



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 7 -- NOTICE OF AN EMERGENCY RULE (Page 1)

AGENCY **Division of Labor**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE No TITLE-SERIES **42-36**
RULE NAME **Registration of Weighing and Measuring Devices Used By Businesses In Commercial Transactions**
CITE AUTHORITY **W. Va. Code §§ 47-1-3(c) and 47-1-21(d)**

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

SB 419, passed during the 2017 regular legislative session, amends W. Va. Code §47-1-21 (d), which provides for the filing of an emergency rule prior to January 1, 2018 in order to implement and administer these amendments.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 42-36



Rule Id: 16488



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FORM 9 -- EMERGENCY RULE QUESTIONNAIRE (Page 1)

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CITE AUTHORITY **W. Va. Code §§ 47-1-3(c) and 47-1-21(d)**

PRIMARY CONTACT

David W. Mullins, Commissioner
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
Charleston, WV 25305

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FORM 9 -- EMERGENCY RULE QUESTIONNAIRE (Page 2)

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RULE NAME **Registration of Weighing and Measuring Devices Used By Businesses In Commercial Transactions**

CITE AUTHORITY **W. Va. Code §§ 47-1-3(c) and 47-1-21(d)**

DATE OF FILING

Friday, June 16, 2017

STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE

W. Va. Code §47-1-22(d), as amended by the Legislature during the 2017 regular session in SB 419.

DATE OF FILING OF PROPOSED LEGISLATIVE RULE

Friday, June 16, 2017

DOES THE EMERGENCY RULE ADOPT NEW LANGUAGE OR DOES IT AMEND OR APPEAL A CURRENT LEGISLATIVE RULE?

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED?

No

STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE EMERGENCY RULE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC PEACE, HEALTH, SAFETY OR WELFARE.

When weighing and measuring devices are registered with the Division, they are inspected for accuracy as determined by the National Institute of Standards and Technology (NIST) Handbooks. If the devices do not conform to the NIST standards, the devices must be brought into compliance in order to be used in commercial transactions.

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FORM 9 -- EMERGENCY RULE QUESTIONNAIRE (Page 3)

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CITE AUTHORITY **W. Va. Code §§ 47-1-3(c) and 47-1-21(d)**

IF THE EMERGENCY RULE WAS PROMULGATED IN ORDER TO COMPLY WITH A TIME LIMIT ESTABLISHED BY THE CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN.

SB 419, passed during the 2017 regular legislative session, requires the Division of Labor to charge annual registration fees for weighing and measuring devices used in commercial transactions beginning January 1, 2018.

W. Va. Code §47-1-21(d) permits the Commissioner to file an emergency rule prior to January 1, 2018 to implement and administer the amendments made to this section during the 2017 regular legislative session.

STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE EMERGENCY RULE NECESSARY TO PREVENT SUBSTANTIAL HARM TO THE PUBLIC INTEREST.

The proper calibration of weighing and measuring devices used in commercial transactions is essential to the economy.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY Division of Labor

RULE TYPE Legislative AMENDMENT TO EXISTING RULE No TITLE-SERIES 42-36

RULE NAME Registration of Weighing and Measuring Devices Used By Businesses In Commercial Transactions

CITE AUTHORITY W. Va. Code §§ 47-1-3(c) and 47-1-21(d)

PRIMARY CONTACT

David W. Mullins, Commissioner
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
Charleston, WV 25305

SECONDARY CONTACT

Victor Zamora
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
Charleston, WV 25305

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CITE AUTHORITY W. Va. Code §§ 47-1-3(c) and 47-1-21(d)

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

The proposed rule includes a fee schedule in Appendix A for scales and a fee schedule in Appendix B for meters. There 13 different fees for scales based on the scale capacity or type. There are 10 different fees for meters based on the type of meter.

The Division anticipates that the total revenue for the registration of all types of scales in FY 2018 will be \$369,875, and \$739,750 upon full implementation in FY 2019.

The Division anticipates that the total revenue for the registration of all types of meters in FY 2018 will be \$404,200 and \$808,400 upon full implementation in FY 2019.

The total combined revenue for both scales and meters for FY 2018 is \$774,075 and for FY 2019, \$1,548,150.

There are no anticipated costs for state government.

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Division of Labor**
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 RULE NAME **Registration of Weighing and Measuring Devices Used By Businesses In Commercial Transactions**
 CITE AUTHORITY **W. Va. Code §§ 47-1-3(c) and 47-1-21(d)**

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	-	-	-
PERSONAL SERVICES	-	-	-
CURRENT EXPENSES	-	-	-
REPAIRS AND ALTERATIONS	-	-	-
ASSETS	-	-	-
OTHER	-	-	-
ESTIMATED TOTAL REVENUES	-	+\$774,075.00	+\$1,548,150.00

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY Division of Labor

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CITE AUTHORITY W. Va. Code §§ 47-1-3(c) and 47-1-21(d)

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

The revenue estimates are based on the number of scales and meters that are currently registered with the Division of Labor.

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY Division of Labor

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CITE AUTHORITY W. Va. Code §§ 47-1-3(c) and 47-1-21(d)

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.

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Division of Labor**
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CITE AUTHORITY **W. Va. Code §§ 47-1-3(c) and 47-1-21(d)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

SB 419, passed during the 2017 regular legislative session, amended W. Va. Code §47-1-21 by requiring the Division of Labor to charge annual fees for the registration of weighing and measuring devices used in commercial transactions, and to set the fees by legislative rule.

SB 419 also allows the Commissioner to file an emergency rule prior to January 1, 2018 to implement and administer the amendments to W. Va. Code §47-1-21(d).

The proposed rule is a new rule, which contains a definition section, requirements for the registration of weighing and measuring devices, requirements for the registration application and renewal, and the payment of fees, penalties for the failure to register a device, and a fee schedule for scales in Appendix A and a fee schedule for meters in Appendix B.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 36
REGISTRATION OF WEIGHING AND MEASURING DEVICES
USED BY BUSINESSES IN COMMERCIAL TRANSACTIONS

§42-36-1. General.

1.1. Scope. -- This rule governs the registration of weighing and measuring devices used by businesses in commercial transactions, the issuance of certificates of device registration, and fees.

1.2. Authority. -- W. Va. Code §§47-1-3(c) and 47-1-21(d).

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Sunset Date. This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

§42-36-2. Application and Enforcement.

2.1. Application. This rule applies to all businesses that use weighing and measuring devices in commercial transactions with the public.

2.2. Enforcement. The enforcement of this legislative rule is vested in the West Virginia Division of Labor.

§42-36-3. Definitions.

3.1. "Certificate of device registration" means the document issued by the Division to a business upon receipt of a complete application and payment of the required fee for each weighing or measuring device used in commercial transactions.

3.2. "Commissioner" means the Commissioner of the Division of Labor and his or her authorized representatives.

3.3. "Complete application" means an application that includes all the information required by the Commissioner on the form supplied by the Division.

3.4. "Device" means any instrument, apparatus or piece of equipment that is used in commercial transactions to weigh or measure goods or products for sale to the public.

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

§42-36-4. Device Registration Required.

A business that uses weighing or measuring devices in commercial transactions for the sale of goods or products to the public shall register each device with the Division prior to placing the device in service and annually thereafter.

§42-36-5. Device Registration Application; Payment of Fees; Renewal.

5.1. A business that uses weighing or measuring devices in commercial transactions shall submit a written application and provide all information as the Commissioner may require on a form supplied by the Division and shall pay the applicable registration fee as prescribed in section 6 of this rule.

5.2. If a business operates in more than one commercial location, the business shall submit a separate device registration application for each commercial location where weighing or measuring devices are used in commercial transactions.

5.3. The preferred means of paying device registration fees is by credit card.

5.4. Upon receipt of a complete application, the Commissioner shall issue a certificate of device registration for each device registered with the Division.

5.5. A certificate of device registration shall expire one year from the date of issuance.

5.6. The Division shall provide a renewal application to each business that has registered weighing and measuring devices at least 30 days prior to the certificate of device registration's expiration date.

§42-36-6. Fees.

6.1. The Division shall charge device registration fees according to the Annual Device Registration Fee Schedule for Scales in Appendix A and the Annual Device Registration Fee Schedule for Meters in Appendix B.

6.2. If a business submits a renewal application that is postmarked more than fifteen days past the expiration of certificate of device registration, there shall be a \$25.00 late fee in addition to the annual device registration fee.

6.3. The fee for a duplicate or replacement certificate of device registration shall be \$10.00.

§42-36-7. Failure to Register; Expired Certificate of Device Registration.

A business that fails to register its weighing and measuring devices that are used in commercial transactions for the sale of goods or products to the public or has an expired certificate of device registration may be subject to civil penalties as set forth in W. Va. Code §47-1-22.

Appendix A - Annual Device Registration Fee Schedule for Scales

ID #	Scale Capacity or Type	Fee Per Scale
01	0 - 50 pounds	\$25.00
02	51 - 1,000 pounds	\$50.00
03	1,001 - 5,000 pounds	\$150.00
04	5,001 - 10,000 pounds	\$250.00
05	10,001 pounds and over	\$350.00
06	Wheel Load Weighers	\$50.00
07	Forklift Scales	\$75.00
08	Monorail Scales	\$150.00
09	Animal Scales	\$200.00
10	Vehicle or Railroad Scales	\$300.00
11	Hopper Scales	\$300.00
12	Belt Conveyor Scales	\$300.00
13	Livestock Scales	\$350.00

Appendix B - Annual Device Registration Fee Schedule for Meters

ID #	Type of Meter	Fee Per Meter
14	Retail Meter or Blend Valve Meter under 20 gallons per minute	\$25.00
15	Retail Diesel Exhaust Fluid ("DEF") Meter under 20 gallons per minute	\$25.00
16	Retail Meter over 20 gallons per minute	\$35.00
17	Vehicle Tank Meter ("VTM") up to 100 gallons per minute	\$75.00
18	Loading Rack Meter ("LRM") up to 100 gallons per minute	\$75.00
19	Vehicle Tank Meter ("VTM") over 100 gallons per minute	\$100.00
20	Mass Flow Meter	\$100.00
21	Compressed Natural Gas ("CNG") Meter	\$100.00
22	Liquid Propane ("LP") Meter - Truck or Stationary	\$100.00
23	Loading Rack Meter ("LRM") from 101 to 1,000 gallons per minute	\$200.00