

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2008 AUG 26 AM 11:32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code 47-1-3 (c)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Weights and Measures Calibration Fees

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 26, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

LEGISLATIVE RULE TITLE: _____
Weights and Measures Calibration Fees

1. Authorizing statute(s) citation W. Va. Code 47-1-3 (c)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 17, 2008

b. What other notice, including advertising, did you give of the hearing?
Public comment period only.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 18, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received x

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 26, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David W. Mullins, Commissioner phone: 304.558.7890 x 111
West Virginia Division of Labor fax: 304.558.2273
State Capitol Complex email: david.w.mullins@wv.gov
Building 6, Room B-749
Charleston, WV 25305

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

John Junkins, Director phone: 304.722.0602
Weights and Measures Section fax: 304.722.0605
West Virginia Division of Labor email: john.j.junkins@wv.gov
570 MacCorkle Avenue
St. Albans, WV 25177

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

FACTS AND CIRCUMSTANCES FOR THE PROPOSED RULE CHANGES

The purpose of the changes in the proposed rule is to increase the fees for cast iron weights needing adjustment and for LPG provers requiring certification for accuracy.

All volumetric provers were originally in one category. A standard prover takes four hours to certify. An LPG prover takes three days to certify due to special requirements for pressurizing.

SUMMARY OF PROPOSED RULE CHANGES

See "Appendix A."

Explanation for additional fee for cast iron weights added.

LPG Prover, 25 and 100 gallons, including frequency of calibration and fees, added.s

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Weights and Measures Calibration Fees

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Labor

Address: Room 749-B Building # 6
Capitol Complex
Charleston, WV 25305

Phone Number: 304-558-7890 Email: john.r.junkins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Volumetric provers were all in one category. A standard volumetric prover takes less than 4 hours to certify. A volumetric LPG (PROPANE) prover takes 3 days to certify because of the special requirements for pressurizing. Currently these test expenses are being assumed by the Weights and Measures Section of the Division of Labor. The proposed fee increases would offset the expense in certifying these pressurized LPG (PROPANE) provers.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	4,000.00	4,000.00

Rule Title: _____

Rule Title: Weights and Measures Calibration Fees

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

These figures are based upon 1 LPG (PROPANE) prover and 5400 cast iron weights. The sole intent is to make this program self supporting.

The fee increasee are adding an adjustment fee to cast iron weights that need to be adjusted to be certified and add a fee for certifying LPG (PROPANE) provers. These provers are substantially different than a standard volumetric prover.

\$10.00 adjustment fee for each cast iron weight, that is adjusted.

\$215.00 certification fee for 25 gallon LPG (PROPANE) prover. Good for 5 years.

\$450.00 certification fee for 100 gallon LPG (PROPANE) prover. Good for 5 years.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

NONE

Date: 7-15-08

Signature of Agency Head or Authorized Representative

David W. Phillips

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 26
WEIGHTS AND MEASURES CALIBRATION FEES

FILED
2008 AUG 26 AM 11:32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-26-1. General.

1.1 Scope. -- This legislative rule establishes laboratory calibration fees for weights and measures testing standards which are used to verify the accuracy of weighing and measuring devices used for commercial purposes.

1.2. Authority. -- W. Va. Code ~~§47-1-20~~. § 47-1-3 (c).

1.3. Filing Date. -- ~~May 13, 2005~~.

1.4. Effective Date. -- ~~July 1, 2005~~.

§42-26-2. Application and Enforcement.

2.1. Application. This legislative rule governs all persons, firms, corporations, government entities, materials and transactions covered by the provisions of W. Va. Code §47-1-1, et seq.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor or its designated representatives as authorized by W. Va. Code §47-1-3.

§42-26-3. Definitions.

3.1. "Division" means the West Virginia Division of Labor.

3.2. "Device" means any weighing or measuring apparatus used in this state for commercial purposes.

3.3. "Standards" means weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology.

§42-26-4. Fees.

The division shall charge laboratory calibration fees for all testing standards according to the table in appendix A.

§42-26-5. Payment of fees.

The division shall provide the owner of any standards calibrated by the division with an invoice for services rendered. The owner shall pay the invoice within thirty (30) days of the date of the invoice. The division may refuse services to any person, firm, corporation or government entity who has failed to pay an invoice for services.

Appendix A. Weights & Measures Laboratory Fee Structure			
Description of Standards	Per	Calib Freq,	Calib Fee
5 gallon Test Measure	each	1 year	\$20.00
Provers >5 gal and <=50gal	each	1 year	\$75.00
Provers >50 <400 gal	each	1 year	\$150.00
Provers >=400 gal	each	5 years	\$300.00
Weights Carts	See**	1 year	\$125.00
Weights >= 2000lbs	See **	see note 8	\$25.00
Weights >=500lb <2000lb	See **	1 year	\$20.00
Weights >=20 <500lb	See **	1 year	\$5.00
Weights <20lb	See **	1 year	\$3.00
Pharmacy Weight Kits	up to 16 weights	5 years	\$50.00
Lottery Daily 3, per set of 10	per set	see note 9	\$25.00
Lottery Cash 25, per case	per case	see note 9	\$50.00
LPG (Propane) Prover 25 Gal.	each	5 years	\$215.00
LPG (Propane) Prover 100 Gal	each	5 years	\$450.00
Notes relative to Appendix A.			
1. The Weights & Measures laboratory staff reserves the right to refuse any standards that are considered not suitable for testing			
2. A cleaning fee of \$25 will be added to the regular test fee for each 5 gallon test measure, if cleaning is considered to be necessary			
3. A \$25 fee for appointment cancellation will be levied if less than 48 hours notice of cancellation is given by company representatives			
4. Fees for metric standards will be charged at the comparable rate for customary standards as shown in Appendix A			
5. Subsequent retesting for rejected or condemned standards will be charged at the applicable rate shown in Appendix A			
6. For Pharmacy weight kits with more than 16 weights, additional weights will be charged as individual weights at \$3 each			
7. All applicable shipping charges to and from Weights & Measures Laboratory shall be paid by company or person submitting the standards			
8. Calibration frequency for fixed location coal loadout weights is 5 years; all others 1 year			
9. Monthly Calibration frequency on Lottery balls is set by Lottery Commission rather than Weights & Measures rule			
10. Depending on the standard type, a storage fee of either 15% of the total Calibration Fee or \$2 per day will be added to the amount due for that calibration, beginning 10 days after written or verbal notice is given to an authorized company representative			
** There will be a \$10.00 adjustment fee on any cast iron weights of 1lb and above needing adjustment			