

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Weights and Measures
Rulemaking**

Case No. WM-20-369

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

September 2, 2020

The Commission is proposing amendments to North Dakota Century Code Article 69-10, Testing and Safety. The purpose of the proposed amendments to Article 69-10 is to update and clarify the administrative rules regarding standards for certifying and maintaining commercial weighing and measuring devices.

The proposed rules are not the result of new legislation and are not pursuant to emergency rulemaking.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if a proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

2.The regulatory analysis must contain:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- b. A description of the probable impact, including economic impact, of the proposed rule;
- c. The probable costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or commission and the reasons why the methods were rejected in favor of the proposed rule.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis has been prepared.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property.

The proposed amendments are not anticipated to limit the use of private property.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

The Commission considered the listed methods of reducing impacts of the proposed rule on small entities. Some of the proposed amendments define and clarify already existing practices. However, many of the amendments were intended to reduce regulatory burden while adding ease of administration for the program. This can be illustrated by the following proposed amendments:

- The proposed amendment to 69-10-01-02.3 allows more flexibility to extend a 15-month scale certification interval to 24 months during exigent circumstances.

- The proposed amendment to 69-10-01-03.2 reduces the requirement for recalibration when retail motor fuel devices under register. NIST Handbook 44 requires that when 51% or more of retail motor fuel devices, whether by grade or by location, over or under registers, the devices must all be recalibrated. The proposed amendment only requires recalibration when the devices over-register, meaning the retail motor fuel device indicates more product than what was dispensed.
- The proposed amendment to 69-10-03-02 extends the certification period from one to two years as determined by the NIST-recognized metrology laboratory that issued the report of calibration. The one-year certification period was more stringent than other states and an extended recertification timeframe will allow easier scheduling with metrology laboratories.
- The proposed amendment to 69-10-02-05.1 adds concrete floating slab foundation standards. With no set standards provided in administrative rule, a variance is required for operation of a floating slab foundation scale and subjected the scale to quarterly testing. The result of this amendment is that the company would no longer need to apply for a variance and quarterly certifications would no longer be necessary.
- The proposed amendment to 69-10-02-12 adds photoelectric eyes technology that may be used for unattended scale applications.
- The proposed amendments to 69-10-04-02 and 69-10-04-02.3 reduce the work history requirements from three months to 60 days for the permitting of registered service persons. The amendments also allow additional options in lieu of the work history requirement, such as completing a manufacturer's training course and allowing reciprocity with other states.

There are a few amendments that may be construed as more stringent in compliance and reporting requirements. An explanation for each follows:

- The proposed amendments to 69-10-01-03 disallow certain certification seal colors and require that the seals be punched. The amendments are necessary for the commission and the public to reasonably inspect and validate the device. These practices will ensure that there is no confusion between commission tags for weighing and measuring devices, reduce time for entities and staff in need to verify mistaken and unreadable seals, and is consistent with industry standards and existing practices of many of the registered service companies.
- The proposed amendment to 60-10-04-01(c) requires an 80 percent minimum passing score, increased from 75 percent, to apply as a registered service person. Although this appears to be a more stringent requirement, the test is currently being updated and rewritten concurrently with the rulemaking process to provide a simpler, more applicable exam.

- The proposed amendment to 69-10-04-02(3) requires that a service person must apply for renewal 30 days prior to the expiration of the current registration. This shifts back the renewal application period by 15 days to ensure that it is processed prior to the expiration of the registration. In the event the deadline is missed, the applicant is still eligible for permit reinstatement.
- The proposed amendment to 69-10-04-02.1 removes that the Commission may exempt operators that self-certify from taking the knowledge exam required for to ensure that they are knowledgeable on the Century Code and Administrative Code requirements. In practice, this exemption has not been requested in recent history and it is unlikely that the exemption would be granted.

Small Entity Economic Impact Statement

No adverse economic impact is expected for small entities, consumers or private persons, or state revenues. In 69-10-03-02 the adjusted certification timeframe, for standards used for certifying weighing and measures devices, from a required annual certification interval to a two-year interval as determined by a NIST-recognized metrology laboratory should result in cost savings to registered service companies.