



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Labor TITLE-SERIES: 42-36
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 42-36 Registration of Weighing and Measuring Devices Used By Businesses In Commercial Transactions

PRIMARY CONTACT

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

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §47-1-3(c) authorizes the Commissioner to propose rules for the enforcement of the Weights and Measures Act, W. Va. Code §47-1-1 et seq. W. Va. Code § 47-1-21(d), as amended by SB 419, passed during the 2017 regular legislative session, authorizes the Commissioner to propose rules for the implementation and enforcement of the registration of weighing and measuring devices used by businesses in commercial transactions.

In accordance with its rule-making authority, the proposed rule is a new rule that includes the following sections: definitions; the required registration of weighing or measuring devices used in commercial transactions; information required in the registration application, payment of fees and annual registration renewal; fees; penalties if a business fails to register its weighing and measuring devices or has expired certificates of registration; and appendices A and B that set forth the annual registration fees for each type of scale and each type of meter.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/15/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/17/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The purpose of the proposed rule is to comply with the Division's responsibilities for implementing and enforcing the registration of weighing and measuring devices used by businesses in commercial transactions, and to establish fees for the various types of weighing and measuring devices.

The proposed rule is a new rule that incorporates the provisions of SB 419, passed during the 2017 regular legislative session, amending W. Va. Code §47-1-21, which authorizes the Division to charge annual device registration fees beginning January 1, 2018, and to establish these fees by legislative rule.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule is authorized by SB 419, amending W. Va. Code §47-1-21, requiring the Division to implement and enforce the registration of weighing and measuring devices used by businesses in commercial transactions, to charge annual registration fees, and to establish registration fees by legislative rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Division estimates that the total revenue for the registration of all types of scales in FY 2018 will be \$369,875.00, and upon full implementation in FY 2019, \$739,750.00.

The Division estimates that the total revenue for the registration of all types of meters in FY 2018 will be \$404,200.00 and upon full implementation in FY 2019, \$808,400.00.

The Division estimates that total combined revenue for both scales and meters for FY 2018 is \$774,075.00 and for FY 2019, \$1,548,150.00.

The Division does not anticipate any increase on the costs of state government.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Beginning January 1, 2018, businesses that use weighing and measuring devices in commercial

transactions will be required to pay the corresponding registration fees according to the types of scales and meters set forth in Appendices A and B of the proposed rule.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-	-	-
Personal Services	-	-	-
Current Expenses	-	-	-
Repairs and Alterations	-	-	-
Assets	-	-	-
Other	-	-	-
2. Estimated Total Revenues	-	\$774,075.00	\$1,548,150.00

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

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

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

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

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

Appendix B - Annual Device Registration Fee Schedule for Meters

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