

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

Form #4

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

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

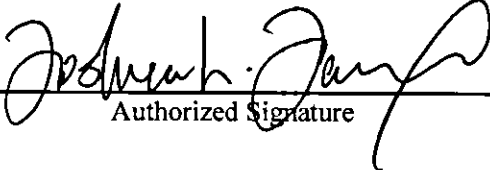
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

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 RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR

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

OFFICE OF 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 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 ----- Sec **	each	1 year	\$125.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights >= 2000 lbs ----- Sec **	per weight	see note 8	\$25.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights >= 500 lb <= 2000 lb ----- Sec **	per weight	1 year	\$20.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights >= 20 <= 500 lb ----- Sec **	per weight	1 year	\$5.00 Storage fee is 15% of calibration fee after 10 days from notification
Weights <= 20 lb ----- Sec **	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
Battery Daily 3, per set of 10	per set	see note 9	\$25.00 No Storage fee
Battery 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**

<b><u>Volumetric or Prover Standard</u></b>	<b><u>Required Testing and Calibration Frequency</u></b>	<b><u>Testing and Calibration Fee</u></b>	<b><u>Storage Fee</u></b>
<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>

<b><u>Miscellaneous Standard: Diameter and Weight</u></b>	<b><u>Required Testing and Calibration Frequency</u></b>	<b><u>Testing and Calibration Fee</u></b>	<b><u>Storage Fee</u></b>
<u>Lottery Daily 3</u>	<u>Monthly <sup>1</sup></u>	<u>\$25.00 per set of 10 balls</u>	<u>None</u>
<u>Lottery Cash 25</u>	<u>Monthly <sup>1</sup></u>	<u>\$50.00 per case of 25 balls</u>	<u>None</u>

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<sup>1</sup> 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> <sup>2</sup>	<u>annually</u>	<u>\$200.00 each</u>	<u>15% of calibration fee/one time charge</u>
<u>Weights under 20 pounds</u> <sup>3</sup>	<u>annually</u>	<u>\$5.00 per weight</u>	<u>\$2.00/day</u>
<u>Weights from 20 to 499 pounds</u> <sup>3</sup>	<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> <sup>3</sup>	<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> <sup>3</sup>	<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>

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

<sup>3</sup> 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.