

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

2004 JUN 17 P 3:17

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code 47-1-20

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 26

TITLE OF RULE BEING PROPOSED: Weights and Measures Calibration Fees

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 23, 2004 AT 5:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Division of Labor

Attn: Andrew A. Brown

Room B-709, Building #6

State Capitol Complex

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**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 B-709, Building #6  
State Capitol Complex  
Charleston, WV 25305

1. Effect of Proposed Rule NO IMPACT ON EXPENDITURES

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates: This rule will have no impact on agency expenditures. It will, however, generate approximately \$53,200 which will be used to make repairs and support the operation of the lab.

3. Objectives of these rules:

These fees will be used to maintain the state laboratory.

Rule Title: Weights and Measures Calibration Fees

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

-None-

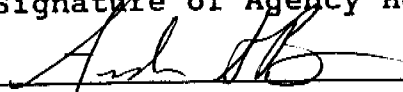
B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Fees will be paid by service companies who utilize the calibration services of a nationally certified lab.

C. Economic Impact on Citizens/Public at Large.

Date: June 17, 2004

Signature of Agency Head or Authorized Representative



# WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

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[HTTP://WWW.STATE.WV.US/LABOR](http://WWW.STATE.WV.US/LABOR)

BOB WISE  
Governor



JAMES R. LEWIS  
Commissioner

## FACTS AND CIRCUMSTANCES

This rule is new. It is necessary to establish laboratory calibration fees authorized by H.B. 4709 as passed during the 2004 Regular Session of the Legislature. The fees are set generally below the averages for surrounding states. The fees became necessary as a funding source to help maintain the national certification of the division's weights and measures laboratory.

**TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR**

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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**Series 26  
Weights and Measures Calibration Fees**

**§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. Filing Date. –

1.3. Effective Date. –

**§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. “Commissioner” means the commissioner of the West Virginia Division of Labor.

3.2. “Division” means the West Virginia Division of Labor.

3.3. “Device” means any weighing or measuring apparatus used in this state for commercial purposes.

3.4. “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 below:

**Table A. Weights & Measures Laboratory Fee Structure**

<b>Description of Standards</b>	<b>Per</b>	<b>Calib. Freq.</b>	<b>Calibration Fee</b>	<b>Storage Fees (see Note 10 below)</b>
5 gallon Test Measure	each	1 year	\$20.00	Storage Fee is \$2.00 /day after 10 days from notification
Provers >5gal and <=50gal	each	1 year	\$75.00	Storage fee is 15% of calib. fee after 10 days from notification
Provers >50 <400 gal	each	1 year	\$150.00	Storage fee is 15% of calib. fee after 10 days from notification
Provers >=400 gal	each	5 years	\$300.00	Storage fee is 15% of calib. fee after 10 days from notification
Weight Carts	each	1 year	\$125.00	Storage fee is 15% of calib. fee after 10 days from notification
Weights >= 2000lbs	per weight	see note 8	\$25.00	Storage fee is 15% of calib. fee after 10 days from notification
Weights >= 500lbs < 2000lb	per weight	1 year	\$20.00	Storage fee is 15% of calib. fee after 10 days from notification
Weights >=20lb < 500lb	per weight	1 year	\$5.00	Storage fee is 15% of calib. fee after 10 days from notification
Weights < 20lbs	per weight	1 year	\$3.00	Storage Fee is \$2.00 /day after 10 days from notification
Pharmacy wt. kits	up to 16 wts	5 years	\$50.00	Storage Fee is \$2.00 /day after 10 days from notification
Lottery Daily 3, per set of 10	per set	see note 9	\$25.00	No Storage Fee
Lottery Cash 25, per case	per case	see note 9	\$50.00	No Storage Fee

**Notes relative to Table A.**

- 1 The Weights & Measures laboratory staff reserves the right to refuse any standards that are deemed 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 deemed necessary by W&M laboratory staff
- 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 table A.
- 5 Subsequent retesting for rejected or condemned standards will be charged at the applicable rate shown in table A.
- 6 For Pharmacy wt. 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 must 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 regulation
- 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 proper written or verbal notice is given to an authorized company representative

**§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. Payment of the invoice shall be made 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.