the best interest of the public, electricians, contractors, labor unions and the state fire commission.

The emergency rules filed by this commission on our about July 1, 1992 are generally supported by our industry and the thousands of licensees we represent with the exceptions noted below.

We believe that with some minor modification these proposed rules will serve the citizens of West Virginia, electricians and contractors well. While our opposition to the proposed rules is not broad in scope, it is extremely strong in its resolve. Our organization has considered these rules carefully, judicially and with much study. As a result of this effort, we strongly urge the West Virginia State Fire Commission to amend the agency's proposed rule as follows:

Section 2:02 -- We urge that the new language but may make changes in the design layout for compliance to the National Electrical Code be deleted from the proposed rule. It is our position that a journeyman electrician should be not permitted "to make changes in the design" of electrical systems. Changing

the design of an electrical system is equal to and requires a knowledge and understanding of a master electrician. To allow journeyman electricians the ability to "make changes in design layout" provides journeymen with capabilities far beyond their level of training.

Section 2:04 -- SPECIAL ELECTRICIAN LICENSES -- We note that the legislation enables the state fire commission to create certain specialty electrician license classifications. We note that specialty A, specialty B and specialty D which are restricted to plumbing, heating and air conditioning. Specialty electrical sign and low voltage electrician licenses all deal with wiring that is generally restricted in circuits or voltage isolated from the main wiring of the building by an over current protective isolated device or has been installed, complete with line side connections by master or journeymen electricians. These specialties also are generally required to make connections to existing systems that have been designed and installed by a master or journeyman electrician. While we are less than enthusiastic about the creation of any specialty category, we can support the creation of these specialties by this commission because of the restrictions and limitations places on these specialties by the rule. These limitations fully acknowledge that the main system in the structure needs to be designed and installed by a licensed, trained man or professional who is knowledgeable and qualified to do complete electrical systems.



Our Association strongly opposes the inclusion of Section C under Section 2:04. Sub section C allows for the creation of a special licenses for electrical work in single family residential dwelling or ancillary structures. This specialty unlike the others proposed in the rule would create a class license that would allow for the design, installation, maintenance or repair of wiring and "devises" in single family residential homes. A "devise" is not defined. We believe that the creation of this special category will result in perpetuation of untrained, under qualified electricians working on single family residential structures in West Virginia. It is our position that the design and installation of an electrical system in a single family residence is no less important and in some respects requires equal knowledge to the installation of electrical systems in a commercial building. We further believe that there are hundreds of West Virginia licensed electricians who currently hold licenses who are anxiously seeking work. We believe an existing labor pool of licensed and journeymen electricians would be greatly harmed by the inclusion of this specialty category in the West Virginia electrical licensing system. It is our position that the testing for journeyman and master levels of knowledge should be no greater than the level of knowledge required for single family residential dwellings with the increased size of residential dwellings some of which require three phase power. We believe that the creation of this special license is wrong, is not needed and will result in a overall reduction in the quality

of electrical work in West Virginia's single family residential dwellings in the years ahead. We urge that the specialty category C be stricken from the proposed rule.

Our Association is concerned about the addition of the word "controlling" to the definition of electrical work in Section 2:05. Fan limit switches and various component parts of heating and cooling equipment including thermostats could be considered controlling the use of electricity. Such an interpretation of the word controlling could mean that thousands of trained technicians would be required to obtain electrician licenses although their work was directly related to the manufacture, installation or repair of an engineered or manufactured system like an high energy efficient gas furnace. We urge the striking of the word controlling in Section 2:05 or a definition for the word controlling developed and added to the rule in order to clarify the meaning of the word controlling.

We would urge that the commission consider a revision in Section 5:13 regarding the percentage necessary to achieve a passing grade on any electrical licensing test. Our membership strongly urges that the commission consider establishing seventy percent (70%) grade on any test as the level required to permit the state fire marshall to issue an electrician license to any applicant. We believe this percentage will approximate the required percentage in some neighboring jurisdictions in accordance with many recognized industry standards.

With regard to Section 6:02 -- Our organization urges the following amendment. Following the words may be issued a one time... we would urge that you include the words in a lifetime preceding the completion of the sentence "temporary master or journeymen license for ninety days which is not renewable". The current proposed language might be applied to shorter time frames such as annual, monthly, etc. by administrative interpretation. By adding the language in a lifetime the one time non-renewable is absolutely clear. We believe that this clarification is generally non controversial and assures that the legislative intent is achieved.

We understand that those contractors who are primarily engaged in the construction of single family residences will strongly oppose our Associations position. Electrician licensing has been required in this state for many many years without the creation of a specialty category for residential electricians. We are confident that we can demonstrate an adequate labor pool of current licenses for this industry without the creation of this specialty license.

We urge this commission to make the changes in the proposed electrician licensing rule that we have respectfully requested. Our industry remains concerned and frustrated surrounding the overall level of enforcement of existing law. We recognize that the purpose of this hearing is to consider the changes in the rule. We can only hope that this commission through its staff will continue aggressively pursuing those who violate

the West Virginia Electrician Licensing law and its adopted regulations. We are grateful for the opportunity to provide our Associations position to this commission and for the spirit of cooperation and openness displayed by the fire marshall and his staff. We urge the commission to adopt our recommendations. We look forward to working with this commission to achieve a higher level of public safety through the protection of lives and property by the aggressive enforcement of the National Electrical Code and the licensees of this board.

*Dist'd 11/8/92*

Comments Before The  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
of the  
West Virginia Legislature

concerning

Revision of the  
ELECTRICIANS' LICENSING RULES AND REGULATIONS

November 8, 1992  
Senate Finance Committee Room, M-451  
Capitol Complex  
Charleston, West Virginia

These comments submitted  
behalf of

Home Builders Association of WV  
700 Virginia Street, West  
Charleston, WV 25302

(304) 342-5176

Good Evening. My name is Bob Carvell and I am the 1993 President-Elect of the West Virginia Home Builders Association .. and have been a builder in Wood County since 1974.

You have received from us a letter of support of the Rules you are now considering .. "Specialty" License for electricians. Of special interest to the members of the Home Builders Association is the specialty for single family residential dwellings. Prior to the enactment of electrical licensure in the 1989 Legislative Session, many of our members performed the electrical work in homes they built. They had the experience to perform this function .. they performed it safely .. they had no problems in obtaining a certificate of occupancy after inspection .. and they were able to pass the cost savings along to the home owner.

Yes, they could have been 'grandfathered' in with the passage of the 1989 legislation (which was effective from passage); however, because the bill when introduced was described "to outline a plan to make the state fire commission operate self sufficient on revenues derived from various fees" .. it was not until very late in the session that the provision for electrical licensure was added to the bill and the time for grandfathering passed before many people were aware of the licensure law. I will note at this point that many groups in addition to ours were unaware of the legislation.

And yes, our builders could have taken the test .. a test designed for knowledge beyond the scope needed for the electrical work they do .. that they had been doing for years.

We applaud the State Fire Marshal and his staff for recognizing the hardship that have been created and for proposing rules

and regulations for "specialty" license which will allow a builder to be licensed to install, maintain or repair ONLY electrical wiring and devices that are in or on a SINGLE FAMILY DWELLING. No one from any business or consumer community (be it electricians, builders, legislators or consumers) can have any possible doubt that the primary focus of the State Fire Marshal and the Commission is anything but fire safety FIRST. And while there have been occasions we have felt that their philosophy and rules have been excessive in nature .. there is no dispute that this office is created to protect West Virginia citizens .. and it does. That should be, perhaps, the foremost reason to be comfortable with specialty license for proven qualified builders of single family homes .. who will be required to offer proof of at least two years experience .. and be fully tested for competency.

Our mailing to you last week also included a letter to the State Fire Marshal addressing apprehensions of fairness and merits of this specialty license and his response that the supposition that the requirements would be easier, inferior or less difficult was indeed a misconception .. stating that "the opposite would be true and that an indepth knowledge would be required". In the Fire Marshal's response he also responded to the fact that such specialty license programs work in other states.

Previous testimony from the spokesman for the Electrical Contractors Association, at a Public Hearing held August 3rd, raised the group's strong opposition to the specialty license for contractors of single family dwellings stating that it would "result in perpetuation of untrained, under qualified electricians working on single family residential structures in West Virginia". We do not agree, and by substantiation previously addressed, it is our opinion that this is not a well founded objection. We agree

with the State Fire Marshal that "the purpose is to improve the quality". Certainly, by being able to provide this skill, a builder can lower the cost of the home to the West Virginia citizen seeking the "American Dream".

Testimony from the spokesman for Electrical Contractors also said that "existing labor pool of licensed and journeymen electricians would be greatly harmed". Again, we agree with the State Fire Marshal that "the recommendation appears to be an economical issue between competitors and places an undue restriction on those deserving to work in this limited electrical field".

Finally, I personally appreciate the opportunity to present to you, the members of the Legislative Rule Making Review Committee, our side of the story and urge your support of these specialty license .. and the ability to allow builders to safely perform electrical work in the single family dwellings they build .. resulting in a substantial savings in the price of the "American Dream", the future homes of West Virginia citizens.



**TENTATIVE AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Monday, November 9, 1992, 5:00 - 7:00 p.m.

SENATE FINANCE COMMITTEE MEETING ROOM, M-451

1. Review of Legislative Rules:

- a. Division of Natural Resources - Revocation of Hunting and Fishing Licenses
- b. Division of Natural Resources - Commercial Sale of Wildlife
- c. Division of Natural Resources - Special Requirements Concerning Boating
- d. Division of Natural Resources - Deer Hunting Regulations
- e. Division of Natural Resources - Wild Boar Hunting Regulations
- f. Division of Natural Resources - West Virginia Wildlife Management Areas
- g. Division of Natural Resources - Special Waterfowl Hunting Regulations
- h. Division of Natural Resources - Special Bear Hunting Regulations
- i. Division of Natural Resources - Regulations Concerning Prohibitions When Hunting and Trapping
- j. Division of Natural Resources - Special Migratory Bird Hunting Regulations
- k. Division of Natural Resources - Dog Training Regulations
- l. Division of Natural Resources - Wild Turkey Regulations
- m. Division of Natural Resources - General Hunting Regulations
- n. Division of Natural Resources - General Trapping Regulations

- o. Division of Natural Resources - Regulations Defining the Terms to be Used Concerning All Hunting and Trapping Regulations
- p. WV Board of Examiners for Registered Professional Nurses - Limited Prescriptive Authority for Nurses in Advanced Practice
- q. Board of Medicine - Certification, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants
- r. Division of Tourism and Parks - Rules Governing Public Use of West Virginia State Parks, State Forests and State Hunting and Fishing Areas Under the Division of Tourism and Parks
- s. Department of Agriculture - Commercial Feed
- t. Real Estate Commission - Requirements in Licensing Real Estate Brokers and Salesmen and the Conduct of the Brokerage Business
- u. Board of Pharmacy - Rules of the West Virginia Board of Pharmacy
- v. Health Care Cost Review Authority - Exemption for Birthing Centers
- w. Health Care Cost Review Authority - Exemption for Primary Care Hospitals
- x. Health Care Cost Review Authority - Exemption for Primary Care Services
- y. Health Care Cost Review Authority - Temporary Approval of Discount Contracts for Border Hospitals

2. Other business:

Monday, November 9, 1992

5:00 - 7:00 p.m.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Boley (absent)

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Chafin.

Mike Mowery, House Judiciary Counsel, explained the rule proposed by the Air Pollution Control Commission, Regulations to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds. Kurt Hassler, Appalachian Hardwoods Center at WVU, and Dale Farley, Air Pollution Control Commission, addressed the Committee and answered questions. John Cummings, West Virginia Manufacturers Association, asked the Committee to delay action on the proposed rule until its December meeting.

Mr. Wooton asked unanimous consent that the proposed rule lie over until the Committee's December meeting. He withdrew his request to allow for further questions.

John Benedict, Office of Air Quality, responded to questions from the Committee.

Mr. Wooton asked unanimous consent that the proposed rule lie over until the Committee's December meeting. There being no objection, the proposed rule was laid over.

Mr. Chafin asked unanimous consent to consider the rules proposed by the Board of Pharmacy be moved up on the agenda and taken up for immediate consideration. There being no objection, the proposed rule was taken up for immediate consideration.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Board of Pharmacy, Rules of the West Virginia Board of Pharmacy, and stated that the Division has agreed to technical modifications. Sam Kaporales, President of the Board, stated that the Board agreed to the proposed modifications.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Mowery reviewed a memorandum drafted by former committee staff regarding the interpretive rules promulgated by the Division of Tax on the Consumers Sales Tax. He distributed a memo from the Secretary of the Department of Tax and Revenue on the interpretive rules and stated that he would like to do a little more research.

Mr. Roop moved that the proposed rule lie over until the Committee's December meeting. The motion was adopted.

Ms. Graham explained that the rule proposed by the Division of Natural Resources, Revocation of Hunting and Fishing Licenses, had been laid over from the Committee's May and August meetings to allow the Division to respond to some concerns expressed by Mr. Love. Major William Daniel, Assistant Chief of Law Enforcement of the Division, presented proposed modifications to the Committee to answer the concerns expressed by Mr. Love.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Natural Resources, Commercial Sale of Wildlife, and stated that the Division has agreed to technical modifications. Bob Miles, Chief of the Wildlife Resources Section, answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Love stated that he had reviewed all of the rules proposed by the Department of Natural Resources and that with the exception of the proposed rule relating to Prohibitions When Hunting and Trapping that he would like to ask unanimous consent that Counsel's explanation be dispensed with and that the rules be placed before the Committee for action.

There being no objection, Counsel's explanation was dispensed with and the proposed rules were placed before the Committee for action.

Mr. Love moved that the rule proposed by the Division of Natural Resources, Special Requirements Concerning Boating, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, Deer Hunting Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, Wild Boar Hunting Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, West Virginia Wildlife Management Areas, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, Special Waterfowl Hunting Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, Special Bear Hunting Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, Special Migratory Bird Hunting Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed the Division of Natural Resources, Dog Training Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, Wild Turkey Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, General Hunting Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, General Trapping Regulations, be approved as modified. The motion was adopted.

Mr. Love moved that the rule proposed by the Division of Natural Resources, Regulations Defining the Terms to be Used Concerning All Hunting and Trapping Regulations, be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Natural Resources, Regulations Concerning Prohibitions When Hunting and Trapping, and stated that the Division has agreed to technical modifications. Mr. Love stated that he would like the Division to look into bringing the rule into compliance with the federal Americans With Disabilities Act. Mr. Daniels said the the Division would be willing to review the proposed rule.

Mr. Love moved that the proposed rule lie over until the Committee's December meeting. The motion was adopted.

Ms. Graham explained the rule proposed by the WV Board of Examiners for Registered Professional Nurses, Limited Prescriptive Authority for Nurses in Advanced Practice, and stated that the Division has agreed to technical modifications. Janet Fairchild, Executive Secretary of the Board, Deborah Rodecker, Counsel to the Board of Medicine, and Janice Smith, West Virginia Nurses Association, addressed the Committee regarding the proposed rule and answered

questions from the Committee. Mr. Wooton asked if the Board would agree to a modification to the proposed rule which would allow the Board to impose sanctions on Nurses who divert drugs. Ms. Fairchild stated that the Board would agree to modify the proposed rule. Barbara Koster, an adult advanced practitioner, responded to questions from the Committee.

Mr. Wooton moved that the proposed rule lie over until the Committee's December meeting and that the Board draft a modification on the diversion of drugs for the Committee's approval. Mr. Gallagher asked unanimous consent to amend Mr. Wooton's motion to request that the Board work with the Board of Medicine to establish a more comprehensive formulary prior to the December meeting. Mr. Wooton accepted Mr. Gallagher's amendment to his motion. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Board of Medicine, Certification, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants, and stated that the Division has agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Tourism and Parks, Rules Governing Public Use of West Virginia State Parks, State Forests and State Hunting and Fishing Areas Under the Division of Tourism and Parks, and stated that the Division has agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Agriculture, Commercial Feed, and stated that the Division has agreed to technical modifications.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Real Estate Commission, Requirements in Licensing Real Estate Brokers and Salesmen and the Conduct of the Brokerage Business, and stated that the Division has agreed to technical modifications.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Health Care Cost Review Authority, Exemption for Birthing Centers, and stated that the Division has agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Health Care Cost Review Authority, Exemption for Primary Care Hospitals, and stated that the Division has agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Health Care Cost Review Authority, Exemption for Primary Care Services, and stated that the Division has agreed to technical modifications.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Health Care Cost Review Authority, Temporary Approval of Discount Contracts for Border Hospitals, and stated that the Division has agreed to technical modifications. Marianne Stonestreet, Counsel to the Authority, responded to questions from the Committee. Bob Coda, Health Plan of the Upper Ohio Valley addressed the Committee and answered questions from the members.

Mr. Love moved that the proposed rule lie over until the Committee's December meeting. The motion was adopted.

The meeting was adjourned.

**ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

DATE: 11/9/92

TIME: 5:00 P.M.

**NAME**

**Present      Absent      Yeas      Nays**

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Gallagher, Brian A.

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William R., Co-Chair

Boley, Donna

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Wiedebusch, Larry

TOTAL

Present	Absent	Yeas	Nays
✓	✗		
✓			
✓			
✓			
✓			
✓			
✓	✗		
	✓		
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	✓		
	✓		

RE: \_\_\_\_\_

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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE Legislative Rule-Making DATE: Nov. 9, 1992

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly ✓ Bob Kott	118 MEADOW LAKE WHEELING, W. VA.	THE HEALTH PLAN OF THE Upper Ohio Valley, INC.	X
Richard Strader	Charleston	Real Estate Commission	
Don Andrews	"	PARKS	
Bill Daniel	"	DNR LAW	If requested
Bob Miles	"	DNR-	" "
Bubba Smith	Charleston	Dept. Agriculture	" "
Marianne K. Stonestreet	100 Bee Drive Chas	HCCRT	If requested
David Mathieu	WHEELING	The Hth Plan Upper Ohio Valley	
Phil Wright	WHEELING, WV	HEALTH PLAN	
Jerry Chambers	Charleston	Supt. + John	
✓ John Cummings	Charleston	Robinson & McElwee, WVA	FB Required
✓ JALE FARLEY	CHARLESTON	DTP - Office of the Dir.	45 CSR 21 - If required
Sdo White	"	WVHA	DF requested

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly <i>KO Danson</i>	<i>Chon</i>	<i>WVMSA</i>	

BEFORE THE LEGISLATIVE RULE-MAKING COMMITTEE

TESTIMONY

of

JAMES H. PAIGE III

SECRETARY OF TAX AND REVENUE

Mr. Chairmen and members of the Committee, my name is James H. Paige III. I am Secretary of Tax and Revenue as well as Tax Commissioner. I appear before you today, at your request, to explain why the Tax Division chose to promulgated several interpretive consumers sales and service tax regulations rather than proposing amendments to existing legislative regulations.

The interpretive regulations in question pertain to amendments to the consumers sales tax law enacted by passage of Committee Substitute for Senate Bill No. 348 during the 1992 Regular Session of the Legislature.

These interpretive rules state the Tax Division's opinion regarding four exemptions from consumers sales tax titled:

Baby-Sitting Services,

Personalized Physical Fitness Programs,

Nails and Fencing -- Commercial production of  
Agricultural Products, and

Services of Community-Based Service Organizations

This is the first time the Tax Division has promulgated interpretive regulations pertaining to taxes it collects. We view this as an experiment. We sense, however, that this Committee may perceive the filing of interpretive regulations as an attempt to circumvent the Committee. I want to assure you that it is not. We understand the legal distinction between legislative and interpretive rules. We understand the statutory limitations on the use that can be made of interpretive rules. We reviewed and discussed these before we drafted the proposed interpretive rules. We do not view interpretive rules as a substitute or replacement for legislative rules. We will continue to propose legislative rules and amendments to existing legislative rules. We tend to believe that interpretive rules and legislative rules should work together and compliment each other.

We chose to promulgate these interpretive rules for essentially three reasons:

First, several organizations, including the Taxation Committee of the West Virginia Chamber of Commerce and the West Virginia Bankers Association, as well as several attorneys who practice in the area of state taxation, encouraged the Tax Division to promulgate interpretive regulations rather than legislative rules.

Second, relatively speaking, the changes in the sales tax law made by Committee Substitute for Senate Bill No. 348 are not major changes in the sales tax law. Obviously, they are important to the people and businesses who benefit from the changes but, in the overall scheme of things, they are what we consider to be minor changes.

The critical determination, in every instance, was adoption by the Legislature of the policy decisions embodied in the several amendments. The four

interpretive regulations are relatively noncontroversial. Three of the proposed interpretive regulations were finalized and promulgated after addressing concerns expressed in the public comments we received.

The fourth proposed interpretive regulation has not been finalized for two basic reasons:

(1) Some interested parties are asserting that the Legislature intended for the new exemption for personalized physical fitness programs to extend to general aerobics classes, free-weight programs and other physical fitness activities that are not personalized and not supervised by a personal physical fitness trainer.

(2) There is also a question concerning whether or not other businesses such as hotels and motels that offer physical fitness equipment, facilities or programs available to their "guests" are eligible to claim this exemption.

Finalization of this interpretive rule is on hold until we get a sense from this Committee on the issue raised by its former counsel.

Third, narrow classes of business benefit from these amendments. Their representatives are known to the Tax Division, and we received input from these businesses prior to promulgation of the interpretive rules. We believe we have addressed their concerns.

We involved the public in drafting the interpretive regulations. Notice of the proposed interpretive rules was filed in the State Register as required by the State APA. Additionally, copies of the proposed legislative rules were provided to business representatives who were actively interested in passage of Senate Bill 348; copies of the proposed interpretive rules were also mailed to Delegate Robert Kiss, Vice Chair of the House Finance Committee, and to Senator Earl Ray Tomblin, Chair of the Senate Finance Committee, before they were filed in the State Register. No formal or informal comments were received from these individuals or from their legislative staff.

It was the opinion of your former counsel that the interpretive rules might be used as a basis for imposition of tax liability and imposition of civil or criminal penalties. Therefore, they should be legislative rule rather than interpretive rules, writing:

"[T]he delineations contained in the interpretive rules have the potential to be used in an administrative hearing regarding the imposition of sales tax and the failure of a vendor to collect or the purchaser to pay the tax. In those instances, an assessment and a civil or criminal penalty may be imposed. An interpretive rule may not form the basis for the imposition of a civil or criminal penalty. To the contrary, a legislative rule has the force of law. Although the initial basis for liability is the statute, the clarification and construction of the statute furnished in the rule constitutes the actual basis for the liability. Therefore, the rules should be legislative rules subject to legislative oversight by the Legislative Rule-Making Review Committee."

We believe the rules should be judged on how they are used, rather than on how they might be misused by the Tax Division. Facts not speculation should control.

Former committee counsel further opined that because exemptions from sales tax were previously addressed in legislative rules, the Tax Division is barred from filing interpretive regulations with respect to those exemptions or new exemptions writing:

"The interpretive rules are analogous to the agency's legislative rules on Consumers Sales and Service and Use Tax, 110 C.S.R. 15, §1 et seq. All the other exemptions contained in W. Va. Code §11-15-9 are incorporated, explained and expounded upon in the legislative rule of the Tax Division. Counsel opines that there is no difference between the former statutory exemptions and the new exemptions included in the statute. There is also no significant nor substantive difference between the contents of the legislative rule and the contents of the interpretive rules. Because the existing exemptions are explained in the legislative rule, so should these new exemptions be explained in a legislative rule, especially, if the application of the rule will form the basis for liability for non-compliance with the requirements and demarcations provided in the interpretive rules."

We disagree with this conclusion because there is no basis for it in the State Administrative Procedures Act.

The State APA expressly recognizes three types of rules: Legislative, interpretive, and procedural. When an agency decides

to promulgate a rule it must identify the rule under one of these captions. There is no provision in West Virginia law that prohibits the Tax Division from promulgating interpretive regulations. Similarly, there is no provision in West Virginia law requiring the Tax Commissioner to promulgate only legislative rules.

Former committee counsel observed that there are no substantive differences between the contents of the legislative rules for the sales tax and the contents of the interpretive rules. The fact that this may be true does not, however, control whether the rule is legislative or interpretive.

Professor Alfred Neeley, IV, in his treatise on West Virginia Administrative Law, observed that it is not the language of a rule that determines whether it is an interpretive rule or a legislative rule. Rather, it is the intended effect of rule and what the rule does rather than its language that determines whether the rule is interpretive or legislative. Conceivably, the language of a legislative rule and that of an interpretive rule could be alike. But, that fact alone does not make the interpretive rule a legislative rule.

The Tax Division clearly intends for the rules in question to be interpretive rules. The Tax Division understands the limitations associated with interpretive rules. We are not trying to confuse or mislead taxpayers.

Each rule is clearly labeled "WEST VIRGINIA INTERPRETIVE RULE." The numbering scheme for rules was modified to clearly indicate that the rule is an interpretive rule. Legislative rules for the consumers sales and use taxes are file in chapter 110, series 15 of the State Administrative Code. These interpretive rules are also filed in chapter 110, but as new series 15(I).1, series 15(I).2, series 15(I).3, and series 15(I).4, respectively.



Addition of the parenthetical capital "I" after 15 further indicates that the rule is interpretive.

The Tax Division recognizes that an interpretive rule does not have the force and effect of a legislative rule. Our interpretive rules are intended to state the Tax Division's opinion regarding their subject matter; they are merely intended to provide guidance to taxpayers.

If a taxpayer chooses to ignore an interpretive rule, taxpayer is in no worse position than if no interpretive rule had been promulgated. More over, taxpayer is in a better position to argue that its interpretation of particular statutory language is the correct interpretation, since an interpretive rule does not have the force and effect of law.

Second, the Tax Division recognizes that additions to tax and other money penalties cannot be imposed when a taxpayer fails to follow an interpretive rule. To illustrate, the Tax Procedures Act, in section 11-10-18(c), provides for imposition of a 25 percent money penalty when taxpayer intentionally disregards a rule or regulation of the Tax Commissioner. We understand that this money penalty does not apply when there is an intentional disregard of an interpretive regulation. Similarly, intentional disregard of an interpretive rule cannot be the basis for imposition of the civil fraud penalty provided in section 11-10-18(d) of the Tax Procedure Act. Additionally, none of the criminal tax penalties apply to failure to follow an interpretive rule.

A fair question to ask is whether it is good administrative tax policy to promulgate interpretive rules rather than legislative rules. In other words, do the disadvantages of interpretive rules outweigh the advantages of interpretive rules? And, do the advantages of legislative rules outweigh the advantages and disadvantages of interpretive rules here?

As previously mentioned, these are the first interpretive rules promulgated by the Tax Division under the State APA for taxes administered under the Tax Procedures Act. We view this venture as an experiment.

We tend to believe that appropriate use of interpretive rules is good tax policy for several reasons:

First, the process for promulgating interpretive rules is not as cumbersome on taxpayers or the Tax Division as is the process of promulgating legislative rules. This allows us to deal with issues in smaller chunks, to have more meaningful dialogue with taxpayers and, hopefully promulgate better regulations.

Second, it is very difficult to draft regulations that flesh out how a particular tax provision impacts all taxpayers under all circumstances. Consequently, a regulation that provides clear, meaningful guidance to some taxpayers may be of no help or even add to the confusion of other taxpayers. Use of interpretive regulations as a prelude to promulgation of legislative rules should improve the quality of legislative rules when they are submitted to you for review.

Third, judicious use of interpretive rules, again as a prelude to legislative rules, allows the Tax Division, we believe, to be more responsive to taxpayers, in an environment that is more conducive to discussion and information dissemination.

Fourth, interpretive rules can be used to give taxpayers guidance on how the Tax Division interprets its own legislative rules.

Lastly, I would observe that should an interpretive rule be wrong, taxpayers have the same remedies available to them to challenge that rule as they have in the case of a legislative rule.

The Tax Division's opinion can be challenged administratively in a refund or assessment proceeding before our Office of Hearings and Appeals. Additionally, like a legislative rule, an interpretive rule can be challenged in a declaratory ruling proceeding under section 29A-4-2 of the State APA. Finally, jurisdiction of the Legislative Rule-Making Review Committee is not limited to legislative rules. It may review interpretive rules as well as procedural rules. In that regard, I welcome any comments this Committee wishes to make, either formally or informally, regarding our interpretive rules.

In summary, we believe promulgation of interpretive rules is a valuable tax administration tool that has not been utilized in the past. We believe judicious use of this tool will enhance our ability to involve taxpayers in formulation of tax administrative policy and provide additional, meaningful guidance to taxpayers. We do not view interpretive rules as an alternative to or replacement for legislative rules. We believe that both types of rules are important.

Mr. Chairmen, I will be happy to answer any questions the you or the Committee may have either now or at a latter time. I appreciate the opportunity to appear before you today.

James H. Paige III  
Secretary of Tax and Revenue  
November 8, 1992

DIST 11/9/92



Appalachian Hardwood Center □ Division of Forestry

**West Virginia University**

College of Agriculture and Forestry

**Statement to the Legislative Rule-making Review Committee  
Concerning Proposed Rule 45CSR21  
(November 9, 1992)**

The Appalachian Hardwood Center at West Virginia University was established by the West Virginia Legislature to provide technical assistance to the wood products industry. One aspect of this assistance involves maintaining industry awareness about the impacts of Federal and State regulations. Our objective is to provide an unbiased transfer of information so that companies/individuals can become familiar with the issues and have the opportunity to offer sound input into the rulemaking process.

Our presence here today is a result of our attempt to clearly understand the impacts of Legislative Rule 45CSR21--*Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds*. The Office of Air Quality generously provided us with a draft copy of the rule, which we spent many hours reviewing. However, even after this extended period of study and at least two conversations with Office of Air Quality representatives, we were still unable to fulfill our objective of providing a clear, concise summary of the rule for the wood businesses that would be impacted. Being unable to clearly interpret the rule gave us considerable cause for concern and the desire to communicate these concerns to this committee.

Without burdening the committee with an extended listing of the many specific points of confusion, we would like to identify the following major concerns:

1. It is not clear from the draft whether the rule strictly follows the Federal guidelines or goes substantially beyond those requirements in regulating VOC's. Without a clear understanding of the differences, if any, between the Federal guidelines and the draft rule, it is not possible to ascertain whether certain regulations are necessary or not.

2. It has been our experience, in most cases, that industry is willing to comply with environmental regulations. Although they complain loud and often, in the end they are usually proud of their accomplishments in meeting compliance standards. However, a major point of contention, and in our opinion fully justified, is that the burden and associated cost of interpreting the rule should not be placed upon the industry. That is, if government is imposing air quality standards on an industry, then government should be required to issue regulations that can be interpreted with minimal effort. This rule, as it exists today, would be essentially incomprehensible by the businesses it is intending to regulate.

RECOMMENDATIONS

We feel the following recommendations will lend themselves to the issuance of a clear and easily interpreted rule:

1. Obtain a deadline extension from EPA.
2. Clearly establish whether the current draft of 45CSR21 either meets minimum Federal guidelines or is more restrictive than the Federal guidelines.
3. Actively seek input from those companies being affected by the rule in order to gain a more balanced approach in developing this rule.
4. It is crucial that the Office of Air Quality either through development of the rule or through companion publications, provide a clear, concise set of guidelines for businesses to follow as they attempt to comply with this new rule.

In summary, we simply wish to insure that reasonable care and consideration are given to the development of this rule so that it does not unnecessarily go beyond the intent of the Federal legislation or cause an unnecessary burden to companies in understanding and interpreting how to comply. Let's take the time to clarify the points of confusion and not rush this rule through simply to meet an EPA deadline.