

WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III

ADMINISTRATIVE LAW DIVISION

Form #7

Do Not Mark In This Box  
Filing Date

2004 JUN 17 P 3:18

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W.Va. Code 47-1-20

EMERGENCY 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 RULE BEING PROPOSED: 26

TITLE OF RULE BEING PROPOSED: Weights and Measures Calibration Fees

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

(see attachment)

Use additional sheets if necessary

  
Authorized Signature

# WEST VIRGINIA DIVISION OF LABOR

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

Phone (304) 558-7890 • Fax (304) 558-3797

[HTTP://WWW.STATE.WV.US/LABOR](http://www.state.wv.us/labor)

BOB WISE  
Governor



JAMES R. LEWIS  
Commissioner

June 17, 2004

The Honorable Joe Manchin, III  
West Virginia Secretary of State  
State Capitol, Suite 157K  
1900 Kanawha Blvd., East  
Charleston, WV 25305

Dear Mr. Secretary:

The Weights and Measures Section of the West Virginia Division of Labor maintains a metrology laboratory as mandated W.Va. Code §47-1-20. This laboratory is charged with the calibration of all weighing and measuring standards used to test devices in this state. These standards affect every consumer product sold by weight or measure in the commercial market place. The lab must maintain a national certification through the National Institute of Standards and Technology. In order to retain this national certification, the laboratory must comply with extremely rigid physical, environmental and technological requirements. The division is facing some problems with these requirements, such as a leaking roof on the building. This situation caused the Division to go before the 2004 regular session of the Legislature with a request for a general revenue appropriation to cover the cost of abating these problems.

Legislative leadership determined that a one time general revenue appropriation was the wrong answer to these problems. It was suggested that the Division create a source of special revenue that would provide a long term solution. The Division proposed a fee for laboratory services provided to industry (H.B. 4709). Since its creation in 1896, there has never been a fee for these laboratory services. The total annual revenue from this fee would not totally support the laboratory, but it would provide a maintenance budget. The Legislature accepted this concept with the passage of House Bill 4709. The bill was signed into law by the governor on April 6, 2004, to be effective ninety days from passage. The bill mandates the Commissioner of Labor to promulgate a fees schedule by rule. Because of the immediate need for funds, the legislature authorized the commissioner to make expenditures from collections until July 1, 2006, after which a legislative appropriation would be required.

The enacting legislation, H. B. 4709, requires the commissioner to set the fees by rule. However, the legislation does not specify what type of rule is to be filed. It was the Legislature's intent for these funds to be available during the 2005 fiscal year. Therefore, the rule must have an effective date of July 1, 2004. This would require that the rule be

filed as an "emergency rule". Even though effective July 1, 2004, the rule would be presented to the 2005 Legislature for review. The immediate availability of these funds is a necessity in order to maintain the integrity and certification of the state's metrology laboratory.

The Division respectfully requests that you accept the filing of 42 CSR 26, Weights and Measures Laboratory Fees, as an emergency rule. Should you have questions or require additional information, please do not hesitate to contact me.

Sincerely,

  
Andrew A. Brown  
Asst. to the Commissioner

DATE: June 17, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Labor

EMERGENCY RULE TITLE: Weights and Measures Calibration Fees

1. Date of filing: June 18, 2004
2. Statutory authority for promulgating the emergency rule: W Va. Code: 47-1-20
3. Date of filing of proposed legislative rule: June 18, 2004  
for Public Comment
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
New Rule authorized by H.B. 4709, 2004 regular session
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
All weighing and measuring devices used for commercial purposes in this state must be approved for accuracy using testing standards calibrated by a nationally certified laboratory. Fees are immediately necessary to continue the required laboratory services.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

NO

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

As stated in item 6, this rule is necessary to protect the general public and the business community from economic loss as a result of inaccurate weighing and measuring devices used in in the market place.

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for information, contact:

Andrew A. Brown, Asst. to the Commissioner  
West Virginia Division of Labor  
Room B-709, Building #6  
State Capitol Complex  
Charleston, WV 25305

(304) 558-7890, ext. #112  
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E-mail [abrown@labor.state.wv.us](mailto:abrown@labor.state.wv.us)

**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.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

NO

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

As stated in item 6, this rule is necessary to protect the general public and the business community from economic loss as a result of inaccurate weighing and measuring devices used in in the market place.

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## 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.

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

FILED

2004 JUN 17 P 3:18

OFFICE 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**

Description of Standards	Per	Calib. Freq.	Calibration Fee	Storage Fees (see Note 10 below)
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.