

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?

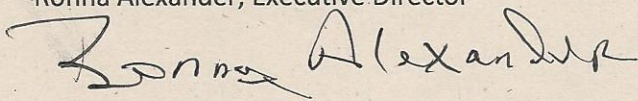
The MPMCSA would ask that the Bureau/Department collaborate with the industry on developing a less frequent, more accurate and fair testing schedule than the annual plan currently in place. We believe the Bureau could actually lower fees if adopting a less frequent schedule and allow the industry to 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 initial "R" and a long, sweeping underline.