

September 10

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

12:00 - 2:00 p.m., September 10, 1990

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting August 21, 1990
2. Review of Legislative Rules:
 - a. State Fire Commission - State Building Code
 - b. WV Lottery - State Lottery Rules and Regulations
 - c. Division of Labor - Polygraph Examinations, Limitations of Use, Requirements, Licenses and Penalties
 - d. Department of Administration - Availability of State Surplus Buildings and Equipment to Charity Food Bank
 - e. Department of Agriculture - West Virginia Agricultural Liming Materials Regulations
 - f. Health Care Cost Review Authority - Exemption for Shared Services
 - g. Health Care Cost Review Authority - Health Services Offered by Health Professionals
3. Other Business:

Monday, September 10, 1990

Noon-2:00 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

Jackson, Chairman (absent)
Chafin
Manchin, J.
Tomblin
Wiedebusch (absent)
Warner (absent)

Murphy, Acting Chairman(absent)
Buchanan
Burk
Faircloth
Roop
Starcher

The meeting was called to order by Mr. Roop.

The minutes of the meeting of August 21, 1990, were approved.

Debra Graham, Committee Counsel, explained the remaining issue regarding the rule proposed by the State Fire Commission, State Building Code. She told the Committee that they would have to determine whether certain provisions of the State Building Code should be subject to interpretation by the local jurisdictions or whether the State Fire Commission should provide a statewide interpretation of those provisions. James Fife, representing the Fire Commission, addressed the Committee regarding the proposed rule.

Mr. Faircloth moved that the proposed rule lie over until the Committee's next meeting and that the State Fire Commission be requested to prepare a statewide schedule of maximum fees.

Mr. Buchanan moved to amend Mr. Faircloth's motion to include in the request to the State Fire Commission that they prepare a statewide interpretation for all of the provisions. The motion was adopted.

Mr. Faircloth's motion, as amended, was adopted.

Ms. Graham told members of the Committee that they had before them a letter from the Treasurer's office with an attached Attorney General's opinion regarding the remaining issue on the rule proposed by the West Virginia Lottery, State Lottery Rules and Regulations. She said that both the letter and the opinion support the Lottery's use of a zero balance checking account despite the apparent conflict with the Code. Robert Wilhelm, Deputy Director of Finance and Administration, representing the Lottery Commission, explained how the zero balance checking account operates.

Mr. Roop explained to the Committee that subject to any further action by the Committee that the proposed rule had been approved as modified at the Committee's last meeting. No further action was taken on the proposed rule.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Administration, Availability of State Surplus Buildings and Equipment to Charity Food Bank. She stated that the Department had agreed to several minor technical modifications. Diana Stout of the Department of Administration, answered questions from the Committee.

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

Ms. Graham reviewed the rule proposed by the Department of Agriculture, West Virginia Agricultural Liming Materials Regulations. She stated that the Department had agreed to several minor technical modifications.

Mr. Buchanan moved that the proposed rule lie over until the next meeting so that he might have an opportunity to review it. The motion was adopted.

Michael McThomas, Committee Counsel, reviewed his abstract on the rule proposed by the Health Care Cost Review Authority, Exemption for Shared Services. He stated that the agency had agreed to several minor technical modifications. Marianne Stonestreet, Counsel for the agency, addressed the Committee regarding the proposed rule.

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, Health Services Offered by Health Professionals. She stated that she had several minor technical modifications to suggest which she had not yet discussed with the agency.

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

Cheryl Hall, Counsel for the Court of Claims, addressed the Committee regarding legislation which was passed during the last regular session requiring the Court's rules to go through the rule-making process. She explained that this would place an undue burden on the Court due to the frequency with which it amends its rules and recommended that the Committee consider sponsoring legislation removing the rule-making requirement for rules of the Court of Claims.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Sept. 10, 1990

TIME: 12:00 - 2:00 p.m.

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
8			

Chambers, Robert "Chuck", Speaker

Murphy, Patrick H, Co-Chair

Buchanan, Michael

Burk, Robert W., Jr.

Faircloth, Larry V.

Roop, Jack

Starcher, Virginia

Burdette, Keith, President

Jackson, Lloyd, II, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Warner, George

Wiedebusch, Larry

TOTAL

RE: _____

*CANCELLED
Lack of Quorum*

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

6:00 - 8:00 p.m., September 10, 1990

COMMITTEE MEETING ROOM, M-438

1. Review of Legislative Rules:
 - a. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Private Club Licensing
 - b. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Bailment Policies and Procedures
 - c. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Retail Licensee Operations
 - d. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Licensing of Retail Liquor Stores
 - e. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Farm Wineries
 - f. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Retail Sale of Wine in Grocery Stores, Wine Specialty Shops and Private Wine Restaurants
 - g. Nonintoxicating Beer Commissioner, Dept. of Tax and Revenue - Nonintoxicating Beer Licensing and Operations Procedures
2. Other Business:

September 25

AGENDA

SPECIAL MEETING

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

9:00 a.m., September 25, 1990

COMMITTEE MEETING ROOM, M-438

1. Approval of minutes - Meeting September 10, 1990
2. Review of Legislative Rules:
 - a. Department of Agriculture - West Virginia Agricultural Liming Materials Regulations
 - b. Department of Agriculture - Rules and Regulations Governing Meat Inspection
 - c. Department of Agriculture - Regulations Governing Public Markets
 - d. Division of Natural Resources - Dam Safety Regulations
 - e. Division of Natural Resources - Water Pollution Control Permit Fee Schedules
 - f. Division of Natural Resources - Underground Storage Tank Regulations
 - g. Division of Public Safety - West Virginia State Police - Career Progression System
 - h. WV Board of Examiners for Professional Nurses - Announcement of Advanced Nursing Practice
 - i. Insurance Commissioner - Group Coordination of Benefits
 - j. West Virginia Board of Medicine - Fees for Services Rendered by the Board of Medicine
 - k. Secretary of State - Guidelines for the Use of Nicknames and Other Designations on the Ballot
3. Other Business:

SPECIAL MEETING

Tuesday, September 25, 1990

9:00 a.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

Jackson, Chairman
Chafin (absent)
Manchin, J.
Tomblin (absent)
Wiedebusch (absent)
Warner (absent)

Murphy, Acting Chairman
Buchanan
Burk (absent)
Faircloth
Roop
Starcher

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

Debra Graham, Committee Counsel, explained that the rule proposed by the Department of Agriculture, West Virginia Agricultural Liming Materials Regulations, had been laid over at the Committee's previous meeting to allow Mr. Buchanan more time to review the proposed rule. Mr. Buchanan stated that he had no comments on the proposed rule.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Rules and Regulations Governing Meat Inspection, and explained that the Department had agreed to several minor technical modifications. Dr. Charminski, Director, Meat Inspection Division, Department of Agriculture, answered questions from the Committee.

Ms. Graham explained the rule proposed by the Department of Agriculture, Regulations Governing Public Markets, and stated that the Department had agreed to several minor technical modifications. Robert Williams, Director, Marketing and Development Division, Department of Agriculture, and Barbara Smith, Director of Compliance, Department of Agriculture, answered questions from the Committee.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed by the Division of Natural Resources, Dam Safety Regulations. Eli McCoy, representing the Division of Natural Resources, answered questions from the Committee.

Mr. McThomas reviewed the rule proposed by the Division of Natural Resources, Water Pollution Control Permit Fee Schedules. Mr. McCoy answered questions from the Committee.

Mr. McThomas reviewed his abstract on the rule proposed by the Division of Natural Resources, Underground Storage Tank Regulations, and stated that the Division had agreed to several technical

modifications. Ken Ellison, representing the Division of Natural Resources, Dave Haines, Petroleum Marketers Association, and Marvin Gray, Gasoline Dealers Association, commented on the proposed rule and answered questions from the Committee.

Mr. Murphy moved that the rules proposed by the Department of Agriculture, West Virginia Agricultural Liming Materials Regulations, Rules and Regulations Governing Meat Inspection, and Regulations Governing Public Markets and the rule proposed by the Division of Natural Resources, Underground Storage Tank Regulations be approved as modified and that the rules proposed by the Division of Natural Resources, Dam Safety Regulations and Water Pollution Control Permit Fee Schedules be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Public Safety, West Virginia State Police - Career Progression System and explained that the Division had agreed to numerous minor technical modifications and that further nonsubstantive modifications are necessary to clarify certain provisions of the proposed rule. Colonel J. R. Buckalew, Superintendent of the Division of Public Safety, explained the Career Progression System and responded to questions from the Committee. Charles Bedwell, of the West Virginia State Police, answered questions from the Committee.

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

Ms. Graham reviewed the rule proposed by the WV Board of Examiners for Professional Nurses, Announcement of Advance Nursing Practice and stated that the Board has agreed to several minor technical modifications. Ruth Pearson, Board Member, and Nancy Adkins, West Virginia Nurses Association, addressed the Committee regarding the proposed rule and responded to questions from the Committee.

Ms. Starcher moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Insurance Commissioner, Group Coordination of Benefits and stated that the Commissioner had agreed to several minor technical modifications. Keith Huffman, General Counsel to the Commissioner, responded to questions 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 West Virginia Board of Medicine, Fees for Services Rendered by the Board of Medicine, and explained that the section of the rule increasing the fee for renewal of a physician's assistants certificate conflicts with the fees set forth in the Code. Deborah Rodecker, Counsel for the Board, told the Committee that she was aware of the conflict and that she would modify the proposed rule to conform to the Code.

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

Mr. McThomas reviewed his abstract on the rule proposed by the Secretary of State, Guidelines for the Use of Nicknames and Other Designations on the Ballot. Mary Ratliff answered questions from the Committee.

Ms. Starcher moved that the proposed rule be approved as modified. The motion was adopted.

The meeting was recessed until 1:00 p.m.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Sept. 25, 1990

TIME: 9:00 a.m.

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
7			

Chambers, Robert "Chuck", Speaker
 Murphy, Patrick H, Co-Chair
 Buchanan, Michael
 Burk, Robert W., Jr.
 Faircloth, Larry V.
 Roop, Jack
 Starcher, Virginia

 Burdette, Keith, President
 Jackson, Lloyd, II, Co-Chair
 Chafin, Truman H.
 Manchin, Joe, III
 Tomblin, Earl Ray
 Warner, George
 Wiedebusch, Larry
 TOTAL

RE: _____

Please Print

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: Sept. 25, 1990 9:00 A.M.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<u>Please print or write plainly</u>			
<u>Ruth Pearson</u>	<u>5309 Forest Heights Huntington, WV 25705</u>	<u>WV Board of Examiners for Registered Professional Nurses</u>	
<u>Nancy Atkins</u>	<u>1448 Saffers Circle MTRD, WV 25143</u>	<u>WVNA</u>	
<u>El. McCoy</u>	<u>1201 Greenbriar St</u>	<u>WVDNR - WUTV</u>	
<u>Ang A Joaner</u>	<u>Bldg 3 Rm. 672</u>	<u>WV DNR Deputy Director</u>	
<u>Jerry L. Ray</u>	<u>1201 Greenbriar St.</u>	<u>WV DNR - WRS</u>	
<u>W. Jan Charkinski</u>	<u>Guthrie Ag Center</u>	<u>WVDA - Meat Inspection</u>	
<u>BARBARA SMITH</u>	<u>WVDA - Guthrie Center</u>		<u>if needed</u>
<u>Robert Williams</u>	<u>WVDA - Guthrie Center</u>		<u>if needed</u>
<u>B. Keith Huffman</u>	<u>2019 Wash. St. E Chas. WV 25305</u>	<u>Insurance Commissioner</u>	<u>if needed</u>
<u>Ken Ellison</u>	<u>1356 Hansford St.</u>	<u>DNR Waste Mgmt.</u>	
<u>Charles Redwell</u>	<u>725 Jefferson Rd So Chas</u>	<u>WVSP</u>	<u>IF NEEDED</u>
<u>Dale Humphrey</u>	<u>725 Jefferson Rd S. Chas</u>	<u>WVSP</u>	
<u>DAVID HAINES</u>	<u>8745 BUILDING CHARLESTON</u>	<u>WV PMA</u>	<u>IF NEEDED</u>
<u>MARVIN GRAY</u>	<u>524 SIXTH AVE. HUNTINGTON</u>	<u>WV GASOLINE DEALERS ASSN</u>	<u>IF NEEDED</u>
<u>Helen Matheny</u>	<u>405 Capitol St</u>	<u>West Virginia Troopers Association</u>	<u>X</u>
<u>MARK J. COYLE</u>	<u>405 Capitol St.</u>	<u>West Va. Troopers Assoc</u>	
<u>Chester J. Wojcik</u>	<u>210 Chesapeake Ave Chas</u>	<u>West Virginia Troopers Assoc.</u>	<u>IF NEEDED</u>
<u>Mary Rothoff</u>	<u>Secretary of State</u>	<u>→ "</u>	<u>Answer questions</u>

AGENDA

SPECIAL MEETING

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1:00 p.m., Tuesday, September 25, 1990

COMMITTEE MEETING ROOM, M-438

1. Review of Legislative Rules:

- a. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Private Club Licensing
- b. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Bailment Policies and Procedures
- c. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Retail Licensee Operations
- d. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Licensing of Retail Liquor Stores
- e. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Farm Wineries
- f. Alcohol Beverage Control Commissioner, Dept. of Tax and Revenue - Retail Sale of Wine in Grocery Stores, Wine Specialty Shops and Private Wine Restaurants
- g. Nonintoxicating Beer Commissioner, Dept. of Tax and Revenue - Nonintoxicating Beer Licensing and Operations Procedures

2. Other Business:

SPECIAL MEETING

Tuesday, September 25, 1990

1:00 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

Jackson, Chairman
Chafin
Manchin, J.
Tomblin
Wiedebusch (absent)
Warner (absent)

Murphy, Acting Chairman
Buchanan
Burk (absent)
Faircloth
Roop
Starcher

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

The minutes of September 25, 1990, were approved.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed by the Alcohol Beverage Control Commissioner, Private Club Licensing, and stated that the Commissioner had agreed to several minor technical modifications. Harry Camper, Commissioner, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Buchanan moved that the proposed rule be modified on page 6, section 3.2.3.1, by decreasing the age at which a person may own a private club from twenty-one to eighteen. The motion was adopted. Mr. Murphy voted "No".

Mr. Jackson moved that the proposed rule be modified on page 13, section 5.1.1.2, before the word "authorize" by inserting "Insofar as these types of activities are permitted by law." The motion was adopted.

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

Mr. McThomas, reviewed his abstract on the rule proposed by the Alcohol Beverage Control Commissioner, Bailment Policies and Procedures, and stated that the Commissioner had agreed to several minor technical modifications. Commissioner Camper answered questions from the Committee.

Ms. Starcher moved that the proposed rule be approved as modified. The Motion was adopted.

Mr. McThomas, reviewed his abstract on the rule proposed by the Alcohol Beverage Control Commissioner, Retail Licensee Operations, and stated that the Commissioner had agreed to several minor technical modifications. Commissioner Camper and John Montgomery, Senior Technical Attorney, Legal Division, Department of Tax and Revenue, responded to questions from the Committee.

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

Mr. McThomas reviewed his abstract on the rule proposed by the Alcohol Beverage Control Commissioner, Licensing of Retail Liquor Stores, and stated that the Commissioner had agreed to several minor technical modifications. Commissioner Camper, Mr. Montgomery and Donald McIver answered questions from the Committee.

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

Mr. McThomas reviewed his abstract on the rule proposed by the Alcohol Beverage Control Commissioner, Farm Wineries, and stated that the Commissioner had agreed to several minor technical modifications. Commissioner Camper responded to questions from the Committee.

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

Mr. McThomas reviewed his abstract on the rule proposed by the Alcohol Beverage Control Commissioner, Retail Sale of Wine in Grocery Stores, Wine Specialty Shops and Private Wine Restaurants, and stated that the Commissioner had agreed to several minor technical modifications. Commissioner Camper answered questions from the Committee.

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

Mr. Buchanan moved that the Committee reconsider its actions whereby it approved as modified the rule proposed by the Alcohol Beverage Control Commissioner, Private Club Licensing. After discussion on the motion, Mr. Buchanan requested unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. McThomas reviewed his abstract on the rule proposed by the Nonintoxicating Beer Commissioner, Nonintoxicating Beer Licensing and Operations Procedures and stated that the Commissioner had agreed to several minor technical modifications. Blane Michael, representing

Miller Brewing Company, addressed the Committee regarding the proposed rule. He and Commissioner Camper responded to questions from the Committee.

Mr. Jackson moved that the proposed rule be modified on page eight, section 3.4.1, to require that Class S Licensees notify all distributors in the area in writing that nonintoxicating beer is to be sold at a fair, festival or special event. The motion was adopted.

Mr. Jackson moved to modify the proposed rule on page fifteen, section 6.2.3.1, by deleting the requirement that 50% of the members of an athletic team be employees of a brewer or distributor in order that a brewer be permitted to sponsor the team. Following discussion, no action was taken on the motion.

Mr. Jackson moved that the proposed rule be modified on page fifteen, section 6.2.4.2, to allow reasonable trade spending. Following discussion no action was taken on the motion.

Mr. Jackson moved that the proposed rule be modified on page seventeen, section 7.1.2, to increase the size limitation on signs from 2200 sq. inches to 5000 sq. inches. Paula Cunningham, Counsel for Go-Mart, Inc., spoke against increasing the size limitation and answered questions from the Committee. Mr. Montgomery also addressed the Committee regarding the proposed modification. Following discussion, no action was taken on the motion.

Mr. Buchanan moved that the proposed rule be modified on page seventeen, section 7.1.2, after the words "decorations or other similar advertising matter" by inserting "within said premises or establishments". The motion was adopted.

Mr. Manchin moved to amend the proposed rule on page fifteen, by striking all of sections 6.2.3.1, 6.2.4, 6.2.4.1 and 6.2.4.2.

Mr. Faircloth moved that the proposed rule lie over until the Committee's next meeting. The motion was rejected.

Mr. Manchin amended his motion to amend the rule on page fifteen, section 6.2.3.1. by striking the words "at least 50% of the team are employees of such brewer or distributor and". The motion was adopted.

Mr. Manchin moved to amend the proposed rule on page seventeen, section 7.1.2 by striking everything after the words "decoration or other similar advertising matter" and inserting a period. He also moved that language be added to this section requiring compliance with all federal regulations regarding exterior and interior signs. The motion was rejected.

Mr. Tomblin moved to amend the proposed rule on page nineteen, by deleting sections 7.2., 7.3. and 7.3.2. The motion was adopted.

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

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Sept 25, 1990

TIME: 1:00 p.m.

<u>NAME</u>	<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
Chambers, Robert "Chuck", Speaker				
Murphy, Patrick H, Co-Chair	✓			
Buchanan, Michael	✓			
Burk, Robert W., Jr.				
Faircloth, Larry V.	✓			
Roop, Jack	✓			
Starcher, Virginia	✓			
Burdette, Keith, President				
Jackson, Lloyd, II, Co-Chair	✓			
Chafin, Truman H.	✓			
Manchin, Joe, III	✓			
Tomblin, Earl Ray	✓			
Warner, George				
Wiedebusch, Larry				
TOTAL	9			

RE: _____

PLEASE PRINT

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: Sept 25, 1990 1:00 p.m.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<u>Please print or write plainly</u>			
<u>Blane Michael</u>	<u>P.O. Box 553</u>	<u>Miller Atewing</u>	<input checked="" type="checkbox"/>
<u>John Melton</u>	<u>W.300, Capitol</u>	<u>Dept. of Tax & Revenue</u>	
<u>John Montgomery</u>	<u>W.409, "</u>	<u>"</u>	
<u>DON McIVER</u>	<u>P.O. Box 2906 CHS.</u>	<u>ABCC / ERNST & YOUNG</u>	
<u>Paula M. Cunningham</u>	<u>PO 422, 26624</u>	<u>go-Mart, Inc</u>	
<u>A</u>			

*Handout At meeting
9-25-90 1:00 p.m.*

COMMENTS ON BEHALF OF
MILLER BREWING COMPANY ON PROPOSED
RULES RELATING TO NONINTOXICATING BEER
LICENSING AND OPERATIONS PROCEDURES

1. Section 3.4.1 provides for a Class S license for a fair, festival or special event. The Class S licensee is required to contact all distributors in the area where the fair, festival or special event will occur to provide all distributors the opportunity to participate. Miller suggests that this rule be expanded to require that written notice be mailed to all distributors at the same time so that an equal opportunity is afforded to all distributors.

2. Section 6.2.3.1 permits a brewer to sponsor an athletic team or contest only if at least 50% of the members of the team are employees of a brewer or distributor. Sponsorship of athletic teams involving persons of legal drinking age should be permitted, along with sponsorship of athletic leagues involving persons of legal drinking age, regardless whether the players are employees of a brewer or distributor. Sponsoring activities of this type simply promotes a brewer's name and goodwill and does not involve consumption of nonintoxicating beverages.

3. Section 6.2.4.2 would prohibit "trade spending" such as the purchase of beer from licensed retail establishments for consumer sampling. The current rule permitting consumer trade spending has not led to abuse because of the limitation of reasonable quantities in the language of the rule. In normal social and business activities, representatives of brewers and distributors have occasion to entertain friends and customers. It is reasonable under such circumstances for such representatives to "pick up the tab." The proposed change to the rule would prohibit this practice and thereby cause an awkward situation for brewer and distributor representatives dealing with the public and with customers. Further, as a part of reasonable marketing and promotional activities, brewers and distributors periodically visit retail establishments to assess the impact of sales and marketing programs. As part of such market visits, consumers are given the opportunity to sample the particular brewer's products (or any other brand of their choice) at the brewer's or distributor's expense. These valuable marketing programs and evaluations would be eliminated under this proposed rule change.

4. Section 7.1.2 establishes a size limitation of signage for a single brand of nonintoxicating beer of 2,200 square inches. This size limitaton is unreasonable and has no relevance to traditional, nonutilitarian point-of-sale materials used by the brewing industry.

5. The entire section 13.2, relating to brewer-distributor franchise agreements, is unnecessary because it simply restates the language of W.Va. Code § 11-16-21. The clear language of the Code places restrictions on the relationship between a brewer and its distributor. Because the proposed rule simply restates the statute, the proposed rule does nothing to interpret or administer the statute.

September 25, 1990