



Public Service Commission
State of North Dakota

COMMISSIONERS

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Kevin Cramer
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Executive Director
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May 12, 2008

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RECEIVED

MAY 12 2008

PUBLIC SERVICE COMMISSION

Mr. John Walstad, Code Revisor
Legislative Council
State Capitol
Bismarck, ND 58505

RE: Public Service Commission
Weights and Measures
Rulemaking
Case No. WM-07-203

Dear Mr. Walstad:

Enclosed please find a copy of the Commissioners' April 9, 2008 order and amended rules under Article 69-10 concerning weights and measures. The Commission's April 9, 2008 order includes a summary of the comments and the written record of the agency's consideration of all comments and the rules. No changes were made in the rules subsequent to submission to the Attorney General.

By letter dated May 6, 2008, the Attorney General approved the proposed rules as to their legality. A copy of this letter is also enclosed, as well as copies of relevant analysis statements and testimony. On May 7, 2008 the Public Service Commission adopted the rules as approved, and is now submitting the rules for publication in the North Dakota Administrative Code.

Thank you for your attention to this matter.

Sincerely,

Illona A. Jeffcoat-Sacco
Executive Director

IJS/jm

Enclosures:

1. Copy of Attorney General Opinion
2. Copy of Order Adopting Rules
3. Copy of Proposed Rules
4. Copy of Regulatory Analysis, Small Entity Analysis, and Takings Assessment
5. Copy of Testimony

25 WM-07-203 Filed: 5/12/2008 Pages: 57
Submission of Order and Rules to Legislative
Council for Publication in Administrative Code



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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OPINION

MAY 07 2008

PUBLIC SERVICE COMMISSION

May 6, 2008

Ms. Illona A. Jeffcoat-Sacco
Executive Director
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 69-10 concerning weights and measures (Case No. WM-07-203), along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was not prepared because the rules do not affect real property, 4) a small entity regulatory analysis and an economic impact statement were prepared for those rules having an impact on small entities, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Thomas L. Trenbeath
Chief Deputy Attorney General

eee/vkk

cc: John Walstad, Legislative Council

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Opinion - Rules in Compliance and Approved as to
their Legality

Attorney General

**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:

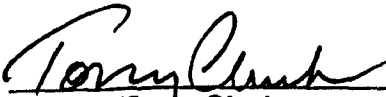
The only written comments filed and the only testimonies received at the hearing were those of Commission staff. Staff testified to the proposed changes in the various chapters.

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;

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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.

**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-weight 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.

**State of North Dakota
Public Service Commission**

**Public Service Commission
Weights and Measures
Rulemaking**

Case No. WM-07-203

**Regulatory Analysis, Small Entity Analysis and Takings Assessment
September 28, 2007**

The Testing and Safety Division has conducted the regulatory assessments required by North Dakota Century Code (NDCC) Sections 28-32-08, 28-32-08.1 and 28-32-09 for the weights and measures rules changes proposed in Case No. WM-07-203. Section 28-32-08 requires a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. NDCC Section 28-32-09 requires an agency to prepare a written assessment if the proposed rule changes are considered a constitutional takings that may limit the use of private real property.

Proposed Rule Changes:

- 69-10-01-01, paragraph 18., 69-10-01-03.2, 69-10-01-04.1, 69-10-01-04.2, 69-10-01-05, 69-10-01-05.1, 69-10-02-05, 69-10-02-16, 69-10-02-19, 69-10-02-20, 69-10-03-08, and 69-10-04-03: we propose adding the word “permit” to the definition of a variance in these rules to match the change made to NDCC, Chapter 64 by the 2007 legislature.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by these rule changes and they will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with these proposed changes.

- 69-10-01-02.3: is a proposed new rule that will clarify who may recertify commercial devices; whose responsibility it is to ensure 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.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-01-03: we propose to delete the requirement in this rule that requires an address on the adhesive stickers used as part of the sealing process because there is not enough space to fit this information on the sticker.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-01-03.2 b: we propose to add the word “or” to this rule to clarify that the rule references two different measuring device types; and in 69-10-01-03.2 c. we propose to delete any reference to the use of an LPG master meter as a standard. Under this proposal, use of an LPG master meter as a standard will no longer be allowed because they are not recognized by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST).

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-01-07: we propose to repeal this rule in order to allow the sale of refined fuels through a temperature compensated meter.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-01-13: we propose adding the term “1999 edition” to this rule to clarify which edition of NIST handbook 44 is adopted by ND.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment – ~~no regulatory taking of private real property~~ is associated with this proposed change.

- 69-10-01-16: in this rule we propose lowering the time limit registered service companies have to test a commercial device under contract to them from 13 months to 12 months, and also would change the requirement that the commission “must” schedule a device for testing that was not tested on time. These changes are needed as a result of the 2007 legislative reduction in the Commission’s inspection staff in order to better allocate time and resources.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-02-08 and 69-10-02-11: we propose repealing these two existing rules in order to combine these manufacturer specifications together in new proposed rule 69-10-01-17. This section will now include all weighing and measuring devices, and will be placed in the general section of the administrative rules.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-12: we propose to change the “weighman” terminology in this rule to eliminate use of gender specific terminology.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-02-24: we propose to clarify this rule by changing the following: adds “on commercial scales after”, changes “audit” to “audit trail”, and changes “recall” to “recalled”.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-02-25: we propose to add the term “portable wheel-load scale” to this rule to clarify that both permanent axel load scales and portable wheel-load scales are included in this rule.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-02-26: is a proposed new rule that provides design and access requirements for all new large hopper scales installed after January 1, 2008, and new modification requirements for all existing large hopper scales. These changes are intended to prevent injury to personnel during testing and to prevent damage to the device. It also sets forth exemptions for smaller hopper scales 5,000 lbs. in capacity or less because these scales require much less testing weight.

NDCC 28-32-08 Regulatory Analysis – New device installations will be impacted, but the economic impact should be greatly reduced by design before construction and much less than \$50,000 per year. If, in order to comply with this rule, an operator experiences excessive expense, an economic hardship variance is available from the commission under administrative rule 69-10-01-04.1 provided all safety requirements are met.

NDCC 28-32-08.1 – Small Entity Analysis - The compliance requirement proposed by this rule change may impact small entities but cannot be less stringent for small entities. The rule is intended to protect the hoppers from damage and the personnel involved with the testing from injury.

No additional reporting requirements are proposed by this rule change.

This rule change has no deadline proposed for existing device installations and since most of the existing devices have already been modified no impact is associated.

This rule change is intended to clarify, consolidate, and simplify this requirement for all impacted entities.

This design requirement cannot be replaced with a performance standard. The proposed change is intended to protect the device from damage and the personnel involved with the testing from injury.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-03-02: we propose to reorganize and clarify this rule. The proposed changes are as follows: clarify that an up to date copy of the metrology certificate of traceability for all standards be on file with the commission; require the certification of automatic bulk-weighing system (bulkweigher) standards once every 5 years; no longer allow the use of LPG master meters as testing standards; require recertification of any standard if upon inspection the physical condition of a standard indicates a need for recertification.

NDCC 28-32-08 Regulatory Analysis - The proposed change requiring certification of jurisdictional bulkweigher standards every 5 years will affect approximately 85 device operators throughout the state and could have an economic impact in excess of \$50,000 for the first year and every five years thereafter.

For example, a bulkweigher operator in Crosby, North Dakota could incur the following impact every five years: Crane service to remove the standards from the elevator and place them onto a flatbed truck for transport: \$3,010. Cost to transport to the metrology laboratory in Bismarck, North Dakota: \$635. Metrology fee: \$200. Total: \$3,845. However, a bulkweigher operator in New Salem, North Dakota could incur the following impact every five years: No crane service fees since the standards are located on the ground floor of the elevator. Cost to load and transport the standards to the metrology laboratory in Bismarck, North Dakota: \$125. Metrology fee: \$200. Total: \$325. The two above examples represent the worst and best case cost scenarios. Costs for the remaining 83 operators would vary between the above two totals.

LPG master meter were only used by state weights and measures staff and one private service company. However, that company also has a compliant LPG standard currently in service. In addition, four other service companies have compliant LPG standards currently in service to test the LPG devices potentially affected so small entities will still be able to receive this service. No economic impact concerning LPG device testing will result from this rule change.

There is no alternative to this proposed change. These devices must be tested every 15 months by either commission staff or by private registered service providers as required under current law. There is no other way to ensure accuracy and traceability of the standards.

NDCC 28-32-08.1 Small Entity Analysis - The 5 year certification interval proposed in this rule for automatic bulk weighing system (bulkweigher) standards only applies to a bulkweigher with integral standards if the device is being used commercially and if the integral standards are being used to annually test and certify the device, then those standards fall under the jurisdiction of the public service commission under:

NDCC Section 64-02-07 Duties of commission. The commission shall:

1. Maintain the calibration of the state weights and measures standards that are traceable to the United States standards. All secondary standards must be calibrated by a national institute of standards and technology-recognized metrology laboratory as often as the commission deems necessary.

The compliance requirement proposed by this rule change cannot be less stringent for small entities. The weights and measures program promotes equity in the commercial market place by maintaining secondary standards used in the state and through commercial weighing and measuring device enforcement by the weights and measures program. Therefore we cannot bias rule requirements to favor the buyer or seller regardless of the economic disposition of either party.

The proposed reporting requirement in this rule is needed to comply with:

NDCC Section 64-02-07 Duties of commission. The commission shall:

3. Test, correct, and seal, when found to be accurate, all copies of the standards used in the state for the purpose of testing the weighing or measuring devices used in the state, and keep a record thereof.

We consider the proposed 5 year certification interval for these jurisdictional bulkweigher standards reasonable. Bulkweigher standards that are under Federal Grain Inspection Service (FGIS) jurisdiction require a 3 year certification interval. However this certification interval could be negotiated with operators but should in no case be greater than 5 years.

The proposed rule has been clarified with this change and it is intended to simplify compliance for small entities. The reporting requirement for jurisdictional bulkweigher standards will have no impact on small entities.

No performance standard can replace this operational rule requirement. The change is intended to bring jurisdictional bulkweigher standards into compliance with the applicable requirements of the North Dakota Century Code and other administrative rules.

Since the State Metrologist is paid a monthly salary, any increase in metrology hours incurred from testing these bulkweigher standards (approximately 51 hours per year) would not have an impact on the Commission's budget.

This proposed rule change could increase state revenue up to \$3,468 annually by providing metrology service for the bulk weigher test weights. There are approximately 85 bulkweighers in the state. The time involved to certify the test weights of each device is about 3 hours per device. The current metrology fee is \$68 per hour. For a five year recertification rotation then it would be approximately: $85 \text{ operators} \div 5 \text{ years} = 17 \text{ devices per year} \times 3 \text{ hours per device} \times \$68 \text{ per hour metrology fee} = \$3,468$ in possible additional revenue to the general fund.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-03-06: we propose to change paragraph 4 of this rule in order to clarify how to make a metrology appointment, the proposed change to paragraph 6 by replacing the word "accredited" with the word "recognized" is in order to match the correct terminology used by the U.S. Department of Commerce National Institute of Standards and Technology which is to ensure that all NIST recognized labs, not just NIST accredited labs are recognized by the Commission.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-03-07: we propose to change paragraph 4 of this rule to clarify the design requirement for leveling a volumetric prover; and in paragraph 16, add the word “permit”, in order to match the change made to North Dakota Century Code, Chapter 64 by the 2007 legislature.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-04-02: we propose to change paragraph b in this rule, by adding clarifications to show what type of registered service person test must be taken and where the test questions originate. Change paragraph c. of 69-10-04-02 by replacing the phrase “metrology lab” with the phrase “a state facility” in order to clarify where the test may be administered.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-04-06: we propose some minor clarifying language changes to this rule.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

**TESTIMONY OF KEVIN HANSON
BEFORE THE PUBLIC SERVICE COMMISSION
Case No. WM-07-203
Weights and Measures Rule Making**

NOVEMBER 26, 2007

Good afternoon! My name is Kevin Hanson, I am employed by the Public Service Commission as Assistant Director and State Metrologist of its Testing and Safety Division.

The Testing and Safety Division of the North Dakota Public Service Commission has inspection and/or testing responsibility over the State's Gas Pipeline Safety Program, the Metrology Program, and the Weights and Measures Inspection and Testing Program.

During this rulemaking, we are requesting rule changes that affect the Weights and Measures and Metrology programs within the Division. A summary of the rule amendments are as follows:

Amendments to CHAPTER 69-10-01:

69-10-01-01. Definitions. As used in article 69-10: The proposed amendment to this rule adds the word "permit" to the definition of a variance to match the recent change to Title 64, NDCC.

69-10-01-02.3. Recertification. This new rule outlines who may recertify commercial devices; whose responsibility it is to insure that these devices are recertified; how often the devices must be recertified; and what type of enforcement actions that will take place if this rule is violated. This new rule was necessary to clarify recent changes to Title 64, NDCC.

69-10-01-03. Sealing. The proposed amendment to this rule deletes the requirement to include an address on the adhesive stickers used as part of the sealing

process. There is not enough space on the stickers to include the address.

69-10-01-03.2. Equipment repair notice - Applicable usage. The proposed amendments to this rule adds the word "permit" to the word "variance" to match the recent change to Title 64, N.D.C.C.; and, deletes the reference to LPG master meters which will be no longer allowed as standards.

69-10-01-04.1. Variance permit requests. The proposed amendment to this rule adds the word "permit" to the word "variance" to match the recent change to Title 64, N.D.C.C.

69-10-01-04.2. Split-weight variance permit requests. The proposed amendment to this rule adds the word "permit" to the word "variance" to match the recent change to Title 64, N.D.C.C.

69-10-01-05. Rejected devices. The proposed amendment to this rule adds the word "permit" to the word "variance" to match the recent change to Title, N.D.C.C.

69-10-01-05.1. Inactive weighing or measuring devices. The proposed amendment to this rule adds the word "permit" to the word "variance" to match the recent change to Title 64, N.D.C.C.

69-10-01-07. Sale of liquid fuels on other than gross volume basis prohibited. It is proposed that this existing rule be repealed in order to allow any operator to sell gasoline through a temperature compensated meter.

69-10-01-13. Enforcement. The proposed amendment to this rule adds the term "1999 edition" to clarify which NIST handbook no. 44 is used in ND.

69-10-01-16. Service contracts. The proposed amendments to this rule lowers the time limit registered service companies have to test a commercial device under contract to them, and also changes the requirement that the commission “must” schedule a device for testing which was not tested on time by a registered service company.

69-10-01-17. Manufacturer design deviations and limitations. This is a new rule which replaces two existing rules in the scale section of the code. This new rule is a composite of those two rules which was re-written to include both weighing AND measuring devices and, therefore, belongs in the general section of the code. The existing rules in the scale section will be repealed (see 69-10-02-08 and 69-10-02-11 in the next section).

Amendments to CHAPTER 69-10-02:

69-10-02-05. Portable pitless scales and portable hopper scales. The proposed amendment to this rule adds the word “permit” to the word “variance” to match the recent change to Title 64, N.D.C.C.

69-10-02-08. Deviations from manufacturer’s design. The proposed amendment repeals this rule (see new rule 69-10-01-17).

69-10-02-11. Limits established by factory-rated scale capacity. The proposed amendment repeals this rule (see new rule 69-10-01-17).

69-10-02-12. Observation windows or video cameras. The proposed amendment replaces gender specific terms with gender neutral terms.

69-10-02-16. Automatic bulk-loading systems - Receiving. The proposed amendment to this rule adds the word “permit” to the word “variance” to match the recent change to Title , N.D.C.C.

69-10-02-19. Single-draft weighing - Exceptions. The proposed amendment to this rule adds the word "permit" to the word "variance" to match the recent change to Title 64, N.D.C.C.

69-10-02-20. Split-weigh agreements. The proposed amendment to this rule adds the word "permit" to the word "variance" to match the recent change to Title, N.D.C.C.

69-10-02-24. Electronic scale data storage and retrieval. The proposed amendments to this rule make minor administrative additions and deletions to correct and clarify the rule.

69-10-02-25. Law enforcement scales. The proposed amendment to this rule adds the term "portable wheel-load scale" and other terms to clarify that both axel load permanent scales and portable wheel-load scales should be included in this rule.

69-10-02-26. Hoppers Scale Design Requirements. 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 provides for adequate clearance to facilitate testing with large test weights on newly installed hopper scales. The third section sets forth exemptions of this rule.

Amendments to CHAPTER 69-10-03:

69-10-03-02. Adequate standards. The proposed amendments to this rule do the following: reorganize the existing rule and make administrative additions and deletions to correct and clarify the rule; replace the word "accredited" with the word "recognized"

so that ALL NIST laboratories, no matter what their echelon status are allowed; clarifies that an up to date copy of the metrology certificate of traceability for all standards be on file with the commission; changes the requirement for the recertification of bulk weigher standards to once every 5 years; disallows the use of LPG master meters as testing standards; and modifies the rule to allow that any standard may be recertified sooner if inspection shows a need.

69-10-03-06. Metrology service. The proposed amendments to this rule make changes which clarify how to make a metrology appointment and replaces the word "accredited" with the word "recognized" so that ALL NIST labs, no matter what their echelon status are allowed.

69-10-03-07. Delivery of standards for certification. The proposed amendments to this rule make changes which clarify the design leveling requirements on a prover, and adds the word "permit" to the term variance to match recent changes to Title 64, N.D.C.C.

69-10-03-08. Rejection of standards. The proposed amendment to this rule adds the word "permit" to the term variance to match recent changes to Title 64, N.D.C.C.

Amendments to CHAPTER 69-10-04:

69-10-04-02. Application for registration and permitting of a service person. The proposed amendments to this rule do the following: clarifies what type of test must be taken and where the test questions are taken from; replaces the term "metrology lab" with the word "facilities" so that a registered service person test may be given at any state facility; and deletes an unnecessary word ("and").

69-10-04-03. Revocation of registration. The proposed amendment to this rule adds the word "permit" to the term variance to match recent changes to Title 64, N.D.C.C.

69-10-04-06. Quality control - Witnessing. The proposed amendment to this rule makes a minor change in wording to clarify the intent of the rule.

A Regulatory Analysis, Small Entity Analysis and Takings Assessment was conducted and a statement submitted on September 28, 2007. No regulatory taking of private real property is associated with any of the proposed rules.

With the exception of sections 69-10-02-26 and 69-10-01-04.1, none of the other proposed rules are expected to impact the regulated community in excess of fifty thousand dollars, no additional compliance standards or reporting requirements are proposed by those rule changes, and they will have no economic impact on small entities.

For details on the impacts associated with sections 69-10-02-26 and 69-10-01-04.1, please refer to that document.

The Commission has received no written comments concerning this proceeding.

This concludes my testimony. I would be happy to answer any questions on any of the rule amendments offered.