

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2014 JUN 18 A 11:17

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 § 47-1-3(c) and §47-1-20

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Weights and Measures Calibration Fees

IF NO, SERIES NUMBER OF 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 July 18, 2014 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

John R. Junkins, Acting Commissioner

West Virginia Division of Labor

State Capitol Complex, Building 6, Room B-749

Charleston, WV 25305

Or by email to: john.r.junkins@wv.gov

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA DIVISION OF LABOR

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

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

EARL RAY TOMBLIN
Governor



JOHN R. JUNKINS
Acting Commissioner

Statement of Facts and Circumstances

and

Summary of Proposed Amendments to Title 42, Series 26

Weights and Measures Calibration Fees

The Division of Labor Measurement Laboratory maintains the weights and measures standards 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. The Lab is responsible for testing, calibrating, and issuing Certificates of Conformance for all measurement standards used by business, industry, and law enforcement in West Virginia to ensure that commercial transactions are accurate and to protect consumers from unfair or deceptive practices.

Pursuant to W. Va. Code §47-1-20, the Lab must be certified and approved by the National Institute of Standards and Technology, and it is authorized to assess fees for its operation. The current lab fees have been in effect since 2005, generating approximately \$30,000.00 per year. Due to the substantial costs involved in maintaining the Lab's aging physical plant, replacing aging equipment, and staffing, the Division of Labor is proposing an increase in fees, as shown on Appendix A of the proposed rule.

The proposed increase in fees will help ensure the long-term viability of the Lab while at the same time have a minimal impact on the Lab's customer base. In fact, knowing the financial challenges faced by the Lab and understanding what the potential increase in costs could be if businesses had to take their standards out of state to be calibrated and certified, many of these customers have expressed their support for the proposed increase in fees.

The Division of Labor also proposes the following amendments and revisions to Title 42, Series 26, of the West Virginia Code of State Regulations:

- Several definitions have been added to clarify the meaning of terms used in the proposed rule and appendix A;
- An explanation of certain charges have been added to the rule that previously were included in appendix A; and
- An explanation for when a Certificate of Conformance is issued.



APPENDIX B

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: State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

Phone Number: 304.558.7890 x 58018 Email: john.r.junkins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The requested increase in lab fees, while modest in terms of revenue, will enhance the Division of Labor's ability to maintain the equipment and physical facility essential to the certification of the lab by the National Institute of Standards and Technology.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	10,000.00	10,000.00

Rule Title: Weights and Measures Calibration Fees

Rule Title:

Weights and Measures Calibration Fees

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The average annual revenue generated by the measurements lab is approximately \$30,000.00. A 20% to 25% increase will enhance the lab's viability in maintaining its required certification. If the lab were to lose its National Institute of Standards and Technology certification, the impact on the lab's private sector customers would greatly exceed the Division's requested increase in fees.

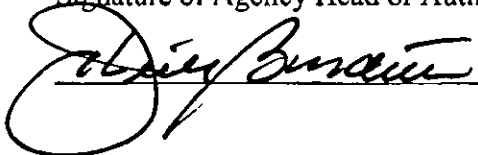
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The lab plays an essential role in all state commercial transactions involving the sale of commodities and products. If the lab were to lose its required certification, the private sector would have to arrange to have its weighing and measuring devices calibrated and certified annually by approved out-of-state entities at a significantly increased cost.

Date: 6/07/14

Signature of Agency Head or Authorized Representative



TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

FILED

2014 JUN 18 A 11:17

SERIES 26
WEIGHTS AND MEASURES LABORATORY TESTING AND CALIBRATION
PROCEDURES AND FEES

SECRETARY OF STATE

§42-26-1. General.

1.1 Scope. -- This legislative rule establishes the laboratory testing and calibration procedures and fees for weights and measures testing standards which that are used to verify the accuracy of weighing and measuring devices used for commercial purposes.

1.2. Authority. -- W. Va. Code § 47-1-3(c) and §47-1-20.

1.3. Filing Date. -- May 8, 2009.

1.4. Effective Date. -- June 1, 2009.

§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. “Certificate of conformance” means the document issued by the Weights and Measures Laboratory that certifies the accuracy of a working standard after it has been tested and calibrated.

3.2. “Commissioner” means the Commissioner of the West Virginia Division of Labor or his or her designee.

~~3.1.~~ 3.3. “Division” means the West Virginia Division of Labor.

~~3.2.~~ “Device” means any weighing or measuring apparatus used in this state for commercial purposes.

3.4. “National Institute of Standards and Technology” or “NIST” refers to the federal technology agency that works with industry to develop and apply technology, measurements, and

standards and whose address is 100 Bureau Drive, Gaithersburg, MD 20899.

3.3. 3.5. "Standards" "Primary standards" means the weights and measures standards 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.

3.6. "Prover" or "prover standard" means a standard used to measure and verify the accuracy of a product's volume.

3.7. "Secondary standards" means the weights and measures standards used by the Weights and Measures Laboratory for testing, calibrating and certifying working standards.

3.8. "State Measurement Laboratory" or "Weights and Measures Laboratory" means the facility located at 570 MacCorkle Avenue West, St. Albans, WV 25177.

3.9. "Storage fee" means the fee charged by the Division of Labor to store working standards for 10 days or more after notification that the testing and calibration has been completed.

3.10. "Weight" or "weight standard" means a standard used to measure and verify the accuracy of a product's mass or quantity.

3.11. "Working standards" means the weights and measures standards that have been tested, calibrated and certified as accurate by the Weights and Measures Laboratory.

§42-26-4. Fees and Charges.

4.1. The Division shall charge laboratory testing and calibration fees for all the testing of working standards according to the table Fee Schedule in appendix Appendix A.

4.2. The Division shall charge a \$25.00 cleaning fee in addition to any testing and calibration fee if a working standard must be cleaned before it can be tested or calibrated.

4.3. The Division shall charge a \$25.00 fee if the owner of the working standard does not give at least 48 hours notice of cancellation for a scheduled appointment.

4.4. The Division shall charge a comparable fee for metric standards as for customary standards as shown on the Fee Schedule in Appendix A.

4.5. The Division shall charge the fee shown on the Fee Schedule in Appendix A for the retesting of a rejected or condemned working standard.

4.6. When working standards are shipped to and from the Weights and Measures Laboratory, the owner of the working standard shall pay the shipping charges.

§42-26-5. Certification of Conformance of Working Standards.

5.1. When the Weights and Measures Laboratory certifies the accuracy of a working standard after it has been tested and calibrated, it shall issue a written certification of conformance that identifies the standard by number or other means of identification, the date of the certification, and the date of expiration of the certification.

5.2. If a working standard, or any part of a working standard, has been sealed with a wire or lead seal after certification, and the seal is subsequently broken, the working standard shall be retested before being used.

§42-26-6. Payment of fees Fees.

6.1. The Division shall provide the owner of any working standards it tests and calibrates calibrated by the division with an invoice for services rendered. The owner shall pay the invoice 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.

6.2. The owner shall pay the invoice within 30 days of receipt the date of the invoice.

6.3. The Division may refuse services to any person, firm, corporation or government entity who has failed to pay an invoice for services.

§42-26-7. Working Standards Unsuitable for Testing and Calibrating.

If the Division determines that a working standard is not suitable for testing and calibrating, the Division reserves the right to refuse to perform the testing and calibrating.

Appendix A. Weights & Measures Laboratory Fee Structure		Calib Fee Storage Fees (see Note 10 below)	
Description of Standards	Per	Calib Freq.	
5-gallon Test Measure	each	1 year	\$20.00 Storage fee is \$2.00/day after 10 days from notification
Provers > 5 gal and <= 50 gal	each	1 year	\$75.00 Storage fee is 15% of calibration fee after 10 days from notification
Provers > 50 <= 400 gal	each	1 year	\$150.00 Storage fee is 15% of calibration fee after 10 days from notification
Provers >= 400 gal	each	5 years	\$300.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights Carts ----- See **	each	1 year	\$125.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights >= 2000 lbs ----- See **	per weight	see note 8	\$25.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights >= 500 lb < 2000 lb ----- See **	per weight	1 year	\$20.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights >= 20 < 500 lb ----- See **	per weight	1 year	\$5.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights < 20 lb ----- See **	per weight	1 year	\$3.00 Storage fee is \$2.00/day after 10 days from notification
Pharmacy Weight Kits	up to 16 weights	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
LPG (Propane) Prover 25 Gal:	each	5 years	Storage fee is 15% of calibration fee after 10 days from notification
LPG (Propane) Prover 100 Gal	each	5 years	\$215.00 notification
			Storage fee is 15% of calibration fee after 10 days from notification

Notes relative to Appendix A:

1. The Weights & Measures laboratory staff reserves the right to refuse any standards that are considered 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 considered to be necessary
 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 Appendix A
 5. Subsequent retesting for rejected or condemned standards will be charged at the applicable rate shown in Appendix A
 6. For Pharmacy weight 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 shall 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 rule
 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 written or verbal notice is given to an authorized company representative
- ** There will be a \$10.00 adjustment fee on any cast iron weights of 1 lb and above needing adjustment

Appendix A

**Weights and Measures Laboratory
Testing and Calibration Frequency and Fee Schedule**

<u>Volumetric or Prover Standard</u>	<u>Required Testing and Calibration Frequency</u>	<u>Testing and Calibration Fee</u>	<u>Storage Fee</u>
<u>Prover - up to 5 gallons</u>	<u>annually</u>	<u>\$30.00 each</u>	<u>\$2.00/day</u>
<u>Prover - from 5 to 49 gallons</u>	<u>annually</u>	<u>\$100.00 each</u>	<u>15% of calibration fee/one time charge</u>
<u>Prover - from 50 to 399 gallons</u>	<u>annually</u>	<u>\$200.00 each</u>	<u>15% of calibration fee/one time charge</u>
<u>Prover - over 400 gallons</u>	<u>every 5 years</u>	<u>\$500.00 each</u>	<u>15% of calibration fee/one time charge</u>
<u>LPG (Propane) Prover, 25 gallons</u>	<u>every 5 years</u>	<u>\$250.00 each</u>	<u>15% of calibration fee/one time charge</u>
<u>LPG (Propane) Prover, 100 gallons</u>	<u>every 5 years</u>	<u>\$500.00 each</u>	<u>15% of calibration fee/one time charge</u>

<u>Miscellaneous Standard: Diameter and Weight</u>	<u>Required Testing and Calibration Frequency</u>	<u>Testing and Calibration Fee</u>	<u>Storage Fee</u>
<u>Lottery Daily 3</u>	<u>Monthly¹</u>	<u>\$25.00 per set of 10 balls</u>	<u>None</u>
<u>Lottery Cash 25</u>	<u>Monthly¹</u>	<u>\$50.00 per case of 25 balls</u>	<u>None</u>

¹ Monthly testing and calibration frequency on lottery balls is set by the Lottery Commission.

<u>Mass or Weight Standard</u>	<u>Required Testing and Calibration Frequency</u>	<u>Testing and Calibration Fee</u>	<u>Storage Fee</u>
<u>Weight cart or buggy</u> ²	annually	\$200.00 each	15% of calibration fee/one time charge
<u>Weights under 20 pounds</u> ³	annually	\$5.00 per weight	\$2.00/day
<u>Weights from 20 to 499 pounds</u> ³	annually	\$10.00 per weight	15% of calibration fee/one time charge
<u>Weights from 500 to 1,999 pounds</u> ³	annually	\$30.00 per weight	15% of calibration fee/one time charge
<u>Weights over 2,000 pounds</u> ³	Fixed location coal load out weights, every 5 years. All other weights, annually	\$30.00 per weight	15% of calibration fee/one time charge
<u>Pharmacy weight kit</u>	every 5 years	\$50.00/kit up to 16 weights. Additional \$5.00 per weight for kits with more than 16 weights.	\$2.00/day

² In addition to the calibration and testing fee, there is an additional \$20.00 adjustment fee on any weight cart or buggy needing adjustment.

³ In addition to the calibration and testing fee, there is an additional \$10.00 adjustment fee per weight on any weight weighing between 1 and 25 pounds needing adjustment. On any weight weighing more than 25 pounds there is an additional \$20.00 adjustment fee for each weight needing adjustment.