



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/27/2017 11:29:34 AM

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

AGENCY: Labor TITLE-SERIES: 42-35
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 42-35 Registration of Service Persons and Service Agencies

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §§47-1-3(c) and 47-1-8(b)

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 § 47-1-8(b) 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 voluntary registration of service persons and service agencies program.

In accordance with its rule-making authority, the proposed rule is a new rule that includes the following sections: definitions; the incorporation by reference of specific sections of the National Institute of Standards and Technology (NIST) Handbook 44, Handbook 112, and Handbook 130; requirements concerning the privileges and responsibilities of a service person or service agency that registers voluntarily; information required in a registration application, payment of fees and annual renewal; fees for a service person and service agency, including late fees and duplicate fees; requirements concerning the calibration and verification of equipment used by a service person or service agency; security seals; penalties for a failure to register; and grounds for the suspension or revocation of a certificate of registration.

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 rule is to comply with the Division's responsibilities for implementing and enforcing the voluntary registration of service persons and service agencies program, and for establishing fees for the registration of service persons and service agencies.

The proposed rule is a new rule that incorporates the provisions of SB 419, passed during the 2017 regular legislative session, which authorizes the Division to implement and enforce the voluntary registration of service persons and service agencies program, to charge annual registration fees for voluntary registration the 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 §47-1-8, which requires the Division to implement and enforce the voluntary registration of service persons and service agencies program, to charge annual registration fees, and to establish 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:

There are currently 278 voluntarily registered service agencies and 1600 voluntarily registered service persons in WV. The proposed rule sets a \$90.00 annual registration fee for a service agency and a \$50.00 annual registration fee for service persons. The combined estimated revenue from these fees in FY 2018 is \$52,510.00, and upon full implementation in FY 2019, \$105,020.00.

There is no estimated impact on the costs of state government.

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

Beginning January 1, 2018, service agencies and service persons who want to voluntarily register with the Division will have to pay the registration fees in 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	-	\$52,510.00	\$105,020.00

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

There are currently 278 voluntarily registered service agencies and 1600 voluntarily registered service persons in WV. The proposed rule sets a \$90.00 annual registration fee for a service agency and a \$50.00 annual registration fee for service persons. The estimated revenue from these fees beginning January 1, 2018 for FY 2018 is \$52,510.00 and upon full implementation in FY 2019, \$105,020.00.

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

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 35
REGISTRATION OF SERVICE PERSONS AND SERVICE AGENCIES

§42-35-1. General.

1.1. Scope. -- This rule governs the voluntary registration of service persons and service agencies, the issuance of certificates of registration, and fees.

1.2. Authority. -- W. Va. Code §§ 47-1-3(c), 47-1-8(b).

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.

§42-35-2. Application and Enforcement.

2.1. Application. This rule applies to the voluntary registration of service persons and service agencies.

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

§42-35-3. Definitions.

3.1. "Act" means the Weights and Measures Act, W. Va. Code §47-1-1 et seq.

3.2. "Certificate of registration" means the document issued by the Division of Labor upon receipt of a complete application and payment of the required fee by a service person or service agency.

3.3. "Complete application" means an application that includes all the information required in section 5 of this rule.

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

3.5. "Days" means business days, unless stated otherwise.

3.6. "Device" means and includes any instrument, apparatus or piece of equipment that is commercially used to weigh or measure goods or products.

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

3.8. "Emergency" means an unforeseen event requiring immediate attention that occurs after the

Division's normal business hours.

3.9. "National Institute of Standards and Technology" or "NIST," is an agency of the United States Department of Commerce located at 100 Bureau Drive, Gaithersburg, MD 20899. Its website is www.nist.gov.

3.10. "Normal business hours" means Monday through Friday between the hours of 8:00 am and 5:00 pm, excluding legal holidays as defined in W. Va. Code §2-2-1 or states of emergency as declared by the President of the United States or the Governor of West Virginia.

3.11. "Notice of Device Rejection" means the Division of Labor Form 301 that is given to a business identifying a specific device that has been found, after testing, to be out of compliance with required specifications or tolerances.

3.12. "Placed in Service Report" means the Division of Labor Form 301B that authorizes the placement in service of a newly installed device or the restoration to service of a rejected device.

3.13. "Request for Assistance Number" or "RFA Number" means the number assigned by the Division of Labor to track the status of a consumer complaint or actions taken by a registered service person or registered service agency.

3.14. "Security seal" means a physical seal or an audit trail counter.

3.15. "Service agency" means a business that installs, services, repairs or reconditions commercial weighing or measuring devices.

3.16. "Service person" means an individual who, for compensation, installs, services, repairs or reconditions commercial weighing or measuring devices.

3.17. "Weights and Measures Section" means the section within the Division of Labor primarily responsible for the weights and measures programs.

§42-35-4. Incorporation By Reference.

4.1. The following sections in the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 2017 Edition, as adopted by The National Conference on Weights and Measures, are adopted and incorporated herein by reference:

4.1.a. Section 1.10, General Code;

4.1.b. Section 2.20, Scales;

4.1.c. Section 2.21, Belt-Conveyor Scale Systems;

4.1.d. Section 2.22, Automatic Bulk Weighing Systems;

4.1.e. Section 2.24, Automatic Weighing Systems;

4.1.f. Section 3.30, Liquid Measuring Devices;

4.1.g. Section 3.31, Vehicle-Tank Meters;

4.1.h. Section 3.32, Liquified Petroleum Gas and Anhydrous Ammonia Liquid Measuring Devices;

4.1.i. Section 3.37, Mass Flow Meters;

4.1.j. Section 4.45, Dry Measures;

4.1.k. Section 4.46, Berry Baskets and Boxes;

4.1.l. Section 5.55, Timing Devices; and

4.1.m. Appendix D, Definitions.

4.2. The National Institute of Standards and Technology Handbook 112, "Examination Procedure Outlines for Commercial Weighing and Measuring Devices," 2015 Draft, is adopted and incorporated herein by reference and is available at www.nist.gov .

4.3. The following sections in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," 2017 Edition, as adopted by The National Conference on Weights and Measures, are adopted and incorporated herein by reference:

4.3.a. Section IV. F, Uniform Regulation for National Type Evaluation; and

4.3.b. Section IV. G, Uniform Engine Fuels and Automotive Lubricants Regulation.

§42-35-5. Voluntary Registration; Privileges and Responsibilities of a Voluntary Registrant; Service Persons Employed by a Registered Service Agency.

5.1. A service person or service agency may install, service, repair or recondition a commercial weighing and measuring device without registering with the Division.

5.2. A service person or service agency that is not registered with the Division may not engage in or perform any of the activities set forth in subsection 5.3.

5.3. A service person or service agency that registers with the Division and has been issued a certificate of registration shall have the authority and responsibility to:

5.3.a. Notify the Weights and Measures Section by telephone or email before performing any of the activities set forth in this subsection and obtaining an RFA number;

5.3.b. Comply with the appropriate NIST Handbook 44 specifications, tolerances and other technical requirements and the appropriate NIST Handbook 112 examination procedures when installing, servicing, repairing or reconditioning a commercial weighing or measuring device;

5.3.c. Remove the Division's official rejection tag or security seal on a device;

5.3.d. Place a new device in service;

5.3.e. Complete a "Placed in Service Report" Form 301B, and submit the completed report to the Weights and Measures Section by mail, email or fax within 24 hours of placing a device in service;

5.3.e.1. If work must be performed after normal business hours during a routine service call and the Division has not assigned an RFA number, the registered service person or service agency shall enter the words "AFTER HOURS" in place of the RFA Number on Form 301B;

5.3.e.2. If work must be performed after normal business hours due to an emergency, the registered service person or service agency shall enter the word "EMERGENCY" in place of the RFA Number on Form 301B.

5.3.f. After adjusting or repairing a device that the Division has rejected, complete the "Affirmation of Repairs" section on Form 301 and mail, email or fax the form to the Weights and Measures Section within 24 hours of placing the device in service.

5.4. A service person employed by a registered service agency shall register individually with the Division if he or she performs any of the activities set forth in subsection 5.3.

5.5. A registered service person or service agency shall possess and use the equipment and standards necessary to work on the types or categories of weighing and measuring devices specified on the registration application.

5.6. A registered service person or service agency shall have current editions of NIST Handbook 44, NIST Handbook 112, and NIST Handbook 130, and current copies of W. Va. Code §§47-1-1 through 47-1-23, and this rule available at a central location for reference and use.

§42-35-6. Registration Application; Payment of Fees; Renewal.

6.1. A service person desiring to register with the Division shall submit a written application requesting that he or she be registered, and shall provide all information as the Commissioner may require on a form supplied by the Division, shall pay the applicable registration fee as prescribed in subsection 7.1 of this rule, and shall include the documentation required in section 8 of this rule.

6.2. A service agency desiring to register with the Division shall submit a written application requesting that the agency be registered, and shall provide all information as the Commissioner may require on a form supplied by the Division, shall pay the applicable registration fee as prescribed in subsection 7.2 of this rule, shall include the documentation required in section 8 of this rule, and shall include a sample security seal required in section 9 of this rule.

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

6.4. Upon receipt of a complete application, the Commissioner shall issue a certificate of registration to a service person or service agency, which shall identify the specific weights and measures devices the person or agency is authorized to service.

6.5. A registered service person shall carry his or her certificate of registration at all times when performing any work described in subsection 5.3 of this rule.

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

6.7. The Division shall provide a renewal application to each registered service person or service agency at least 30 days prior to the certificate of registration's expiration date.

§42-35-7. Fees.

7.1. The annual fee for registration of a service person shall be \$50.00.

7.2. The annual fee for registration of a service agency shall be \$90.00.

7.3. If a registered service person or registered service agency submits a renewal application that is postmarked more than fifteen days past the expiration of certificate of registration, there shall be a \$25.00 late fee in addition to the annual fee.

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

§42-35-8. Calibration and Verification of Standards and Testing Equipment Used by a Service Person or Service Agency.

8.1. A registered service person or service agency shall submit documentation with the initial registration application and renewal application that each field standard or piece of testing equipment used to perform the activities set forth in subsection 5.3 are calibrated and verified as to accuracy according to the following intervals, or whenever recalibrated:

8.1.a. Pharmacy Weight Kits, 5 years;

8.1.b. Cast Iron Construction Weights ("b" ID number), 2 years;

8.1.c. Coal Load Out Weights greater than 2,000 pounds, 5 years;

8.1.d. Liquid Propane Gas Provers, 5 years;

8.1.e. Provers over 200 gallons, 5 years;

8.1.f. All other weighing and measuring devices, 1 year.

8.2. The calibration and verification shall be performed by an accredited or NIST-traceable metrology laboratory.

8.3. A registered service person or service agency shall have a copy of the current calibration documentation for each field standard or piece of testing equipment on hand and available for inspection at all times when performing any of the work in subsection 5.3. of this rule.

§42-35-9. Security Seals.

9.1. Other than an audit trail counter, a service agency or service person shall only use security seals that have been approved by the Weights and Measures Section when performing any of the work in subsection

5.3. of this rule.

9.2. Other than an audit trail counter, a security seal shall clearly identify the service agency by its initials, logo, or design.

§42-35-10. Failure to Register.

A service person or service agency performing any of the activities set forth in subsection 5.3 of this rule without a valid certificate of registration may be subject to civil penalties as set forth in W. Va. Code §47-1-22.

§42-35-11. Suspension or Revocation of Certificate of Registration.

11.1. The Commissioner shall have the authority to suspend or revoke a certificate of registration for good cause, including, but not limited to, the following:

11.1.a. taking unfair advantage of an owner of a device;

11.1.b. failure to have equipment or standards verified and calibrated as required by section 8 of this rule;

11.1.c. failure to use adequate testing equipment as required by subsection 5.5 of this rule;

11.1.d. failure to adjust devices in compliance with the specifications in Handbook 44;

11.1.e. failure to adhere to the examination procedures set forth in Handbook 112;

11.1.f. submission of falsified reports, documents or information to the Commissioner; or

11.1.g. failure to comply with the requirements of the Act or this rule.

11.2. If the Commissioner finds that suspension or revocation of a certificate of registration is warranted, he or she shall give written notice of the reasons to the registrant, and shall afford the registrant an opportunity to respond.