

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2004 AUG 12 P 3:09

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 §47-1-20

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 RULE BEING PROPOSED: 26

TITLE OF RULE BEING PROPOSED: Weights and Measures Calibration Fees

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 12, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Division of Labor
Room B-709, Building #6
State Capitol Complex
Charleston, WV 25305
(304) 558-7890

LEGISLATIVE RULE TITLE: Weights and Measures Calibration Fees

1. Authorizing statute(s) citation W.Va. Code §47-1-20

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 17, 2004

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:
July 23, 2004

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 12, 2004

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

Andrew A. Brown, Asst to the Commissioner
West Virginia Division of Labor
Room B-709 State Capitol Complex
Charleston, WV 25305
ph. (304) 558-7890 Fax (304) 558-2273
E-mail abrown@labor.state.wv.us

- 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)

Same as f

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:

June 17, 2004

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

N/A

d. Attach findings and determinations and reasons:

Attached No Comments Received

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

2004 JUN 17 P 3:17

OFFICE OF 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

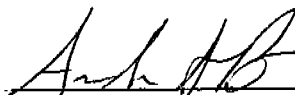
State Capitol Complex

Charleston, WV 25305

Legislative Rule Making

JUN 17 2004

THE ISSUES TO BE HEARD SHALL BE
~~Review Committee~~ 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: X 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

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

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.

FILED

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

2004 AUG 12 P 3:09

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.