

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Weights and Measures  
Rulemaking**

**Case No. WM-20-369**

**PUBLIC SERVICE COMMISSION STAFF TESTIMONY**

**September 28, 2020**

I am Konrad Crockford, Director of the Compliance Division with the Public Service Commission.

The proposed amendments are extensive and cover many sections of Article 69-10 due to the last rulemaking occurring 10 years ago. Many of the proposed amendments are non-substantive and made as a result of changes in the way the program is administered and implemented by the Commission and others are editorial in nature. The following details the substantive amendments.

Section 69-10-01-02.3 is amended due to the pandemic caused by COVID-19 and grants authority to the Commission to extend the device certification interval from 15 to 24 months if necessary. This is consistent with N.D.C.C. § 64-02-13.

Section 69-10-01-03 is amended to add criteria a security seal must contain. Previously, no criteria was specified. Additionally, the following requirements are added to certification seals in addition to what is currently required: preprinted month and year indicators to be punched out upon certification, made of material other than paper, and limited use of specific colors (green, red, yellow, and orange are reserved for Commission use).

Section 69-10-01-03.1 is repealed due to non-enforcement.

Section 69-10-01-03.2 is amended to limit the enforcement of NIST Handbook 44 2020 edition G-UR4.1. Maintenance of Equipment, to only retail motor fuel devices which over-register by four cubic inches when using a five-gallon test measure or forty-seven cubic inches when using a one-hundred-gallon prover. This limits the requirement to adjust retail motor fuel devices only when 51% or more of the devices over-register. If 51% or more of the devices under-register by grade or location, then the device owner or operator has the option to have the devices adjusted.

Section 69-10-02-05.1 is amended to require the clearance distance from the I beam to the slab to be reduced from 12" to 10". This change will allow the reduction of ten issued variances and will not impact the ability to provide proper maintenance. It is further amended to allow the installation of a scale using a floating slab foundation and details the specific requirements. The Commission has authorized, via variance permit, the installation of a floating slab foundation since 2013. At that time, it was intended to allow this type of foundation to be installed without the necessity of a variance when the next rulemaking was undertaken. Staff has determined a floating slab foundation is a suitable foundation type. Additionally, adding the floating slab foundation will allow device owner or operators to reduce the number or required certifications.

Section 69-10-02-12 is amended to allow the use of photo electric eyes for unattended scale applications in preparation for pay to weigh systems possibly being installed in North Dakota.

Section 69-10-02-27 is added to require a specific class of scale to be used in the weighing and packaging of medical marijuana in quantities of one ounce or less to ensure a suitable device is being used.

Section 69-10-03-01 is amended to adopt by reference the 2020 edition of the National Institute of Standards and Technology (NIST) Handbook No. 44 and applicable sections.

Section 69-10-03-01.1 is amended to require commercial weighing or measuring devices used in North Dakota to have a National Conference on Weights and Measures National Type Evaluation Program (NTEP) certification to be used in North Dakota. Devices currently in use prior to adoption will be grandfathered. Adoption of NTEP requirements ensures devices are of sound quality and are suitable for the application.

The following lists the NIST Handbooks adopted by reference to give clarity if a situation arises:

- 105-1: Specifications and Tolerances for Field Standard Weights – 2019
- 105-2: Specifications and Tolerances for Field Standard Measuring Flasks – 1996 (new adoption)
- 105-3: Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards – 2010
- 105-4: Specifications and Tolerances for Liquified Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers – 2016
- 105-7: Specifications and Tolerances for Dynamic Small Volume Provers – 1997 (new adoption)

- 105-8: Specifications and Tolerances for Field Standard Weight Carts – 2019 (new adoption)

Section 69-10-03-02 is amended to allow the certification timeframe of a standard to be determined by the NIST-recognized metrology laboratory which issued the report of calibration not to exceed two years. This was done as it is becoming more challenging for registered service companies to have standards certified annually by labs which issue a two-year certification. Furthermore, Staff was not comfortable extending the certification issued by a one-year lab, since that lab is operated by a different jurisdiction.

Section 69-10-04-01 is amended to require a registered service person to adjust devices as closely as practicable to zero error to ensure the device is providing an equitable transaction. This is consistent with NIST Handbook No. 44.

Section 69-10-04-02 is amended to add the requirement that the registered service applicant is currently employed by a registered service company to be eligible for a permit. Additional specifications are added for the type of work performed by a registered service person that would satisfy the work history requirement. The number of work history months is reduced from 3 months to 60 days. Additional provisions are added to satisfy the work history requirement such as a manufacturer's training course or holding a permit as a registered service person with another state/jurisdiction for a period of 60-days or more. Finally, the testing standard is increased from 75% to 80%.

Section 69-10-04-02.1 is amended to repeal the exemption for applicants as registered service persons employed by a self-certification company to take the

registered service person exams. No self-certifying company has taken advantage of this option in recent history.

Section 69-10-04-02.3 is amended to remove the current probationary permit option. This option previously allowed a registered service person applicant the ability to test without meeting the work history requirement. If the individual passed, then they would receive a probationary permit. However, a probationary permit holder is still required to be accompanied by a permanent permit holder who will cosign all test reports. It has been Staff's experience that individuals who come in without the necessary work experience do not test well and the majority come back to retest. This is also not a benefit to a registered service company since the employee is not authorized to work alone when servicing or certifying weighing or measuring devices. Finally, an applicant who previously held a registered service permit within the last two years is eligible for permit reinstatement. The previous timeframe was five years. This period of time is too long to not require the applicant to go through the reapplication and testing process due to changing industry trends.

Section 69-10-04-06.2 is amended to provide the Commission more flexibility in carrying out the evaluation of registered service persons in a fair and consistent manner.

Section 69-10-04-06.3 is amended from three consecutive quality assurance failures in a twelve-month period to three failures in a twelve-month period. If an individual has two failures and then has a pass, the current provision requires Staff to begin the quality assurance failure count again prior to being able to take any

potential action against the registered service person. This is not consistent with a full evaluation of the registered service person's total history and competence and allows one pass to overshadow a registered service person's lack of knowledge or experience.

A Statement on Regulatory Analysis, Takings Assessment, and Small Entity Regulatory Analysis was prepared and filed on September 2, 2020, for this Weights and Measures rulemaking proceeding.

The Commission has not received any written comments concerning this proceeding.

This concludes my testimony. I would be happy to answer any questions at this time.