

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 24.351.215 license fee ) ADOPTION  
schedule and the adoption of NEW )  
RULE I split weighing allowed )

TO: All Concerned Persons

1. On June 20, 2013, the Department of Labor and Industry (department) published MAR Notice No. 24-351-276 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 1004 of the 2013 Montana Administrative Register, Issue No. 12.

2. On July 12, 2013, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the July 22, 2013, deadline.

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

ARM 24.351.215 LICENSE FEE SCHEDULE FOR WEIGHING AND MEASURING DEVICES

COMMENT 1: Numerous commenters opposed the meter fee increase in ARM 24.351.215, stating that the meter fees were too high and have increased too much over time. The commenters also asserted that Montana businesses pay more for meter licenses than neighboring and western states, and that scale owners are not paying their fair share. Commenters further stated that because the number of meters rejected is low and more meters give fuel away rather than short the customer, Montana should change to longer inspection intervals.

RESPONSE 1: Following consideration of the public comments and concerns raised by the Legislative Economic Interim Affairs Committee, the department decided to not proceed with the proposed amendments to this rule at this time. The department intends to meet with industry stakeholders to discuss meter testing and fees.

NEW RULE I SPLIT WEIGHING ALLOWED

COMMENT 2: Two commenters opposed split weighing, asserting that split weighing liquids in commercial trade is inaccurate and the rule puts an undue burden on small business. Commenters stated that the rule will lead to many hay haulers estimating their loads rather than getting an accurate weight, and that scale operators will have to invest in new facilities.

RESPONSE 2: The department notes that split weighing was not a legal method of obtaining a weight for any product that was bought or sold until July 1, 2013, when House Bill 157 became effective. The legislation, codified at 30-12-107, MCA, establishes split weighing and requires the department to adopt rules providing for the implementation and administration of split weighing.

COMMENT 3: A few commenters stated that requiring vendors and purchasers to submit an agreement to the department before split weighing a load is not a workable practice, will lead to loads being estimated, and will shut down local small scales.

RESPONSE 3: Section 30-12-107, MCA, does not specify the timelines for submission of split weighing documentation to the department. However, the statute does require the reporting of the name of the person operating a scale to split weigh, and the date and location of the scale used. In testimony provided at the House Bill 157 hearings, department representatives explained the potential for inaccurate weighing of split weighed loads, and the importance of buyers and sellers understanding that the weights may not be accurate.

The department initially believed that requiring submission of the agreement before the split weighing would help ensure that both parties recognize the potential consequences of split weighing. After reviewing the comments, the department agrees that submitting split weighing documents in advance will be very difficult, and is amending the rule to allow submission of a month's worth of weigh tickets at a time, to cover multiple loads. The department notes that weigh tickets and the supplemental documents, if applicable, must still be completed for each individual load, but will not have to be submitted to the department until within ten days of the last day of the month the load(s) were split weighed. This change will allow scale owners, buyers, and sellers to submit split weighing documents in one package for an entire month.

The department is also amending New Rule I to eliminate information duplicated between the written agreement and weigh tickets, and to not require the submission of written agreements to the department. The department concluded that submission of the weigh tickets is sufficient to comply with the statutory requirements.

COMMENT 4: A commenter stated that it is not clear who is the responsible party for which items on the agreement, nor who is responsible for the agreement.

RESPONSE 4: The department has determined that both the buyer and seller are responsible for completing the agreement. The scale owner is responsible for the weigh ticket or supplemental document when split weighing. If individual loads are split weighed, there must still be an agreement between the buyer and seller, but the agreement does not have to be submitted to the department.

COMMENT 5: One commenter believed the new split weigh law will be very beneficial to small businesses like his that only have small scales.

RESPONSE 5: The department appreciates all comments received during the rulemaking process.

COMMENT 6: One commenter asked how long records on split weighing should be kept.

RESPONSE 6: The department is required to keep licensing, inspection, and testing records for three years, and recommends that buyers, sellers, and scale owners also keep records for the same period of time.

COMMENT 7: One commenter asked if the department will notify the United States Forest Service, Department of State Lands, Bureau of Land Management, or other owners of split weighing agreements, and whether all documents for split weighing will be available to interested parties.

RESPONSE 7: The department will not automatically send copies of the split weighing documents to these other agencies, but they will be provided upon request.

COMMENT 8: One commenter asked if "LOAD TO BE SPLIT WEIGHED" must be clearly stated on the contract and weigh ticket.

RESPONSE 8: Both the agreement and the weigh ticket or supplemental document must clearly indicate the load was split weighed.

4. The board has adopted New Rule I (ARM 24.351.207) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.351.207) SPLIT WEIGHING ALLOWED (1) through (2)(b) remain as proposed.

~~(c) scale owner's name and the location of the scale;~~

~~(d) name(s) of the scale operator(s);~~

~~(e) (c) commodity covered by the agreement; and~~

~~(f) (d) time period covered by the written agreement; and~~

~~(g) acknowledgement that the weigh tickets clearly indicate the loads were split weighed.~~

(3) remains as proposed.

(4) (6) A copy of the agreement each weigh ticket, and supplemental documents if applicable, must be submitted to the bureau before any loads are within ten days after the last day of the month the load(s) were split weighed.

~~(5) (4) For purposes of this rule, the weigh ticket must also include the following information:~~

~~(a) through (d) remain as proposed.~~

~~(6) remains as proposed but is renumbered (5).~~

5. The department did not amend ARM 24.351.215 as proposed.

/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 October 21, 2013