



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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11/30/2021 3:31:01 PM

Office of West Virginia
Secretary Of State

**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: Yes 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) authorizes the Commissioner to propose rules for the implementation and enforcement of the voluntary registration of service persons and service agencies program.

The rule 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 and renewal; requirements concerning the calibration and verification of equipment used by a service person or service agency; security seals; penalties for failure to register; and grounds for the suspension or revocation of a certificate of registration.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

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?

N/A

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.

The only proposed change to the rule is a five-year extension of the sunset date.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Pursuant to W. Va. Code §29A-3-19(e), the Division is affirmatively seeking renewal of the rule, which was previously set to expire on March 23, 2023.

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 rule will not have an economic impact on the revenues of State government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The rule will not have an economic impact on special revenue accounts.

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

The rule will not have an economic impact on the State or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mitchell E Woodrum -- 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 42
LEGISLATIVE RULE
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, and the issuance of certificates of registration.

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

1.3. Filing Date. -- ~~March 23, 2018.~~

1.4. Effective Date. -- ~~March 30, 2018.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect ~~on March 30, 2023~~ upon the expiration five 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 Commissioner of the Division of Labor and his or her authorized representatives.

3.3. "Complete application" means the document issued by the Division of Labor upon receipt of a complete application from a service person or service agency.

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 in 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, Liquefied 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 of 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; 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, and shall include the documentation required in section 7 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, including the documentation required in section 7 of this rule, and a sample security seal required in section 8 of this rule.

6.3. 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.

6.4. 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.

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

6.6. 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. Calibration and Verification of Standards and Testing Equipment Used by a Service Person or Service Agency.

7.1. 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:

- 7.1.a. Pharmacy Weight Kits, 5 years;
- 7.1.b. Cast Iron Construction Weights ("b" ID number), 2 years;
- 7.1.c. Coal Load Out Weights greater than 2,000 pounds, 5 years;
- 7.1.d. Liquid Propane Gas Provers, 5 years;
- 7.1.e. Provers over 200 gallons, 5 years;
- 7.1.f. All other weighing and measuring devices, 1 year.

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

7.3. 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.

§42-35-8. Security Seals.

8.1. 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.

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

§42-35-9. 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.

§42-35-10. Suspension or Revocation of Certificate of Registration.

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

- 10.1.a. taking unfair advantage of an owner of a device;
 - 10.1.b. failure to have equipment or standards verified and calibrated as required by section 7 of this rule;
 - 10.1.c. failure to use adequate testing equipment as required by subsection 5.5 of this rule;
 - 10.1.d. failure to adjust devices in compliance with the specifications in Handbook 44;
 - 10.1.e. failure to adhere to the examination procedures set forth in Handbook 112;
 - 10.1.f. submission of falsified reports, documents or information to the Commissioner; or
 - 10.1.g. failure to comply with the requirements of the Act or this rule.
- 10.2. If the Commissioner finds that the 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.