

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.351.201, 24.351.204,	)	PROPOSED AMENDMENT,
24.351.211, 24.351.224 and	)	ADOPTION, AND REPEAL
24.351.227 weighing and measuring	)	
devices, 24.351.301 and 24.351.321	)	
packaging and labeling, 24.351.401	)	
and 24.351.411 petroleum,	)	
24.351.1104, 44.351.1111 and	)	
24.351.1115 voluntary registration,	)	
the adoption of NEW RULE I	)	
certification of stationary standards,	)	
and the repeal of 24.351.221	)	
weighing device license transfer	)	

TO: All Concerned Persons

1. On August 2, 2012, at 1:30 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal 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 who 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 27, 2012, 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](mailto:tlloyd@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department is amending several of the bureau's rules to adopt and implement the most current editions of the National Institute of Standards and Technology (NIST) handbooks. Per statute, the standards published by NIST govern all weighing and measuring equipment and transactions in Montana. It is necessary to periodically update the rules to align references to the new handbooks and keep up with advances in technology and testing methods. Accordingly, the department has determined that reasonable necessity exists to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

24.351.201 NIST HANDBOOK 44 - SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES

(1) The bureau, with the advice and counsel of NIST, adopts the specifications, tolerances, and requirements for commercial weighing and measuring devices published in NIST Handbook 44, ~~2005~~ 2012 edition, as the specifications, tolerances, and requirements for commercial weighing and measuring devices for ~~the state of~~ Montana with the following exception:

(a) remains the same.

(2) A copy of NIST Handbook 44 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. The web site is [www.nist.org](http://www.nist.org).

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

24.351.204 UNIFORM REGULATION FOR NATIONAL TYPE EVALUATION

(1) The bureau adopts and incorporates by reference the Uniform Regulation for National Type Evaluation, as found in NIST Handbook 130, ~~2005~~ 2012 edition, and is adopted in its entirety with the following modifications:

(a) remains the same.

(b) in Section 4, ~~subsections 3 (c) through 7 (g)~~, insert in all blank spaces the date of January 1, 1999; and

(c) in Section ~~8~~ 7, insert in the blank space January 1, 1999, for the effective date for this regulation.

(2) A copy of NIST Handbook 130 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. The web site is [www.nist.org](http://www.nist.org).

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

24.351.211 FEES FOR TESTING AND CERTIFICATION (1) remains the same.

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

(b) all other units, \$1.25 a 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 ~~an~~ per hour.

(2) Where fees are not paid within 30 days after the special inspection, ~~equipment will be sealed and removed from service by the bureau~~ may seal and remove from service the device in question, until such 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: The department is amending (2) to allow, rather than require the seal and removal of equipment due to nonpayment of special inspection fees. In the past ten years, the bureau has not removed a device from service within 30 days, nor might it be possible to do so within such a tight time frame. The bureau notes that allowing additional time may be desirable depending on the individual circumstances.

24.351.224 ACCESSIBILITY TO STOCK SCALES (1) All permanently installed stock scales must be provided with a landing or access to the scale, having a width at least equal to the width of the scale platform, ~~having~~ and a length of at least five feet from the scale platform enclosure. The landing must be level with the deck of the scale platform and be constructed of concrete.

(2) A pathway must be provided to the scale access such that the test vehicle will not become mired down and such that the test vehicle can be parked in a relatively level position, both horizontally and vertically. The pathway is required to have a width of from ~~40 ten~~ to ~~42 twelve~~ feet and a height clearance of at least ~~14 fourteen~~ feet. This pathway must be continuous to the scale access concrete. All gates in the pathway must be in good working order.

(3) Portable livestock scales must be located on level ground and be provided with a temporary landing or access to the scale, having a width at least equal to the width of the scale platform, having a length of at least five feet from the scale platform enclosure, be level with the deck of the scale platform, and be constructed of materials sufficient to support a test vehicle.

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

REASON: The department determined it is reasonably necessary to amend this rule to distinguish between requirements for a permanent livestock scale and a portable scale, better define what is required for access, and provide access requirements for portable livestock scales. Additionally, portable scales are becoming more common every year and there have been occasions where bureau inspectors were unable to test these devices because they were installed improperly or there was no material available to construct a temporary landing.

24.351.227 SCALE PIT CLEARANCE (1) remains the same.

(2) Scale pits are not required for fully electronic scales, unless the pit is necessary for the installation, operation, or maintenance of the particular 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, ~~2005~~ 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

24.351.301 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS

(1) The bureau, with the advice and counsel of NIST, adopts the model regulations to provide accurate and adequate information on packages as to the identity and quantity of contents, so that purchasers can make price and quantity comparison. The regulations are published in NIST Handbook 130, ~~2005~~ 2012 edition, ~~part IV~~, subparts:

- (a) ~~A~~, Uniform Packaging and Labeling Regulation;
- (b) ~~B~~, Uniform Regulation for the Method of Sale of Commodities; and
- (c) ~~C~~, Uniform Unit Pricing Regulation.

(2) A copy of NIST Handbook 130 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001. The web site is [www.nist.org](http://www.nist.org).

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

24.351.321 NIST HANDBOOK 133 – CHECKING THE NET CONTENTS OF PACKAGED GOODS (1) The bureau, with the advice and counsel of NIST, adopts the test methods and procedures as published in NIST Handbook 133, ~~fourth~~ 2011 edition, as the methods and procedures to be used for determining net weight of packaged commodities ~~for the state of~~ Montana.

(a) A copy of NIST Handbook 133 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001. The web site is [www.nist.org](http://www.nist.org).

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

(1) The bureau, with the advice and counsel of NIST, adopts, except as provided in (2), the regulations concerning fuel specifications and gasoline-oxygenate blends. The regulations are published in NIST Handbook 130, ~~2005~~ 2012 edition, ~~part IV~~, subpart G, Uniform Regulation of Engine Fuels, Petroleum Products, and Automotive Lubricants.

(a) A copy of NIST Handbook 130 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001. The web site is [www.nist.org](http://www.nist.org).

(2) The following are the minimum antiknock index requirements for the various grades of gasoline sold in Montana and supersede the minimum requirements contained in paragraph 3.2.5, Table 1, p. 437 180, of Handbook 130:

<u>Term</u>	<u>Minimum Antiknock Index</u>
Premium, Super, Supreme High Test	91
Midgrade, Plus	88
Regular Unleaded with Lead Substitute	87
Regular, Unleaded (alone)	85.5

AUTH: 82-15-102, 82-15-103, MCA

IMP: 82-15-103, MCA

REASON: Authority cites are being amended to provide the complete sources of the department's rulemaking authority.

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 ~~will~~ may be made to ensure that proper standards are being met. The bureau may require the cost of testing samples ~~must~~ be paid for by the manufacturer or importer.

(2) remains the same.

AUTH: 82-15-102, MCA

IMP: 82-15-107, MCA

REASON: It is reasonably necessary to amend this rule to allow, rather than require the bureau's random sampling of petroleum products for testing, as the bureau does not receive funding to perform this sampling. The bureau will continue to investigate complaints and will test petroleum products if warranted by the results of the investigation. Additionally, the cost of this testing may not always be the responsibility of the manufacturer or importer, due to the blending of petroleum products and pipelines used to transport products produced by different manufacturers.

24.351.1104 INDIVIDUAL APPLICANTS FOR REGISTRATION (1) and (1)(a) remain the same.

(i) is fully qualified to install, service, repair, or recondition whatever devices for the service of which competence is being registered;

(ii) remains the same.

(iii) has full knowledge of all appropriate weights and measures laws, rules, and regulations.

(b) remains the same.

(2) An individual applicant must have available sufficient standards and equipment to adequately test devices as set forth in the notes section of each

applicable code in NIST Handbook 44, ~~2005~~ 2012 edition, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." The equipment must meet the applicable specifications of:

(a) through (2)(c) remain the same.

(3) Each individual applicant shall complete and pass a written test to determine the applicant's knowledge of the appropriate weights and measures laws, rules, and regulations prior to the issuance by the bureau of the initial certificate of registration.

(a) Subsequent testing and/or continuing education classes may be necessary due to changes in weights and measures laws and rules. Such testing and/or classes shall be given whenever deemed necessary by the bureau. If such subsequent testing is appropriate, the bureau shall provide notice to registered ~~servicepersons~~ service persons of the subsequent testing prior to the time of the next renewal of the certificate of registration.

(4) There is a \$25 fee for registration as a ~~serviceperson~~ service person.

(5) remains the same.

(6) A certificate of registration expires on December 31, unless revoked earlier for good cause-, which shall include, but not be limited to:

(a) taking unfair advantage of an owner of a device;

(b) failure to have test equipment or standards certified;

(c) failure to use adequate testing equipment;

(d) continued failure to submit, or to submit in a timely manner, properly completed placed-in-service reports for new installations or repair of existing devices;

(e) failure to adjust commercial or law enforcement devices to comply with the regulations adopted by the bureau;

(f) nonpayment of calibration or registration fees; or

(g) continued failure to properly seal devices.

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: The department is amending (3) to clarify that the bureau may require registered service persons to either retest and/or attend continuing education classes. Requiring them to retest and/or attend classes will help ensure that registered service persons have knowledge of the regulations adopted by the bureau. It is also reasonably necessary to amend (6) and specify several possible reasons for revocation of a certificate of registration to address questions posed to the bureau. The department notes that certificates have been revoked for both continued late submission of placed-in-service reports and delinquent payment of calibration or registration fees.

#### 24.351.1111 PRIVILEGES AND OBLIGATIONS OF A CERTIFICATE

HOLDER (1) remains the same.

(2) A registered ~~serviceperson~~ service person or registered service agency may not use, in servicing commercial weighing or measuring devices, any standards or testing equipment that have not been certified by the bureau. Equipment

calibrated by another state's weights and measures laboratory that can show traceability to the ~~national institute of standards and technology~~ National Institute of Standards and Technology will also be recognized as equipment suitable for use by registered ~~servicepersons~~ service persons or registered service agencies in this state.

(3) A registered ~~serviceperson~~ service person or registered service agency is responsible for installing, repairing, and adjusting devices such that the devices are adjusted as closely as practicable to zero error.

(4) A registered service person or registered service agency is responsible for following the testing procedures in the regulations that are adopted by the bureau.

~~(4)~~ (5) Each registered ~~serviceperson~~ service person and registered service agency shall execute a "placed-in-service" report when a device is placed in service. The "placed-in-service" report must be on a form provided or approved by the bureau. An agency may request approval of a company form already in use if such form meets bureau standards. Such a form must:

(a) and (b) remain the same.

(c) be signed by the registered ~~serviceperson~~ service person responsible for each:

(i) and (ii) remain the same.

~~(5)~~ (6) Within ~~24 hours~~ five working days after a device is restored to service, or placed in service, the original of the properly executed placed-in-service report, together with any official rejection tag removed from the device, must be mailed to the bureau at the Department of Labor and Industry, Weights and Measures Bureau, P.O. Box 200516, Helena, Montana 59620-0516. It is also permissible to fax or e-mail a copy of the original and any removed tags to the bureau, with the registered service agency maintaining the original. The duplicate copy of the report must be given to the owner or operator of the device. The removed rejection tag or original placed-in-service report is not to be left with the owner or operator of the device.

(7) Each registered service person shall have a unique identifier if they place devices into service that can be physically sealed. Unique identifiers for new service persons registered after January 1, 2013 shall have the service person's registration number that is provided by the bureau. For devices with internal controls, and thus cannot be physically sealed, the registered service person shall place a sticker or label on the device bearing their name, company name, and the date the device was placed into service.

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: The department determined it is reasonably necessary to amend (4) and require registered service persons to follow the testing procedures in the regulations adopted by the bureau. There have been cases where the bureau has received test reports that indicate registered service persons have not tested the device correctly. Following amendment, the department will be able to hold registered service persons accountable for not following bureau-approved testing procedures.

The department is amending (5) to allow registered agencies to submit either a placed-in-service report or test report as long as the report includes all information required by the bureau. Following suggestion by registered service companies, the department agreed that the amendment will still gain the required information, but will also reduce bureau printing costs and the paper work required of registered service providers. The bureau's placed-in-service report will still be available at no cost for service providers who wish to use the form.

The department is amending (6) to increase the time for submission of placed-in-service reports and allow fax or e-mail versions of the submission. The department determined that 24 hours did not allow reasonable time for submission of the reports after a device is restored to or placed in service.

It is reasonably necessary to add (7) and require that registered service persons use unique identifier numbers on their placed-in-service reports and seals on devices. Use of the identifiers allows the bureau to ensure that service persons are registered, and enable follow-up with the actual technicians to ensure the work they do results in devices which are accurate to bureau standards. Although the bureau has been working with companies to assign and use these identifying numbers, the requirement was not previously set forth in rule.

24.351.1115 RENEWAL OF CERTIFICATE OF REGISTRATION

(1) remains the same.

(a) ~~serviceperson~~ service person \$25.00

(b) and (c) remain the same.

(2) A registered ~~serviceperson~~ service person and a registered service agency shall submit, at least biennially or every two years, to the bureau for examination and certification, any standards and testing equipment that are used, or are to be used, in the performance of the service and testing functions, with respect to weighing and measuring devices for which competence is registered. Failure to timely submit suitable standards and testing equipment may disqualify the individual or agency from renewing the certificate of registration.

(3) remains the same.

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: The department is amending (2) to clarify that standards and test equipment must be calibrated every two years, to address repeated questions regarding the meaning of the word "biennially."

5. The proposed new rule provides as follows:

NEW RULE I CERTIFICATION OF STATIONARY STANDARDS (1) The recommended interval for certification of stationary standards used for testing hopper or similar scales is every five years. The bureau may require any stationary standards showing signs of degradation to be certified every five years.

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: The department determined it is reasonably necessary to adopt New Rule I and recommend that stationary standards for testing hopper or similar scales be submitted every five years for examination and certification. Although standards and testing equipment used by service companies must be certified every two years per ARM 24.351.1115, there is no current requirement addressing the certification of stationary standards.

Since stationary standards are not exposed to the same hazards as standards used by service companies, a longer certification interval is warranted. In cases where the stationary standards are showing signs of degradation, which can affect the testing and calibration of the scale, the bureau will require the standards to be recertified.

6. The rule proposed to be repealed is as follows:

24.351.221 WEIGHING DEVICE LICENSE TRANSFER found at ARM page 24-35043.

AUTH: 30-12-202, MCA

IMP: 30-12-203, MCA

REASON: The department is repealing this rule since all licenses are now administered by the one-stop licensing program and the second tier of regulation in this rule is no longer needed.

7. 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 [tlloyd@mt.gov](mailto:tlloyd@mt.gov), and must be received no later than 5:00 p.m., August 10, 2012.

8. An electronic copy of this Notice of Public Hearing is available through the department and program's web site on the World Wide Web at [www.bsd.dli.mt.gov/bc/ms\\_index.asp](http://www.bsd.dli.mt.gov/bc/ms_index.asp). 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.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. 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 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) 841-2060; e-mailed to [tlloyd@mt.gov](mailto:tlloyd@mt.gov); or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. 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  
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 2, 2012