

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

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Weights and Measures Laboratory Testing and
Calibration Procedures and Fees

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S. B. 170

SECTION 64-10-3(f), PASSED ON March 14, 2015

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2015


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 WEST VIRGINIA
SECRETARY OF STATE

§42-26-1. General.

1.1 Scope. -- This rule establishes the laboratory testing and calibration procedures and fees for weights and measures standards 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. -- April 22, 2015.

1.4. Effective Date. -- July 1, 2015.

§42-26-2. Application and Enforcement.

2.1. Application. This 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 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.

3.3. "Division" means the West Virginia Division of Labor.

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.

3.5. "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 the testing of working standards according to the Fee Schedule in 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.

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

6.2. The owner shall pay the invoice within 30 days of receipt 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 and Measures Laboratory Testing and Calibration Frequency and Fee Schedule

Volumetric or Prover Standard	Required Testing and Calibration Frequency	Testing and Calibration Fee	Storage Fee
Prover - up to 5 gallons	annually	\$30.00 each	\$2.00/day
Prover - from 6 to 49 gallons	annually	\$100.00 each	15% of calibration fee/one time charge
Prover - from 50 to 399 gallons	annually	\$200.00 each	15% of calibration fee/one time charge
Prover - over 400 gallons	every 5 years	\$500.00 each	15% of calibration fee/one time charge
LPG (Propane) Prover, 25 gallons	every 5 years	\$250.00 each	15% of calibration fee/one time charge
LPG (Propane) Prover, 100 gallons	every 5 years	\$500.00 each	15% of calibration fee/one time charge

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

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

Mass or Weight Standard	Required Testing and Calibration Frequency	Testing and Calibration Fee	Storage Fee
Weight cart or buggy ²	annually	\$200.00 each	15% of calibration fee/one time charge
Weights under 20 pounds ³	annually	\$5.00 per weight	\$2.00/day
Weights from 20 to 499 pounds ³	annually	\$10.00 per weight	15% of calibration fee/one time charge
Weights from 500 to 1,999 pounds ³	annually	\$30.00 per weight	15% of calibration fee/one time charge
Weights over 2,000 pounds 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
Pharmacy weight kit	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.