

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

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

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

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

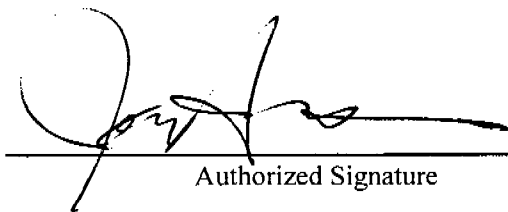
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 27

TITLE OF RULE BEING PROPOSED: Rules of Procedure for Contested Case Hearings Dealing With Civil

Penalties Under the Weights and Measures Act

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 29, 2008


Authorized Signature

TITLE 42
PROCEDURAL RULE
DIVISION OF LABOR

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SERIES 27
RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS
DEALING WITH CIVIL PENALTIES UNDER THE WEIGHTS AND MEASURES ACT

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-27-1. General.

1.1. Scope. -- These procedural rules establish the general procedures for conducting contested case hearings dealing with civil penalties under the West Virginia Weights and Measures Act.

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

1.3. Filing Date. -- August 27, 2008.

1.4. Effective Date. -- September 29, 2008.

§42-27-2. Notice of Hearing.

2.1. Notice of hearing in all cases shall be given at least ten (10) days prior to the date of the hearing, stating:

2.1.1. the time, day, and location of the hearing;

2.1.2. a short plain statement of the matter asserted; and

2.1.3. a statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Section 7 of these rules.

§42-27-3. How Hearings are to be Conducted.

3.1. Any party shall have the right to be represented by an attorney-at-law, duly qualified to practice in the State of West Virginia, or to represent himself; Provided, that corporations shall be represented by an attorney-at-law, not a corporate officer or any other person.

3.2. The Division of Labor will present its case regarding whether a violation of any provisions of W. Va. Code § 47-1-1, *et seq.*, or any rule promulgated thereunder, occurred and whether civil penalties are due under the specified weights and measures laws. Any party alleged to have committed a violation and owe such penalties shall thereafter be afforded the opportunity to present its case in defense. The Division of Labor will then be allowed to present its rebuttal.

3.3. Every party shall have the right of cross-examination of witnesses who testify.

3.4. Following the presentation of all the evidence, any party, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the Commissioner or the hearing examiner.

§42-27-4. Continuation and Adjournment.

4.1. Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the scheduled hearing date.

4.2. Except for good cause shown, a party shall be permitted only one (1) motion for a continuance related to any particular hearing.

§42-27-5. Transcript of Reported Testimony and Evidence.

5.1. What reported. -- All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

5.2. Request from any party. -- Upon request to the Commissioner or hearing examiner, all reported materials shall be transcribed and a copy thereof furnished to such party at the requesting party's expense.

5.3. Responsibility for transcript. -- The Commissioner shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence.

§42-27-6. Submission of Proposed Finding of Fact and Conclusion of Law; Time for Submission.

6.1. Any party may submit proposed findings of fact and conclusions of law to the Commissioner or hearing examiner within fifteen (15) days of the conclusion of a hearing, or a date agreed upon by all parties, or in the event that the proceedings of the hearing are transcribed, within fifteen (15) days from the date final transcript is available.

§42-27-7. Appointment of Hearing Examiner; Function of Hearing Examiner.

The Commissioner may, in his or her discretion, appoint a hearing examiner who shall be empowered to subpoena witnesses and documents administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the parties and to otherwise conduct hearings.

§42-27-8. Orders; content.

Every final order entered by the Commissioner, or hearing examiner, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of W. Va. Code §29A-5-3 of 1931, as amended. Such orders shall be entered within thirty (30) days following the submission of all documents and materials, including transcripts and proposed findings of fact and conclusion of law.

§42-27-9. Appeal.

An appeal from any final order or ruling entered in accordance with these regulations shall be in accordance with the provisions of W. Va. Code §29A-5-4.

§42-27-10. Severability.

If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.