35 **PU-07-642** Filed: 6/25/2008 Pages: 111
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23 **PU-06-501** Filed: 6/25/2008 Pages: 111
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25 **PU-06-490** Filed: 6/25/2008 Pages: 111
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28 **PU-06-486** Filed: 6/25/2008 Pages: 111
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Legislative Council

27 **WM-07-203** Filed: 6/25/2008 Pages: 111
Final Administrative Rules - As Published and with Editorial Changes

Legislative Council

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NORTH DAKOTA
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North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

June 24, 2008

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505

Dear Ms. Jeffcoat-Sacco:

We have completed preparation of the North Dakota Administrative Code rules changes you recently submitted to our office for publication. Enclosed are copies of two different versions of those rules.

The first enclosed copy shows revised North Dakota Administrative Code sections as they will be published in the next supplement of the North Dakota Administrative Code. There is an instruction sheet for replacement of obsolete pages with these updated pages to be used if your agency maintains a full-sized set of your rules. If you maintain the published North Dakota Administrative Code in reduced size binders, the reduced size replacement pages will be sent to you soon.

The other enclosed copy shows our editorial changes to the rules as submitted. Please observe the style and grammar changes we have made.

Please contact this office if you have any questions regarding these rules. If these rules will be reviewed by the Administrative Rules Committee, we will contact you when the meeting is scheduled.

Sincerely,

John Walstad
Code Revisor

JW/JFB
Encs.

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 329

July 1, 2008

The North Dakota Administrative Code Supplement is published each month following the month that rules are filed with the Legislative Council office. A historical source note immediately follows an affected section and indicates the effective date of any amendment, creation, or repeal. A supplement change without any historical source note corrects a nonsubstantive error in the section.

This supplement instruction page should be retained and placed behind your "supplement instruction sheets" divider in Volume 1. **Before inserting any supplement into the code be sure the previous supplement has been inserted.** For those codes purchased after August 1, 1996, the first supplement is Supplement 207.

Instructions for integrating this supplement into the Administrative Code are as follows:

	Pages to be Removed	Pages to be Inserted
Title 3	1	1
Article 3-01 (Chapter 3-01-01)	1 - 2	1 - 2
Chapter 3-01-02	1 - 2	1 - 2
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Chapter 3-02-02	1 - 4	1 - 3
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Chapter 3-04-02	1 - 2	
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Chapter 3-04-04	1 - 2	
Chapter 3-04-05	1	
Chapter 3-04-06	1 - 2	
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Chapter 3-05-04	1	
Article 4-07 (Chapter 4-07-01)	1 - 5	1 - 5
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Chapter 4-07-11	1 - 3	1 - 3
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Article 10-16 (Chapter 10-16-01)	1 - 5	1 - 5
Chapter 10-16-03	1 - 13	1 - 13
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Chapter 17-01-02	1	1
Article 17-02 (Chapter 17-02-01)	1 - 6	1 - 5
Chapter 17-02-02.1		1
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Article 17-03 (Chapter 17-03-01)	1 - 4	1 - 4
Chapter 17-03-02	1 - 3	1 - 3
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Appendix	1 - 15	26 - 41
Title 37	1	1
Chapter 37-06-04	1 - 3	1 - 4
Article 37-09 (Chapter 37-09-01)	1 - 3	1 - 2
Article 37-12 (Chapter 37-12-01)		1
Chapter 37-12-02		1 - 5
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Chapter 37-12-04		1
Chapter 37-12-05		1
Article 38-01 (Chapter 38-01-01)	1 - 2	1
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Chapter 54-05-03.2	1 - 3	1 - 4
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Article 54-07 (Chapter 54-07-01)	1 - 2	1 - 2
Chapter 54-07-02	1 - 2	1 - 3
Chapter 54-07-02.1		1
Chapter 54-07-05	1 - 7	1 - 8
Chapter 54-07-06.1	1 - 4	1 - 4
Chapter 54-07-07	1 - 5	1 - 5
Article 56-02 (Chapter 56-02-01)	1 - 3	1 - 3
Chapter 56-02-02	1 - 2	1 - 2
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Article 67.1-02 (Chapter 67.1-02-01)	1 - 4	1 - 5
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Article 82-03 (Chapter 82-03-01)	1 - 6	1 - 6
Article 82-05 (Chapter 82-05-01)	1 - 2	1 - 2
Chapter 82-05-04	1 - 3	1 - 4
Chapter 82-05-06		1
Article 82-07 (Chapter 82-07-01)	1 - 5	1 - 5
Chapter 82-07-04	1	1
Article 82-10 (Chapter 82-10-01)	1	1
Article 89-10 (Chapter 89-10-01)	1 - 12	1 - 12

ARTICLE 69-06

ENERGY CONVERSION AND TRANSMISSION FACILITY SITING

Chapter

69-06-01	General Provisions
69-06-02	Utility Reporting Requirements
69-06-03	Letter of Intent
69-06-04	Certificate of Site or Corridor Compatibility
69-06-05	Transmission Facility Permit
69-06-06	Waiver of Procedures and Time Schedules
69-06-07	Emergency Certificate or Permit [Repealed]
69-06-08	Criteria
69-06-09	Continuing Suitability of Certificate or Permit

CHAPTER 69-06-01
GENERAL PROVISIONS

Section

69-06-01-01	Definitions
69-06-01-02	Procedure for Public Hearings
69-06-01-03	Advisory Committees
69-06-01-04	Applications
69-06-01-05	Designated State Agencies and Officers
69-06-01-06	Siting Fee Refund

69-06-01-01. Definitions. The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.

2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable alternatives.

3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.

4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.

5. "Designated route" means a route for which a permit has been issued by the commission.

6. "Designated site" means a site for which a certificate has been issued by the commission.

7. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.

8. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.

9. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.

10. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.

11. "Refinement" means the action or process of purifying.

12. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.

13. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22.

14. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

History: Amended effective August 1, 1979.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-01, 49-22-03, 49-22-05.1, 49-22-07, 49-22-08, 49-22-08.1, 49-22-19

69-06-01-02. Procedure for public hearings.

1. **General hearings.** A general hearing shall be held prior to the adoption of, or a substantial or material modification to, the criteria, a substantial or material modification or addition to these rules, and the revocation or suspension of a certificate or permit. Notice of a general hearing shall be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of the county where the hearing will be held, in the official newspaper of all counties in which any part of an affected facility is located, and if it is a hearing on the adoption of, or a substantial or material modification or addition to, the criteria or these rules, in all of the state daily newspapers.

2. **Application hearings.** One or more public hearings shall be held on an application for a certificate or a permit in each county in which any part of the site, corridor, or route is proposed to be located; provided, that the commission by order may consolidate the county hearings. The notice of a hearing on an application for a certificate of corridor compatibility for a transmission facility shall include a map of the appropriate county depicting the proposed corridor and study area. The notice of a hearing on an application for a route permit shall include a map of the appropriate county depicting the designated corridor and the location of the proposed route and any alternative routes. The maps shall be of a size, style, and legend as specified by the commission. Notice of each hearing shall be given by the commission at least twenty days prior to the hearing, as follows:

   a. By publication in the official newspaper of each county in which any part of the site, corridor, or route is proposed to be located, whether the hearings are consolidated or not, and in such other newspapers that the commission may determine to be appropriate.

   b. By mail to the following persons in each county in which any part of the site, corridor, or route is proposed to be located:

      (1) The chairman of the board of county commissioners.

      (2) The county auditor.

      (3) The chief executive officer of each city in the county on an application for a certificate for an energy conversion facility.

      (4) The chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility.

   c. By mail to any state or federal agency authorized to issue a permit required for the construction or operation of the facility.

   d. By mail to all parties.

   e. By mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.

   f. By publication as provided in subdivision a on each city in the county outside of the proposed corridor.

3. **Transfer and waiver hearings.** The commission, upon determination that an application for the transfer of a certificate or permit or an application for a waiver of procedures and time schedules is complete, shall publish a notice of opportunity for a public hearing, or upon its own motion shall publish a notice of hearing, in the official newspaper of

each county in which any part of the site, corridor, or route is located or proposed to be located. A public hearing shall be held on an application if, either within twenty days following the publication of a notice of opportunity any interested person requests and demonstrates good cause for a public hearing, or the commission determines upon its own motion that there is good cause for a public hearing. Notice of a public hearing shall be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of each county in which the site, corridor, or route is located or proposed to be located.

History: Amended effective August 1, 1979; January 1, 1982.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-13

69-06-01-03. Advisory committees.

1. **Public representatives.** Persons appointed to an advisory committee to advise and assist the commission in the evaluation of a site or corridor who are to serve as representatives of a city or a county shall be deemed to be the public representatives on that committee.

2. **Meetings.** Committee meetings shall be scheduled at the discretion of the commission. All meetings of an advisory committee shall be open to the public, and public notice shall be given of the time and place of each meeting. All committee meetings shall be conducted in an informal manner by the commission or its representative, and members of the public and the applicant shall be afforded a reasonable opportunity to participate in the proceedings.

3. **Term.** All members of an advisory committee shall serve at the pleasure of the commission.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-14

69-06-01-04. Applications.

1. **Time.** The time in which the commission is required to act in response to an application shall not commence until the commission notifies the applicant in writing that the application is complete.

2. **Complete application.** An application for a certificate or permit shall be deemed complete when the application contains sufficient information and supporting documentation to enable the commission to process the application.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-05. Designated state agencies and officers. The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. Department of health.
5. Department of human services.
6. Department of labor.
7. Department of career and technical education.
8. Economic development commission.
9. Energy development impact office.
10. Game and fish department.
11. Geological survey.
12. Governor.
13. Highway department.
14. State Historical Society of North Dakota.
15. Indian affairs commission.
16. Job service North Dakota.
17. Land department.
18. Parks and recreation department.
19. Division of community services - department of commerce.
20. Soil conservation committee.
21. State water commission.

History: Effective August 1, 1979; amended effective July 1, 2008.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-06. Siting fee refund. After all siting permits and certificates are issued by the commission and after all notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except five thousand dollars or the amount of the fee remaining if that amount is less than five thousand dollars. When construction and all postconstruction inspections are complete and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than fifty dollars will be processed.

History: Effective July 1, 2008.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-22

ARTICLE 69-09

PUBLIC UTILITY DIVISION

Chapter	
69-09-01	Standards of Service - Gas
69-09-02	Standards of Service - Electric
69-09-03	Gas Pipeline Safety
69-09-04	Uniform Sign Standards - Railroad
69-09-05	Standards of Service - Telephone
69-09-05.1	Accounting Practices
69-09-06	Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting [Repealed]
69-09-07	Small Power Production and Cogeneration
69-09-08	Renewable Electricity and Recycled Energy Tracking System
69-09-09	Wind Turbine Decommissioning

CHAPTER 69-09-01
STANDARDS OF SERVICE - GAS

Section	
69-09-01-01	Definitions
69-09-01-02	Heating Value
69-09-01-03	Calorimeter Equipment
69-09-01-04	Purity of Gas
69-09-01-05	Pressure of Gas
69-09-01-06	Pressure Recording Equipment and Records
69-09-01-07	Definition of a Cubic Foot of Gas
69-09-01-08	Testing Facilities
69-09-01-09	Meter Prover
69-09-01-10	Location of Meters
69-09-01-11	Service Meters Required
69-09-01-12	Prepayment Meters
69-09-01-13	Gas Meter Accuracy Requirements
69-09-01-14	Periodic Tests
69-09-01-15	Requests and Referee Tests
69-09-01-16	Meter Test Records
69-09-01-17	Deposits and Guarantees
69-09-01-18	Discontinuance of Service [Superseded]
69-09-01-18.1	Discontinuance of Gas Service
69-09-01-19	Extensions of Service
69-09-01-20	Information to Customers
69-09-01-21	Billing Basis
69-09-01-22	Meter Readings on Bills
69-09-01-23	Adjustment of Bills for Meter Error
69-09-01-24	Refunds
69-09-01-25	Resale
69-09-01-26	Filing of Rates
69-09-01-27	Rate Applications

69-09-01-28 Filing of Additional Rules
69-09-01-29 Advertising by Gas Utilities
69-09-01-30 Automatic Adjustment Clauses

69-09-01-01. Definitions. As used in this article:

1. "Commission" means the public service commission of the state of North Dakota.

2. "Customer" means any person, firm, corporation, municipality, or other political subdivision of North Dakota supplied by any such utility.

3. "Utility" means public utility.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-02. Heating value.

1. **Artificial gas.** Each utility furnishing manufactured gas shall supply gas which shall have an average heating value of five hundred twenty-five British thermal units per cubic foot [28.32 liters]; and at no time shall the heating value of the gas at such point be less than five hundred or more than five hundred fifty British thermal units per cubic foot [28.32 liters]; provided, that before the gas utility may lower its present standard, the commission may make an investigation of the operating condition of the plant to determine whether the rates may not be reduced at the same time. The present standards of the gas utility shall not be changed until specifically relieved by the commission. Tests shall be made at least twice a day, Sundays and holidays excepted.

   On or before the tenth day of each month, the above daily heating value averages for the preceding calendar month shall be reported to the commission, together with full explanations of any abnormal operations.

2. **Natural gas.** Each utility furnishing natural gas shall determine the heating value of the gas at regular intervals of not less than thirty days and shall file with the commission, monthly, a report of these tests.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-03. Calorimeter equipment. Each utility shall equip itself with a complete standard calorimeter outfit. This equipment shall be used to test the heating value of gas supplied. The accuracy of all calorimeters, as well as the method of making heating value tests, shall be subject to the approval of the commission.

CHAPTER 69-09-02
STANDARDS OF SERVICE - ELECTRIC

Section	
69-09-02-01	Rates and Regulations to be Filed
69-09-02-02	Information Available to Customers [Superseded]
69-09-02-02.1	Information to Customers
69-09-02-03	Service Connections
69-09-02-04	Deposits and Guarantees
69-09-02-05	Discontinuance of Service [Superseded]
69-09-02-05.1	Discontinuance of Electric Service
69-09-02-06	Continuity of Service
69-09-02-07	Extension of Service
69-09-02-08	Temporary Service
69-09-02-09	Customer Complaints
69-09-02-10	Meter Readings
69-09-02-11	Billing
69-09-02-12	Adjustment of Bill for Meter Errors
69-09-02-13	Refunds and Deficiency Billings
69-09-02-14	Classification of Service
69-09-02-15	Resale and Submetering
69-09-02-16	Measuring Customer Service
69-09-02-17	Standard Frequency
69-09-02-18	Standard Voltage and Allowable Variation
69-09-02-19	Voltage Measurement and Voltage Records
69-09-02-20	Accuracy of Portable Indicating Instruments
69-09-02-21	Accuracy of Watt-Hour Meters
69-09-02-22	Accuracy of Demand Meters
69-09-02-23	Multipliers and Test Constants
69-09-02-24	Instrument Transformers
69-09-02-25	Meter Testing Equipment
69-09-02-26	Meter Testing
69-09-02-27	Determination of Average Meter Error
69-09-02-28	Meter Records
69-09-02-29	Location of Meters
69-09-02-30	Public Interest
69-09-02-31	Cooperation
69-09-02-32	Advance Notice
69-09-02-33	Principle of Least Cost
69-09-02-34	Location of Lines
69-09-02-35	Installation and Maintenance - Conformance to National Electrical Safety Code
69-09-02-36	Raising and Lowering Electric Supply and Communication Lines
69-09-02-37	Electric Master Metering Prohibited - Exception
69-09-02-38	Advertising by Electric Utilities
69-09-02-39	Automatic Adjustment Clauses

69-09-02-01. Rates and regulations to be filed.

1. Schedules of rates and charges for the furnishing of electric service, and rules and regulations pertaining thereto, shall be filed with the commission by each utility. The provisions thereof shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The rate schedules, or the rules and regulations, shall include, together with such other information as may be deemed pertinent, the following:

   a. The class of customers to which each rate applies. There shall also be shown any limitation on loads and type of equipment which may be connected, the price per unit of service, and the number of units per billing period to which the prices apply, the period of billing, the minimum bill, the method of measuring demands including method of calculating or estimating loads or minimums, definition of service classification and other terms used in the schedule, and any special terms and conditions applicable. The discount for prompt payment or penalty for late payment, if any, the period, if any, during which the net amount must be paid, and the date when bills become delinquent, shall be specified.

   b. The nominal voltage at which service will be supplied and the type of service available (direct current, single or polyphase alternating current).

   c. A list of cities and unincorporated communities where rates are applicable. If the utility has various rural rates, the areas where the rural rates are available shall be indicated.

   d. A specification of such portion of service connection facilities as the utility furnishes, owns, and maintains, such as service drop, metering equipment, utilization control equipment, etc.

   e. A statement of the type of special construction commonly requested by customers which the utility allows to be connected, e.g., underground service, and the terms and conditions upon which such construction will be permitted.

   f. The regulations with which prospective customers must comply as a condition of receiving service, and the terms of any agreements required.

   g. The regulations governing the establishment of credit, and the making of deposits, by customers to ensure payment for electric service.

   h. The notice to the utility by a customer required to have service discontinued.

i. The regulations covering the furnishing of temporary, emergency, auxiliary, and standby service.

j. The regulations covering requirements for the installation of special facilities, such as demand-limiting devices or power factor corrective equipment.

k. The regulations governing the location of metering equipment, or other company equipment, and the connection of utilization equipment requiring special controls.

2. Any proposed change in rates or charges for the furnishing of electric service, or rules and regulations pertaining thereto, shall be filed with the commission not less than thirty days prior to the effective date thereof. The filing shall include a statement indicating the reason for the proposed change, the number of customers affected, the estimated increase or decrease in annual revenue and the basis for the estimate, and the existing rate schedules or rules and regulations, if any, to be superseded.

3. Special contracts for the sale of electric energy to customers shall be filed with the commission showing the name and address of the customer, the point where energy is delivered, the rate to be charged, term of contract, load conditions, voltage of delivery, and other provisions of the contract.

4. Standard contract forms for the sale of electric energy for streetlighting, municipal water pumping, or other services, shall be filed with the commission showing availability, rates, and all other terms and conditions thereof.

General Authority: NDCC 28-32-02, 49-02-11
Law Implemented: NDCC 49-02-03, 49-02-11

69-09-02-02. Information available to customers. Superseded by section 69-09-02-02.1.

69-09-02-02.1. Information to customers. A utility shall:

1. Keep copies of its rate schedules, rules, and regulations on file in every office where payments are received.

2. Send a statement to each customer containing a clear and concise explanation of the existing rate schedule, and any rate schedule applied for, that is applicable to that customer.

a. The statement shall be sent:

(1) Not later than sixty days after the date of commencement of service to the customer; and

(2) Not later than thirty days after filing an increase in a rate schedule applicable to such customer. The statement must include for each of the major classes of customers for which there is a separate rate, a summary analysis which shows the economic impact of the proposed rate change and rate design changes, if any, for an average customer within a class based upon an average annual consumption and a statement that the rates applied for are proposed only and that, if the rates are suspended by the commission, the new rates will not be effective until commission action has been taken; and

(3) As required by the commission under section 69-02-04-01.

b. The statement must include notice to customers regarding the availability and location of the information required in subsection 1.

3. Include with each customer bill, at least once each year:

a. A clear and concise summary of the existing rate schedules applicable to each of the major classes of customers for which there is a separate rate;

b. An identification of any classes whose rates are not summarized; and

c. A notice calling the attention of the customer to the availability of alternative rate schedules for the customer's particular class of service and that, upon request, the utility will assist the customer in determining the billing for load conditions specified by the customer under various rate schedules. The customer, after selecting a particular rate schedule, shall take service under the rate schedule for a period of not less than twelve months, unless the rates are changed or there is a material change in the customer's load.

4. Send each customer upon request, without charge, a clear and concise statement of the actual consumption and cost of energy by the customer for each billing period during the prior year, unless the consumption and cost data is not reasonably ascertainable by the utility.

5. Provide, upon request, information and assistance to the extent reasonably possible so that customers may secure safe and efficient service. A utility must inform each customer of any change made or proposed to be made in any condition of service that would affect the efficiency of the service or the operation of appliances which may be in use by the customer.

6. File with the commission a sample copy of the statement format required by subsections 2 and 4 and a copy of the summary and notice required by subsection 3. Any format changes in statements or notices under this section must be filed immediately with the commission.

History: Effective October 1, 1980; amended effective April 1, 2001.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-03. Service connections.

1. A utility shall not connect a customer for electric service until the customer has obtained all necessary permits from the proper authorities. Service may be denied to any customer for failure to comply with the applicable requirements of this chapter or with the service regulations of the utility on file with the commission.

2. A utility may require a customer to sign an application for electric service, and to make a deposit to ensure payment therefore, before making a service connection.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-04. Deposits and guarantees.

1. An electric utility may require an applicant for service to make a deposit sufficient to cover the estimated charge for furnishing service to the customer for a sixty-day period. A receipt showing the amount of the deposit, the date the deposit was made, and the depositor's name shall be issued to the depositor. Each utility shall keep a deposit record showing the same information as shown on the depositor's receipt, and shall provide a method of repayment in case the depositor's receipt has become lost or destroyed.

2. The utility shall each year pay interest on such deposit at the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year, on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the depositor, or may be deducted from the depositor's indebtedness to the utility for electric service. The payment or deduction for interest must be made during each calendar year, or whenever a deposit is refunded or service discontinued.

3. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract must be indeterminate, but it must automatically terminate when the customer gives notice of service discontinuance to

the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement may be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract a new contract or a cash deposit may be required by the utility.

History: Amended effective April 1, 1985.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-05. Discontinuance of service. Superseded by section 69-09-02-05.1.

69-09-02-05.1. Discontinuance of electric service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. However, no utility shall discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice shall:

   a. Be sent by first-class mail addressed to the customer at the place where service is rendered, except that in the case of residential customers sixty-five years of age or older, or for handicapped customers, personal notice by delivery is required. A copy of each notice must also be mailed to the nearest social service office and to any other appropriate financial assistance agency, providing that prior approval has been given by the customer pursuant to subsection 2.

   b. Show the amount of the delinquency.

   c. Include the telephone number of the public service commission.

   d. Advise the customer of the customer's rights and remedies, including, but not limited to, the right of the customer to stay termination for up to thirty days if the customer advises the utility within the ten-day notice period that dangerous health conditions exist or that the customer is sixty-five years of age or older or that the customer is handicapped. In addition, the notice shall advise the customer of the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts and of the opportunity to enter into equal monthly payment plans for future service.

   e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory

installment agreement is not made with the utility for payment of the delinquent bill.

If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying the delinquent account at any time prior to the actual disconnection of service, and the person directed by the utility to make the disconnection shall be deemed authorized and shall accept payment of the delinquent account if tendered to the person by the customer before actual disconnection of service is made.

2. It shall be the responsibility of all residential customers sixty-five years of age or older, handicapped, or having an emergency medical problem in the household, including life-sustaining appliances, such as kidney dialysis, to notify the utility of such status. To assist in such notification, all utilities shall annually include a preaddressed postage-paid postcard in the monthly billing mailed to all residential customers during the billing period ending October first. Such notice shall also be provided to all new customers in that service area when they are first provided service by the utility.

   The postcard shall include the following questions:

	YES	NO
1. Is any member of your household 65 years of age or older, or handicapped?	—	—
2. Do you have any emergency medical problem in your household?	—	—
3. Do you desire that the area social service office or other appropriate financial assistance agency be notified in the event of a proposed disconnect?	—	—
4. Do you desire that some other third party be contacted in the event of a disconnect? If so, name and address of person _____ _____	—	—
5. If you are having difficulty paying your utility bill, please contact our local service representative or business office so that we can work with you on your problem.		

   Utility Telephone Number _____
   Office Address _____

Date _____ Name _____
Address _____

_____
Signature

3. Service shall not be disconnected under this section on weekends, Fridays, state holidays, the day before a state holiday, or after twelve noon on any day. A report describing the total number of actual disconnects, date and time, type of customer, and amount of delinquency for each disconnected customer shall be filed monthly with the commission within ten days after the last day of each month.

4. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules; make a deposit pursuant to section 69-09-02-04 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered between the last meter reading date and the date service was disconnected.

5. In the event the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility shall not disconnect service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute, and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

6. A utility may not disconnect service to a customer for failure of the customer to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.

7. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and operation of utilization equipment, or for use of equipment which interferes with, or adversely affects, the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

8. A utility may discontinue service to a customer upon ten days' written notice if the meter or other equipment installed by the utility has been tampered with, or if there has been a diversion of service, or if the

customer is utilizing electricity before the energy has passed through a meter installed by the utility.

9. When a customer who has tenants is including the cost of utility services in the rent charged and the utility bill becomes delinquent, the utility before disconnecting service must also notify the tenants in writing at least ten days prior to the proposed termination date. The utility must allow each tenant to apply to become the customer of the utility in the tenant's own name, to have the service to the rental facility continued or resumed, and to pay the pro rata share of future bills. Such tenant-customer shall be subject to all the provisions of this chapter.

10. A utility may not discontinue service to a customer for nonpayment of a deposit.

History: Effective October 1, 1980; amended effective May 1, 1996; July 1, 1997; April 1, 2001; January 1, 2002.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-06. Continuity of service.

1. Each utility shall make every reasonable effort to prevent interruptions of service, and when such interruptions occur shall endeavor to reestablish service within the shortest possible time. Whenever the service is necessarily interrupted or curtailed for the purpose of working on equipment, it shall be done at a time which, if at all practicable, will cause the least inconvenience to customers, except in cases of emergency.

2. Each utility shall keep a record of all interruptions to service affecting the entire distribution system of any single community or an important division of a community, and include in the record the date and time of interruption, the date and time service was restored, and, if known, the cause of each interruption. Service interruption records shall be kept for a period of six years.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-07. Extension of service.

1. It shall be the obligation of each utility to make reasonable extensions of its lines and services to new customers within any area in which it is authorized to serve.

2. Each utility shall file with the commission its rules for extending service to new customers, and shall file any changes in the rules which may be made from time to time.

3. If the utility does not consider that an extension within its service area is justified, the commission, upon request of one or more prospective customers to be served by the extension, may set the matter for public hearing to determine if the extension should be made, and the terms and conditions thereof.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-08. Temporary service.

1. Temporary service is defined as service to circuses, carnivals, traveling shows, construction projects, and all other purposes which from their very nature evidently will be of short duration.

2. A customer taking temporary service shall pay the regular rates applicable to the class or classes of service rendered for all energy used, and, in addition, shall pay the installation and removal cost, less salvage value, of facilities installed by the utility to furnish temporary service to the customer.

3. The utility may require the customer to make an advance deposit sufficient to cover the estimated cost of furnishing temporary service.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-09. Customer complaints. Each utility shall promptly investigate and keep a record of written complaints received from its customers in regard to safety, service, or operation of its system. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date thereof. The complaint records shall be kept for a period of three years.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-10. Meter readings.

1. Readings of all meters used for determining charges to customers shall be made each month. The term "month" means the period between any two consecutive regular meter reading dates, which shall be as nearly as practicable at thirty-day intervals. The meter reading date may be advanced or postponed not more than five days without adjustment of the billing for the period.

2. The utility may read meters used for determining charges to customers less frequently than once each month provided authorization thereof is obtained from the commission.

3. The utility may obtain the meter readings on a form supplied to the customer provided a utility representative reads the meter at least once each three months, and when there is a change of occupancy of the premises, unless otherwise authorized by the commission.

4. Records of all meter readings shall be maintained for a period of six years.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-11. Billing.

1. Bills for electric service shall be rendered monthly, unless otherwise authorized by the commission, or unless service is rendered for a period of less than a month. The term "month" as used for billing purposes means the period between any two consecutive regular meter reading dates, which shall be as nearly as practicable at thirty-day intervals. Bills shall be prorated for periods of less than one month when service is begun or terminated between regular meter reading dates. Bills shall be prorated for a fraction of a month on a daily basis, unless a different basis for proration of bills for fractions of a month is provided in the utility's service regulations on file with the commission.

2. Each bill shall show the present meter reading; the date of the present meter reading; the number of kilowatt hours consumed; the demand, if used for billing purposes; the date or time when the bill is due; the gross and net amounts of the bill and the date or time after which the gross amount must be paid, or the net amount of the bill and the date or time after which the penalty applies and the amount thereof; and identity of the class of service or rate schedule under which the bill is computed. Estimated bills and prorated bills shall be distinctly marked as such.

3. The utility may, if it is unable to obtain a meter reading, bill the customer on an estimated consumption. The basis for the estimate shall be the normal consumption for a corresponding period during the preceding year, or average consumption during the three preceding months.

4. If the period between meter readings is more than one month, the bill for the entire period may be computed on the assumption of uniform monthly use of service during the entire period. However, if estimated monthly bills have been rendered during the period and the customer does not object thereto, bills for the interim period between meter readings need not be recomputed. If the customer objects to an estimated bill, or to a bill based on uniform monthly use, and presents

reasonable evidence of zero consumption, or of material variation in consumption, during one or more months of the interim billing period, the bill shall be recomputed on the basis of actual use during each month.

5. Bills for service shall be rendered within thirty days from the present meter reading date. A record of all bills for electric service rendered to customers shall be maintained for a period of six years.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-12. Adjustment of bill for meter errors.

1. Whenever a watt-hour meter is found upon a test made at the request of the customer to have an average error of more than two percent, or a demand meter is found to have an error of more than the allowable limits specified in these rules, an adjustment of bills for service shall be made. The amount of the adjustment shall be calculated on the basis that the metering equipment should be one hundred percent accurate. The utility shall refund to the customer any excess charges for incorrectly metered electric service for a period equal to one-half the time elapsed since the last previous meter test, but not to exceed six months. The utility may charge the customer for any deficiency in billing for incorrectly metered electric service for a period equal to one-half the time elapsed since the last previous meter test, but not to exceed six months. Adjustments shall be based on actual monthly consumptions.

   Errors in meter registrations due to "creep" shall be calculated by timing the rate of "creeping" and assuming that the "creeping" affected the meter registration for one-half the time elapsed since the last previous meter test, but not to exceed six months.

2. When the average meter error cannot be determined by test because of failure of part or all of the metering equipment, it shall be permissible to use the registration of check metering installations, if any, or to estimate the quantity of energy used on all available data. The customer shall be advised of the metering equipment failure, and of the basis for the estimated bill. Any adjustment because of failure of metering equipment shall be from the date of the metering equipment failure, if known; or if not known, for a period equal to one-half the time elapsed since the last previous meter test, but not to exceed six months.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-13. Refunds and deficiency billings. Application for refund of any payment to a utility claimed to be in excess of established rates schedules, or

rules and regulations pertaining thereto, shall be made within six years from the date of payment. A utility may not retroactively bill a customer a deficiency charge for service rendered more than six years prior to the date of the bill.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-14. Classification of service.

1. Residential service is defined as service for general household purposes in space occupied as living quarters, such as single private residences, single apartments, fraternity houses and sorority houses, and for garages, or other auxiliary buildings on the same premises used by the residential customer.

2. Commercial service is defined as service to a business enterprise in space occupied and operated for commercial purposes, such as stores, offices, shops, hotels, garages, wholesale houses, filling stations, barber shops, beauty shops, and any other space occupied for commercial purposes.

   A business enterprise operated by an individual, a partnership, or a corporation, may include more than one type of business activity at the same location.

   A landlord renting space to separate business enterprises in the same building may take electric service through a single meter on the commercial service rate provided electric service is furnished for occupants of the building as part of the rent, subject, however, to the provisions restricting master meters contained in section 69-09-02-37.

   If a single business enterprise occupies more than one unit of space in the conduct of the same business, each separate unit will be metered individually and considered a separate service unless the customer makes provision for the necessary circuits to connect the separate units to permit the use of a single meter.

3. A customer occupying a building for residential and commercial purposes jointly may combine the customer's residential and commercial use on the applicable commercial service rate.

4. Other classes of electric service furnished by the utility shall be defined in applicable rate schedules, or in rules and regulations pertaining thereto. Service to customers for which no specific rate schedule is applicable shall be billed on the commercial or general service rate.

History: Amended effective October 1, 1980.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-15. Resale and submetering. Electric service furnished by a public utility under established rate schedules shall not be resold or submetered by a customer unless the rate schedule under which the customer receives service specifically so provides.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-16. Measuring customer service.

1. All electrical energy sold to customers shall be measured by commercially acceptable measuring devices owned and maintained by the utility, except where it is impracticable to meter loads, such as multiple streetlighting, or temporary or special installations, in which case the consumption may be estimated. Every reasonable effort shall be made to measure at one point all electrical quantities necessary for billing a customer under a given rate.

2. All electric service to the same class of customers rendered under the same rate schedule shall be metered with instruments having generally similar characteristics.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-17. Standard frequency.

1. Each utility furnishing alternating current service shall adopt a standard service frequency for its system.

2. Under normal operating conditions the utility shall maintain a frequency of not more than plus or minus three percent of standard frequency.

3. Variations in frequency in excess of those specified herein caused by service interruptions, the action of the elements, temporary separation of parts of the system, or other causes beyond the control of the utility shall not be considered violations of this section.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-18. Standard voltage and allowable variation.

1. Each utility furnishing electric service shall adopt a standard nominal voltage, or voltages, as may be required by the design of its distribution system for its entire constant voltage service area or for each of the several districts into which the distribution system, or systems, may be divided. The voltage maintained at the utility's service terminals as installed for each customer shall be reasonably constant with a

variation in voltage at any time of not more than seven percent above or below nominal voltage. A utility may furnish electric service to a particular customer, or to a group of customers at a specific location, on its system under conditions of voltage variation greater than seven percent if approval thereof is obtained from the commission.

2. Variations in voltage in excess of those specified herein caused by service interruptions, the action of the elements, temporary separation of parts of the utility's system, infrequent and unavoidable fluctuations of short duration, or other causes beyond the control of the utility shall not be considered a violation of this section.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-19. Voltage measurement and voltage records.

1. Each utility shall employ at least one portable indicating voltmeter, and at least one device capable of producing recorded voltage measurements in continuous service at the plant, office, or on a customer's premises. Each utility shall make a sufficient number of voltage measurements to indicate the character of the service furnished to its customers and to satisfy the commission, upon request, of its compliance with established voltage requirements. All voltage measurement records shall be available for inspection by the commission for a period of one year.

2. Each recording voltmeter shall be checked with an indicating voltmeter when it is placed in operation and when it is removed, or periodically if the instrument is in a permanent location.

History: Amended effective January 1, 2002.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-20. Accuracy of portable indicating instruments. All portable indicating electrical instruments used for determining quality of service to customers or for billing purposes, such as voltmeters, ammeters, and wattmeters, shall be checked against suitable secondary reference standards at least once in each twelve months. If the portable indicating instrument is found appreciably in error at zero, or in error by more than two percent of indication at full scale deflection, it shall be adjusted to indicate correctly.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-21. Accuracy of watt-hour meters. Watt-hour meters used for measuring electrical energy furnished to customers shall:

1. Be of proper design for the circuit on which they are used, be in good mechanical condition, and shall register correctly.

2. Not creep at "no load". A meter shall be considered to creep when the load wires are disconnected, and potential is impressed, if the disk makes more than one full revolution in five minutes or less.

3. Be accurate, when used on alternating current circuits, to within plus or minus two percent, at unity power factor, on light load (ten percent of meter reading) and on full load (one hundred percent of meter rating); and to within plus or minus three percent, at fifty percent lagging power factor, on full load (one hundred percent of meter rating).

4. Be accurate, when used on direct current circuits, to within plus or minus two percent on light load (ten percent of meter rating) and on full load (one hundred percent of meter reading).

5. If polyphase meters, have their elements in balance within two percent of full load (one hundred percent of meter rating) at unity power factor, and at fifty percent lagging power factor.

6. If used in conjunction with instrument transformers, for which laboratory test records are available, be adjusted so that the overall accuracy of the metering installation will meet the requirements of this section.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-22. Accuracy of demand meters. Demand meters, demand registers, or demand attachments used to measure electric service to customers shall: be in good mechanical and electrical condition; have proper constants, indicating scale, contact device, and resetting device; not register at no load; and be accurate within the following limits:

1. Curve-drawing meters which record quantity-time curves, and integrated-demand meters, shall be accurate to within plus or minus two percent of full scale deflection throughout their working range. Timing elements measuring specific demand intervals shall be accurate to within plus or minus two percent, and the timing element which serves to provide a record of the time of day when the demand occurs shall be accurate to within plus or minus four minutes in twenty-four hours.

2. Lagging-demand meters shall be accurate to within plus or minus four percent of full scale deflection.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-23. Multipliers and test constants.

1. Meters which are not direct reading, and meters operating from instrument transformers, shall have the multiplier plainly marked on the dial of the instrument or other suitable location, and all charts taken from recording meters shall be marked with the date of the record, the meter number, the customer, and the chart multiplier.

2. The register ratio shall be marked on all meter registers. The watt-hour constant for the meter itself shall be shown on all watt-hour meters.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-24. Instrument transformers.

1. Instrument transformers used in conjunction with metering equipment to measure electric energy furnished to customers shall be in proper mechanical condition and shall have electrical insulation satisfactory for the service on which used.

2. The accuracy of current transformers shall comply with the requirements of American standards association accuracy class 1.2.

3. The accuracy of potential transformers shall comply with the requirements of American standards association accuracy class 0.6.

4. Instrument transformers for special installations may be tested in a laboratory before installation provided the last records are kept to aid in adjusting the meter used in conjunction with the transformer.

5. Current transformers shall be tested for short-circuited primary or secondary turns, high resistance connections, and proper wire connections whenever the metering installation is tested for accuracy.

6. The nameplate voltage ratio of potential transformers shall be checked whenever the metering installation is tested for accuracy.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-25. Meter testing equipment.

1. Each utility shall maintain sufficient laboratories, meter testing shops, secondary standards, instruments, and facilities to determine the accuracy of all types of meters and measuring devices used by the utility.

2. Each utility maintaining primary standards such as precision wattmeters, volt boxes, resistances, and timing devices shall have such standards certified at the time of purchase as to accuracy by a recognized laboratory other than that of the manufacturer of the standard.

3. Utilities not maintaining standardization laboratories may obtain authorization from the commission to have their standards certified for them by an approved laboratory.

4. Secondary watt-hour meter standards shall not be in error by more than plus or minus three-tenths of one percent at loads and voltages at which they are to be used, and shall not be used to check or calibrate working standards unless the secondary standard has been checked and adjusted, if necessary, within the preceding twelve months. A history and calibration record shall be kept for each secondary standard watt-hour meter.

5. Any two or more of at least three watt-hour meters may be used as a secondary standard to check portable rotating standards provided there is no discrepancy in accuracy between any two of the watt-hour meters used by more than two-tenths of one percent at standard test loads. Calibration and history records shall be maintained for each of the meters used as secondary standards.

6. Secondary standard indicating instruments shall not be in error by more than plus or minus one-half of one percent of indication at commonly used scale deflections, and shall not be used to check or calibrate portable indicating instruments unless the secondary standard has been checked and adjusted, if necessary, within the preceding twelve months. A calibration record shall be maintained for each standard.

7. All working rotating standards, when regularly used, shall be compared with a secondary standard at least once a month if they are of the commutator type, and at least once in every six months if of the induction type. Working rotating standards infrequently used shall be compared with a secondary standard before they are used.

8. Working rotating standards shall be adjusted, if necessary, so that their accuracy will be within plus or minus three-tenths of one percent at unity power factor, and within plus or minus one-half of one percent at fifty percent lagging power factor at all voltages and loads at which the standard may be used. A history and calibration record shall be kept for each working rotating standard.

9. The meter accuracies herein required for all primary, secondary, and portable standards shall be referred to one hundred percent. Service measuring equipment shall be adjusted to within the accuracies required assuming the portable test equipment to be one hundred

percent accurate; provided, that a utility may use calibration records to compensate for known errors of secondary standards and working standards in adjusting service measuring equipment.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-26. Meter testing.

1. The testing of any unit of metering equipment shall consist of a comparison of its accuracy with a standard of known accuracy. Meters shall be adjusted as closely as practicable to the condition of zero error, and may be checked for accuracy at the point where they are installed, or at a central testing laboratory, or in a mobile testing laboratory.

2. All meters shall be tested for accuracy before initially placed in service. Metering equipment associated with instrument transformers shall be tested for accuracy on the customer's premises within sixty days after installation and whenever the instrument transformers are changed.

3. Meters shall be tested for accuracy at unity power factor, provided that polyphase meters shall also be checked for accuracy at fifty percent power factor whenever tested.

4. Watt-hour meters, and associated equipment such as demand measuring devices, shall be periodically tested for accuracy in accordance with a plan approved by the commission or the following schedule:

PERIODIC TEST SCHEDULE

Meter Description	To Be Tested At Least Once in Every	
Alternating current meters:		
Up to and including twelve kilovolt-amperes	120	months
Over twelve kilovolt-amperes up to and including one hundred kilovolt-amperes	36	months
Over one hundred kilovolt-amperes	12	months
Direct current meters:		
Up to and including six kilowatts	42	months
Over six kilowatts up to and including one hundred kilowatts	18	months
Over one hundred kilowatts	12	months

The kilovolt-ampere rating of an alternating current, single-element meter, or the kilowatt rating of a direct current meter, is the product of the rated voltage and the rated current. In the case of polyphase or multielement meters, the rating is the product of the rated voltage and the rated current multiplied by the number of meter elements. When meters are connected to and tested in conjunction with instrument transformers, the nominal rating of the transformer shall be used in the determination of the kilovolt-ampere rating of the metering equipment.

5. An electric service utility shall test the accuracy of any meter upon request of the customer, shall provide the customer with a report of the test results, and shall keep the complete original test record and a copy of the report on file in the utility's office.

6. A customer may request in writing to the commission that the utility's test be supervised by a commission representative.

7. The customer may not be charged for the test provided the customer requests no more than one test each twelve-month period, otherwise the utility may charge a tariffed rate. The charge must be waived if the meter error is more than plus or minus two percent.

History: Amended effective July 1, 1997.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-27. Determination of average meter error. Whenever a metering installation is found upon any test to be in error by more than two percent at any test load, the average error shall be determined as follows:

1. If the metering installation is used to measure a load which has practically constant characteristics, such as a streetlighting load, the meter shall be tested under similar conditions of load and the accuracy of the meter "as found" shall be considered as the average error.

2. If a single-phase, or direct current, metering installation is used on a varying load, the average error shall be the weighted algebraic average of the error at light load, with a weighting of one, and the error at heavy load, with a weighting of four.

3. If a polyphase metering installation is used on a varying load, the average error shall be the weighted algebraic average of the error at light load (unity power factor) with a weighting of one, the error at heavy load (unity power factor) with a weighting of four, and the error at heavy load (fifty percent lagging power factor) with a weighting of two.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-28. Meter records.

1. Each utility shall keep a history record of each unit of metering equipment used for measuring service to customers showing date of purchase; utility's identification number; essential nameplate data; associated equipment, if any; dates of tests; results of all "as found" and "as left" tests; and locations where installed together with dates of installation and removal. A utility may keep separate records at different locations on its system for each unit of metering equipment in lieu of a history record provided that said records include all data required on a history record and that the two most recent tests records are retained. Only the most recent test record need be kept if a complete history record is maintained.

2. A test record shall be made whenever a unit of metering equipment is tested. The test record shall show the utility's identification number; nameplate data; location of the unit; equipment with which the device is associated; date of test; reason for test; register readings before and after the test; a statement as to whether the meter "creeps", and in case of creeping, the rate; a statement of "as found" and "as left" accuracies sufficiently complete to permit checking of the calculations; an indication that all required checks have been made; a statement of repairs made, if any; identification of test standard used; and name of person making the test.

3. Each utility shall file with the commission annually a summary report of all meter tests made during the year on forms to be supplied by the commission.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-29. Location of meters.

1. Meters on customers premises shall be installed in locations free of conditions detrimental to the metering equipment, and where the metering equipment will not create a hazard, or be inconvenient for servicing or reading. Meters shall be located so that there is not less than three feet [.91 meters] of unobstructed space in front of the meter, and so that the top of the meter is not less than four feet [1.22 meters], nor more than seven feet [2.13 meters], above the floor, ground, or permanent platform.

2. Outdoor meters shall be mounted securely on rigid structures such as yard poles, houses, garages, or other buildings. Outdoor meters shall be located so that they will not be subject to damage by passing objects.

3. Indoor metering equipment shall be located as near as practicable to the point where service enters the building, and shall be mounted securely

on a permanent structure in a location free from excessive moisture, high temperature, and vibration. Meters shall not be placed in attics, living rooms, bathrooms, toilets, bedrooms, over doors or windows, or in any location where annoyance or inconvenience might be caused by servicing or reading the meter. When two or more meters are installed in an office, apartment, or other building, the meters shall be placed side by side on the same meter board with a distance between centers of not less than seven and one-half inches [19.05 centimeters] for alternating current meters and fifteen inches [38.1 centimeters] for direct current meters.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-30. Public interest. The public has a paramount right to:

1. All forms of public service efficiently rendered at a reasonable cost.

2. Require that public service facilities shall be so constructed and maintained as not to constitute a hazard to life and property.

3. Establish regulations which will permit the full economic use of public rights of way for the distribution of all classes of utility service.

General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-31. Cooperation. A utility contemplating new construction, or changes in construction or operating conditions of its facilities, should make every reasonable effort to avoid conflicts or interference with other public service facilities in situations or proximity. It shall be the duty of utilities concerned to cooperate, and to adopt, after full consideration of all factors, the best engineering solution to problems of conflict and interference due to unavoidable proximity of facilities.

General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-32. Advance notice. It shall be the duty of a utility to give advance notice (at least sixty days where practicable, but not less than twenty days) to other utilities serving in the same general territory of contemplated new construction, or of changes in construction of operating conditions of its facilities in situations of existing or anticipated proximity.

General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-33. Principle of least cost. It shall be the duty of utilities, when coordination of facilities is necessary to avoid or mitigate conflicts or interference, to adopt, after a full consideration of all factors, the most practicable method which

provides the greatest present and future economy and convenience in rendering the services involved irrespective of whether the selected method applies to electric supply or signal systems or both.

General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-34. Location of lines. In situations where communication lines and electric supply lines on the same right of way are not to occupy joint poles or where either kind of line is alone on a right of way, all communication lines should be placed on one side of the right of way and all electric supply lines should be placed on the other side.

In the construction or reconstruction of electric supply and communication lines, unnecessary crossings of the right of way from side to side should be avoided.

Overbuilding of one line by another line should be avoided where practicable. Where necessary for different types of lines to occupy the same side of a right of way, joint use is generally preferable to overbuilding.

General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the 2007 edition of the National Electrical Safety Code, issued August 1, 2006, which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003; July 1, 2008.
General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-36. Raising and lowering electric supply and communication lines.

1. If the circumstances necessitate the raising or lowering of electric supply or communication lines to permit the movement of buildings or other bulky objects, the person in charge of such movement shall give the official in charge of the lines preliminary advance notice thereof not less than ninety-six hours prior to the time of crossing, unless a shorter notice is mutually agreed upon. The preliminary advance notice shall include the following information:

    a. The name and address of the owner, and mover, of the building or other object to be transported.

b. The location of the proposed crossings.

c. The height, when mounted, of the building or other object aboveground.

The person in charge of the movement of a building or other bulky object shall give the official in charge of electric supply or communication lines final advance notice not less than twenty-four hours prior to the time of crossing, and shall then specify the day and hour of arrival at the proposed crossings.

If, in the opinion of the official in charge of electric supply or communication lines, the proposed crossings will necessarily cause a serious interruption of services provided by the line, then the raising or lowering of the line shall be made at such time as to cause least inconvenience to the users thereof. The time of crossing, in that case, shall be fixed by the official in charge of the line after due consideration of all factors involved, including any requirements imposed by law upon the mover; but, except by mutual agreement, the time shall not be later than twenty-four hours after the time of crossing specified in the final advance notice. However, if, in the opinion of the official, any interruption of service provided by the line will materially affect public health, safety, or welfare, then the official in charge of the line may petition the commission for authority to refuse the request for crossing. The official in charge of electric supply or communication lines may require that all requests for crossing of lines under the official's supervision be in writing.

2. The person in charge of the movement of a building or other bulky object which will necessitate the raising or lowering of electric supply or communication lines shall ascertain, in advance, the ownership of all lines along the proposed route of travel, and shall give the official in charge of each line due notice of proposed crossings as provided for in this section.

3. The official in charge of electric supply or communication lines may require that any person requesting the raising or lowering thereof to permit the movement of a building or other bulky object shall deposit, in advance, the estimated cost of raising or lowering and restoring the lines. The official shall promptly notify the person requesting the raising or lowering of lines that a deposit will be required. The deposit shall be made not less than twenty-four hours prior to the time of the proposed crossing, unless a lesser time is agreed upon. Any amount of the deposit in excess of the cost of raising or lowering and restoring the lines shall be refunded to the depositor. If the cost thereof exceeds the deposit, the person making the request shall promptly pay any amount in excess of the deposit.

4. After compliance with all requirements provided for in this section, the official in charge of the electric supply or communication lines shall proceed to raise or lower the lines to permit the movement of buildings or other bulky objects at the time agreed upon, or as specified in the final advance notice.

5. The person in charge of the movement of a building or other bulky object shall notify the official in charge of electric supply or communication lines in advance of the specified time of crossing of any probable delay in arriving at the proposed crossings. Likewise, the official in charge of the lines shall promptly notify the mover of any unavoidable delay in raising or lowering lines at the proposed crossings.

6. Any person required to pay for the raising or lowering and restoring of electric supply or communication lines shall, upon request, be furnished an itemized statement showing in detail all costs incurred.

7. If any charge is made for the raising or lowering and restoring of electric supply or communication lines, the official in charge of said lines shall make and keep, for a period of not less than one year, a record of all direct costs incurred each time the lines under the official's supervision are raised or lowered to permit the movement of a building or other bulky object. However, if the cost of raising or lowering and restoring a particular line exceeds fifty dollars, records shall be made and kept, for a period of not less than one year, showing the following additional information:

   a. The original written request for crossings, if submitted in writing, and a notation of the day and hour received.

   b. A memorandum of an oral request for crossing, noting thereon the day and hour received, and any other pertinent information.

   c. The location of the crossing, or crossings.

   d. The estimated cost of the crossings, if quoted; and the amount of deposit received, if any.

   e. The day and hour the electric supply or communication lines were ready for crossing.

   f. The day and hour the crossing was completed.

   g. The number of wires involved, whether wires were raised or lowered to permit crossing, and any other pertinent information regarding work performed and time required to complete the job.

h. The vertical clearance in feet [meters] of lowest wire aboveground before wires were raised, if the owner or mover of the building or other object requests that information.

i. If an electric supply line, the normal voltage between wires, and whether line was deenergized.

j. Names of crew members assigned to job; hours worked by each crew member; method of transportation, indicating miles [kilometers] traveled or time required; and a list of materials used on the job.

8. The charges which may be assessed for the raising or lowering and restoring of electric supply or communication lines shall be the direct cost incurred.

9. Any official in charge of electric supply or communication lines who fails, except for good cause, to have the lines raised or lowered to permit the movement of buildings or other bulky objects at the time specified, as provided for in this section, shall be deemed to have violated this chapter.

General Authority: NDCC 49-02-21
Law Implemented: NDCC 49-02-21

69-09-02-37. Electric master metering prohibited - Exception.

1. Applicability. This section is applicable to any new or substantially remodeled commercial or residential building containing more than one unit or any other multiple use facility in which the occupant of each unit has control over a portion of the electric energy used in the building or facility. This section is applicable to those buildings or facilities on which construction or substantial remodeling is commenced on or after November 1, 1980. This section is not applicable to hotels, motels, dormitories, nursing homes, homes for the elderly, or similar facilities, or to low income rental housing in which the cost of electricity is included in the rent and where the amount of the rental payment is based upon the tenant's ability to pay.

2. Master metering of electric service in new or substantially remodeled buildings is prohibited, except to the extent determined appropriate by the commission pursuant to subsection 3.

3. An owner or builder of a new or substantially remodeled building may petition the commission for approval of master metering of electric service. The commission may approve the petition if the owner or builder affirmatively demonstrates to the satisfaction of the commission that the costs of purchasing and installing separate meters in such

building exceed the longrun benefits of separate metering to the customers in such building.

History: Effective October 1, 1980.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-38. Advertising by electric utilities.

1. Definitions. For purposes of this section:

   a. "Advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's electric customers.

   b. "Institutional advertising" means advertising which has as its primary objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public and investors.

   c. "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

   d. "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use the utility's service.

   e. "Institutional advertising", "political advertising", and "promotional advertising" do not include:

      (1) Advertising which informs electric customers how they can conserve energy or can reduce peak demand for electric energy.

      (2) Advertising required by law or regulations.

      (3) Advertising relating to service interruptions, safety measures, or emergency conditions.

      (4) Advertising concerning employment opportunities with an electric utility.

      (5) Advertising which promotes the conservation of limited resources, the use of more plentiful resources, or the use of energy efficient appliances, equipment, or services.

(6) Any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

(7) Advertising determined by the commission to benefit customers and serve the public interest.

2. Any expenditure by the utility for institutional, promotional, or political advertising shall be excluded from operating expenses in the cost of service determination for ratemaking purposes.

3. Advertising expenditures which are reasonable in amount and which are not excluded by the provisions of this section may be included as operating expenses in the cost of service determination for ratemaking purposes.

History: Effective October 1, 1980.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-02-39. Automatic adjustment clauses.

1. As used in this section, the term "automatic adjustment clause" means a tariff provision that provides for increases or decreases, or both, without prior hearing, in rates reflecting increases or decreases, or both, in energy costs incurred by an electric utility.

2. An automatic adjustment clause that does not conform to the principles set out in this section may not be in the public interest. This section contemplates that the filing of a proposed rate tariff that includes a nonconforming automatic adjustment clause may result in suspension of all or part of the tariff.

3. The automatic adjustment clause must be in a form that provides for periodic adjustments per kilowatt-hour of sales equal to the difference between the energy cost per kilowatt-hour of sales in the base period and in the current period in accordance with the following formula:

Adjustment Factor = (Fm - Sm) - (Fb - Sb)

For the purposes of this formula: "Fm" is the expense of fossil and nuclear fuel in the current period; "Fb" is the expense of fossil and nuclear fuel in the base period; "Sm" is the kilowatt-hour sales in the current period; and "Sb" is the kilowatt-hour sales in the base period. The energy costs per kilowatt-hour for the current period shall be calculated from data covering actual costs from the most recent four-month period as follows: Energy costs for actual months 1, 2, 3, and 4 plus unrecovered (or less overrecovered) prior cumulative energy costs divided by kilowatt-hour sales for actual months 1, 2, 3, and 4 equals the energy cost adjustment for month 6.

4. Energy costs (F) are the cost of:

   a. Fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants;

   b. The actual identifiable fuel costs associated with energy purchased for reasons other than those identified in subdivision c;

   c. The net energy cost of energy purchases, exclusive of capacity or demand charges, irrespective of the designation assigned to such transaction, when such energy is purchased:

      (1) On an economic dispatch basis. Included therein may be such costs as the charges for economic energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy;

      (2) From a renewable energy source, including hydropower, wood, windpower, and biomass; and

      (3) From a qualifying facility as defined in 18 CFR part 292;

   d. Less the cost of fuel recovered through intersystem sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

5. Sales (S) are all kilowatt-hours sold, excluding intersystem sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of:

   a. Generation;

   b. Purchases;

   c. Interchange-in; less

   d. Energy associated with pumped storage operations; less

   e. Intersystem sales referred to in subdivision d of subsection 4; less

   f. Total system losses.

6. The adjustment factor developed according to this procedure must be modified to properly allow for losses (estimated if necessary) associated only with wholesale sales for resale.

7. The cost of fuel other than nuclear may include only those items listed in Account 151 of the Uniform System of Accounts for Public Utilities and Licensees. The cost of nuclear fuel is that in Account 518, to the extent that the cost has not already been included in the cost of other fuel.

8. If the current price of fuels is in litigation or otherwise being collected subject to refund, the utility shall advise the commission and shall keep a separate account of amounts paid that are subject to refund, and shall advise the commission of the final outcome.

9. Notice of change in the adjustment must be filed with the commission prior to billing. The notice must include:

   a. Workpapers calculating the adjustment; and

   b. To the extent possible, an explanation of market and other factors causing the change.

10. If a particular circumstance prevents the use of a standard or its use would result in an undue burden, the commission may for good cause shown, permit deviation from a standard.

11. The commission may review an automatic adjustment clause at any time to ensure the maximum economies in those operations and purchases which affect the rates to which the clause applies. The commission's review may include an evidentiary hearing. In making this review, the commission may examine and, if appropriate, cause to be audited, the practices of a utility relating to costs subject to an automatic adjustment clause, and may require any filings and reports that may be necessary to carry out the review, including volumes, prices, and contracts for all fuel and electric energy from all sources and a disclosure of any affiliation between the electric utility and the seller of fuel, electric energy, or other items to the utility.

12. Each utility shall cause an independent audit of its automatic adjustment clause to be performed annually. A copy of the auditor's report must be filed annually with the commission.

History: Effective October 1, 1980; amended effective February 1, 1995.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

CHAPTER 69-09-05.1
ACCOUNTING PRACTICES

Section	
69-09-05.1-01	Accounting Practices - Rate-Regulated Telecommunications Companies
69-09-05.1-02	Accounting Practices - Rate-Regulated Gas Companies
69-09-05.1-03	Accounting Practices - Rate-Regulated Electric Companies
69-09-05.1-04	Accounting Practices - Allowance for Funds Used During Construction for Rate-Regulated Gas Companies
69-09-05.1-05	Accounting Practices - Allowance for Funds Used During Construction for Rate-Regulated Electric Companies

69-09-05.1-01. Accounting practices - Rate-regulated telecommunications companies. The system of accounts used by all North Dakota telecommunications companies subject to rate regulation by the commission shall conform to the uniform system of accounts set forth in title 47, Code of Federal Regulations, part 32, prescribed by the federal communications commission by order of May 1, 1986, which is adopted by reference.

History: Effective March 1, 1988; amended effective August 1, 1994.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-12

69-09-05.1-02. Accounting practices - Rate-regulated gas companies. The system of accounts used by all North Dakota natural gas distribution companies subject to rate regulation by the commission must conform to the uniform system of accounts set forth in title 18, Code of Federal Regulations, part 201, prescribed by the federal energy regulatory commission.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-12

69-09-05.1-03. Accounting practices - Rate-regulated electric companies. The system of accounts used by all North Dakota electric companies subject to rate regulation by the commission must conform to the uniform system of accounts set forth in title 18, Code of Federal Regulations, part 101, prescribed by the federal energy regulatory commission.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-12

69-09-05.1-04. Accounting practices - Allowance for funds used during construction for rate-regulated gas companies. A North Dakota natural gas distribution company subject to rate regulation by the commission may not capitalize allowance for funds used during construction (AFUDC) as prescribed in

title 18, Code of Federal Regulations, part 201, for projects costing less than ten thousand dollars and taking less than thirty days to complete.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-12

69-09-05.1-05. Accounting practices - Allowance for funds used during construction for rate-regulated electric companies. A North Dakota electric company subject to rate regulation by the commission may not capitalize allowance for funds used during construction (AFUDC) as prescribed in title 18, Code of Federal Regulations, part 101, for projects costing less than ten thousand dollars and taking less than thirty days to complete.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-12

ARTICLE 69-10

TESTING AND SAFETY DIVISION

Chapter	
69-10-01	Weights and Measures - General
69-10-02	Scales
69-10-03	Standards
69-10-04	Service Registration
69-10-05	Oil and Gas Metering Systems [Repealed]

CHAPTER 69-10-01
WEIGHTS AND MEASURES - GENERAL

Section	
69-10-01-01	Definitions
69-10-01-02	Installation by Other Than a Registered Service Person
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69-10-01-07	Sale of Liquid Fuels on Other Than Gross Volume Basis Prohibited [Repealed]
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69-10-01-09	Bulk Liquid Fuel Meters [Repealed]
69-10-01-09.1	Bulk Liquid Fuel Meters - Retail Sales
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69-10-01-10	Examination of Records
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69-10-01-14	Inspection and Testing Accessibility
69-10-01-15	Devices Taken Out of Service
69-10-01-16	Service Contracts
69-10-01-17	Manufacturer Design Deviations and Limitations

69-10-01-01. Definitions. As used in article 69-10:

1. "Automatic bulk weighing system" means a weighing system which weighs grain in successive drafts, automatically records the no-load and loaded weight values, and accumulates the net weight of each draft.

2. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.

3. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.

4. "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.

5. "Equipment repair notice tag" means a tag that allows a device to be operated for sixty days from its inspection date pending correction of cited defects relating to the device or any of its required peripheral equipment. The tag defaults to a rejection tag if the device is not in compliance within sixty days.

6. "Liquid or LPG computing pump" means a device that provides fuel or LPG to a consumer.

7. "NIST" means the United States department of commerce, national institute of standards and technology.

8. "Not sealed" means a sticker or seal applied to a device which has not been inspected and tested, does not meet applicable design or tolerance requirements, or is no longer being used commercially. A device that is not sealed shall not be used in commerce.

9. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested under the self-certification rules.

10. "Registered service person" means a person or agency authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to repair and certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.

11. "Rejected for repair" means a sticker or seal applied to a device which has been inspected and tested and does not meet applicable design or tolerance requirements. A device that is rejected for repair shall be modified or repaired by a registered service person within thirty days of

the date it was rejected and may not be used in commerce until placed into service.

12. "Retail fuel device" means a commercial, indicating fuel pump used to deliver fuel to individual highway vehicles in quantities of one hundred gallons [378.54 liters] or less per transaction.

13. "Seal" means marking a weighing or measuring device to show certification or rejection.

14. "Security seal" means either a lead and wire pressure-sensitive seal, a plastic and wire pressure-sensitive seal, or a sealing sticker, permanently attached to a weighing or measuring device to prevent unauthorized access to the tolerance-adjusting mechanisms of that device.

15. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.

16. "Split-weighing" means determining the weight of a vehicle, combination vehicle, or a commodity by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combinations.

17. "Standard" means test equipment used for certifying weighing or measuring devices.

18. "Variance permit" means a temporary or permanent suspension of a particular rule granted to an owner or operator of a commercial weighing or measuring device because of an economic hardship, a site restriction requiring modification to the design or installation of a device, or a special installation or operational condition, to be determined by the commission on a case-by-case basis.

19. "Weights and measures inspector" means a commission employee in the testing and safety division performing duties set by the commission.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; August 1, 2000; January 1, 2002; March 1, 2003; November 1, 2003; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-03

69-10-01-02. Installation by other than a registered service person. A person, other than a registered service person, who installs a commercial weighing or measuring device must report the installation to the commission within seven working days from the day the installation was completed. The device must then

be certified by a weights and measures inspector or a registered service person, as allowed by section 69-10-04-02.1, before the device can be used in commerce.

History: Amended effective April 1, 1992; August 1, 1993; July 1, 1997; July 1, 1998.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.1. Certification. A weighing and measuring device may only be certified for commercial use by the commission or a registered service person. Certification must take place at the location of intended use unless the device is otherwise designed, in which case the device must be tested by the commission at the location of intended use within fifteen months of its installation. The commission may certify a weighing or measuring device by actual testing of the device, or by witnessing the test.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.2. Repair and calibration. A commercial weighing and measuring device may only be repaired, tested, calibrated, and placed into commercial service by a registered service person, or tested and adjusted, as allowed by law, and certified for commercial service by the commission, whichever is applicable.

History: Effective July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.3. Recertification. The commission or a registered service person may inspect, test, and calibrate a commercial weighing or measuring device annually. The owner of any commercial weighing or measuring device is responsible for its accuracy and must have it tested once every fifteen months. Commission staff shall issue a written compliance order to the owner or operator of any commercial device that has not been tested within the fifteen-month time limit. The compliance order must allow thirty days for the owner of the device to have it recertified by a registered service person. Failure to comply with a compliance order within the thirty-day time limit will cause the device to be removed from commercial service.

History: Effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03. Sealing. A weighing or measuring device used in commerce must be certified and sealed. A security seal must be installed where applicable, to prevent adjustments to the calibration of the device. An adhesive sticker that is of

sufficient quality that it remains readable and unaffected by the elements must be installed externally to show visual proof of certification. It is unlawful to remove, or allow to be removed, an official tag or seal without commission approval. Effective January 1, 1995, an adhesive sticker must contain the following information: name and telephone number of the commission or registered service company certifying the device, the words "tested and approved", and the month and year of certification.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997; July 1, 1998; January 1, 2002; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03.1. Registration of a new or moved commercial device. A written report must be filed with the commission by the owner or operator of any new commercial weighing or measuring device and any commercial weighing or measuring device that has been moved from its original location of certification within seven working days of installation or relocation.

History: Effective July 1, 1997; amended effective July 1, 1998; January 1, 2002.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03.2. Equipment repair notice - Applicable usage. An equipment repair notice tag may be used in the following circumstances:

1. During the period any one of the following is pending:
   a. Response to a variance permit request;
   b. Completion of design requirements; or
   c. Repair of required peripheral equipment;
2. When a point of sale liquid-measuring device:
   a. Is a retail liquid-measuring device that is no more than two cubic inches [32.77 milliliters] outside of the applicable tolerance for over-registration or ten cubic inches [163.87 milliliters] outside the applicable tolerance for under-registration, using a five gallon [18.93 liter] test measure;
   b. Is a vehicle tank or wholesale liquid-measuring device that is no more than twenty-two cubic inches [360.52 milliliters] outside of the applicable tolerance for over-registration or one hundred cubic inches [1638.71 milliliters] outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] prover;

c. Is an LPG liquid-measuring device that is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or five percent outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] test with a one hundred gallon [378.54 liter] prover;

d. Is an LPG or anhydrous ammonia liquid-measuring device equipped with an automatic temperature compensating system, the allowable error difference between an activated and not activated mechanical or electronic automatic temperature compensating system is no more than one-half of one percent outside of the applicable tolerance for over-registration or under-registration; or

e. Is a liquid hydrocarbon or agri-chemical measuring device that has an automatic temperature compensating system, the difference between the meter error (expressed as a percentage) for results determined with and without the mechanical or electronic automatic temperature compensating system activated may be no more than one-tenth of one percent outside of the applicable tolerance for over-registration or under-registration;

3. When a point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or two scale divisions outside the applicable tolerance for under-registration; or

4. When a point of purchase or point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or under-registration.

History: Effective March 1, 2003; amended effective November 1, 2003; May 1, 2005; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-04. Registration of new devices - Moving existing devices. Repealed effective April 1, 1992.

69-10-01-04.1. Variance permit requests. The operator of any commercial weighing or measuring device, other than an operator seeking a split-weigh variance permit under section 69-10-01-04.2, may make written request for a variance permit from the commission under North Dakota Century Code section 64-02-02. The request for a variance permit must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;

2. A plan for compliance over a period not to exceed one hundred eighty days if the variance permit request results from a rejection; or, a plan for compliance over a period not to exceed five years if the variance request results from economic hardship. Through reapplication, the economic hardship variance may be a permanent variance permit provided the applicant can show that compliance will continue to cause economic hardship;

3. The manufacturer's name, type, location, serial number, deck length, and capacity of the device;

4. The maximum amount that will be weighed on the device, along with a certified letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard (if applying for a variance permit that will allow a device to be used beyond its rated sectional or concentrated load capacity);

5. Detailed information showing that compliance with specific regulations will cause economic hardship (if applicable to the variance permit request); and

6. Any other information the operator believes may expedite the variance permit request.

A variance permit granted by the commission is a temporary variance permit and does not become permanent until sufficient time to conclude inspection and testing (usually two years) has elapsed. A notice of the variance permit must be conspicuously posted on the device during the time the temporary variance permit is in effect.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-04.2. Split-weigh variance permit requests. The operator of any motor truck or motor truck dump scale installed after April 1, 1965, may make written request for a permanent split-weigh variance permit from the commission under North Dakota Century Code section 64-02-02. The request for a variance permit must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;

2. The manufacturer's name, type, location, deck length, serial number, and capacity of the device;

3. The maximum amount of weight that will be placed upon the device at any time during the split-weighing operation. If that maximum weight exceeds the rated sectional capacity or concentrated load capacity of the device, the applicant must also include a letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard;

4. The maximum distance between the front and rear outer axles of the vehicle or coupled-combination vehicle that will be split-weighed;

5. A statement in the variance permit request certifying that each axle of the vehicle or each axle of the coupled-combination vehicle will rest on a straight surface, in the same plane with, and not to exceed one-third inch [8.47 millimeters] per foot [30.48 centimeters] out of level with, the scale deck during the split-weighing operation;

6. A statement in the variance permit request agreeing to the following procedures to be observed during the split-weighing operation:

   a. Use of the vehicle brakes is prohibited;

   b. The vehicle transmission must be in neutral; and

   c. Chocking of the vehicle's wheels should be discouraged.

7. For an operator of a motor truck or motor truck dump scale installed after April 1, 1995, a temporary variance permit will be issued only if the operator has substantiated that it is unable to install a scale of sufficient length to allow single-draft weighing due to economic hardship. If the operator chooses to pursue the plea of economic hardship, then the operator's split-weigh variance permit request must also include a plan for compliance over a period not to exceed five years. Through reapplication, at the end of the five-year period, the economic hardship temporary variance permit may be made a permanent variance permit provided the operator can show that compliance will continue to cause economic hardship.

History: Effective February 1, 1996; amended effective July 1, 1997; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-04

69-10-01-05. Rejected devices. Once a weighing or measuring device has been rejected, the device may not be used in commerce. The commission may install a security seal on the device to prevent its use until the device has been retested and certified or a variance permit has been granted.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-05.1. Inactive weighing or measuring devices. An inactive commercial weighing or measuring device unused or tagged "not sealed" for longer than one year, must meet all current state laws and rules before it may be retested and certified, unless the operator receives a variance permit allowing for the use of the device.

History: Effective September 1, 1994; amended effective July 1, 1997; July 1, 2008.
General Authority: NDCC 28-32-02, 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-04

69-10-01-06. Liquefied petroleum gas meters. Repealed effective April 1, 1992.

69-10-01-06.1. Liquefied petroleum gas meters - Temperature compensation. All sales of liquefied petroleum gas in a liquid state shall be made through a meter having an automatic temperature conpensator. The compensator shall be connected, operable, and in use at all times.

History: Effective February 1, 1996.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-03

69-10-01-07. Sale of liquid fuels on other than gross volume basis prohibited. Repealed effective July 1, 2008.

69-10-01-08. Assisting inspector. When requested, the owner or operator of any commercial weighing or measuring device shall supply access and assistance to the division inspector in movement of the test weights to and from and on and off the scale for testing purposes, or for returning liquids to aboveground or belowground storage tanks. Failure to provide inspector access and assistance in a timely manner may be grounds for tagging the device "not sealed".

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-09. Bulk liquid fuel meters. Repealed effective August 1, 2000.

69-10-01-09.1. Bulk liquid fuel meters - Retail sales. Meters designed for bulk loading use may not be used for retail fuel sales without first obtaining a variance from the commission, which may be granted for no longer than six months.

History: Effective September 1, 1994.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-09.2. Bulk liquid fuel meters - Marking. A bulk liquid fuel meter used in commerce and not marked from the manufacturer with the liquid to be measured must be sealed with a tag indicating the product for which the meter is designed to deliver, or the liquid used to certify the meter if other than the design liquid.

History: Effective September 1, 1994.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-09.3. Bulk liquid fuel meters - Design use. A bulk liquid fuel meter may not be used for the commercial delivery of any liquid fuel that is not substantially similar in physical properties to the liquid fuel for which it was designed, tested, and certified.

History: Effective September 1, 1994.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-10. Examination of records. The commission may obtain copies of, and examine any weigh ticket, weigh receipt, meter printer ticket, or any other record of sale resulting from the operation of any commercial weighing or measuring device.

History: Effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-10.1. Retention of records. A record of a sale such as a weigh ticket, weigh receipt, meter printer ticket, or any other record resulting from the operation of any commercial weighing or measuring device must be maintained on file at the place of sale for a period of not less than two years from the date of sale.

History: Effective July 1, 1998.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-11. Device adjustments. State weights and measures inspectors may not make adjustments to a commercial weighing or measuring device other than to zero a device or adjust the level on certain counter, dormant, and platform scales.

History: Effective September 1, 1994; amended effective July 1, 1997; November 1, 2003.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-12. Sale of anhydrous ammonia. The sale of anhydrous ammonia after January 1, 1999, on any basis other than by certified scale or

certified meter by any new or newly expanded anhydrous ammonia dealer is prohibited.

History: Effective July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-13. Enforcement. An operator of a commercial weighing and measuring device shall ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in state and national institute of standards and technology handbook no. 44 requirements (1999 edition). The commission may require proof of compliance. The commission may file a complaint for noncompliance, and, in addition to other appropriate sanctions, assess civil penalties under North Dakota Century Code chapter 49-07 after notice and opportunity for hearing on the complaint.

History: Effective May 1, 2005; amended effective July 1, 2008.
General Authority: NDCC 49-07, 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-14. Inspection and testing accessibility. A commercial weighing or measuring device must be installed so that it is easily accessible for inspection and testing.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-15. Devices taken out of service. When a state weights and measures inspector or a registered service person removes a commercial weighing or measuring device from service, the inspector or registered service person shall notify the commission in writing within seven working days of the removal.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-16. Service contracts. Registered service companies shall notify the commission of any service contract that provides for annual certification of a commercial device. Notification must be given no later than thirty days from the date of the verbal or written contract. Commercial devices under service contract that have not been tested within twelve months may be scheduled for testing by the commission.

History: Effective May 1, 2005; amended effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-17. Manufacturer design deviations and limitations. Deviations from the manufacturer's design, installation specifications, intended application, or established limits applicable to any commercial weighing or measuring device are not permitted without approval from the manufacturer's engineering authority and a variance permit granted by the commission.

History: Effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-02
SCALES

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69-10-02-01. Livestock scales - Specifications. A commercial livestock scale must be equipped with a type registering print device, and the value of the minimum graduated interval must not be greater than five pounds [2.27 kilograms], provided, however, that for scale capacities in excess of fifty thousand pounds [22679.6 kilograms] the scale may indicate and record in ten-pound [4.54-kilogram] divisions. A scale rack on a livestock scale must be securely mounted on the scale platform, with adequate clearance between the outside of the rack and other obstructions. The steel yard or beam rod must be connected directly to the transverse lever.

History: Amended effective July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-02. Livestock scales - Installation. All livestock scales must be installed so as to permit ready access for large capacity testing equipment. At the one end of a livestock scale there must be a straight concrete approach the full width of the scale platform, in the same plane as the scale platform and equal in length to the width of the scale platform in order to provide a clean and level area for the purpose of unloading test weights used in testing the scale. Provisions must be made to allow the test truck to back up to the approach by providing an entrance of adequate height and width to enable the test truck to be reasonably level when weights are unloaded. A livestock scale newly constructed after July 1, 1993, must have a minimum entrance and approach width and height of twelve feet [3.66 meters].

A livestock ring scale constructed after January 1, 1998, must have an approach that is level with the scale platform and at least twenty-eight feet [8.53 meters] in length and ten feet [3.05 meters] in width.

History: Amended effective August 1, 1993; July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-02.1. Livestock scales - Certification. All livestock scales under the jurisdiction of the federal packers and stockyards administration must be certified once every six months. The scales may be certified by either a weights and measures inspector or a registered service person.

History: Effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-03. Twister head extensions. The twister head extensions cannot be used under any conditions in the installation of motor truck, motor truck dump, or livestock scales. Extension levers used on motor truck, livestock, or motor dump truck scales must be securely anchored to or suspended from concrete of the neck or walls of the scale pit.

History: Amended effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-04. Steel yard rod. The steel yard rod connecting the weighbeam to the transverse lever on all scales must be installed or shielded to prevent interference.

General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-05. Portable pitless scales and portable hopper scales. A self-contained portable pitless scale and a self-contained portable hopper scale used solely to weigh materials used for government highway construction

are exempt from the provisions of this article. Installation and operation of a self-contained portable pitless scale and a self-contained portable hopper scale for commercial use without a variance permit from the commission is prohibited.

History: Amended effective April 1, 1984; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-05.1. Fixed pitless scales. A fixed pitless scale must have at least twelve inches [304.80 millimeters] of clearance between the "I" beam and the slab and the piers must extend down below the frostline and must be installed to manufacturer's specifications to support the device, prevent shifting, and provide protection from the environment.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-06. Clearances - Drainage - Pit entrances. Motor truck, motor truck dump, and livestock scales, other than fixed pitless scales, regardless of capacity, must have a clearance of not less than four feet [12.19 decimeters] from the finished floorline of the scale pit to the bottom of the "I" beam of the scale bridge. A five-eighths-inch [15.88-millimeter] clearance must be provided between the live deck and the pit coping. A "crushing strip" or "rock guard" must be installed in the event a concrete deck is installed on a scale; wood decks must be undercut around deck to prevent foreign material from lodging between deck and coping. Scale pits must be kept reasonably clean and dry at all times, and adequate drainage must be provided. Convenient entrances to the scale pit must be provided for the purpose of inspecting and cleaning.

History: Amended effective August 1, 1993; September 1, 1994.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-07. Foundation and supports. The foundation and supports of any scale installed in a fixed position shall consist of reinforced concrete of sufficient strength to ensure rigidity and permanence. The fulcrum stands for the levers or the load cells of large capacity scales must be installed on level piers with a minimum of grouting. All footings must be of adequate depth to extend below the frostline.

History: Amended effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-08. Deviations from manufacturer's design. Repealed effective July 1, 2008.

69-10-02-09. Deck lengths.

1. A motor truck or motor truck dump scale installed and operational before January 1, 1995, must have at least twelve feet [3.66 meters] or a distance equal to one-third of deck length, whichever is greater, of straight driveway on either end of the scale deck not over one-third inch [8.47 millimeters] per foot [30.48 centimeters] out of level with the platform. The first twelve feet [3.66 meters] from the scale must be of a hard surface (concrete or asphalt). An inside scale must measure a minimum of four feet [1.22 meters] of metal, wood, asphalt, or reinforced concrete between the scale deck and the inside of the doorsill at both ends of the scale.

2. A motor truck or motor truck dump scale installed on or after January 1, 1995, must have at least twelve feet [3.66 meters] or a distance equal to one-third of deck length, whichever is greater, of straight approaches beginning in a level plane with the surface of the scale deck. The slope of the approaches away from the scale deck may not exceed one-third inch [8.47 millimeters] per foot [30.48 centimeters]. The first twelve feet [3.66 meters] of approach from the scale must be of metal or concrete. An inside scale must measure a minimum of five feet [1.52 meters] of reinforced concrete between the scale deck and the inside of the doorsill at both ends of the scale. However, grating of sufficient strength to withstand all loads equal to the concentrated load capacity of the scale may be installed on either end of that inside scale.

History: Amended effective September 1, 1994; February 1, 1996.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-10. Indicating and printing elements. A beam-type or dial-type indicating element must be installed in a level and plumb position, mounted on concrete piers, or on a concrete slab, and fastened securely to the concrete walls or neck of the scale pit. These mechanical indicating element foundations must be independent of the scalehouse floor, weighing room, or other similar structures. The installation of a dial must allow for adequate clearance for service between the cabinet of the dial and the wall. Motor truck, motor truck dump, railroad track, and livestock scales installed after July 1, 1973, and used in commerce, must be equipped with a ticket printing device with a copy of the printed receipt issued to the customer at the time of the delivery. Notwithstanding the above, for a scale installed prior to July 1, 1973, equipped with any type of ticket printing capability, its operator must use that ticket printing capability for all sales, with a copy of the printed ticket to be issued to the customer at the time of the delivery. A shoulder or stop must be provided on each weighbeam bar to prevent the poise from traveling

and remaining behind the zero graduation. An indicating or printing element must be adequately protected against environmental damage.

History: Amended effective August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-11. Limits established by factory-rated scale capacity. Repealed effective July 1, 2008.

69-10-02-12. Observation windows or video cameras. Windows must be provided and must be located in such a position and manner so that the scale operator has full view of the scale platform and weighing operation from the scale operator's working position, and that the weighman and indicating elements are clearly visible to interested parties. Video cameras may be substituted for windows if the substitution does not diminish the view for either the scale operator or other interested parties. However, installations that exceed two hundred feet [61 meters] from the main indicating element must be equipped with two-way audio communication and remote or video display of weight indication.

History: Amended effective August 1, 1993; September 1, 1994; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-13. Inspection and testing accessibility. Repealed effective May 1, 2005.

69-10-02-14. Assisting inspector. Repealed effective August 1, 1993.

69-10-02-15. Counter computing scales. Repealed effective August 1, 2000.

69-10-02-16. Automatic bulk-loading systems - Receiving. A commercial automatic bulk-loading system used for receiving grain may not be commercially operated without first receiving a variance permit from the commission. Before receiving any grain through an automatic bulk-weighing system, a certified commercial truck scale must be made available to the seller for optional check weighing.

History: Effective September 1, 1994; amended effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-17. Coal belt conveyor scales jurisdictional - Exemption. Coal belt conveyor scales not used for coal sales to the general public, or not used for

the sale of coal on behalf of leasehold interests, are exempt from the provisions of this article.

History: Effective September 1, 1994; amended effective January 1, 2002.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-03-07

69-10-02-18. Concrete hopper scales - Jurisdiction. A concrete hopper scale that is used for measuring a finished concrete product that is sold by a measurement other than weight, even though the quality of its composition (cement, sand, aggregate, and water) is determined by weight, shall be defined as a "batching scale" and is exempt from the provisions of this article.

History: Effective September 1, 1994.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-18.1. Exemptions from testing. Grain moisture testing meters, jewelers' scales, prescription scales, and postal scales used by the United States postal service are exempt from the provisions of this article.

History: Effective January 1, 2002.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-19. Single-draft weighing - Exceptions. It shall be unlawful to weigh a vehicle or a combination vehicle in any method other than the single-draft method, as outlined in the NIST Handbook No. 44, section 2.20. scales, UR.3.3., Single-draft Vehicle Weighing, except for the following:

1. When the sale of the commodity being weighed is determined by destination weight;

2. For a motor truck or motor truck dump scale installed prior to April 1, 1965; or

3. For a motor truck or motor truck dump scale installed after April 1, 1965, provided a split-weigh variance permit has first been granted by the commission under section 69-10-01-04.2, and the parties involved have complied with section 69-10-02-20 prior to split-weighing.

History: Effective February 1, 1996; amended effective August 1, 2000; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-20. Split-weigh agreements. Upon approval by the commission of a variance permit allowing split-weighing, and before an individual customer is split-weighed, an approved split-weigh agreement form must be signed by both the

business and that customer, and kept on file at the place where the split-weighing occurs.

History: Effective February 1, 1996; amended effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-21. Shift test - Load-bearing and section testing. After January 1, 1996, all motor truck, motor truck dump, and railroad track/truck combination scales shall be load-bearing and section tested. The load-bearing test must be conducted with a minimum standard of the lesser value of either ten thousand pounds [4535.9 kilograms] or one-quarter the device capacity in test weights, with the test weights centered, as nearly as possible, successively over each main load support. Section testing shall be conducted with a minimum standard of either twenty thousand pounds [9071.8 kilograms] or one-half the device capacity in test weights, with the test weights centered, as nearly as possible, successively at the center of each quarter of the load receiving element. Applicable tolerances from NIST Handbook No. 44, scale section, T.N.3.1. and T.N.3.2., shall be applied to the amount of test load used.

History: Effective February 1, 1996.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-22. Sensitivity response. The sensitivity response of a motor truck or motor truck dump scale designed with a division size of five pounds [2.27 kilograms] and without a balance indicator may not exceed four scale divisions.

History: Effective October 1, 1999.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-23. Stored tare weight. A stored tare weight across a motor truck or motor truck dump scale may not be used for more than one commercial transaction.

History: Effective January 1, 2002.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-02-24. Electronic scale data storage and retrieval. Computer programming installed on commercial scales after January 1, 2002, enabling the electronic recording or storage of scale weight must conform to the following:

1. If more than one scale is interfaced, the system must store the identity of the scale which originated the weight and all printed data must identify the scale which originated the weight;

2. Any weight which is manually entered must be identified as manually entered on all recorded weights;

3. All recorded weights must match actual scale-weight indications;

4. All recalled weights must match stored weights;

5. Stored weight must have a recorded audit trail on a dedicated line printer in a continuous format which includes an "S" indicating that it is a stored weight; a sequential reference number; a scale identifier number; a unique reference number to enable the recall of that stored weight; and the stored weight;

6. Any stored weight which is recalled must be immediately printed on a scale ticket with the following information: an "R" indicating that it is a recalled weight; the unique reference number identified in subsection 5; and the recalled weight;

7. After the transaction is completed, the recalled weight must be automatically deleted from the recalled weights data file;

8. Computer computations such as rounding off and truncation must be programmed so that the computations do not result in the degradation of the accuracy of the scale tolerance by more than one-half of one scale division; and

9. Programming must ensure all essential data is properly entered and stored before issuing a weight ticket.

History: Effective January 1, 2002; amended effective May 1, 2005; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-02-25. Law enforcement scales. Axle load scales or portable wheel load scales used to enforce load limit restrictions by the North Dakota highway patrol may be tested annually, but must be tested at least once every fifteen months.

History: Effective May 1, 2005; amended effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-02-26. Hoppers scale design requirements. The owner of a commercial hopper scale shall provide a bracket or lifting arms able to utilize a hand-operated chain hoist that will facilitate testing with five hundred pounds [226.80 kilograms] or larger test weights. The brackets or lifting arms must be of sufficient strength for the intended load and permanently and legibly marked with a maximum load rating.

All commercial hopper scales, newly constructed and placed into service after the effective date of this rule, must have a minimum of three feet [.91 meter] of unobstructed clearance on all four sides to facilitate testing with large weights.

Notwithstanding the provisions of this section, automatic bulk-weighing systems with integral standards, overhead hopper scales accessible underneath, and hopper scales with capacities of five thousand pounds [2267.96 kilograms] or less are exempt from this requirement.

History: Effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-03
STANDARDS

Section	
69-10-03-01	National Institute of Standards and Technology (NIST) Handbook No. 44
69-10-03-01.1	National Institute of Standards and Technology (NIST) Handbook No. 44 - NTEP - Exceptions
69-10-03-01.2	National Institute of Standards and Technology (NIST) Handbook No. 105-1 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Class F Field Standard Weights
69-10-03-01.3	National Institute of Standards and Technology (NIST) Handbook No. 105-3 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Graduated Neck-Type Volumetric Field Standards
69-10-03-01.4	National Institute of Standards and Technology (NIST) Handbook No. 105-4 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers
69-10-03-02	Adequate Standards
69-10-03-03	Master Test Weights and Prover Tanks [Repealed]
69-10-03-04	Enforcement [Repealed]
69-10-03-05	Weight Carts
69-10-03-06	Metrology Service
69-10-03-07	Delivery of Standards for Certification
69-10-03-08	Rejection of Standards

69-10-03-01. National institute of standards and technology (NIST) Handbook No. 44. Except as modified in this article, the specifications, tolerances, tests, and other technical requirements for commercial weighing and measuring devices in North Dakota must conform to the following sections and subsections of the 1999 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference: all of section 1, section 2 (except subsection 2.24), all of subsection 3.30, subsection 3.31 (except S.1.1.1., UR.2.2., and UR.2.3.), subsection 3.32 (except UR.2.5. and UR.2.6.), and all of subsections 3.33, 3.35, and 3.37. In the event of a conflict between the NIST Handbook No. 44 and North Dakota laws and rules, North Dakota laws and rules shall prevail. Copies of the handbook may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Amended effective October 1, 1988; December 1, 1990; February 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; October 1, 1999; August 1, 2000; January 1, 2002; May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-07

69-10-03-01.1. National institute of standards and technology (NIST) Handbook No. 44 - NTEP - Exceptions. North Dakota may consider the requirements of the national type evaluation program (NTEP) referenced within any edition of NIST Handbook No. 44 adopted by this state, but shall not require NTEP certification as a prerequisite for the design, sale, installation, operation, and certification of a commercial device.

History: Effective January 1, 2002.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-03-01.2. National institute of standards and technology (NIST) Handbook No. 105-1 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for class f field standard weights. The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial weighing and measuring devices in North Dakota shall conform to the sections and subsections of the 1990 edition of the United States department of commerce, NIST Handbook No. 105-1, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective March 1, 2003.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-03

69-10-03-01.3. National institute of standards and technology (NIST) Handbook No. 105-3 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for graduated neck-type volumetric field standards. The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial measuring devices in North Dakota shall conform to the sections and subsections of the 1997 edition of the United States department of commerce, NIST Handbook No. 105-3, which is adopted by reference. In the event

of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective March 1, 2003.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-03

69-10-03-01.4. National institute of standards and technology (NIST) Handbook No. 105-4 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for liquefied petroleum gas and anhydrous ammonia liquid volumetric provers. The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial liquefied petroleum gas and anhydrous ammonia liquid measuring devices in North Dakota shall conform to the sections and subsections of the 1997 edition of the United States department of commerce, NIST Handbook No. 105-4, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective March 1, 2003.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-03

69-10-03-02. Adequate standards. A standard used to certify any commercial weighing and measuring device must be annually certified as traceable by a NIST-recognized metrology laboratory. The state metrologist may extend the twelve-month recertification interval up to fifteen months.

A current legible copy of the certificate of traceability must be maintained with the commission.

Annual recertification is subject to the following exceptions and conditions:

1. The standards integral to and used for recertification of a commercial automatic bulk-weighing system must be certified traceable by a NIST-recognized laboratory at least once every five years.

2. The volumetric provers used to certify loading-rack meters must be certified traceable by a NIST-recognized laboratory at least once every three years.

3. Unless otherwise approved by the commission, the operator of a coal belt conveyor scale jurisdictional to the commission must conduct a material load test at least once every two years provided that electronic or other simulated load testing is done at least once every three months.

4. A master meter may not be used as a standard to certify commercial LPG devices.

5. Notwithstanding the other provisions of this section, the commission may require recertification of any standard if upon inspection the physical condition of a standard indicates a need for recertification.

History: Amended effective April 1, 1992; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-03-03. Master test weights and prover tanks. Repealed effective April 1, 1992.

69-10-03-04. Enforcement. Repealed effective May 1, 2005.

69-10-03-05. Weight carts. Effective January 1, 2002, weight carts not already in service in North Dakota and seeking metrology certification must meet the following design specifications: wheelbase must not exceed sixty inches [152.4 centimeters], motors must be electric or powered by gel core batteries, gross weight must not exceed five thousand pounds [2267.95 kilograms], tires must be of solid rubber with smooth tread, and sealing cavities must be capable of containing twenty pounds [9.072 kilograms] of lead adjustment.

History: Effective January 1, 2002.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-03-06. Metrology service. Metrology service at the commission laboratory will only be provided as set out in this section:

1. All metrology service requests must be by appointment only and will be according to the following:

   a. Testing and safety division metrology;

   b. State-registered service company metrology;

   c. North Dakota law enforcement metrology;

   d. Industrial customer metrology; and

   e. All other metrology.

2. The director shall send out annual appointment notifications by mail to all state-registered service companies at least thirty days prior to each company's appointment date.

3. If a party with a scheduled metrology appointment needs to cancel that appointment, the party shall notify the commission of the need to cancel at least seven days in advance of the appointment. Appointments cancelled within less than seven days advance notice will lose scheduling priorities. The party canceling a metrology appointment may request a new appointment date at that time.

4. A metrology appointment must be scheduled at least thirty days in advance.

5. A metrology request not previously scheduled may only be serviced as time becomes available.

6. A metrology request for service beyond the scope of the laboratory's recognition level will be referred to an appropriate NIST-recognized metrology laboratory.

History: Effective May 1, 2005; amended effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-03-07. Delivery of standards for certification. Standards delivered to the metrology laboratory for testing and certification must be submitted undamaged and serviceable and must comply with the following:

1. Vehicle scale test carts must be cleaned and painted with all fluid levels topped off to their calibrated reference levels.

2. Cast iron weights must be cleaned and painted following the requirements in NIST Handbook No. 105-1, section 2, as adopted by reference in section 69-10-03-01.2.

3. Provers and test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.

4. Provers must have a simple, sturdy, and adequate leveling means on the legs allowing for adequate adjustments.

5. Provers must have two level indicators mounted on the body of the prover at right angles to each other for leveling purposes.

6. Mild steel provers must be periodically painted as determined by the metrologist, and as recorded in the remarks section on the previous year's calibration report.

7. Mild steel test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.

8. Class F weights must meet the applicable material and design requirements of NIST Handbook No. 105-1, as adopted by reference in section 69-10-03-01.2.

9. Fabricated weights, brass weights, and cast iron weights equal to or less than ten pounds [4.54 kilograms] may not be used.

10. Laminated weights must not be adjusted and must be removed from service when the weights fail to maintain the applicable tolerance.

11. Volume standards placed in service after January 1, 1998, must meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4.

12. A volume standard placed in service before January 1, 1998, that has maintained annual certification need not meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4, unless a standard has been removed from service for a period greater than twelve months.

13. Special seals or special tools required for the test or calibration, which is of a unique nature to a particular standard, must be supplied by the standard owner prior to the beginning of the metrology process.

14. If weights greater than one hundred pounds [45.36 kilograms] or provers with capacities greater than fifty gallons [189.27 liters] are shipped to the metrology laboratory, the weights or provers must be shipped on an open flatbed truck or trailer.

15. Standards that are not in compliance with any of the above requirements will not be accepted for testing and certification.

16. A standard that is not tested and certified may not be used to test and certify a commercial device unless a variance permit is obtained from the commission, or unless the standards is recertified.

History: Effective May 1, 2005; amended effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-03-08. Rejection of standards. Rejected standards must be removed from service as follows:

1. A standard that has been rejected must be conspicuously marked by sealing, tagging, or painting as appropriate to that standard.

2. A rejected standard may not be used to test and certify a commercial weighing and measuring device. The use of a rejected standard may result in commission enforcement action.

3. A standard not meeting appropriate design criteria may be allowed to remain in service for a limited time, provided a variance permit is obtained from the commission prior to certification or recertification.

History: Effective May 1, 2005; amended effective July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

CHAPTER 69-10-04
SERVICE REGULATIONS

Section	
69-10-04-01	Registration of Service Persons
69-10-04-01.1	Registration of Service Companies
69-10-04-02	Application for Registration and Permitting of a Service Person
69-10-04-02.1	Self-Certification
69-10-04-02.2	Application for Registration of a Service Company
69-10-04-02.3	Issuing a Placing in Service Permit
69-10-04-03	Revocation of Registration
69-10-04-04	Reports
69-10-04-05	Standardized Report Forms
69-10-04-06	Quality Control - Witnessing
69-10-04-06.1	Quality Control - Failures
69-10-04-06.2	Procedures for the Quality Control of Registered Service Persons
69-10-04-07	Adequate Field Standard Requirements - Exception
69-10-04-08	Devices Taken out of Service [Repealed]

69-10-04-01. Registration of service persons. A registered service person has the authority to certify weighing or measuring devices described in North Dakota Century Code section 64-02-13 and to remove an official rejection, "equipment repair notice", or "not sealed" tag or sticker and place the device in service.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-04-01.1. Registration of service companies. A registered service company has the authority to maintain state-certified field standards and to employ a registered service person to design, install, and repair a commercial weighing or measuring device as described in North Dakota Century Code section 64-02-13.

History: Effective July 1, 1998.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-04-02. Application for registration and permitting of a service person. Annual application for registration as a registered service person must be submitted to the commission under the following requirements:

1. A first-time applicant shall:

    a. Provide a written history of education and work experience to show that the applicant is fully qualified to repair, test, and certify a commercial weighing or measuring device; and

b. Complete written tests that must be taken in Bismarck, North Dakota, at a location designated by the commission, and must be administered as follows:

(1) The written test will be open book, with seventy-five percent as the minimum passing score. The test material will cover the applicable sections of the adopted 1999 edition of NIST Handbook No. 44, North Dakota Century Code title 64, and North Dakota Administrative Code article 69-10; and

(2) In the case of a test failure, an applicant may retake the tests after a review period of ten working days.

2. Each applicant registered by the commission shall utilize adequate standards during the testing and certification of a commercial device.

3. An applicant who is applying for renewal of an existing registration shall complete and submit the application at least fifteen days prior to the expiration date of the applicant's existing registration. Each applicant who has renewed an existing registration shall utilize adequate standards during the testing and certification of a commercial device.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-04-02.1. Self-certification. Self-certification to repair, test, and certify an operator's own commercial weighing and measuring devices is permitted only as provided in this section:

1. Only hazardous liquid pipeline operators, North Dakota highway patrol, natural gas pipeline operators, and manufacturing-processing operators may self-certify;

2. Applications must be submitted to the commission in writing;

3. Commission approval is required annually; and

4. Applications must address the following conditions:

a. The person doing the self-certification must be registered with the commission under section 69-10-04-02. However, persons or companies who make written application to the commission describing their weighing or measuring devices, operating and maintenance procedures, testing processes including a list of testing technicians and their expertise, and reporting requirements, subject to commission approval, may be exempt from the provisions of section 69-10-04-02, except for subdivision d

of subsection 1 and subdivision b of subsection 2 of section 69-10-04-02.

b. Upon testing, the device must be within commission-approved tolerance.

c. Whenever a weighing or measuring device is recertified, the person or company recertifying that device shall, within seven working days, report the recertification to the commission. The report must clearly identify each device, the initial test results recorded during self-certification, and the test results upon recertification.

d. A weights and measures inspector may randomly recertify any self-certified weighing or measuring device either by performing a test or by witnessing a test performed by a self-certified service person.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-02.2. Application for registration of a service company. An annual application for registration as a registered service company must be filed with the commission prior to conducting any service work on commercial weighing or measuring devices and must include:

1. Acceptable evidence that all of the service standards used to test and approve commercial weighing or measuring devices have been certified under section 69-10-03-02;

2. A copy of the company's standardized report form, if not currently on file with the commission, as required by section 69-10-04-05;

3. A sample of the company's "tested and approved" sticker and internal seals, if not currently on file with the commission, as required by section 69-10-01-03; and

4. An application for registration.

History: Effective July 1, 1998; amended effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-02.3. Issuing a placing in service permit. Upon acceptance and approval of an application, the commission shall issue a placing in service permit to the applicant. All permits issued under this section remain the property of the commission and must be surrendered upon demand. Permits issued will be either probationary or permanent as defined in this section.

1. **Probationary permits.**

   a. An applicant with less than three months' experience repairing and placing devices into service will receive a probationary permit;

   b. The duration of a probationary permit will be at the discretion of the testing and safety division director but will not exceed six months from the date of testing; and

   c. A probationary permitholder shall be accompanied by, and have each placing in service test report cosigned by, a permanent permitholder from the same service company in order for the test report or the placing in service to be considered valid.

2. **Permanent permits.**

   a. An applicant with more than three months' experience repairing and placing devices into service will receive a permanent permit;

   b. An applicant who has been previously tested and issued a permanent permit by the commission within the last five years, but has allowed it to expire, will receive a permanent permit; or

   c. A probationary permitholder who has completed probationary time assigned without receiving any quality control failures will receive a permanent permit.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-04-03. Revocation of registration. The commission may, for good cause, suspend or revoke a registered service person's permit or a registered service company's permit. A person or a company not registered with the commission but qualified to install a commercial weighing or measuring device may install but may not service, repair, or recondition a commercial weighing or measuring device without a variance permit from the commission.

History: Amended effective April 1, 1992; July 1, 1997; July 1, 1998; October 1, 1999; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-04-04. Reports. A registered service person must, within seven working days, send a test report on all commercial weighing or measuring devices certified, recertified, serviced, or inspected and tested by the person to the

commission, and shall furnish a copy of the test report to the owner or operator of the device.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-05. Standardized report forms. All test report forms filed with the commission after July 1, 1994, must be in a format. The commission will issue copies of the standardized prototype to all newly permitted registered service companies.

History: Effective August 1, 1993; amended effective February 1, 1996; October 1, 1999.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-06. Quality control - Witnessing. The commission may evaluate the work performed by a registered service person to ensure that the person is performing proper inspections and tests. The evaluation method may be by direct observation of a registered service person placing a commercial device into service or by reinspection of a device previously placed into service by a registered service person. The commission shall consider the following criteria during the evaluation:

1. The results of a random sampling of at least one inspection and test per year, or more if so ordered by the commission, of the devices certified by a registered service person;

2. Complaints filed against a registered service person, and whether those complaints are valid; and

3. Other factors deemed relevant by the commission.

The quality control evaluation must be completed within forty-five days of the date the work is completed by the registered service person and at no charge to the owner of the device.

History: Effective September 1, 1994; amended effective February 1, 1996; October 1, 1999; July 1, 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-06.1. Quality control - Failures. Quality control failures must include the outcome of any actual quality control inspections and tests, and any violations of title 64 of the North Dakota Century Code, title 69 of the North Dakota Administrative Code, and any applicable sections of the NIST Handbook No. 44, as adopted by reference in section 69-10-03-01. If a registered service person

fails three consecutive quality control inspections within a twelve-month period, the commission may:

1. Issue either a verbal warning or a formal warning letter requiring remedial action within thirty days from the date of the warning;

2. Schedule a conference with the division director or chief inspector, the registered service person, and that person's supervisor;

3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;

4. Reduce the registered service person's permit status to probationary for up to six months; and

5. Suspend the registered service person's permit and assess a civil penalty.

The results of any quality control failures and associated enforcement actions may be sent to the individual permitholder's company or to the owner or operator of the affected device.

Any quality control failures and associated enforcement actions must be kept on file as part of the overall quality control profile of the registered service person for a twelve-month period from the date of the failure.

History: Effective October 1, 1999; amended effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-06.2. Procedures for the quality control of registered service persons. A quality control inspection of a registered service person will be conducted as set forth in this section:

1. Quality control inspection selection criteria is as follows:

   a. Established by permitholder number;

   b. Set at one percent, or one of every one hundred placing in services, of average annual production;

   c. Location of the device versus location of the state inspector is a controlling factor;

   d. Each permitholder whose annual production is less than twenty will be placed into a special pool of which ten percent will have a quality control performed each year.

e. Average annual production must be based upon the previous inspection year totals.

2. A permanent permitholder who receives multiple quality control inspections within a twelve-month period because the holder has logged a large number of placing in services, and, has received a "pass" on the first scheduled quality control inspection for that time period, will receive an "honorary pass" on the second scheduled quality control inspection. If the number of placing services requires a third quality control inspection for which the holder receives a "pass", the fourth scheduled quality control will again be an "honorary pass".

3. The quality control inspection may be based upon the applicable tolerance, acceptance or maintenance tolerance, or design requirements that are applicable to the device.

4. The quality control inspection must be completed within forty-five days from the date of the permitholder's test report.

5. A specific quality control inspection ends when the device either fails a portion of the inspection or it passes the inspection.

6. If a device fails a quality control inspection, the failed quality control is documented for that permitholder, the device is rejected, and a quality control inspection must be scheduled as soon as practicable on the next device placed into service by the permitholder responsible for the previous quality control failure.

7. At the discretion of the division director, weights and measures inspectors may conduct quality control inspections of self-certifying permitholders either by performing a test on that holder's device or by witnessing the testing of a device by the self-certified permitholder.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-07. Adequate field standard requirements - Exception. All state weights and measures inspectors and registered service companies shall make available minimum test weights and test loads as required by NIST Handbook No. 44, table 4, during tests of commercial weighing devices. However, during highway load restrictions as announced by the North Dakota department of transportation, shift tests, load-bearing tests, and section tests required by section 69-10-02-21 and NIST Handbook No. 44, table 4, may be performed with a test load of ten thousand pounds [4535.9 kilograms].

History: Effective July 1, 1998.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-08. Devices taken out of service. Repealed effective May 1, 2005.

PU-06-501

PROPOSED SITING RULE

REGULATORY ANALYSIS, TAKINGS ASSESSMENT AND SMALL ENTITY ANALYSIS

STAFF TESTIMONY

69-06-01-05. Designated state agencies and officers. The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. Department of health.
5. Department of human services.
6. Department of labor.
7. Department of vocational education.
8. Economic development commission.
9. Energy development impact office.
10. Game and fish department.
11. Geological survey.
12. Governor.
13. Highway department.
14. State Historical Society of North Dakota.
15. Indian affairs commission.
16. Job service North Dakota.
17. Land department.
18. Parks and recreation department.
19. State planning division - office of intergovernmental assistance - office of management and budget.
20. Soil conservation committee.

Add July 1 2008 to history

Public Service Commission
Public Utilities – Siting Rulemaking

Case No. PU-06-501

Proposed Rule

A new section to Chapter 69-06-01

69-06-01-06 Siting fee refund. After all siting permits and certificates are issued by the commission and after all notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except $5,000 or the amount of the fee remaining if that amount is less than $5,000. When construction and all post-construction inspections are complete, and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than $50 will be processed.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-22

PU-06-486

PROPOSED ACCOUNTING RULES FOR ELECTRIC AND GAS

REGULATORY ANALYSIS OF PROPOSED ACCOUNTING RULES

STAFF TESTIMONY

Add July 1 2008 to histories JCW

Public Service Commission
Accounting, Electric and Gas
Rulemaking

Case No. PU-06-486

Proposed Accounting Rules for Electric and Gas

Four new Sections to Chapter 69-09-05.1:

69-09-05.1-02. Accounting practices - Rate-regulated gas companies. The system of accounts used by all North Dakota natural gas distribution companies subject to rate regulation by the commission must conform to the uniform system of accounts set forth in title 18, Code of Federal Regulations, part 201, prescribed by the Federal Energy Regulatory Commission.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

69-09-05.1-03. Accounting practices - Rate-regulated electric companies. The system of accounts used by all North Dakota electric companies subject to rate regulation by the commission must conform to the uniform system of accounts set forth in title 18, Code of Federal Regulations, part 101, prescribed by the Federal Energy Regulatory Commission.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

69-09-05.1-04. Accounting practices - Allowance for funds used during construction for rate-regulated gas companies. A North Dakota natural gas

distribution company subject to rate regulation by the commission may not capitalize allowance for funds used during construction (AFUDC) as prescribed in title 18, Code of Federal Regulations, part 201, for projects costing less than $10,000 and taking less than 30 days to complete.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

69-09-05.1-05. Accounting practices - Allowance for funds used during construction for rate regulated electric companies. A North Dakota electric company subject to rate regulation by the commission may not capitalize allowance for funds used during construction (AFUDC) as prescribed in title 18, Code of Federal Regulations, part 101, for projects costing less than $10,000 and taking less than 30 days to complete.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

PU-07-642

PROPOSED RULE – WIND TURBINE DECOMMISSIONING

REGULATORY ANALYSIS, TAKINGS ASSESSMENT AND SMALL ENTITY ANALYSIS

STAFF TESTIMONY

Exhibit 1

Add July 1 2008 to histories JW

~~Public Service Commission~~
Wind Turbine Decommissioning
Rulemaking

Case No. PU-07-642

Chap. title

Proposed Rule

A new Chapter to Article 69-09:

~~69-09-10~~ 09 **69-09-01. Definitions.**

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission.
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

~~69-09-10~~ 09 **69-09-02. Cost Responsibility.** The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

~~69-09-10~~ 09 **69-09-03. Useful Life.** A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuous period of twelve (12) months. The

presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-10-04. Decommissioning Period. The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within 8 months after the time the facility or turbine reaches the end of its useful life, as determined in Section 69-09-10-03. Decommissioning must be completed within 18 months after the facility or turbine reaches the end of its useful life.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-10-05. Decommissioning Requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet (1.22 meters) and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must

be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-~~10~~-06. Decommissioning Plan. Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file with the commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility or turbine and a decommissioning plan that describes how the facility or turbine owner or operator will ensure that resources are available to pay for decommissioning the facility or turbine at the appropriate time. The commission shall review a plan filed under this section and shall issue an order approving or disapproving the plan within 6 months after the decommissioning plan was filed. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-~~10~~-07. Existing Facilities. Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 69-09-09-06 within one year ~~of the effective date of the rules~~ after July 1, 2008.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-10-08. Financial Assurance. After the 10th year of operation of a commercial wind energy conversion facility or wind turbine, the commission may by order require a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-10-09. Failure to Decommission. If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

Add July 1 2008 to histories JW

Public Service Commission
Weights and Measures
Rulemaking

Case No. WM-07-203

PROPOSED AMENDMENTS TO CHAPTER 69-10-01

69-10-01-01. Definitions. As used in article 69-10:

1. "Automatic bulk weighing system" means a weighing system which weighs grain in successive drafts, automatically records the no-load and loaded weight values, and accumulates the net weight of each draft.

2. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.

3. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.

4. "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.

5. "Equipment repair notice tag" means a tag that allows a device to be operated for sixty days from its inspection date pending correction of cited defects relating to the device or any of its required peripheral equipment. The tag defaults to a rejection tag if the device is not in compliance within sixty days.

6. "Liquid or LPG computing pump" means a device that provides fuel or LPG to a consumer.

7. "NIST" means the United States department of commerce, national institute of standards and technology.

8. "Not sealed" means a sticker or seal applied to a device which has not been inspected and tested, does not meet applicable design or tolerance requirements, or is no longer being used commercially. A device that is not sealed shall not be used in commerce.

9. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device ~~being~~ tested under the self-certification rules.

I can't find such a change!?

10. "Registered service person" means a person or agency authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to repair and certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.

11. "Rejected for repair" means a sticker or seal applied to a device which has been inspected and tested and does not meet applicable design or tolerance requirements. A device that is rejected for repair shall be modified or repaired by a registered service person within thirty days of the date it was rejected and may not be used in commerce until placed into service.

12. "Retail fuel device" means a commercial, indicating fuel pump used to deliver fuel to individual highway vehicles in quantities of one hundred gallons [378.54 liters] or less per transaction.

13. "Seal" means marking a weighing or measuring device to show certification or rejection.

14. "Security seal" means either a lead and wire pressure-sensitive seal, a plastic and wire pressure-sensitive seal, or a sealing sticker, permanently attached to a weighing or measuring device to prevent unauthorized access to the tolerance-adjusting mechanisms of that device.

15. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.

16. "Split-weighing" means determining the weight of a vehicle, combination vehicle, or a commodity by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combinations.

17. "Standard" means test equipment used for certifying weighing or measuring devices.

18. "Variance permit" means a temporary or permanent suspension of a particular rule granted to an owner or operator of a commercial weighing or measuring device because of an economic hardship, a site restriction requiring modification to the design or installation of a device, or a special installation or operational condition, to be determined by the commission on a case-by-case basis.

19. "Weights and measures inspector" means a commission employee in the testing and safety division performing duties set by the commission.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; August 1, 2000; January 1, 2002; March 1, 2003; November 1, 2003.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-03

69-10-01-02.3. Recertification. The commission or a registered service person may inspect, test, and calibrate a commercial weighing or measuring device annually. The owner of any commercial weighing or measuring device is responsible for its accuracy and must have it tested once every 15 months. Commission staff shall issue a written compliance order to the owner or operator of any commercial device that has not been tested within the 15-month time limit. The compliance order must allow thirty days for the owner of the device to have it recertified by a registered service person. Failure to comply with a compliance order within the thirty day time limit will cause the device to be removed from commercial service.

History: Effective July 1, ~~1997~~ 2008.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03. Sealing. A weighing or measuring device used in commerce must be certified and sealed. A security seal must be installed where applicable, to prevent adjustments to the calibration of the device. An adhesive sticker that is of sufficient quality that it remains readable and unaffected by the elements must be installed externally to show visual proof of certification. It is unlawful to remove, or allow to be removed, an official tag or seal without commission approval. Effective January 1, 1995, an adhesive sticker must contain the following information: name, ~~address,~~ and telephone number of the commission or registered service company certifying the device, the words "tested and approved", and the month and year of certification.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997; July 1, 1998; January 1, 2002.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03.2. Equipment repair notice - Applicable usage. An equipment repair notice tag may be used in the following circumstances:

1. During the period any one of the following is pending:

   a. Response to a variance permit request;

   b. Completion of design requirements; or

   c. Repair of required peripheral equipment;

2. When a point of sale liquid-measuring device:

   a. Is a retail liquid-measuring device that is no more than two cubic inches [32.77 milliliters] outside of the applicable tolerance for over-registration or ten cubic inches [163.87 milliliters] outside the applicable tolerance for under-registration, using a five gallon [18.93 liter] test measure;

   b. Is a vehicle tank or wholesale liquid-measuring device that is no more than twenty-two cubic inches [360.52 milliliters] outside of the applicable tolerance for over-registration or one hundred cubic inches [1638.71 milliliters] outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] prover;

   c. Is an LPG liquid-measuring device that is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or five percent outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] test with ~~either~~ a one hundred gallon [378.54 liter] prover ~~or a commission registered master meter, however, when the certifying standard is an LPG master meter the applicable tolerance is one percent for any part of the certification test regardless of acceptance or maintenance tolerances~~;

   d. Is an LPG or anhydrous ammonia liquid-measuring device equipped with an automatic temperature compensating system, the allowable error difference between an activated and not activated mechanical or electronic automatic temperature compensating system is no more than one-half of one percent outside of the applicable tolerance for over-registration or under-registration; or

e. Is a liquid hydrocarbon or agri-chemical measuring device that has an automatic temperature compensating system, the difference between the meter error (expressed as a percentage) for results determined with and without the mechanical or electronic automatic temperature compensating system activated may be no more than one-tenth of one percent outside of the applicable tolerance for over-registration or under-registration;

3. When a point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or two scale divisions outside the applicable tolerance for under-registration; or

4. When a point of purchase or point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or under-registration.

History: Effective March 1, 2003; amended effective November 1, 2003; May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-04.1. Variance permit requests. The operator of any commercial weighing or measuring device, other than an operator seeking a split-weigh variance permit under section 69-10-01-04.2, may make written request for a variance permit from the commission under North Dakota Century Code section 64-02-02. The request for a variance permit must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;

2. A plan for compliance over a period not to exceed one hundred eighty days if the variance permit request results from a rejection; or, a plan for compliance over a period not to exceed five years if the variance permit request results from economic hardship. Through reapplication, the economic hardship variance permit may be a permanent variance permit provided the applicant can show that compliance will continue to cause economic hardship;

3. The manufacturer's name, type, location, serial number, deck length, and capacity of the device;

4. The maximum amount that will be weighed on the device, along with a certified letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard (if applying for a variance permit that will allow a device to be used beyond its rated sectional or concentrated load capacity);

5. Detailed information showing that compliance with specific regulations will cause economic hardship (if applicable to the variance permit request); and

6. Any other information the operator believes may expedite the variance permit request.

A variance permit granted by the commission is a temporary variance permit and does not become permanent until sufficient time to conclude inspection and testing (usually two years) has elapsed. A notice of the variance permit must be conspicuously posted on the device during the time the temporary variance permit is in effect.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-04.2. Split-weigh variance permit requests. The operator of any motor truck or motor truck dump scale installed after April 1, 1965, may make written request for a permanent split-weigh variance permit from the commission under North Dakota Century Code section 64-02-02. The request for a variance permit must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;

2. The manufacturer's name, type, location, deck length, serial number, and capacity of the device;

3. The maximum amount of weight that will be placed upon the device at any time during the split-weighing operation. If that maximum weight exceeds the rated sectional capacity or concentrated load capacity of the device, the applicant must also include a letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard;

4. The maximum distance between the front and rear outer axles of the vehicle or coupled-combination vehicle that will be split-weighed;

5. A statement in the variance permit request certifying that each axle of the vehicle or each axle of the coupled-combination vehicle will rest on a straight surface, in the same plane with, and not to exceed one-third 7 inch [8.47 millimeters] per foot [30.48 centimeters] out of level with, the scale deck during the split-weighing operation;

6. A statement in the variance permit request agreeing to the following procedures to be observed during the split-weighing operation:

   a. Use of the vehicle brakes is prohibited;

   b. The vehicle transmission must be in neutral; and

   c. Chocking of the vehicle's wheels should be discouraged.

7. For an operator of a motor truck or motor truck dump scale installed after April 1, 1995, a temporary variance permit will be issued only if the operator has substantiated that it is unable to install a scale of sufficient length to allow single-draft weighing due to economic hardship. If the operator chooses to pursue the plea of economic hardship, then the operator's split-weigh variance permit request must also include a plan for compliance over a period not to exceed five years. Through reapplication, at the end of the five-year period, the economic hardship temporary variance permit may be made a permanent variance permit provided the operator can show that compliance will continue to cause economic hardship.

History: Effective February 1, 1996; amended effective July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-04

69-10-01-05. Rejected devices. Once a weighing or measuring device has been rejected, the device may not be used in commerce. The commission may install a security seal on the device to prevent its use until the device has been retested and certified or a variance permit has been granted.

History: Amended effective April 1, 1992; September 1, 1994.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-05.1. Inactive weighing or measuring devices. An inactive commercial weighing or measuring device unused or tagged "not sealed" for longer than one year, must meet all current state laws and rules before it may be retested and certified, ~~unless the~~ operator receives a variance permit allowing for the use of the device.

History: Effective September 1, 1994; amended effective July 1, 1997.
General Authority: NDCC 28-32-02, 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-04

no o/s

~~**69-10-01-07. Sale of liquid fuels on other than gross volume basis prohibited.** The sale of gasoline or other refined liquid fuels, excluding liquefied petroleum gases and residual fuel oils, on any basis other than the gross volume of gasoline or other refined liquid fuel actually delivered is prohibited unless sale on a temperature-corrected basis is specifically agreed to by both buyer and seller.~~

History: Effective January 1, 1981.
General Authority: NDCC 28-32-02, 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-04

repealed eff July 1, 2005

69-10-01-13. Enforcement. An operator of a commercial weighing and measuring device shall ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in state and national institute of standards and technology handbook no. 44 requirements (1999 edition). The commission may require proof of compliance. The commission may file a complaint for noncompliance, and, in addition to other appropriate sanctions, assess civil penalties under North Dakota Century Code chapter 49-07 after notice and opportunity for hearing on the complaint.

History: Effective May 1, 2005.
General Authority: NDCC 49-07, 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-16. Service contracts. Registered service companies shall notify the commission of any service contract that provides for annual certification of a commercial device. Notification must be given no later than thirty days from the date of the verbal or written contract. Commercial devices under service contract that have not been tested within ~~thirteen~~ twelve months ~~must~~ may be scheduled for testing by the commission.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-17. Manufacturer design deviations and limitations. Deviations from the manufacturer's design, installation specifications, intended application, or established limits applicable to any commercial weighing or measuring device are not permitted without approval from the manufacturer's engineering authority and a variance permit granted by the Commission.

History:
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

PROPOSED AMENDMENTS TO CHAPTER 69-10-02

69-10-02-05. Portable pitless scales and portable hopper scales. A self-contained portable pitless scale and a self-contained portable hopper scale used solely to weigh materials used for government highway construction are exempt from the provisions of this article. Installation and operation of a self-contained portable pitless scale and a self-contained portable hopper scale for commercial use without a variance permit from the commission is prohibited.

History: Amended effective April 1, 1984; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

Repealed etc

~~**69-10-02-08. Deviations from manufacturer's design.** Neither the length nor the width of the load receiving element, nor the indicating element of a scale shall be increased beyond the manufacturer's design dimension unless the proposed modification has been approved by competent scale engineer, and a variance has been granted by the commission. The weighbridge of a scale shall be constructed of steel of sufficient strength to ensure permanence, and shall include steel support members to provide adequate support for the platform.~~

~~**History:** Amended effective August 1, 1993; July 1, 1997.~~
~~**General Authority:** NDCC 64-02-03~~
~~**Law Implemented:** NDCC 64-02-02, 64-02-13~~

~~**69-10-02-11. Limits established by factory-rated scale capacity.** No person shall use a scale for weighing commodities, the gross weight of which is greater than the factory-rated scale capacity, as stamped by the manufacturer on each indicating or load-receiving element (whichever is less), without a variance from the commission.~~

~~**History:** Amended effective August 1, 1993.~~
~~**General Authority:** NDCC 64-02-03~~
~~**Law Implemented:** NDCC 64-02-02, 64-02-13~~

69-10-02-12. Observation windows or video cameras. Windows must be provided and must be located in such a position and manner so that the ~~weighman~~ scale operator has full view of the scale platform and weighing operation from the ~~weighman's~~ scale operator's working position, and that the weighman and indicating elements are clearly visible to interested parties. Video cameras may be substituted for windows if the substitution does not diminish the view for either the ~~weighman~~ scale operator or other interested parties. However, installations that exceed two hundred feet [61 meters] from the main indicating element must be equipped with two-way audio communication and remote or video display of weight indication.

History: Amended effective August 1, 1993; September 1, 1994.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-16. Automatic bulk-loading systems - Receiving. A commercial automatic bulk-loading system used for receiving grain may not be commercially operated without first receiving a variance permit from the commission. Before receiving any grain through an automatic bulk-weighing system, a certified commercial truck scale must be made available to the seller for optional check weighing.

History: Effective September 1, 1994.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-19. Single-draft weighing - Exceptions. It shall be unlawful to weigh a vehicle or a combination vehicle in any method other than the single-draft method, as outlined in the NIST Handbook No. 44, section 2.20. scales, UR.3.3., Single-draft Vehicle Weighing, except for the following:

1. When the sale of the commodity being weighed is determined by destination weight;

2. For a motor truck or motor truck dump scale installed prior to April 1, 1965; or

3. For a motor truck or motor truck dump scale installed after April 1, 1965, provided a split-weigh variance permit has first been granted by the commission

under section 69-10-01-04.2, and the parties involved have complied with section 69-10-02-20 prior to split-weighing.

History: Effective February 1, 1996; amended effective August 1, 2000.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-20. Split-weigh agreements. Upon approval by the commission of a variance permit allowing split-weighing, and before an individual customer is split-weighed, an approved split-weigh agreement form must be signed by both the business and that customer, and kept on file at the place where the split-weighing occurs.

History: Effective February 1, 1996.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-24. Electronic scale data storage and retrieval. Computer programming installed on commercial scales after January 1, 2002, enabling the electronic recording or storage of scale weight must conform to the following:

1. If more than one scale is interfaced, the system must store the identity of the scale which originated the weight and all printed data must identify the scale which originated the weight;

2. Any weight which is manually entered must be identified as manually entered on all recorded weights;

3. All recorded weights must match actual scale-weight indications;

4. All recalled weights must match stored weights;

5. Stored weight must have a recorded audit trail on a dedicated line printer in a continuous format which includes an "S" indicating that it is a stored weight; a sequential reference number; a scale identifier number; a unique reference number to enable the recall of that stored weight; and the stored weight;

6. Any stored weight which is recalled must be immediately printed on a scale ticket with the following information: an "R" indicating that it is a recalled weight; the unique reference number identified in subsection 5; and the recalled weight;

7. After the transaction is completed, the recalled weight must be automatically deleted from the ~~recall~~ recalled weights data file;

8. Computer computations such as rounding off and truncation must be programmed so that the computations do not result in the degradation of the accuracy of the scale tolerance by more than one-half of one scale division; and

9. Programming must ensure all essential data is properly entered and stored before issuing a weight ticket.

History: Effective January 1, 2002; amended effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-02-25. Law enforcement scales. Axle load scales or portable wheel load scales used ~~for weight enforcement~~ to enforce load limit restrictions by the North Dakota highway patrol may be tested annually, but must be tested at least once every fifteen months.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-02-26. Hoppers Scale Design Requirements. The owner of a commercial hopper scale shall provide a bracket or lifting arms able to utilize a hand-operated chain hoist that will facilitate testing with 500 lb or larger test weights. The brackets or lifting arms must be of sufficient strength for the intended load and permanently and legibly marked with a maximum load rating.

All commercial hopper scales, newly constructed and placed into service after the effective date of this rule, must have a minimum of three feet of unobstructed clearance on all four sides to facilitate testing with large weights.

Notwithstanding the provisions of this section, automatic bulk-weighing systems with integral standards, overhead hopper scales accessible underneath, and hopper scales with capacities of 5,000 lbs or less, are exempt from this requirement.

History:
General Authority: *NDCC 64-02-03*
Law Implementation: *NDCC 64-02-02, 64-02-13*

[226.80 kilograms]

[.91 meter]

[2267.96 kilograms]

PROPOSED AMENDMENTS TO CHAPTER 69-10-03

69-10-03-02. Adequate standards. ~~Only standards annually certified by the commission may be used to certify commercial weighing and measuring devices. However, standards annually certified by any national institute of standards and technology accredited laboratory may be used if a legible copy of the certification is first filed with the commission. Annual recertification is subject to the following exceptions and conditions:~~

~~1. The twelve-month recertification period may be extended after consultation with the state metrologist, but not to exceed fifteen months.~~

~~2. The standard weights or "test weights" used in a commercial automatic bulk-weighing system must initially be certified by the commission or by another national institute of standards and technology accredited state laboratory.~~

~~3. The volumetric provers used to certify loading rack meters must initially be certified by the commission or by another national institute of standards and technology accredited state laboratory, and at least once every three years thereafter.~~

~~4. The commission may require recertification of the "test weights" described in subsection 2, and the volumetric provers described in subsection 3 if, upon inspection, physical condition indicates a need.~~

~~5. Unless otherwise approved by the commission, the operator of a coal belt conveyor scale jurisdictional to the commission must conduct a material load test at least once every two years provided that electronic or other simulated load testing is done at least once every three months.~~

~~6. The commission may test and inspect any commercial LPG meters by using a certified master meter that has a flow rate of twelve to sixty gallons [45.4 to 227.1 liters] per minute at 0.02 percent accuracy, and has an orifice size of one and one-half inches [38.1 millimeters]. A master meter must be tested and certified quarterly with a prover traceable to national institute of standards and technology.~~

A standard used to certify any commercial weighing and measuring device must be annually certified as traceable by a ~~national institute of standards and technology (NIST)~~ recognized metrology laboratory. The state metrologist may extend the ~~twelve-~~month recertification interval up to fifteen months.

NIST-

A current legible copy of the certificate of traceability must be maintained with the commission.

Annual recertification is subject to the following exceptions and conditions:

1. The standards integral to and used for recertification of a commercial automatic bulk-weighing system must be certified traceable by a ~~national institute of standards and technology (NIST)~~ recognized laboratory at least once every five years.

2. The volumetric provers used to certify loading-rack meters must be certified traceable by a ~~national institute of standards and technology (NIST)~~ recognized laboratory at least once every three years.

3. Unless otherwise approved by the commission, the operator of a coal belt conveyor scale jurisdictional to the commission must conduct a material load test at least once every two years provided that electronic or other simulated load testing is done at least once every three months.

4. A master meter may not be used as a standard to certify commercial LPG devices.

5. Notwithstanding the other provisions of this section, the commission may require recertification of any standard if upon inspection the physical condition of a standard indicates a need for recertification.

History: Amended effective April 1, 1992; September 1, 1994; February 1, 1996; July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-03-06. Metrology service. Metrology service at the commission laboratory will only be provided as set out in this section:

1. All metrology service requests must be by appointment only and will be according to the following:

a. Testing and safety division metrology;

b. State-registered service company metrology;

c. North Dakota law enforcement metrology;

d. Industrial customer metrology; and

e. All other metrology.

2. The director shall send out annual appointment notifications by mail to all state-registered service companies at least thirty days prior to each company's appointment date.

3. If a party with a scheduled metrology appointment needs to cancel that appointment, the party shall notify the commission of the need to cancel at least seven days in advance of the appointment. Appointments cancelled within less than seven days advance notice will lose scheduling priorities. The party canceling a metrology appointment may request a new appointment date at that time.

4. ~~Metrology appointments will be requested and confirmed by telephone, e-mail, facsimile, or in writing by mail. A party requesting a metrology appointment should plan at least thirty days' advance notice to the commission on any metrology appointment requests.~~ A metrology appointment must be scheduled at least thirty days in advance.

5. A metrology request not previously scheduled may only be serviced as time becomes available.

6. A metrology request for service beyond the scope of the laboratory's ~~certification of~~ recognition level will be referred to an appropriate ~~NIST-accredited~~ NIST-recognized metrology laboratory.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-03-07. Delivery of standards for certification. Standards delivered to the metrology laboratory for testing and certification must be submitted undamaged and serviceable and must comply with the following:

1. Vehicle scale test carts must be cleaned and painted with all fluid levels topped off to their calibrated reference levels.

2. Cast iron weights must be cleaned and painted following the requirements in NIST Handbook No. 105-1, section 2, as adopted by reference in section 69-10-03-01.2.

3. Provers and test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.

4. Provers must have a simple, sturdy, and adequate leveling means on the legs allowing for adequate adjustments ~~with a single tool~~.

5. Provers must have two level indicators mounted on the body of the prover at right angles to each other for leveling purposes.

6. Mild steel provers must be periodically painted as determined by the metrologist, and as recorded in the remarks section on the previous year's calibration report.

7. Mild steel test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.

8. Class F weights must meet the applicable material and design requirements of NIST Handbook No. 105-1, as adopted by reference in section 69-10-03-01.2.

9. Fabricated weights, brass weights, and cast iron weights equal to or less than ten pounds [4.54 kilograms] may not be used.

10. Laminated weights must not be adjusted and must be removed from service when the weights fail to maintain the applicable tolerance.

11. Volume standards placed in service after January 1, 1998, must meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4.

12. A volume standard placed in service before January 1, 1998, that has maintained annual certification need not meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4, unless a standard has been removed from service for a period greater than twelve months.

13. Special seals or special tools required for the test or calibration, which is of a unique nature to a particular standard, must be supplied by the standard owner prior to the beginning of the metrology process.

14. If weights greater than one hundred pounds [45.36 kilograms] or provers with capacities greater than fifty gallons [189.27 liters] are shipped to the metrology laboratory, the weights or provers must be shipped on an open flatbed truck or trailer.

15. Standards that are not in compliance with any of the above requirements will not be accepted for testing and certification.

16. A standard that is not tested and certified may not be used to test and certify a commercial device unless a variance permit is obtained from the commission, or unless the standard is recertified.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-03-08. Rejection of standards. Rejected standards must be removed from service as follows:

1. A standard that has been rejected must be conspicuously marked by sealing, tagging, or painting as appropriate to that standard.

2. A rejected standard may not be used to test and certify a commercial weighing and measuring device. The use of a rejected standard may result in commission enforcement action.

3. A standard not meeting appropriate design criteria may be allowed to remain in service for a limited time, provided a variance permit is obtained from the commission prior to certification or recertification.

History: Effective May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

PROPOSED AMENDMENTS TO CHAPTER 69-10-04

69-10-04-02. Application for registration and permitting of a service person. Annual application for registration as a registered service person must be submitted to the commission under the following requirements:

1. A first-time applicant shall:

   a. Provide a written history of education and work experience to show that the applicant is fully qualified to repair, test, and certify a commercial weighing or measuring device; and

~~b. Score seventy-five percent or more on commission testing taken from applicable sections of the adopted edition of the NIST Handbook No. 44, and from weights and measures sections of the North Dakota Century Code and North Dakota Administrative Code;~~

~~c.~~ b. Complete written tests that ~~are required to obtain a permit as a registered service person. Tests~~ must be taken ~~at the commission's metrology lab~~ in Bismarck, North Dakota, at a location designated by the Commission, and must be administered as follows:

(1) A The written test will be open book, with seventy-five percent as the minimum passing score. The test material will cover the applicable sections of the adopted 1999 edition of NIST Handbook No. 44, Title 64 ~~of the~~ North Dakota Century Code, and Article 69-10 ~~of the~~ North Dakota Administrative Code; and

(2) In the case of a test failure, an applicant may retake the test(s) ~~an alternate test date may be scheduled~~ after a review period of ten working days; ~~and~~.

~~d.~~ c. Each applicant registered by the commission shall utilize adequate standards during the testing and certification of a commercial device.

~~2.~~ 3. An applicant who is applying for renewal of an existing registration shall complete and submit the application at least fifteen days prior to the expiration date of the applicant's existing registration. Each applicant who has renewed an existing registration shall utilize adequate standards during the testing and certification of a commercial device.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-04-03. Revocation of registration. The commission may, for good cause, suspend or revoke a registered service person's permit or a registered service company's permit. A person or a company not registered with the commission but qualified to install a commercial weighing or measuring device

may install but may not service, repair, or recondition a commercial weighing or measuring device without a variance permit from the commission.

History: Amended effective April 1, 1992; July 1, 1997; July 1, 1998; October 1, 1999.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02

69-10-04-06. Quality control - Witnessing. The commission may evaluate the ~~observe or reinspect~~ work performed by a registered service person to ensure that the person is performing proper inspections and tests. The evaluation method may be by direct observation of a registered service person placing a commercial device into service or by reinspection of a device previously placed into service by a registered service person. The commission shall consider the following criteria ~~while evaluating that person~~ during the evaluation:

1. The results of a random sampling of at least one inspection and test per year, or more if so ordered by the commission, of the devices certified by a registered service person;

2. Complaints filed against a registered service person, and whether those complaints are valid; and

3. Other factors deemed relevant by the commission.

The quality control ~~evaluation reinspection~~ must be completed within forty-five days of the date the work is completed by the registered service person and at no charge to the owner of the device.