

WSR 23-09-020
RULES OF COURT
STATE SUPREME COURT
[April 6, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1500
IRLJ 6.6—SPEED MEASURING)
DEVICE: DESIGN AND)
CONSTRUCTION CERTIFICATION)

The District and Municipal Court Judges' Association, having recommended the suggested amendments to IRLJ 6.6—Speed Measuring Device: Design and Construction Certification, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2024.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 6th day of April, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GENERAL RULE 9
RULE AMENDMENT COVER SHEET
PROPOSED AMENDMENT TO RULE IRLJ 6.6

- 1. Proponent Organization
District and Municipal Court Judges' Association
2. Spokesperson & Contact Info
Judge Megan Valentine, Grays Harbor District Court
(360) 249-3441
Megan.valentine@graysharbor.us

3. Purpose of Proposed Rule Amendment

Allow for filing and judicial notice of public documents generated when weigh station scales are tested and calibrated for the purpose of foundation of commercial vehicle weights in traffic infractions and set forth the appropriate legal criteria for said documents.

This rule change would not remove any obligation of the WSP to ensure their scales are calibrated and maintained, but provides a more efficient manner of providing information for contested infraction hearings.

Proposed rule change promotes the purpose of the Infraction Rules for Courts of Limited Jurisdiction as stated in IRLJ 1.1(b) through a

just, speedy and inexpensive mechanism for law enforcement to establish the foundation for weight measurements relied upon in determining an overweight commercial vehicle traffic infraction.

4. Is Expedited Consideration Requested? No, the regular publication cycle is fine.

5. Is a Public Hearing Recommended? No.

Proposed Rule Changes

IRLJ 6.6 SPEED AND WEIGHT MEASURING DEVICE: DESIGN AND CONSTRUCTION CERTIFICATION

(a) In General. This rule applies only to contested hearings in traffic infraction cases.

(b) Speed Measuring Device Certificate; Form. In the absence of proof of a request on a separate pleading to produce an electronic or laser speed measuring device (SMD) expert served on the prosecuting authority and filed with the clerk of the court at least thirty (30) days prior to trial or such lesser time as the court deems proper, a certificate in substantially the following form is admissible in lieu of an expert witness in any court proceeding in which the design and construction of an electronic or laser speed measuring device (SMD) is an issue:

CERTIFICATION CONCERNING DESIGN AND CONSTRUCTION OF ELECTRONIC SPEED MEASURING DEVICES OR LASER SPEED MEASURING DEVICES

I, _____ do certify under penalty of perjury as follows: I am employed with _____ as a _____. I have been employed in such a capacity for _____ years. Part of my duties include supervising the maintenance and repair of all electronic and laser speed measuring devices (SMD's) used by _____ (name of agency). This agency currently uses the following SMD's: _____ (List all SMD's used and their manufacturers and identify which SMDs use laser technology.) I have the following qualifications with respect to the above stated SMD's: (List all degrees held and any special schooling regarding the SMD's listed above.) This agency maintains manuals for all of the above stated SMD's. I am personally familiar with those manuals and how each of the SMD's are designed and operated. On _____ (date) testing of the SMD's was performed under my direction. The units were evaluated to meet or exceed existing performance standards. This agency maintains a testing and certification program. This program requires: (State the program in detail.) Based upon my education, training, and experience and my knowledge of the SMD's listed above, it is my opinion that each of these electronic pieces of equipment is so designed and constructed as to accurately employ the Doppler effect in such a manner that it will give accurate measurements of the speed of motor vehicles when properly calibrated and operated by a trained operator or, in the case of the laser SMDs, each of these pieces of equipment is so designed and constructed as to accurately employ measurement techniques based on the velocity of light in such a manner that it will give accurate measurements of the speed of motor vehicles when properly calibrated and operated by a trained operator.

_____ (Signature) Dated: _____

(c) Scale Certification of Inspection and Calibration; Form. A certificate, in substantially the following form is admissible in lieu of a witness in any court proceeding in which the calibration and accuracy of a weigh station scale weight measuring is an issue:

SCALE TEST REPORT AND CERTIFICATION OF INSPECTION

I, _____ do certify under penalty of perjury as follows:

I am employed with _____ as a _____. Part of my duties include supervising the inspection and calibration of the traffic scales used by _____. I have the following qualifications with respect to scale calibration: (list all training or special degrees regarding scale calibration)

On _____ (date) testing of the following scale was performed under my direction and the scale was evaluated to meet or exceed existing accuracy standards.

(List all scale identification information to indicate the location type and relevant parameters of the scale.)

Using the testing procedures set forth in Handbook 44 promulgated by the National Institute of Standards and Technology and test weights certified under oath as accurate as shown on the attached "Report of Calibration" under certification number(s) _____,

and herein incorporated by reference, the above device met or exceeded the standards of accuracy.

(Signature) Dated: _____

~~(e)~~ **(d) Continuance.** The court at the time of the formal hearing shall hear testimony concerning the infraction and, if necessary, may continue the proceedings for the purpose of obtaining evidence concerning an electronic speed measuring device and the certification thereof or a weigh station scale and the certification of calibration thereof. If, at the time it is supplied, the evidence is insufficient, a motion to suppress the readings of such device shall be granted.

~~(d)~~ **(e) Maintaining Certificates as Public Records.** Any certificate, affidavit or foundational evidentiary document allowed or required by this rule can be filed with the court and maintained by the court as a public record. The records will be available for inspection by the public. Copies will be provided on request. The court may charge any allowable copying fees. The records are available without a formal request for discovery. The court is entitled to take judicial notice of the fact that the document has been filed with the court. Evidence will not be suppressed merely because there is not a representative of the prosecuting authority present who actually offers the document. Evidence shall be suppressed pursuant to subsection (c) of this rule if the evidence in the certificate, affidavit or document is insufficient, or if it has not been filed as required.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the state supreme court and appear in the Register pursuant to the requirements of RCW 34.08.040.