

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Weights and Measures
Rulemaking**

Case No. WM-07-203

ORDER SUBMITTING PROPOSED RULES TO ATTORNEY GENERAL

April 9, 2008

Appearances

Commissioners Susan Wefald, Kevin Cramer, and Tony Clark.

Preliminary Statement

On October 3, 2007, the North Dakota Public Service Commission (Commission) issued its notice of proposed rulemaking proposing to revise several sections of the Administrative Code including the following proposed rule changes in affecting weights and measures and metrology rules under North Dakota Administrative Code Article 69-10.

Many of the changes deal with housekeeping or clarity issues, and will not be specifically discussed in this order.

Two proposed changes implement changes in laws from the 2007 legislative session: Section 69-10-01-01. Definitions and Section 69-10-01-02.3 Recertification.

The first such change adds the word "permit" to the definition of a variance, and to any existing rules dealing with variances in order to match language in Section 64-02-02 of the North Dakota Century Code which was modified by the 2007 legislature. Prior to the 2007 legislative session, variances or "permits could only be issued on weighing devices. Legislative changes allowed the Commission to issue variance permits for both weighing and measuring devices, which was needed in order to allow mitigating enforcement of design requirements for liquid devices as well as weighing devices.

The second change is a new rule that clarifies who may recertify commercial devices; whose responsibility it is to insure the devices are recertified; how often the devices must be recertified; and what type of enforcement actions will take place if the rule is violated. This new rule is needed because of changes made during the 2007 legislative session in the wording of North Dakota Century Code Section 64-02-13 requiring the commission to determine the frequency of required testing for each category of weighing and measuring device, as long as the frequency does not exceed twenty-four months. The Commission believes that two years between tests is

excessive and is proposing a new rule to set forth testing requirements. Copies of the proposed rules that implement recent statutory revisions were not sent to the “sponsors” because the statutory revisions were part of the Commission’s appropriation bill and consequently have no sponsors.

Section 69-10-02-26 is a new rule that provides for design and access requirements for all new large hopper scales installed after the effective date of this rule, and new modification requirements to all existing large hopper scales. This proposed rule was revised as follows: a portion of the original proposed rule read “All commercial hopper scales, newly constructed and placed into service after January 1, 2008, must have a minimum of three feet of unobstructed clearance on all four sides to facilitate testing with large weights.” The revision deleted the actual date of January 1, 2008, and replaced that date with the phrase “the effective date of this rule”. The first section of this newly proposed rule provides for design requirements to safely aid testing for existing hopper scales. Because of the large capacity of commercial hopper scales currently in service and with the capacities of new ones increasing every year the old test method involving the stacking or hanging of individual 50 lb weights is no longer acceptable. Our large scale inspectors need these modifications so that these devices may be safely tested using adequate test weight. The second section of the proposed new rule provides for adequate clearance to facilitate testing with large test weights on newly installed hopper scales. The third section sets forth exemptions from this proposed rule.

Other changes included in this rulemaking are as follows:

- Repeal of section 69-10-01-07 in order to provide retail operators an option to sell refined fuels through a temperature compensated meter. Also, to allow wholesale operators to continue to provide wholesale fuels through temperature compensated loading rack meters;
- Section 69-10-02-12 changes the word “weighman” to non gender specific “scale operator”;
- Section 69-10-02-25 adds the term “portable wheel-load scale” to clarify that both permanent axle load scales and portable wheel-load scales are to be tested annually not to exceed 15 months;
- Section 69-10-03-02 clarifies that an up to date copy of the metrology certificate of traceability for all standards be maintained on file with the commission so that it can enforce recertification requirements, changes the requirement for the recertification of automatic bulk-weighing system standards to once every 5 years to more closely follow NIST recommendations, disallows the use of LPG master meters as testing standards because they do not meet NIST requirements for use as a testing standard, and, allows that any standard may be recertified sooner if inspection shows a need because some standards may be affected by environmental damage before their recertification date;

- Section 69-10-04-02 clarifies what type of registered service person test must be taken, where the test questions are taken from, and changes where the test may be administered by replacing the phrase “metrology lab” with the phrase “at a location designated by the Commission”;
- Section 69-10-04-06 deletes the phrase “while evaluating that person” in order to clarify intent.

Except for changes to North Dakota Administrative Code Sections 69-10-02-26 and 69-10-03-02, the rules are not expected to impact the regulated community in excess of \$50,000. For changes proposed in North Dakota Administrative Code Sections 69-10-02-26 and 69-10-03-02, a regulatory analysis was prepared.

Public Hearing

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. November 26, 2007. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The notice of rulemaking was published once in all official county newspapers as evidenced by the affidavit of publication on file with the Commission. The notice was also forwarded to the Legislative Council for publication at least 30 days in advance of the November hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until December 6, 2007, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

The following discusses the comments that were received in this case:

The only written comments filed and the only testimonies received at the hearing were those of Commission staff. Staff testified to the proposed changes in the various chapters.

The Commission asked staff to clarify the extent of the impact on resulting from the change in subsection 69-10-03-02 which disallows the use of a master meter as an LPG testing standard. Staff explained that the method was wholly inaccurate and that other than Commission staff, it would affect only one registered service company in the State.

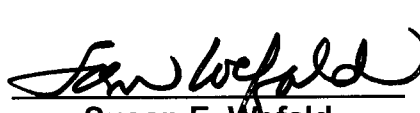
Order

The Commission orders that the proposed changes to several sections of the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code Section 28-32-14 and are approved as to their legality. The Commission also requests an opinion from the Attorney General that the proposed changes to North Dakota Administrative Code Article 69-10, weights and measures rules, do not conflict with any provisions of existing state law or rule.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner

**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.

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.

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

~~**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

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

~~**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 3 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

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.

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;

~~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;~~

~~e. 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. 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.