DEPARTMENT OF LABOR AND INDUSTRY

STATE OF MONTANA

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| In the matter of the amendment of ARM 24.351.101, 24.351.211, 24.351.215, 24.351.227, 24.351.411, 24.351.1117, adoption of NEW RULE I and II, and repeal of 24.351.201, 24.351.203, 24.351.204, 24.351.207, 24.351.301, 24.351.321, 24.351.401, 24.351.1101, 24.351.1104, 24.351.1107, 24.351.1111, 24.351.1115 pertaining to the building and commercial measurements bureau | )  )  )  )  ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL |

TO: All Concerned Persons

1. On **[date]**, at **[time]** a.m./p.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/[**meeting ID number, no spaces**]

Meeting ID: [**meeting ID number**], Passcode: [**if required]**

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656

Meeting ID: [**meeting ID number**], Passcode: [**if required]**

2. 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 department no later than 5:00 p.m., on [**one week before the hearing**], to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.351.101 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Bureau" means the ~~weights and measures~~ building and commercial measurements 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. [(3) remains the same but is renumbered (2).]

~~(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.~~

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: This rule is amended to delete the definitions contained in the NIST Handbooks 44, 130, and 133, adopted by reference in NEW RULE I.

24.351.211 FEES FOR TESTING AND CERTIFICATION (1) The following fees shall apply to the testing of all devices subject to these rules:

(a) PA Meters (20 GPM or less) $10.00

(b) PB Meters (20 GPM-130 GPM) $30.00

(c) PC Meters (above 130 GPM) $30.00

(d) PD Meters (Liquified Petroleum Gas) $50.00

(e) SA/S1 Scales (499 LB or less) $20.00

(f) SB/S2 Scales (500LB-1,999 LB) $30.00

(g) SC/S3 Scales (2,000LB-7,999LB) $35.00

(h) SD/S4 Scales (8,000LB-60,000LB) $150.00

(i) SE/S5 Scales (60,000LB or more) $150.00

(2) A reinspection of a rejected device shall not incur the testing and certification fee.

~~(1)~~(3) Special inspections are not required by statute and only occur upon request to the bureau. ~~fees~~ The fees for special inspections are as follows:

(a) units over 5000 pounds of testing weights, $2.50 per mile, measured by the distance the bureau's employee travels in connection with the special inspection;

(b) all other units, $1.25 per mile, as measured by the distance the bureau's employee travels in connection with the special inspection; and

(c) time for testing by inspection, $75 per hour.

~~(2)~~(4) Where fees are not paid within 30 days after ~~the special~~ any inspection completed by the bureau, the bureau may seal and remove ~~from service~~ the device from service, until ~~such~~ the fees have been paid. ~~The bureau will coordinate the special inspections, whenever possible, with other inspection activities in an effort to keep charges as reasonable as possible.~~

AUTH: 30-12-202, MCA

IMP: 30-12-202, 30-12-203, MCA

REASON: This rule is amended to establish a fee-for-services model where fees only accrue if testing occurs, rather than raise fees on all devices subject to testing. The amendments also clarify the difference between a required inspection and a special inspection. Finally, the amendments clarify that failure to pay the bureau for any inspection may result in the bureau sealing a device and removing it from service.

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~~ volume measuring device 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~~ volume measuring device with a maximum listed delivery rate of between 130 gpm and 20 gpm 70

(c) each ~~petroleum vehicle tank meter or stationary~~ ~~petroleum meter~~ volume measuring device 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.

AUTH: 30-12-202, 82-15-102, 82-15-105, MCA

IMP: 30-12-203, 82-15-105, MCA

REASON: The rule is amended because fuel is not the only material used in commerce that is measured by volume in this state. Title 30, Ch. 12, pt. 1-5.

24.351.227 SCALE PIT CLEARANCE (1) No new installations or replacements of vehicle or livestock scales may be placed in a pit where the clearance from the floor of the pit to the bottom of the I-beams is less than 42 inches.

(2) Scale pits are not required for fully electronic scales, unless the pit is necessary for the installation, operation, or maintenance of the ~~particular~~ fully electronic scale.

(3) Electronic scales which do not require a pit for their installation, operation, or maintenance must be installed in strict compliance with the manufacturer's specification for each specific model ~~and with the requirements of NIST Handbook 44, 2012 edition~~.

(4) Scale pits must have concrete walls surrounding the entire pit, substantial in both durability and strength to prevent soil, snow, and other materials from entering the pit area and preventing the scale from operating properly. The requirements of this rule will apply only to those scales installed after its adoption.

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: This rule is amended to clarify language. The amendment also removes the reference to the 2012 NIST Handbook, which is also duplicative because the NIST Handbook includes manufacturer’s specifications.

24.351.411 SAMPLING OF PETROLEUM PRODUCTS (1) All sampling will be done by employees of the bureau. A random sampling of petroleum products of the manufacturer and importer may be made to ensure that proper standards are being met. The bureau may require the cost of testing samples be paid for by the manufacturer or importer.

(2) On complaint of an individual as to standards of a petroleum product, sampling willbe made by employees of the bureau. ~~An~~ The bureau shall review the complaint and the sampling to determine if an investigation will be conducted ~~by the bureau to determine if a test is required for~~ into the petroleum product in question.

AUTH: 82-15-102, MCA

IMP: 82-15-107, MCA

REASON: This rule is amended to allow the department discretion to determine if an investigation is required based on the complaint and sampling.

24.351.1117 REGISTRATION BY RECIPROCITY (1) ~~The bureau may enter into a reciprocal agreement with any other state(s) that has similar voluntary registration policies. Under such an agreement, a registered serviceperson and a registered service agency from any state that is party to the reciprocal agreement is granted full reciprocal authority, including reciprocal recognition of standards and testing equipment, in all states that are a party to such an agreement.~~ The bureau may approve an individual registered serviceperson from any state if the bureau determines that the individual’s state of registration’s registered service agency’s requirements are substantially similar to those used in this state, and the individual meets those requirements. The individual shall provide the bureau with any information necessary for the bureau to make this determination.

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: This rule is amended to allow the department to assess the registration status of individual servicepersons from another state on a case-by-case basis. Registered servicepersons from another state to can become registered in Montana based on their individual credentials rather than their original state of registration.

4. The proposed new rules are as follows:

NEW RULE I ADOPTION OF STATE WEIGHTS AND MEASURES STANDARDS AND RECOMMENDATIONS

(1) Subject to the provisions of Title 32, Chapter 12, Part 2, and Title 82, Chapter 15, Part 1, MCA the department adopts and incorporates by reference the following publications for Weights and Measures in Montana.

(a) NIST Handbook 44, 2023 edition: specifications, tolerances, and other technical requirements for weighing and measuring devices with the following modifications:

(i) Delete paragraph UR.3.3. Single-Draft Weighing found in Section 2.20, Scales

(ii) Delete paragraph UR.2.2. Ticket Printer, Customer Ticket found in section 3.31, Vehicle-Tank Meters

(b) NIST Handbook 130, 2023 edition: Uniform Laws and Regulations in the areas of legal metrology and fuel quality with the following modifications:

(i) IV Uniform Regulations part A, Uniform Packaging and Labeling Regulation section 14, insert in the blank space October 21, 2023, for the effective date.

(ii) IV Uniform Regulations part B, Uniform Regulation for the Method of Sale of Commodities, section 5 insert in the blank space October 21, 2023, for the effective date.

(iii) IV Uniform regulations part D, Uniform regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices, section 3, Registration Fee, insert in all blank spaces, $25.00. Section 8 insert PO Box 200516 Helena Mt 59620 in the blank space.

(iv) IV Uniform regulations part E. Uniform regulation for National Type Evaluation, section 4.(c) through (g) insert in all blank spaces January 1, 2024 for the effective date.

(v) IV Uniform regulations part E. Uniform regulation for National Type Evaluation, section 7, insert in the blank space October 21, 2023, for the effective date.

(c) NIST Handbook 130, 2023 edition: Uniform Laws and Regulations in the areas of legal metrology and fuel quality with the following modifications:

(i) Delete in its entirety Section III, part B Uniform Weighmaster Law.

(ii) Delete in its entirety Section IV, part C Uniform Unit Pricing Regulation.

(d) NIST Handbook 133, 2022 edition: Checking the Net Contents of Packaged Goods.

(2) A copy of NIST Handbooks 44, 130, and 133 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, MD 20899-0001, online at www.nist.org.

AUTH: 30-12-202, 82-15-102, MCA

IMP: 30-12-202, 30-12-205, 30-12-401, 30-12-406, 30-12-407, 30-12-408, 30-12-409, MCA

REASON: NEW RULE I condenses the department’s adoptions and modifications of NIST Handbooks 44, 130, and 133, into one rule.

NEW RULE II VOLUNTARY REGISTRATION PROGRAM FOR SERVICEPERSONS AND SERVICE AGENCIES - FEES (1) The bureau adopts the Uniform Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices in NIST Handbook 130, 2023 edition, for the voluntary registration of individuals and entities that have demonstrated an ability to accurately install, service, repair or recondition a commercial weighing or measuring device.

(2) The individual or entity shall apply for registration on application forms provided by the bureau.

(3) The application and annual renewal fees are as follows:

(a) serviceperson $25

(b) service agency $25

(c) late renewal fee $12.50

(4) The bureau shall maintain and make public a list of registered servicepersons and registered service agencies.

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: NEW RULE II adopts by reference the Uniform Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices in NIST Handbook 130, 2023 edition, condensing the department’s voluntary registration program for servicepersons and service agencies into one rule.

5. The rules proposed to be repealed are as follows:

24.351.201 NIST HANDBOOK 44 - SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES, AUTH: 30-12-202, MCA, IMP: 30-12-202, 30-12-205, 30-12-401, 30-12-406, 30-12-407, 30-12-408, 30-12-409, MCA

REASON: ARM 24.351.201, 24.351.301, 24.351.321, 24.351.401 are repealed and replaced by NEW RULE I.

24.351.203 CERTIFICATION OF STATIONARY STANDARDS, AUTH: 30-12-202, MCA, IMP: 30-12-202, MCA

REASON: This rule is repealed because all field standards used by the department for testing and certifying weights and measures devices must be certified annually under 30-12-104, MCA. The MCA does not require testing and certification of privately owned weights used to self-evaluate accuracy for hopper or other similar scales.

24.351.204 UNIFORM REGULATION FOR NATIONAL TYPE EVALUATION, AUTH: 30-12-202, MCA, IMP: 30-12-202, MCA

REASON: ARM 24.351.204 is repealed because it is duplicative of the NIST Handbook 130, adopted by reference in NEW RULE I.

24.351.207 SPLIT WEIGHING ALLOWED, AUTH: 30-12-107, MCA, IMP: 30-12-107, 37-12-306, 37-12-406, MCA

REASON: This rule is repealed because it is duplicative of 37-12-107, MCA.

24.351.301 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS, AUTH: 30-12-202, MCA, IMP: 30-12-202, MCA

24.351.321 NIST HANDBOOK 133 – CHECKING THE NET CONTENTS OF PACKAGED GOODS, AUTH: 30-12-202, 30-12-207, 30-12-301, 30-12-302, MCA, IMP 30-12-202, 30-12-207, 30-12-301, 30-12-302, MCA

24.351.401 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS, AUTH: 82-15-102, 82-15-103, MCA, IMP: 82-15-103, MCA

24.351.1101 VOLUNTARY REGISTRATION PROGRAM FOR SERVICEPERSONS AND SERVICE AGENCIES, AUTH: 30-12-202, MCA, IMP: 30-12-202, MCA

REASON: ARM 24.351.1101, 24.351.1104, 24.351.1107, 24.351.1111, and 24.351.1115 are repealed and replaced by NEW RULE II.

24.351.1104 INDIVIDUAL APPLICANTS FOR REGISTRATION, AUTH: 30-12-202, MCA, IMP: 30-12-202, MCA

24.351.1107 AGENCY APPLICANTS FOR REGISTRATION, AUTH: 30-12-202, MCA, IMP: 30-12-202, MCA

24.351.1111 PRIVILEGES AND OBLIGATIONS OF A CERTIFICATE HOLDER, AUTH: 30-12-202, MCA, IMP: 30-12-202, MCA

24.351.1115 RENEWAL OF CERTIFICATE OF REGISTRATION, AUTH: 30-12-202, MCA, IMP: 30-12-202, MCA

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., [**date**].

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on June 27, 2023, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

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| /s/  **[Rule Reviewer Name]**  Rule Reviewer | /s/ LAURIE ESAU  Laurie Esau, Commissioner  DEPARTMENT OF LABOR AND INDUSTRY |

Certified to the Secretary of State [**Date**].