COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Measurement Standards

8 CCR 1202-2

REGULATION 1. PACKAGING AND LABELING-CAN BE FOUND AT 8 CCR 1202-1

REGULATION 2. CIVIL PENALTIES

1. CAUSE OF VIOLATION

1.1 Lack of Knowledge - When the person that has committed the violation was not aware of the statutory requirements, the penalty shall be determined from Line 1 of the applicable table as set forth in 4.4.

1.2 Negligence - When the violation is due to negligence, the penalty shall be determined from Line 2 of the applicable table as set forth in 4.4.

1.3 Willful - When a person has willfully committed a violation, or has committed the same violation three or more times within a 12-month period of time, all violations after the second violation will be construed to be willful and the penalty shall be determined from Line 3 of the applicable table as set forth in 4.4.

2. GRAVITY OF VIOLATION

2.1 Any one of the following factors may be considered in determining the gravity of a violation.

(a) Potential monetary consequences.

(b) Potential for personal injury.

(c) Potential for property damage.

(d) Degree of inconvenience or deception to a buyer or prospective buyer,

(e) Degree of disregard for the law.

2.2 Minimal Gravity - When the violation has a minimal gravity, the penalty shall be determined from Column A of the applicable table as set forth in 4.4.

2.3 Moderate Gravity - When the violation has a moderate gravity, the penalty shall be determined from Column B of the applicable table as set forth in 4.4.

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2.4 Great Gravity - When the violation has a great gravity, the penalty shall be determined from Column C of the applicable table as set forth in 4.4.

3. FREQUENCY OF VIOLATION

3.1 The more frequent a person commits the same violation, the greater the penalty shall be, as provided by the table as set forth in 4.4.

3.2 When a person commits the same violation more than three times in 12 months, the penalty for the third violation shall be assessed. In addition, the person shall be subject to a restraining order or injunction as set forth in 35-14-133 CRS 1973, as amended.

3.3 The period of time in determining frequency of violations shall be 12 months. If a person has not committed the same offense in 12 months, the next offense shall be considered as a first offense.

3.4 A person that has committed the same offense three times in five years shall not be protected by the 12 month limitation and shall be subject to the penalty for the third offense.

4. PENALTIES

4.1 Penalties for violation of the following sections or sub-sections will be determined by procedures as set forth in 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, and 2.4 as established in TABLE I in 4.4: 35-14-112, -113(1), -114, -115, -117, 120, -124, -125, -127, -129, -131(2)(b), -131(2)(c), -131(2)(g), -131(2)(h).

4.2 Penalties for violation of the following sections or sub-sections will be determined by procedures as set forth in 1.1, 1.2, 1.3. 2.1, 2.2, 2.3 and 2.4 as established in TABLE II in 4.4: 35-14-110, -111, -113(2), -118, -131(2)(e)(f)(i).

4.3 Penalties for violation of the following sections or sub-sections will be determined by procedures as set forth in 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, and 2.4 as established in TABLE III in 4.4: 35-14-116, -119, -122, -123, -131(2)(a)(d)(j)(k)(m).

4.4 TABLES

TABLE I									
	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
1	$ 0	10.	20.						
2	$ 10.	20.	40.	20.	40.	80.			
3	$ 20.	40.	80.	40.	80.	160.	80.	160.	240.

TABLE II									
	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C

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TABLE II									
FIRST OFFENSE				SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
1	$ 25.	50.	75.						
2	$ 50.	100.	150.	100.	150.	200.			
3	$ 100.	150.	200.	200.	250.	300.	300.	400.	500.

TABLE III									
FIRST OFFENSE				SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
1	$ 50.	100.	150.						
2	$ 100.	200.	300.	200.	300.	400.			
3	$ 200.	300.	400.	300.	400.	500.	500.	600.	750.

5. APPEALS

5.1 Any person accused of a violation may request a hearing before the Commissioner to contest the account of the penalty or whether the violation occurred or both.

5.2 A request for a hearing before the Commissioner must be in writing and must be submitted within 20 days of notification of penalty.

6. PAYMENT OF PENALTY.

6.1 If no hearing is requested, the penalty is due and payable within 30 days of the issuance of notice of the violation.

REGULATION 3. QUALIFICATIONS FOR CERTIFIED WEIGHER LICENSE

1. TRAINING

1.1 Must have completed apprentice training by a competent scale operator on procedures for operating scales.

2. EXPERIENCE

2.1 Applicants with a minimum of six months continuous weighing experience will be exempt from further training.

3. INTERVIEW

3.1 Applicants that do not provide evidence of training or experience shall be subject to an interview by a measurement standards official.

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REGULATION 4. COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDERS

1. REQUIREMENTS FOR CERTIFICATION

1.1 Training - Must employ at least one service person that has satisfactorily completed a factory training course to service the devices intended to be serviced by the provider.

1.2 Experience - Must employ at least one service person with a minimum of 12 months training by a certified commercial weighing and measuring device service provider.

2. CERTIFICATE CATEGORIES

2.1 One service person;

2.2 Two to five service persons;

2.3 Six to ten service persons;

2.4 More than ten service persons.

3. PERFORMANCE REQUIREMENTS

3.1 commercial weighing and measuring device service providers shall comply with all provisions of section 35-14-123, C.R.S., of the Measurements Standard Act.

REGULATION 5. INFORMATION REQUIRED ON APPLICATION TO LICENSE DEVICE

1. Name, address, and telephone number of applicant.

2. Number of devices to be licensed

3. Capacity of device where applicable.

4. Location of device.

5. Total fee required.

REGULATION 6. SCALE PITS

1. PIT DEPTH

1.1 Vehicle or livestock scales, which require a pit, shall be placed in a pit where the clearance from the floor of the pit to the bottom of the I beam not less than 36 inches.

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REGULATION 7. APPROACHES TO VEHICLE SCALES

1. APPROACHES

1.1 On the approach end or ends of a vehicle scale installed in any one location for a period of six months or more, there shall be a straight approach as follows:

(a) at least the width of the platform, and

(b) at least one-half of the length of the platform but not required to be more than 40 feet, and

(c) not less than 10 feet of any approach adjacent to the platform shall be constructed of concrete to insure that this portion remains smooth and level and in the same plane as the platform. However, grating of sufficient strength to withstand all loads may be installed in this portion; and further, where deemed necessary for drainage purposes, the remaining portion of the approach may slope slightly, not to exceed one inch in ten feet.

REGULATION 8. LICENSE AND CERTIFICATE EXPIRATION DATES

1. EXPIRATION DATES

1.1 The expiration date for a license to operate a commercial weighing and measuring device shall be June 30.

1.2 The expiration date for a certified weigher certificate issued on or after July 1, 2009 shall be December 31.

1.3 The expiration date for a commercial weighing and measuring device service provider certificate issued on or after July 1, 2009 shall be December 31.

STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

The Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1978 to 1986 are no longer in the Department's files.

1. Emergency Rule Adopted July 1, 2009 – Effective July 1, 2009

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Emergency Rule Amendments is set forth in §§ 35-14-107(1)(o), 121(3), C.R.S. (2008), § 35-1-107(5)(a), C.R.S. (2008), § 24-4-103(6) C.R.S., (2008), and §§ 35-14-121(5), 123(1), 123(2)(a), 123(2)(b), and 127(1), C.R.S., as enacted in SB 09-113.

PURPOSE:

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The purpose of these Emergency Rule Amendments is to update the rules pertaining to the Measurement Standards Act of 1983 to comply with the amendments to the Act set forth in SB 09-113.

These Amendments:

a. Establish the license expiration date for operation of commercial weighing and measuring devices.

b. Establish the certified weigher certificate expiration date for those individuals who obtain a certificate on or after July 1, 2009.

c. Establish the certificate expiration date for commercial weighing and measuring device service providers who obtain a certificate on or after July 1, 2009.

d. Establish commercial weighing and measuring device service provider certification categories and performance requirements.

e. Amend commercial weighing and measuring device service provider certification requirements to clarify the requirements are for the company, not the individual service person employed by the company.

f. Add a section to contain the statements of basis, specific statutory authority and purpose.

FACTUAL AND POLICY BASIS:

The factual and policy issues that require the immediate adoption of these Emergency Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Measurement Standards Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-113, effective July 1, 2009, that:

    a. Remove statutory expiration dates for device licenses, certified weigher and device service providers and requires the Commissioner to establish such dates in rule.

    b. Require the Commissioner to establish commercial weighing and measuring device service provider certification categories and performance requirements.

2. The existing rule sets forth certification requirements for individuals, but the statute requires the business to obtain the certificate. The amendment clarifies that the requirements for certification of service providers is for the company, not an individual.

3. The Commissioner hereby finds that immediate adoption of these Emergency Rule Amendments is imperatively necessary to comply with the revisions to the Colorado Measurement Standards Act of 1983, §§ 35-14-101 – 134, C.R.S., enacted by the General Assembly in its 2009 legislative session, which take effect on July 1, 2009. These Emergency Rule Amendments are required to permit the continuous and uninterrupted administration and enforcement of the Act, including the issuance of licenses and certificates thereunder.

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2. ADOPTED JULY 16, 2009 – EFFECTIVE AUGUST 30, 2009

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Permanent Rule Amendments is set forth in §§ 35-14-107(1)(o), 121(3), C.R.S. (2008), § 35-1-107(5)(a), C.R.S. (2008), and §§ 35-14-121(5), 123(1), 123(2)(a), 123(2)(b), and 127(1), C.R.S., as enacted in SB 09-113.

PURPOSE:

The purpose of these Permanent Rule Amendments is to update the rules pertaining to the Measurement Standards Act of 1983 to comply with the amendments to the Act set forth in SB 09-113.

These Permanent Rule Amendments:

a. Establish the license expiration date for operation of commercial weighing and measuring devices.

b. Establish the certified weigher certificate expiration date for those individuals who obtain a certificate on or after July 1, 2009.

c. Establish the certificate expiration date for commercial weighing and measuring device service providers who obtain a certificate on or after July 1, 2009.

d. Establish commercial weighing and measuring device service provider certification categories and performance requirements.

e. Amend commercial weighing and measuring device service provider certification requirements to clarify the requirements are for the company, not the individual service person employed by the company.

f. Add a section to contain the statements of basis, specific statutory authority and purpose.

g. Correct typographical errors throughout the rule.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these Permanent Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Measurement Standards Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-113, effective July 1, 2009, that:

    a. Remove statutory expiration dates for device licenses, certified weigher and device service providers and requires the Commissioner to establish such dates in rule.

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b. Require the Commissioner to establish commercial weighing and measuring device service provider certification categories and performance requirements.

2. The existing rule sets forth certification requirements for individuals, but the statute requires the business to obtain the certificate. The amendment clarifies that the requirements for certification of service providers is for the company, not an individual.

3. The Commissioner intends to adopt Emergency Amendments to the Rules on July 1, 2009 in order to implement the changes to the Act made by the General Assembly in SB 09-113. These Permanent Amendments will make permanent those Emergency Amendments.

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