



Economic Affairs Interim Committee

63rd Montana Legislature

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Aug. 7, 2013

Memo

To: Economic Affairs Committee Members
From: Pat Murdo, Committee Staff
Re: Weights and Measures Bureau Issues on Agenda

The Aug. 21 Economic Affairs Committee will include a discussion of a rule proposed by the Weights and Measures Bureau to increase fees for metering devices, such as those used for fuel oil, diesel, gasoline, and natural gas dispensers. The Montana Petroleum Marketers and Convenience Store Association asked the Economic Affairs Committee to intervene to prevent the rule being approved until after the Economic Affairs Committee had provided an opportunity for further discussion and public comment. The delay is allowed under 2-4-305(9) of the Montana Administrative Procedure Act, which is copied in the letter to Commissioner Pam Bucy that is attached here.

For purposes of your discussion, there is attached to this Memo the following:

- a copy of the letter sent to Commissioner Bucy;
- a copy of the letter provided by the Montana Petroleum Marketers and Convenience Store Association to Tim Lloyd, bureau chief for the Weights and Measures Bureau in response to the rule notice regarding fee increases;
- a copy of the proposed rule notice;
- a copy of the license fee schedule in rule, 24.351.215, which shows that measuring device fees are in rule (subsection 1) but weighing device license fees are in statute, 30-12-203, MCA;
- a copy of the rule definitions under 24.351.101, which shows a combined definition of "commercial weighing or measuring device"; and
- a copy of 30-12-203, MCA, regarding the fees charged for weighing devices.



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July 18, 2013

Commissioner Pam Bucy
Department of Labor and Industry

via E-MAIL

Dear Commissioner Bucy:

Pursuant to 2-4-305(9), MCA, in the Montana Administrative Procedure Act, a majority of members of the Economic Affairs Committee have asked for a letter to be written to the department to ask that the proposed rule increasing fees on measuring devices not be adopted until after the Economic Affairs Committee has had an opportunity to review information related to the proposed rule. The referenced MAPA statute states:

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.

The next Economic Affairs Committee meeting is August 21, approximately a month after the comment period is to end on the proposed rule, 24-351-276, noticed in Issue No. 12 of the Montana Administrative Register on June 20, 2013.

In addition to concerns about the increases in licensing fees for such measuring devices as gasoline meters, diesel meters, compressed natural gas dispensers, and fuel oil meters, there are some technical concerns that the Committee's staff attorney, Bart Campbell, has raised. Mr. Campbell will be submitting a separate comment with respect to MAPA requirements to Tim Lloyd, the bureau chief for the Weights and Measures Bureau.

We look forward to a good discussion with the Department of Labor and Industry and the Weights and Measures Bureau. An agenda is attached to let you know the approximate time of the planned discussion.

Sincerely,

Senator Bruce Tutvedt, EAIC presiding officer

cc: Adam de Yong, acting administrator, Business Standards Division
Tim Lloyd, bureau chief, Weights and Measures Bureau
Darcee Moe, attorney, Department of Labor and Industry

3198.pmx

July 22, 2013

TO: Tim Lloyd, Bureau Chief-Weights & Measures Bureau
Department of Labor & Industry

RE: MAR Notice No. 24-351-276

On behalf of the members of the Montana Petroleum Marketers & Convenience Store Association please accept these comments to the referenced rule amendments. The MPMCSA represents 98% of the fuel distributors in the State and 80% of businesses meeting the definition of a convenience store.

MPMCSA opposes 24.351.215 that increases the license fees for weighing & measuring devices.

1. The proposed fee increase places a financial burden on operators that is difficult to recoup as it can only be recovered by passing the cost on to the consumer. While we understand the Bureau ties the fees to its current policy of testing meters annually, the increased costs are unreasonable when analyzing the benefit of an annual testing schedule.
2. In the last decade, Montana has stood out from surrounding states as having significantly higher licensing fees; if the proposed increase goes into effect, industry will endure 3 to 5 times higher fees than its counterparts (as will the consumer).
3. The annual testing schedule the Bureau has been attempting to complete is overly burdensome for both the Department and the industry and NOT specifically required by law. We cite Montana Code Annotated – 30-12-205 (1) & (2) that clearly states the Department “may” test and “if in accordance with a schedule issued by it, may test less frequently than a 12-month period”. Most other states in the region are testing meters on a less frequent basis.
4. The Department is no longer competitive with private industry in providing meter testing; if the proposed increase is adopted it will be even less competitive. Recent estimates obtained from equipment suppliers indicate that the difference could be as much \$17 per meter. Note: marketers who desire to manage their “over/short”, will find it much more cost effective to use a private company.
5. The high fees are also unfair to the industry in the regard that the Bureau is clearly not able to test every meter in the state each year. We are aware of members that have not received a test (and therefore an updated approval sticker) since 2007. These members have paid the higher fees but not received the “benefit” of the Departments testing.
6. Information from the Bureau’s website states that in 2005, of the 12,526 fuel dispensers tested, 4.05% were rejected as out of tolerance. Given that is a fairly low percentage we would ask the Bureau what the rate was in 2012? We believe this low percentage validates a move to a less frequent testing schedule. Further, what percentage of the tolerance failures resulted in the consumer receiving less fuel than the pump indicated?

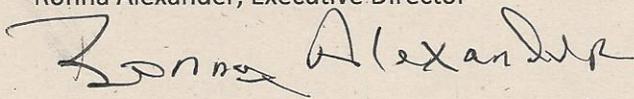
The MPMCSA would ask that the Bureau/Department collaborate with the industry on developing a less frequent, more accurate and fair testing schedule than the annual plan currently in place. We believe the Bureau could actually lower fees if adopting a less frequent schedule and allow the industry to test meters with private equipment suppliers.

The MPMCSA would ask the Bureau to consider implementing the recently passed Senate Bill 139 and conduct a Small Business Impact Analysis for the rule being proposed. MAR 24-351-276 we believe, fits into the parameters of SB139.

Thank you for the opportunity to present our comments.

Submitted by;

Ronna Alexander, Executive Director

A handwritten signature in black ink that reads "Ronna Alexander". The signature is written in a cursive style with a large, sweeping initial "R".



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Montana Administrative Register Notice 24-351-276

No. 12 06/20/2013

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BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM)
[24.351.215](#) license fee schedule and)
the adoption of NEW RULE I split)
weighing allowed)
NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On July 12, 2013, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Weights and Measures Bureau (bureau) of the Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the bureau no later than 5:00 p.m., on July 5, 2013, to advise us of the nature of the accommodation that you need. Please contact Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; telephone (406) 443-3289; facsimile (406) 443-8163; TTD (406) 444-2978; Montana Relay 1 (800) 253-4091; or e-mail tlloyd@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

[24.351.215](#) LICENSE FEE SCHEDULE FOR WEIGHING AND MEASURING DEVICES (1) remains the same.

- (a) each gasoline meter, diesel meter, compressed natural gas dispenser, or fuel oil meter with a listed maximum delivery rate of 20 or less gallons per minute (gpm) ~~\$24~~ 27
 - (b) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery rate of between 130 gpm and 20 gpm ~~70~~ 88
 - (c) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery of over 130 gpm ~~83~~ 104
 - (d) each liquefied petroleum gas (LPG) meter ~~402~~ 128
- (2) remains the same.

AUTH: [30-12-202](#), [82-15-102](#), [82-15-105](#), MCA
IMP: [30-12-203](#), [82-15-105](#), MCA

REASON: The department determined it is reasonably necessary to amend this rule to increase meter license fees and maintain fees commensurate with associated inspection costs. The 2013 Montana Legislature enacted House Bill 591, which granted a statutory fee increase for scale license fees to be effective July 1, 2013. Because these license fees only pay for about half of the bureau's costs, it is reasonably necessary for the department to also increase meter license fees in this rule as proposed.

Due to funding shortages, the bureau has not been able to fill vacant positions, replace

old outdated equipment, or test meters each year as required by [30-12-203](#)(2), MCA. The department is proposing to increase meter license fees an average of 26 percent, or about the same as scale license fees. This proposed fee increase will affect approximately 550 businesses or meter owners and provide about \$127,000 in additional revenue each year.

4. The proposed new rule provides as follows:

NEW RULE I SPLIT WEIGHING ALLOWED (1) The net weight of any commodity, including raw logs, grain, and quarried rock, transported by any combination of truck, truck tractor, trailer, or semi-trailer, may be determined by split weighing on a scale licensed by the bureau.

(2) There must be a written agreement for loads that are split weighed and it must contain the following information:

- (a) names of both the vendor and purchaser;
- (b) agreement by the vendor and purchaser that the net weights of the loads covered by the agreement will be determined by split weighing;
- (c) scale owner's name and the location of the scale;
- (d) name(s) of the scale operator(s);
- (e) commodity covered by the agreement;
- (f) time period covered by the written agreement; and
- (g) acknowledgement that the weigh tickets clearly indicate the loads were split weighed.

(3) A copy of the agreement must accompany each load that is split weighed.

(4) A copy of the agreement must be submitted to the bureau before any loads are split weighed.

(5) For purposes of this rule, the weigh ticket must also include the following information:

- (a) name of the scale operator;
- (b) date;
- (c) location and address of the scale; and
- (d) clear indication the load was split weighed.

(6) The following information must be on the weigh ticket or on a separate signed supplemental document that must be attached to the weigh ticket and accompany the product while being delivered. The scale operator must certify for each load:

(a) each axle of the vehicle or combination of vehicles rests on a straight surface that is level with the deck of the vehicle scale; or, if not level, the amount by which the deck of the scale is not level does not exceed 1/3 inch per foot of distance between the deck of the vehicle scale and the axle;

(b) the brakes of the vehicle or combination of vehicles were not used while the vehicle was being weighed; and

(c) the transmission of the vehicle or combination of vehicles was in neutral.

AUTH: Chap. 296, section 1, L. of 2013

IMP: [37-12-306](#), [37-12-406](#), MCA; Chap. 296, section 1, L. of 2013

REASON: The 2013 Montana Legislature enacted Chapter 296, Laws of 2013 (House Bill 157), an act allowing split weighing of commodities and requiring the department to adopt rules to implement and administer split weighing. The bill was signed by the Governor on April 25, 2013, and will become effective July 1, 2013. The department is now proposing New Rule I to coincide with the new legislative changes and further implement the bill.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; facsimile (406) 443-8163; or e-mail tloyd@mt.gov, and must be received no later than 5:00 p.m., July 22, 2013.

6. An electronic copy of this Notice of Public Hearing is available at www.bsd.dli.mt.gov/bc/ms_index.asp (department and bureau's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of

the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this bureau. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person who wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; faxed to the office at (406) 443-8163; e-mailed to tlloyd@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of [2-4-302](#), MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 23, 2013, by telephone.

9. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 10, 2013

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For questions about the organization of the ARM or this web site, contact sosarm@mt.gov.



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Rule: 24.351.215

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Rule Title: LICENSE FEE SCHEDULE FOR WEIGHING AND MEASURING DEVICES

Department: [LABOR AND INDUSTRY, DEPARTMENT OF](#)
 Chapter: [WEIGHTS AND MEASURES BUREAU](#)
 Subchapter: [Weighing and Measuring Devices](#)



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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

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24.351.215 LICENSE FEE SCHEDULE FOR WEIGHING AND MEASURING DEVICES

(1) Measuring device license fees are as follows:

(a) each gasoline meter, diesel meter, compressed natural gas dispenser or fuel oil meter with a listed maximum delivery rate of 20 or less gallons per minute (gpm) \$21

(b) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery rate of between 130 gpm and 20 gpm 70

(c) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery of over 130 gpm 83

(d) each liquefied petroleum gas (LPG) meter 102

(2) Weighing device license fees are as provided in [30-12-203](#), MCA.

History: [30-12-202](#), [82-15-102](#), [82-15-105](#), MCA; [IMP](#), [30-12-203](#), [82-15-105](#), MCA; [NEW](#), 1993 MAR p. 1501, Eff. 7/16/93; [AMD](#), 1995 MAR p. 2486, Eff. 11/23/95; [AMD](#), 2000 MAR p. 2015, Eff. 7/28/00; [TRANS](#), from Commerce, & [AMD](#), 2005 MAR p. 445, Eff. 4/1/05; [AMD](#), 2006 MAR p. 2661, Eff. 10/27/06.

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Rule: 24.351.101

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Rule Title: DEFINITIONS

Department: [LABOR AND INDUSTRY, DEPARTMENT OF](#)
 Chapter: [WEIGHTS AND MEASURES BUREAU](#)
 Subchapter: [Definitions](#)



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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

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24.351.101 DEFINITIONS

As used in this chapter, the following definitions apply:

(1) "Bureau" means the weights and measures bureau of the Montana department of labor and industry.

(2) "Commercial weighing or measuring device" means:

(a) any weight, measure, weighing or measuring device commercially used to establish:

(i) the size, quantity, extent, area or measurement of quantities, things, produce or articles for distribution or consumption that are offered or sold; or

(ii) any basic charge of payment for services rendered on the basis of weight or measure; and

(b) any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.

(3) "NIST" means the national institute of standards and technology of the United States department of commerce.

(4) "Registered service agency" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device, and that voluntarily registers itself as such with the bureau.

(5) "Registered serviceperson" means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device, and who voluntarily applies for registration with the bureau.

History: [30-12-202](#), MCA; [IMP](#), [30-12-202](#), MCA; [NEW](#), 1998 MAR p. 1498, Eff. 6/12/98; [TRANS](#), from Commerce, & [AMD](#), 2005 MAR p. 445, Eff. 4/1/05.

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For questions about the organization of the ARM or this web site, contact sosarm@mt.gov.

30-12-203. Licensing of weighing devices. (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by applying to the department upon a form provided by the department. Each license must require at least one inspection a year.

(3) An application must be accompanied by the proper fee as established by this section, except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	\$16
500 pounds through 1,999 pounds	26
2,000 pounds through 7,999 pounds	51
8,000 pounds through 60,000 pounds	130
60,001 pounds or more	225

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) (a) All licenses are annual and, except for those described in subsection (5)(b), expire on the anniversary date established by rule by the board of review established in 30-16-302.

(b) Licenses for on-farm scales expire at the end of the calendar year.

(6) (a) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid:

(i) for on-farm scales, before the first day of the sixth month of the year in which the license fee is due;
or

(ii) for all other licenses, within 60 days of the anniversary date.

(b) If the fee is not paid by the respective due date listed in subsection (6)(a), the weighing device may be sealed and removed from service by the department.

(c) A person may not use a weighing device that has been removed from service or break the seal on a device removed from service until all fees have been paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part.