

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

Form #3

Do Not Mark In This Box

FILED

2014 JUL 30 P 1:40

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 47-1-3(c) and 47-1-20

AMENDMENT TO AN EXISTING RULE: YES NO

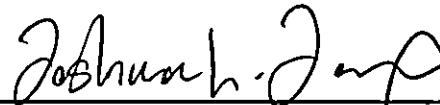
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Weights and Measures Calibration Fees

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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: July 30, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor
State Capitol Complex,
Building 6, Room B-749
Charleston, WV 25305
304.558.7890 x 58018

LEGISLATIVE RULE TITLE: _____
Weights and Measures Calibration Fees

1. Authorizing statute(s) citation W. Va. Code §47-1-3(c) and §47-1-20

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 18, 2014

b. What other notice, including advertising, did you give of the hearing?
A number of trade organizations and service companies were informed of the proposed rule and comment period.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 18, 2014

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)

July 30, 2014

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

John R. Junkins, Acting Commissioner

Division of Labor
State Capitol Complex

Building 6, Room B-749
Charleston, WV 25305

304.558.7890 x 58018 (phone) 304.558.2273 (fax) john.r.junkins@wv.gov

- 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)

Elizabeth Farber, Assistant Attorney General

State Capitol Complex
Building 6, Room B-749

Charleston, WV 25305

304.558.7890 x 58012 (phone) 304.558.2273 (fax) elizabeth.g.farber@wv.gov

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:

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

d. Attach findings and determinations and reasons:

Attached

WEST VIRGINIA DIVISION OF LABOR

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

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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 Laboratory Testing and Calibration Procedures and Fees

The West Division of Labor proposes the following amendments and revisions to Title 42, Series 32 of the West Virginia Code of State Regulations to reflect the Division of Labor's current and proposed practices with regard to enforcement of the Supervision of Plumbing Work Act, W. Va. Code § 21-14-1, *et seq.*

- The definitions of "Commissioner," "direct supervision," "lapsed license," and "supervision" have either been clarified or added.
- The 2012 International Plumbing Code, published by the International Code Council, as adopted by the State Fire Commission in the State Building Code Legislative Rule, 87 CSR 4, effective September 1, 2013, is adopted and incorporated by reference.
- The "grandfathering" provisions, which expired on July 1, 2009, have been removed.
- The requirements for a plumber-in-training license have been clarified so that an applicant is not required to pass a written examination.
- The cost for a plumber-in-training license has been reduced from \$75.00 to \$50.00.
- Requirements concerning the supervision of a plumber-in-training have been added.
- A requirement for a \$25.00 late fee for an applicant who submits a renewal application more than 15 days after a license's expiration date has been added.
- A requirement for a \$10.00 duplicate fee for a license has been added.

Other technical changes are also proposed to clarify current administrative practices and eliminate redundant provisions.



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 lab is approximately \$30,000.00. The requested 20% to 25% increase will enhance the lab's viability in maintaining its required certification by the National Institute of Standards and Technology. If the lab were to lose this required certification, the financial impact on the 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 commercial transactions in West Virginia 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 labs at a significantly increased cost.

Date:

7-30-2014

Signature of Agency Head or Authorized Representative

Joshua L. Jay

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

FILED

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

2014 JUL 30 P 1:40
OFFICE WEST VIRGINIA
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	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 rate
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>Monthly ¹</u>	<u>\$25.00 per set of 10 balls</u>	<u>None</u>
<u>Lottery Cash 25</u>	<u>Monthly ¹</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	<u>annually</u>	<u>\$200.00 each</u>	<u>15% of calibration fee/one time charge</u>
<u>Weights under 20 pounds</u> ³	<u>annually</u>	<u>\$5.00 per weight</u>	<u>\$2.00/day</u>
<u>Weights from 20 to 499 pounds</u> ³	<u>annually</u>	<u>\$10.00 per weight</u>	<u>15% of calibration fee/one time charge</u>
<u>Weights from 500 to 1,999 pounds</u> ³	<u>annually</u>	<u>\$30.00 per weight</u>	<u>15% of calibration fee/one time charge</u>
<u>Weights over 2,000 pounds</u> ³	<u>Fixed location coal load out weights, every 5 years. All other weights, annually</u>	<u>\$30.00 per weight</u>	<u>15% of calibration fee/one time charge</u>
<u>Pharmacy weight kit</u>	<u>every 5 years</u>	<u>\$50.00/kit up to 16 weights. Additional \$5.00 per weight for kits with more than 16 weights.</u>	<u>\$2.00/day</u>

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.