



July 21, 2021

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Rules of the Department of Commerce Governing Weights and Measures Regulation; Revisor's ID Number 4624

Dear Librarian:

The Minnesota Department of Commerce intends to adopt rules governing weights and measures regulations. We plan to publish a Dual Notice of Hearing in the July 26, 2021, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at (651) 539-1457.

Yours very truly,

A handwritten signature in blue ink that reads 'Carrie C. Briggs'.

Carrie Briggs
Rules Coordinator
Department of Commerce

Enclosure: Statement of Need and Reasonableness

Equal Opportunity Employer

Minnesota Department of Commerce

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Weights and Measures, *Minnesota Rules*, chapter 7601; Revisor's ID Number R-04624

I. INTRODUCTION

The Minnesota Department of Commerce (Department) proposes amendments to existing Minnesota Rules, chapter 7601, governing Minnesota Weights and Measures.

The Department's Weights and Measures Division is responsible for the regulation of Minnesota weights and measures, by:

- ensuring that weights and measures in commercial service within the state are suitable for their intended use, properly installed, accurate, and properly maintained by their owners or users;
- preventing unfair or deceptive dealing by weight or measure in a commodity or service advertised, packaged, sold, or purchased within the state;
- making the precision calibration and related metrological certification capabilities of the division available to users of physical standards or weighing and measuring equipment;
- promoting uniformity, to the extent practicable and desirable, between the weights and measures requirements of Minnesota and those of other states and federal agencies; and
- adopting weights and measures requirements that will protect consumers, promote equity between buyers and sellers, and encourage desirable economic growth.

To facilitate the Department's application of accurate national requirements and specifications to promote uniformity, Chapter 7601 incorporates the requirements and specifications of the United States Department of Commerce National Institute of Standards and Technology ("NIST") Handbook. The NIST Handbook is comprised of specification, tolerances, and other technical requirements adopted by the National Conference on Weights and Measures, Inc. (NCWM). These specifications, tolerances, and other technical requirements are recommended by NCWM for official promulgation in and use by state weights and measures agencies. Updates to the NIST Handbook are made annually.

Chapter 7601 has not been updated since 2005 and, as such, still incorporates the 2005 edition of the NIST Handbook 44 *Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices* and NIST Handbook 133 *Checking the Net Contents of Packaged Goods*. The proposed amendments are intended to update Chapter 7601 to incorporate the current NIST Handbook 44 and NIST Handbook 133. This will allow for greater uniformity between the weights and measures requirements of Minnesota and those of other states and federal agencies. The proposed amendments incorporating NIST Handbook 44 will allow Minnesota industry members to install and use up-to-date weighing and measuring equipment in conformance with the current NIST Handbook. The proposed amendments incorporating NIST Handbook 133 will allow Minnesota industry members to adhere to a uniform system for package accuracy.

The proposed amendments are also intended to update requirements to reflect changes in national standards for devices and programs covered under Minnesota Rules Chapter 7601, including vehicle scales, livestock scales, and biodiesel blends. Additional details regarding the specific purpose of each of these proposed amendments are described in Section X below.

II. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Carrie Briggs at the Department of Commerce, 85 7th Place East, St. Paul, MN 55101, phone: (651) 539-1457, email: carrie.briggs@state.mn.us.

III. STATUTORY AUTHORITY

Minnesota Statutes, section 14.125 does not apply because this rulemaking is an amendment of existing rules for which the Legislature has not revised the statutory authority.

The Department's statutory authority to adopt the rules is stated in Minnesota Statutes, section 239.06, which provides:

The department shall prescribe and adopt such rules as it may deem necessary to carry out the provisions of this chapter, including but not limited to the adoption of definitions of basic units of weights and measures, tables of weights and measures, and weights and measures equivalents to govern weighing and measuring equipment and transactions in Minnesota. The division may change, modify, or amend any or all rules when deemed necessary and the rules shall have the force and effect of law.

Further, Minnesota Statutes, section 45.023 authorizes the Commissioner of Commerce to adopt rules as follows:

The commissioner of commerce may adopt, amend, suspend, or repeal rules in accordance with chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities.

Under these statutes, the Department has the necessary statutory authority to amend these rules.

IV. REGULATORY ANALYSIS

Minnesota Statutes, section 14.131 sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the Department's response.

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:

The classes of persons who will be most directly affected by the proposed rule amendments include:

- Grocery industry;
- Petroleum industry;
- Retailers and wholesalers who use weighing and measuring devices in commercial transactions;
- Companies who sell and service commercial weighing and measuring devices;
- Companies who own commercial weighing and measuring devices;
- Voluntary Placing in Service registrants; and
- Registered LPG inspectors.

Regarding whom may bear costs associated with the proposed rule amendments, service companies, voluntary registrants, and LPG inspectors may incur minimal costs for training their technicians on the updated standards.

Those who will benefit from the proposed rule amendments include:

- Industry members who operate weighing and measuring devices in multiple states;
- Service agents that service and sell commercial weighing and measuring devices in multiple states; and
- Minnesota citizens that purchase goods and services by weight, measure, or volume.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:

The proposed rule amendments are unlikely to create additional costs to the Department or to any other agency with regard to implementation and enforcement. The Department does not anticipate that the proposed rule amendments will have any effect on state revenues.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:

The costs and intrusiveness of the proposed rule amendments are minimal. The proposed rule amendments incorporating the most current NIST Handbook and other national standards efficiently achieve the Department's mandate to promote uniformity, to the extent practicable and desirable, between the weights and measures requirements of Minnesota and those of other states and federal agencies. Thus, the Department concludes that there are no less costly or less intrusive methods of achieving the purpose of the proposed rule amendments.

(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule:

The proposed rule amendments include essential amendments to regulations to reflect current national standards. The Department has determined that there are no viable alternative methods for achieving the purpose of the proposed rule amendments.

(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

The Department's assessment of the proposed rule amendments is that there will be minimal, if no, additional direct costs to be borne by industry members. Manufacturers currently design commercial devices for weights and measures so they incorporate the updates to national standards, including those in the NIST Handbook. There may be some minimal costs for industry members associated with training of service personnel, voluntary registrants, and LPG inspectors.

(6) The probable costs of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

The probable cost of not adopting the proposed rule amendments would be confusion by industry and the necessity for the Department to implement waivers for industry members to establish conformance with national standards, as the current rules incorporate out-of-date national standards. As a result, the Department would be less able to implement weights and measures requirements that protect consumers, promote equity between buyers and sellers, and encourage desirable economic growth.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference:

The proposed updates to Chapter 7601 will bring the state into conformance with national standards that are voluntarily adopted by states. There are no federal regulations that are applicable.

(8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.... '[C]umulative effect' means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time”:

The cumulative effect of the proposed rule amendments will be to reduce the burden of compliance for industry members because the state will be in conformance with national standards.

V. PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131 require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

Performance-based standards have been integral to the requirements for weights and measures regulated by Chapter 7601. The standards we are seeking to update contain measurable, objectively observable parameters that can be used to monitor performance.

Commercial weighing and measuring device are compared against the technical and performance requirements found in NIST Handbooks 44. Inspections and performance tests are made with suitable standards to eliminate from service devices that:

- give readings that are false,
- that are not constructed to be reasonably permanent in their adjustment,
- will not repeat correctly,
- facilitate perpetration of fraud, or
- are not suitable for its intended purpose.

Packaged goods are tested using the procedures in NIST Handbook 133. Compliance testing of packaged goods is the determination of the conformance of the results of packaging, distribution, and retailing process to specific legal requirements for net content declaration.

VI. ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an April 10, 2020, letter by Administrative Law Judge Kim Middendorf.

In addition to the statutory requirements to publish notice in the *State Register* and to mail notice to the persons on the Department of Commerce rulemaking list, the Department will provide the following additional notice:

1. Mailing the notice of the proposed rule amendments to the following persons:
 - Minnesota Grocers Association
 - Minnesota Petroleum Marketers
 - Minnesota Service Station Association
 - Service Companies list
2. Placing a summary of the notice of rulemaking on the Department of Commerce web page at www.commerce.state.mn.us.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

VII. CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department will consult with Minnesota Management and Budget to help evaluate the fiscal impact and fiscal benefits of the proposed rules on units of local governments.

The Department will do this by sending to Minnesota Management and Budget copies of the documents required to be sent to the Governor's Office for review and approval by the Governor's Office on the same day we send them to the Governor's office. We will do this before the Department publishes the Notice of Intent to Adopt. The documents include the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and the response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

VIII. DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Department has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Department has determined that they do not, because the proposed revisions are minimal and will not require a local government to make changes to its existing ordinances or other regulation in order to comply with these rules.

VIII. COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying will be minimal and will likely solely be borne by the Department, which does not qualify as a small business.

IX. LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Staff from the Department of Commerce Weights and Measures Division, if necessary.

X. RULE-BY-RULE ANALYSIS

The modifications to the individual rules discussed below are highlighted to explain the precise changes being proposed for adoption. The language is taken from the Statement of Need and Reasonableness prepared when the rules were originally adopted.

7601.1000 NIST HANDBOOK 44 INCORPORATED BY REFERENCE.

Subpart 1. The proposed rule amendment updates the referenced NIST Handbook 44 version from 2005 to 2019. This change is needed so that Minnesota's weighing and measuring devices are uniform with devices used nationally. The change is reasonable because manufacturers will

not have to make different weighing and measuring devices for Minnesota. Further, if Minnesota had requirements that differ from national requirements, there is a potential that manufacturers would dump their obsolete equipment in Minnesota.

7601.1020 NIST HANDBOOK 133 INCORPORATED BY REFERENCE.

Subpart 1. The proposed rule amendment updates the referenced NIST Handbook 133 version from 2005 to 2019. This change will make Minnesota requirements uniform with the rest of the country and is needed and reasonable so that producers of packaged goods will not have to meet different standards in Minnesota than in the rest of the country.

7601.4010 VEHICLE AND LIVESTOCK FOUNDATIONS.

Subpart 3. The proposed rule amendment changes the sloping requirement for washout slabs. The change is needed and reasonable because it makes the sloping requirement performance-based and allows installers to use the solution which best suits the gradation of the installation site. The change will eliminate one of the most common types of variance request which occurs when scales are built next to buildings or on hillsides.

7601.7020 CERTIFICATE OF REGISTRATION.

The proposed rule amendment removes reference to a previously repealed rule part.

7601.7030 REGISTRATION FEE.

The proposed rule amendment removes reference to a previously repealed rule part.

7601.7040 RECIPROCITY.

The proposed rule amendment removes reference to a previously repealed rule part.

7601.7090 PROBLEM RESOLUTION; CERTIFICATE OF REGISTRATION.

The proposed rule amendment removes reference to a previously repealed rule part.

7601.8000 BIODIESEL BLEND QUANTIFICATION METHOD “MN BIODIESEL 2005” INCORPORATED BY REFERENCE

The amendment will repeal the existing rule because it is obsolete now that a nationally accepted ASTM method for quantifying biodiesel blends exists.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

July 19, 2021

Date



Grace Arnold
Commissioner
Department of Commerce