

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #2

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DEC 3 12 38 PM '92  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY TITLE NUMBER: 94CSR3

RULE TYPE: Procedural; CITE AUTHORITY §31-20-10(h)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 94CSR3

TITLE OF RULE BEING AMENDED: CRITERIA AND PROCEDURES FOR DETERMINATION  
OF COST PER DAY FOR INMATES INCARCERATED IN REGIONAL JAILS OPERATED  
BY THE AUTHORITY.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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 January 4, 1993 AT 5:00 p.m.

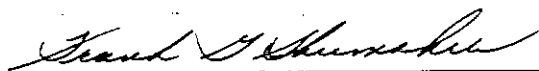
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING

ADDRESS:  
REGIONAL JAIL & CORRECTIONAL  
FACILITY AUTHORITY  
CAPITOL COMPLEX  
307 JEFFERSON STREET

POST OFFICE BOX 50285

CHARLESTON, WEST VIRGINIA 25305-0285

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3,80



State of West Virginia  
OFFICE OF THE SECRETARY  
DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY  
P. O. Box 50155  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0155

Division of Corrections  
Adjutant General's Office:  
Division of Engineering & Facilities/  
State Armory Board  
Military Awards Board  
Division of Public Safety - WV State Police:  
Commission on Drunk Driving Prevention  
Office of Emergency Services:  
Emergency Services Advisory Council  
Disaster Recovery Board  
Emergency Response Commission  
State Fire Commission/State Fire Marshal  
Board of Probation and Parole  
Regional Jail and Correctional Facility Authority  
Office of Veterans' Affairs

Joseph J. Skaff  
SECRETARY  
(304) 558-2930

November 30, 1992

TO: Billy Burke, Director  
Regional Jail and Correctional  
Facility Authority

FROM: Joseph ~~Skaff~~  
Secretary

RE: Revisions - Per Diem

Reference your letter of November 23, 1992 concerning the filing of revisions to the procedural rules which establish the per diem cost of inmates housed in the regional jails.

Approval is granted to submit the revisions to the Code of State Regulations at Section 94CSR3 to the Secretary of State.

S/b

RECEIVED

DEC 01 1992

WV Regional Jail & Correctional  
Facility Authority

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CRITERIA AND PROCEDURES FOR DETERMINATION OF COST PER DAY FOR INMATES INCARCERATED IN REGIONAL JAILS OPERATED BY THE AUTHORITY.

Type of Rule:        Legislative        Interpretive   X   Procedural

Agency: REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY Address: CAPITOL COMPLEX  
307 JEFFERSON STREET POST OFFICE BOX 50285 CHARLESTON, WEST VIRGINIA  
25305-0285

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

The proposed amendment which increases the percentage of capacity used to derive the anticipated usage will have the effect of reducing the per diem rate.

3. Objectives of these rules:

To calculate the per diem rate at a higher anticipated population level.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Will reduce amount owed by Division of Corrections for State inmates housed in Regional Jails.

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

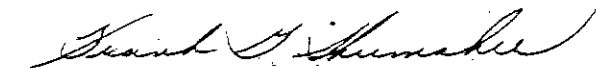
Will reduce per diem charge to counties for housing inmates at regional jails.

C. Economic Impact on Citizens/Public at Large.

None determined

Date: December 3, 1992

Signature of Agency Head or Authorized Representative



Frank G. Shumaker, Deputy Director  
WV Regional Jail & Correctional Facility Authority

FILED

94 CSR 3

DEC 3 12 38 PM '92

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE 94  
PROCEDURAL RULE  
REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

SERIES 3

CRITERIA AND PROCEDURES  
FOR DETERMINATION OF COST PER DAY FOR INMATES  
INCARCERATED IN REGIONAL JAILS OPERATED BY THE AUTHORITY

**§94-3-1. General.**

1.1. Scope. - Chapter 31, article 20, section 10, subsection (h) of the West Virginia Code of 1931, as amended, requires the West Virginia Regional Jail and Correctional Facility Authority to develop an operational cost per day for inmates incarcerated in regional jails. The Authority is required to develop criteria and procedures for the development of these operational per diem costs through the mechanism of regulations pursuant to article 3, of chapter twenty-nine-a of the code. Counties are required by the statute to make payments to the regional jail and correctional facility development fund in an amount sufficient to cover the costs of operating such regional jail facilities and to maintain inmates incarcerated therein.

1.2. Authority. - WV Code §31-20-10(h).

1.3. Filing Date:

1.4. Effective Date:

1.5. Repeal of former rule: This filing represents an amendment of the procedural rule formerly filed on July 15, 1992 and effective on October 16, 1992; therefore strike-throughs reflect language to be deleted and underlining reflects language to be added.

**§94-3-2. Application And Enforcement.**

2.1. These procedural rules apply to the Regional Jail and Correctional Facility Authority, and to counties, municipalities, the West Virginia Division of Corrections, the United States Marshals Service and any other entity by whose authority inmates are incarcerated and maintained in regional jails operated by the West Virginia Regional Jail and Correctional Facility Authority.

2.2. The enforcement of these regulations rests with the Executive Director of the Regional Jail and Correctional Facility Authority.

**§94-3-3. Annual Schedule of Operating Expenditures.**

3.1. The Regional Jail and Correctional Facility Authority shall develop and approve a schedule of anticipated operational expenditures for each regional jail. Such schedules shall include funds for personal services and fringe benefits for personnel necessary to the operation of the facility as well as allocations of funds for

food, clothing, utilities, supplies, transportation and all other costs necessary to operate and maintain the facility.

3.2. The operational expenditure schedule shall include all costs, both direct and indirect, for operating and maintaining the regional jail.

3.3. The operational expenditure schedule shall not include any costs, either direct or indirect, for the construction or acquisition of a regional jail.

3.4. The Authority shall develop and approve an operational expenditure schedule for each regional jail on an annual basis, consistent with the state fiscal year.

#### **§94-3-4. Annual Statement of Cost Per Inmate Day.**

4.1. The Authority shall, on an annual basis, prepare an estimate of the cost of operating each regional jail and maintaining inmates therein. This estimate of cost will be expressed as the cost of maintaining one (1) inmate for one (1) day. This estimate shall include all costs of operating a regional jail.

4.2. The annual statement of cost per inmate day will be forwarded to both the Sheriff and the county commission of each county, the Commissioner of the Division of Corrections, the United States Marshals Service and the mayor of each municipality served by the regional jail to provide notice of per diem costs and for their use in preparing their own budgets.

4.3. The annual statement of cost per inmate day for each regional jail may be provided, upon request, to any other entity on whose behalf an inmate may be incarcerated in a regional jail.

#### **§94-3-5. Calculation Of Cost Per Inmate Day.**

5.1. The Authority shall divide the total of each schedule of anticipated operational expenditures by the anticipated number of inmate days to yield the cost per inmate day as the quotient.

5.1.1. If the Authority has revenue available for use as operational funds, the Authority may apply such revenue to the total of the schedule of operational expenditures before calculating the cost per inmate day. In such case, the net operational costs shall become the dividend.

5.1.2. The anticipated number of inmate days to be provided in a fiscal year shall be the product of the bed capacity of the regional jail multiplied by a capacity factor of ~~eighty-five percent (85%)~~ ninety percent (90%), multiplied by the number of days in the fiscal year.

5.1.3. The Authority may, when operational history is available on any regional jail for more than two years, increase the capacity factor described in §5.1.2. to reflect the actual population levels documented for that particular regional jail; provided, that in no event shall the population factor be greater than one hundred per cent (100%) of the bed capacity for the regional jail.

5.2. The Authority shall collect the cost per inmate day from each entity for which an inmate is maintained in a regional jail.

**§94-3-6. Preparation And Distribution Of Monthly Statements Of Costs Incurred.**

6.1. The Authority shall prepare a monthly statement of charges for each entity for which an inmate is maintained in a regional jail. Each monthly statement of charges will include the name of any inmate maintained in the regional jail, the number of days during the billing month the inmate was maintained, and the total charges for inmate maintenance during the billing month.

6.2. The monthly statements of costs incurred shall be due and payable upon receipt by the responsible entity.

6.3. The Executive Director, on behalf of the Authority, may initiate legal action to collect any debts resulting from the failure of a responsible entity to make prompt payment of billed charges.

**§94-3-7. Extraordinary Costs.**

7.1. If the actual operational costs exceed the approved schedule of operational expenditures by more than ten per centum (10%) in a line item, a temporary surcharge will be added to the cost per inmate day in an amount sufficient to cover the actual expenditures.

**§94-3-8. Settlement Statement.**

8.1. At the end of each fiscal year, a settlement statement may be prepared by the Authority.

8.1.1. If collected revenues exceed the total operational expenditures, any remaining balance shall be credited to the responsible entity on the same basis as payments were received.

8.1.2. If collected revenues are less than total operational expenditures, the settlement statement shall reflect a balance due and payable to the Authority from the responsible entity.

8.2. The Authority may, if collected revenues exceed the expenditures in a fiscal year, apply any such excess revenues to the anticipated operational expenditures for the succeeding fiscal year; in such case, the Authority shall treat such revenue as revenue available for use as operational funds as described in §5.1.1. and shall reduce the net amount of the anticipated operational expenditures thereby before calculating the cost per inmate day to be collected from entities which incarcerate inmates in any regional jail.

STATE OF WEST VIRGINIA



REGIONAL JAIL and CORRECTIONAL FACILITY AUTHORITY

CAPITOL COMPLEX  
307 JEFFERSON STREET  
P. O. BOX 50285  
CHARLESTON, WV 25305-0285  
(304) 558-2110  
FAX: (304) 558-2115

GASTON CAPERTON  
Governor

November 23, 1992

BILLY B. BURKE  
Executive Director

Mr. Joseph J. Skaff, Secretary  
Department of Military Affairs and Public Safety  
1900 Kanawha Boulevard, East  
Post Office Box 50155  
Charleston, West Virginia 25305-0155

Dear Secretary Skaff:

The Regional Jail and Correctional Facility Authority has approved the enclosed revisions to the procedural rules which establish criteria and procedures for determination of cost per day for inmates incarcerated in regional jails operated by the Authority and filed in the Code of State Regulations at §94CSR3.

The purpose of this letter is to request your written consent for the filing of these proposed revisions with the Secretary of State as required by section two, subsection a-12, article two, chapter five-F [§5F-2-2(a)(12)] of the code of West Virginia.

Upon receipt of your written consent, we will file the proposed amendments with the Office of the Secretary of State for the scheduling of a period of public comment prior to the further processing of this proposed rule and its approval.

If you need additional information or have any questions, please let me know.

Very truly yours,

A handwritten signature in cursive script that reads "Billy B. Burke".

Billy B. Burke  
Executive Director

STATE OF WEST VIRGINIA



REGIONAL JAIL and CORRECTIONAL FACILITY AUTHORITY

CAPITOL COMPLEX  
307 JEFFERSON STREET  
P. O. BOX 50285  
CHARLESTON, WV 25305-0285  
(304) 558-2110  
FAX: (304) 558-2115

GASTON CAPERTON  
Governor

December 3, 1992

BILLY B. BURKE  
Executive Director

Ms. Judy Cooper  
Director of Administrative Law  
Office of Secretary of State  
Building 1, Suite 157K  
State Capitol  
Charleston, West Virginia 25305

Dear Ms Cooper:

I have enclosed the proposed amendment of 94CSR3 as adopted by the Regional Jail and Correctional Facility Authority on November 23, 1992 and approved by Secretary of Military Affairs and Public Safety, Joseph J. Skaff, on November 30 1992. Please accept the filing of these proposed amendments for a period of public comment which will end on January 4, 1993.

The effect of these amendments is to allow the Authority to use a population factor which equals ninety per cent (90%) of the design capacity in the calculation of the per diem rate charged to user agencies for the housing of inmates in regional jails for which have been in operation for less than two years. The net effect of these amendments is to reduce the per diem rate which is charged to user agencies for inmates in a regional jail.

If there is additional information needed or you have any questions, please feel free to contact me at 558-2110. I certainly appreciate your helpful assistance in the preparation of these amendments.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frank G. Shumaker".

Frank G. Shumaker  
Deputy Director

Enclosures: