

Hamre, John G.

From: -Adm-Legislative Council
Sent: Thursday, November 19, 2020 8:12 AM
To: Blanchard, Lisa S.; Panos, William T.; Michlitsch, Lindi J.; Martin, Laurie M.; Schuh, John M.; Kroshus, Brian; Hamre, John G.; Jones, Chris D.; Alm, Jonathan E.; Volkman, Reagan; Porsborg, Julie M.; Klipfel, Bryan R.; Smith, Jodi A.; McCusker, Kristie M.; ndbihc@gmail.com; bcba.ihcb@gmail.com
Cc: Richter, Vonette J.
Subject: Administrative Rules

ADMINISTRATIVE RULES COMMITTEE MEETING

The Legislative Management's Administrative Rules Committee reviews all rules recently adopted by administrative agencies. The committee will hold its next meeting on **Tuesday, December 1, 2020, in the Pioneer Room, State Capitol**. If there is a need to change the room because of capacity concerns, I will contact you with that information before the meeting.

You are invited to appear before the committee and describe the procedure followed by your agency in adopting the rules published in the January 2021 supplement to the North Dakota Administrative Code.

A copy of the agenda can be found at <http://www.legis.nd.gov/assembly/67-2021/interim/23-5000-02000-meeting-agenda.pdf> for your reference. Please note the time on the agenda scheduled for your presentation. If you or a representative are unable to appear at that time or if you prefer to present your testimony remotely, please notify me as soon as possible.

With respect to the rules published in the January 2021 supplement, the committee is interested in and would like you to testify before the committee concerning the following matters:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.
5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.
6. An explanation of the subject matter of the rules and the reasons for adopting those rules.
7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.
8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.
9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.
11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?

Please submit an electronic version of your testimony to me by Friday, November 27, 2020. Also on the day of the meeting, please provide the committee with **written** testimony. Please bring 20 copies.

The January 2021 rules of your agency can be found at <http://www.legis.nd.gov/admcode/arc202101379.pdf> in the form they will be presented to the committee at the meeting. The page numbers should be used as references for the committee because committee members will have pages with the same numbering. Please contact this office if you have any questions.

VONETTE J. RICHTER – LEGAL DIVISION DIRECTOR

VJR/BM



ADMINISTRATIVE RULES COMMITTEE

Tuesday, December 1, 2020

Due to public health considerations and in accordance with Executive Order 2020-16, a meeting room will not be available to the public for this meeting. A live stream of the meeting will be available to the public at: <http://video.legis.nd.gov>. Written comments regarding the committee's agenda topics may be submitted in advance of the meeting to vrichter@nd.gov.

Committee members have the option of attending the meeting remotely or in person. Each committee member is asked to notify the Legislative Council at vrichter@nd.gov at least 1 week before the meeting date to indicate whether the member plans to attend the meeting remotely or in person. Staff will provide committee members with call-in or meeting room information before the meeting.

The January 2021 Administrative Code Supplement can be viewed at the link below. The PDF is bookmarked for your convenience. <https://www.legis.nd.gov/admcode/arc202101379.pdf>

- 8:00 a.m. Call to order
Roll call
Consideration of the [minutes of the September 15, 2020, meeting](#)
- 8:05 a.m. Presentation by a representative of the State Board of Chiropractic Examiners regarding the January 2021 rules of the board (pages 1-22)
- 8:20 a.m. Presentation by a representative of the Department of Transportation regarding the January 2021 rules of the department (pages 23-30)
- 8:35 a.m. Presentation by a representative of the Public Service Commission regarding the January 2021 rules of the commission (pages 31-56)
- 8:50 a.m. Presentation by a representative of the Department of Human Services regarding the January 2021 rules of the department (pages 57-68)
- 9:05 a.m. Presentation by a representative of the Board of University and School Lands regarding the January 2021 rules of the board (pages 69-92)
- 9:20 a.m. Presentation by a representative of Workforce Safety and Insurance regarding the January 2021 rules of Workforce Safety and Insurance (pages 93-96)
- 9:30 a.m. Presentation by a representative of the Board of Integrative Health Care regarding the January 2021 rules of the board (pages 97-109)
- 9:45 a.m. Committee discussion and directives
- 9:50 a.m. Adjourn

Committee Members

Representatives: Bill Devlin (Chairman), Rick Becker, Josh Boschee, Kim Koppelman, Andrew Marschall, Brandy Pyle, Dan Ruby, Bernie Satrom, Vicky Steiner, Nathan Toman, Robin Weisz

Senators: Joan Heckaman, Jerry Klein, Randy D. Lemm, Nicole Poolman, David S. Rust

Staff Contact: Vonette J. Richter, Legal Division Director

TITLE 69
PUBLIC SERVICE COMMISSION

JANUARY 2021

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations in effect as of ~~July 31, 2019~~August 20, 2020, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards
5. Part 194 - Response Plans for Onshore Oil Pipelines
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.
7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

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

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016; July 1, 2018; July 1, 2020; January 1, 2021.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-10-01
WEIGHTS AND MEASURES - GENERAL

Section

69-10-01-01	Definitions
69-10-01-02	Installation by Other Than a Registered Service Person
69-10-01-02.1	Certification
69-10-01-02.2	Repair and Calibration
69-10-01-02.3	<u>Device</u> Recertification
69-10-01-03	<u>Certifying and</u> Sealing
69-10-01-03.1	Registration of a New or Moved Commercial Device <u>[Repealed]</u>
69-10-01-03.2	Equipment Repair Notice - Applicable Usage
69-10-01-04	Registration of New Devices - Moving Existing Devices [Repealed]
69-10-01-04.1	Variance Permit Requests
69-10-01-04.2	Split-Weigh Variance Permit Requests
69-10-01-05	Rejected Devices
69-10-01-05.1	Inactive Weighing or Measuring Devices
69-10-01-06	Liquefied Petroleum Gas Meters [Repealed]
69-10-01-06.1	Liquefied Petroleum Gas Meters - Temperature Compensation
69-10-01-07	Sale of Liquid Fuels on Other Than Gross Volume Basis Prohibited [Repealed]
69-10-01-08	Assisting Inspector
69-10-01-09	Bulk Liquid Fuel Meters [Repealed]
69-10-01-09.1	Bulk Liquid Fuel Meters - Retail Sales
69-10-01-09.2	Bulk Liquid Fuel Meters - Marking
69-10-01-09.3	Bulk Liquid Fuel Meters - Design Use
69-10-01-10	Examination of Records
69-10-01-10.1	Retention of Records
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69-10-01-13	Enforcement
69-10-01-14	Inspection and Testing Accessibility
69-10-01-15	Devices Taken Out of <u>Removed from</u> Service
69-10-01-16	Service Contracts
69-10-01-17	Manufacturer Design Deviations and Limitations

69-10-01-01. Definitions.

As used in article 69-10:

1. "Audit trail" means an electronic count or information record of the changes to the values of the calibration or configuration parameters of a device.
2. "Automatic bulk weighing system" means a weighing system ~~which weighs grain~~adapted to the automatic weighing of bulk commodities in successive drafts ~~or predetermined amounts,~~ automatically ~~records~~recording the no-load and loaded weight values, and ~~accumulates~~accumulating the net weight of each draft.
- ~~2.3.~~ "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
- ~~3.4.~~ "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
- ~~4.5.~~ "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.

- 5-6. "Commercial weighing and measuring device" includes:
- a. A weighing or measuring device commercially used or employed in establishing size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure; and
 - b. An accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects the accuracy of the device.
7. "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.~~
- 6-8. "Liquid or LPGliquefied petroleum gas computing pump" means a device that provides fuel or LPGliquefied petroleum gas to a consumer.
- 7-9. "Medical marijuana" means medical marijuana as regulated by the state department of health.
10. "NCWM" means the national conference on weights and measures.
11. "NIST" means the United States department of commerce, national institute of standards and technology.
- 8-12. "~~Not sealed~~Noncommercial device" means a stickertag 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.~~
- 9-13. "NTEP" means the national conference on weights and measures, national type evaluation program.
14. "Quality assurance inspected" means a tag applied to a device which either passed a quality assurance test or passed a test in response to a consumer complaint.
15. "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.~~
- 10-16. "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~~an individual who for hire, award, commission, or payment of any kind installs, services, repairs, or reconditions a commercial weighing or measuring device, and who registers with the commission.
- 11-17. "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.~~
- 12-18. "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~~or fuel additive device used to deliver fuel or fuel additive used in internal-combustion engines.

- ~~13.19.~~ "Seal" means marking a weighing or measuring device to show certification or rejection.
- ~~14.20.~~ "Security seal" means either a crimpable lead and wire ~~pressure-sensitive~~ seal, a plastic and wire pressure-sensitive seal, or a pressure-sensitive adhesive sealing sticker, permanently attached to a weighing or measuring device to prevent or indicate unauthorized access to the tolerance-adjusting mechanisms of that device.
- ~~15.21.~~ "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
- ~~16.22.~~ "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.
- ~~17.23.~~ "Standard" means test equipment used for certifying weighing or measuring devices.
- ~~18.24.~~ "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.~~
- ~~19.25.~~ "Weights and measures inspector" means a commission employee ~~in the testing and safety division performing duties set by the commission~~engaged in enforcing provisions of article 69-10 and North Dakota Century Code title 64.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; August 1, 2000; January 1, 2002; March 1, 2003; November 1, 2003; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-01-02. Installation by other than a registered service person.

A person, other than a registered service person, who installs a commercial weighing or measuring device must report the installation to the commission within seven working days from the day the installation was completed. The device must then be certified by a weights and measures inspector or a registered service person, ~~as allowed by section 69-10-04-02.1,~~ before the device can be used in commerce.

History: Amended effective April 1, 1992; August 1, 1993; July 1, 1997; July 1, 1998; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.1. Certification.

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

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.3. ~~Recertification~~ Device recertification.

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

History: Effective July 1, 2008; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03. ~~Sealing~~ Certifying and sealing.

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

1. A weighing or measuring device used in commerce must be certified and sealed. A security seal must be installed where applicable, to prevent or indicate unauthorized adjustments to the calibration of the device. If a security seal is unable to be installed, the device must be equipped with an audit trail. The audit trail number must be recorded on the test report.

2. A security seal must:

a. Be registered with the commission;

b. If utilizing crimpable or lead wire type, contain the year in which the security seal was applied on one side and the initials of the registered service company certifying the device on the other side;

c. If utilizing a pressure-sensitive adhesive sticker, contain the name of the registered service company certifying the device, the word "sealed", and a place to write the year of installation; and

d. If utilizing a plastic and wire pressure-sensitive seal, contain the company's name or initials and a unique numeric serial number.

3. A certification seal must:

a. Contain the following information:

(1) Name and telephone number of the commission or registered service company certifying the device;

(2) Prominently display the words "tested and approved"; and

(3) Utilize preprinted month and year indicators that are to be punched out upon device certification;

b. Be made of sufficient quality material, other than paper, to remain readable and unaffected by the elements; and

c. Be installed externally and located so that it is clearly visible to the public using the device.

4. A registered service company may not use green, red, yellow, or orange certification seals. These colors are reserved for commission use.

5. It is unlawful to remove, or allow to be removed, an official tag, certification seal, or security seal without commission approval.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997; July 1, 1998; January 1, 2002; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03.1. Registration of a new or moved commercial device.

Repealed effective January 1, 2021.

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

~~**History:** Effective July 1, 1997; amended effective July 1, 1998; January 1, 2002.~~

~~**General Authority:** NDCC 64-02-03~~

~~**Law Implemented:** NDCC 64-02-02, 64-02-13~~

69-10-01-03.2. Equipment repair notice - Applicable usage.

An equipment repair notice tag defaults to a rejection seal if the device is not repaired or modified to a compliant state within sixty days. 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 LPGa liquefied petroleum gas liquid-measuring device that is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or five

percent outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] test with a one hundred gallon [378.54 liter] prover;

- d. Is ~~an LPG~~ a liquefied petroleum gas 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; or
 5. When fifty-one percent or more of retail fuel devices tested, either by grade or by location, over-registers:
 - a. Four cubic inches [65.55 milliliters] or more when using a five-gallon [18.93-liter] test measure; or
 - b. Forty-seven cubic inches [770.19 milliliters] or more when using a one hundred-gallon [378.54-liter] prover.

History: Effective March 1, 2003; amended effective November 1, 2003; May 1, 2005; July 1, 2008; January 1, 2021.

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 request results from economic hardship. ~~Through reapplication, the economic hardship variance may be a permanent variance permit provided the applicant can show that compliance will continue to cause economic hardship;~~
3. The manufacturer's name, type, location, serial number, class, 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); and
5. Detailed information showing that compliance with specific regulations will cause economic hardship (if applicable to the variance permit request); and must include:
 - a. Specific details on how adhering to current laws and rules places an economic hardship on the operation;
 - b. Itemized list of costs associated with adhering to current laws and rules; and
 - c. Any additional information requested by the commission.
- ~~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. An owner or operator shall reapply for the variance permit prior to the current variance permit expiration date.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008; January 1, 2021.

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 smooth straight surface, in the same plane with, and not to exceed one-third inch [8.47 millimeters] per foot [30.48 centimeters] out of level with, the scale deck during the split-weighing operation;
6. A statement in the variance permit request agreeing to the following procedures to be observed during the split-weighing operation:
 - a. Use of the vehicle brakes is prohibited;

- b. The vehicle transmission must be in neutral; and
 - c. Chocking of the vehicle's wheels should be discouraged.; and
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-weight variance permit request must also include a plan for compliance over a period not to exceed five years. ~~Through reapplication, at the end of the five-year period, the economic hardship temporary variance permit may be made a permanent variance permit provided the operator can show that compliance will continue to cause economic hardship.~~

History: Effective February 1, 1996; amended effective July 1, 1997; July 1, 2008; January 1, 2021.

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. A device that is rejected for repair must be modified or repaired by a registered service person within thirty days of the date it was rejected. The commission may install a security seal on the device to prevent its use until the device has been retested and certified or a variance permit has been granted.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-06.1. Liquefied petroleum gas meters - Temperature compensation.

All sales of liquefied petroleum gas in a liquid state ~~shall~~must be made through a meter having an automatic temperature ~~compensator~~compensator. The compensator ~~shall~~must be connected, operable, and in use at all times.

History: Effective February 1, 1996; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03

69-10-01-08. Assisting inspector.

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

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-11. Device adjustments.

~~State weights~~Weights and measures inspectors may not make adjustments to a commercial weighing or measuring device other than to zero a device or adjust the level on certain counter, dormant, and platform scales.

History: Effective September 1, 1994; amended effective July 1, 1997; November 1, 2003; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-13. Enforcement.

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

History: Effective May 1, 2005; amended effective July 1, 2008; January 1, 2021.

General Authority: NDCC 49-07, 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-15. Devices ~~taken out of~~removed from service.

When a ~~state weights and measures inspector or a registered service person removes a~~ commercial weighing or measuring device ~~from service, the inspector or~~is removed from service, a weights and measures inspector shall affix a noncommercial device seal to the device. A device that is sealed as a "noncommercial device" must not be used in commerce. A registered service person shall notify the commission in writing within seven working days ~~of the removal~~when a device is removed from commercial service.

History: Effective May 1, 2005; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-02 SCALES

Section

69-10-02-01	Livestock Scales - Specifications
69-10-02-02	Livestock Scales - Installation
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69-10-02-03	Twister Head Extensions
69-10-02-04	Steel Yard Rod
69-10-02-05	Portable Pitless Scales and Portable Hopper Scales
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69-10-02-06	Clearances - Drainage - Pit Entrances
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69-10-02-09	Deck Lengths
69-10-02-10	Indicating and Printing Elements
69-10-02-11	Limits Established by Factory-Rated Scale Capacity [Repealed]
69-10-02-12	Observation Windows or , Video Cameras, <u>or Photoelectric Eyes</u>
69-10-02-13	Inspection and Testing Accessibility [Repealed]
69-10-02-14	Assisting Inspector [Repealed]
69-10-02-15	Counter Computing Scales [Repealed]
69-10-02-16	Automatic Bulk-Loading Systems - Receiving
69-10-02-17	Coal Belt Conveyor Scales Jurisdictional - Exemption
69-10-02-18	Concrete Hopper Scales - Jurisdiction <u>Exemption</u>
69-10-02-18.1	Exemptions From Testing
69-10-02-19	Single-Draft Weighing - Exceptions
69-10-02-20	Split-Weigh Agreements
69-10-02-21	Shift Test - Load-Bearing and Section Testing
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69-10-02-24	Electronic Scale Data Storage and Retrieval
69-10-02-25	Law Enforcement Scales - <u>Exemption</u>
69-10-02-26	Hoppers Scale Design Requirements
69-10-02-27	<u>Medical Marijuana Scales - Requirements</u>

69-10-02-02.1. Livestock scales - Certification.

All livestock scales under the jurisdiction of the federal packers and stockyards administration must be certified once every six months. ~~The scales may~~A scale must be certified by ~~either a weights and measures inspector or~~ a registered service person.

History: Effective August 1, 1993; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-05.1. Fixed pitless scales - Foundation.

~~A fixed pitless scale must have at least twelve inches [304.80 millimeters] of clearance between the "I" beam and the slab and the piers must extend down below the frostline and must be installed to manufacturer's specifications to support the device, prevent shifting, and provide protection from the environment.~~A fixed pitless scale foundation may be either a pier foundation or floating slab foundation and installed as follows:

1. A pier foundation must:

- a. Maintain at least ten inches [254 millimeters] of clearance between the "I" beam and the slab along the entire length and width of the scale;
- b. Have piers that extend below the frostline;
- c. Be installed to manufacturer's specifications to support the device, prevent shifting, and provide protection from the environment;
- d. Include a reinforced concrete washout slab poured independently of the load bearing piers, a minimum four inches [101.6 millimeters] thick, poured underneath the entire length and width of the scale; and
- e. Be installed to ensure that surface water will drain away from the scale area.

2. A concrete floating slab foundation must:

- a. Maintain at least ten inches [254 millimeters] of clearance between the "I" beam and the slab along the entire length and width of the scale;
- b. Be constructed on soil that has a uniform natural or engineered soil bearing of at least one thousand five hundred pounds per square foot [71.82 kilopascals];
- c. Be supported on a monolithic, steel-reinforced, concrete slab a minimum of twelve inches [304.8 millimeters] thick poured on top of a base of uniform, compacted, permeable aggregate, at least twenty-four inches [609.6 millimeters] deep;
- d. Be installed to manufacturer's specifications to support the device, prevent shifting, and provide protection from the environment; and
- e. Be installed with the top surface of the foundation slab above the surrounding grade level so that water will flow away from the foundation and away from the permeable aggregate base that supports the foundation.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-06. Clearances - Drainage - Pit entrances.

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

History: Amended effective August 1, 1993; September 1, 1994; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-07. Foundation and supports.

The foundation and supports of any scale installed in a fixed position ~~shall~~must consist of reinforced concrete of sufficient strength to ensure rigidity and permanence. The fulcrum stands for the

levers or the load cells of large capacity scales must be installed on level piers with a minimum of grouting. All footings must be of adequate depth to extend below the frostline.

History: Amended effective August 1, 1993; [January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-12. Observation windows ~~or~~, video cameras, or photoelectric eyes.

1. Windows must be provided and must be located in such a position and manner so that the scale operator has full view of the scale platform and weighing operation, including the front, back, and one side of the vehicle being weighed from the scale operator's working position, and that the weighman and indicating elements are clearly visible to interested parties.
2. Video cameras may be substituted for windows if the substitution does not diminish the view for either the scale operator or other interested parties. However, installations that exceed two hundred feet [61 meters] from the main indicating element must be equipped with two-way audio communication and remote or video display of weight indication.
3. Photoelectric eyes or similar devices that are electronically interlocked with the weighing system and positioned such that a vehicle must be entirely on or off a scale prior to a weight being recorded, may be used for unattended scale applications. If the photoelectric eye or similar device is the sole source for vehicle placement verification and is not operational, the scale may not be used.

History: Amended effective August 1, 1993; September 1, 1994; July 1, 2008; [January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-18. Concrete hopper scales - ~~Jurisdiction~~Exemption.

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

History: Effective September 1, 1994; [amended effective January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-18.1. Exemptions from testing.

Grain moisture testing meters, jewelers' scales, prescription scales, and postal scales used by the United States postal service, including scales at a location identified as a contract postal unit, are exempt from the provisions of this article.

History: Effective January 1, 2002; [amended effective January 1, 2021](#).

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~~is 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; July 1, 2008; [January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-21. Shift test - Load-bearing and section testing.

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

History: Effective February 1, 1996; [amended effective January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-25. Law enforcement scales - [Exemption](#).

Axle load scales or portable wheel load scales used to enforce load limit restrictions ~~by the North Dakota highway patrol may be tested annually, but must be tested at least once every fifteen months~~**are exempt from the provisions of this article.**

History: Effective May 1, 2005; amended effective July 1, 2008; [January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

[69-10-02-27. Medical marijuana scales - Requirements.](#)

Scales used in the packaging and sale of medical marijuana in quantities of one ounce [28.35 grams] or less must be an NTEP class I or II scale with a scale verification division of one one-hundredths of a gram or less.

History: Effective [January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-03 STANDARDS

Section

- 69-10-03-01 National Institute of Standards and Technology (NIST) Handbook No. 44
- 69-10-03-01.1 National Institute of Standards and Technology (NIST) Handbook No. 44 - NTEP - Exceptions
- 69-10-03-01.2 National Institute of Standards and Technology (NIST) Handbook No. 105-1 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Class F Field Standard Weights
- 69-10-03-01.3 National Institute of Standards and Technology (NIST) Handbook No. 105-3 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Graduated Neck-Type Volumetric Field Standards
- 69-10-03-01.4 National Institute of Standards and Technology (NIST) Handbook No. 105-4 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers
- 69-10-03-01.5 National Institute of Standards and Technology (NIST) Handbook No. 105-2 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Field Standard Measuring Flasks
- 69-10-03-01.6 National Institute of Standards and Technology (NIST) Handbook No. 105-7 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Dynamic Small-Volume Provers
- 69-10-03-01.7 National Institute of Standards and Technology (NIST) Handbook No. 105-8 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Field Standard Weight Carts
- 69-10-03-02 Adequate Standards
- 69-10-03-03 Master Test Weights and Prover Tanks [Repealed]
- 69-10-03-04 Enforcement [Repealed]
- 69-10-03-05 Weight Carts [Repealed]
- 69-10-03-06 Metrology Service [Repealed]
- 69-10-03-07 Delivery of Standards for Certification [Repealed]
- 69-10-03-08 Rejection of Standards

69-10-03-01. National institute of standards and technology (NIST) Handbook No. 44.

Except as modified in this article, the specifications, tolerances, tests, and other technical requirements for commercial weighing and measuring devices in North Dakota must conform to the following sections and subsections of the ~~1999~~2020 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference: all of section 1, section 2 (except subsection ~~2.242.245~~), all of ~~subsection 3.30, subsection 3.31 (except S.1.1.1., UR.2.2., and UR.2.3.), subsection 3.32 (except UR.2.5. and UR.2.6.), and all of subsections 3.33, 3.35, and 3.37~~section 3 (except subsections 3.34, 3.36, 3.38, and 3.39). In the event of a conflict between the NIST Handbook No. 44 and North Dakota laws and rules, North Dakota laws and rules shall prevail. Copies of the handbook may be obtained from:

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

History: Amended effective October 1, 1988; December 1, 1990; February 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; October 1, 1999; August 1, 2000; January 1, 2002; May 1, 2005; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

69-10-03-01.1. National institute of standards and technology (NIST) Handbook No. 44--~~NTEP--~~Exceptions.

~~North Dakota may consider the requirements of the national~~National type evaluation program (NTEP) ~~referenced within any edition of NIST Handbook No. 44 adopted by this state, but shall not require NTEP certification as a prerequisite~~is required for the design, sale, installation, operation, and certification of a commercial weighing and measuring device. A commercial weighing and measuring device used in commerce prior to January 1, 2021, is exempt from national type evaluation program requirements provided the device is certified in accordance with section 69-10-01-02.3.

History: Effective January 1, 2002; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-03-01.2. National institute of standards and technology (NIST) Handbook No. 105-1 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for class f field standard weights.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial weighing and measuring devices in North Dakota ~~shall~~must conform to the sections and subsections of the ~~1990~~2019 edition of the United States department of commerce, NIST Handbook No. 105-1, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective March 1, 2003 amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.3. National institute of standards and technology (NIST) Handbook No. 105-3 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for graduated neck-type volumetric field standards.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial measuring devices in North Dakota ~~shall~~must conform to the sections and subsections of the ~~1997~~2010 edition of the United States department of commerce, NIST Handbook No. 105-3, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective March 1, 2003; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.4. National institute of standards and technology (NIST) Handbook No. 105-4 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for liquefied petroleum gas and anhydrous ammonia liquid volumetric provers.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial liquefied petroleum gas and anhydrous ammonia liquid measuring devices in North Dakota shall ~~shall~~ must conform to the sections and subsections of the ~~1997~~ 2016 edition of the United States department of commerce, NIST Handbook No. 105-4, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective March 1, 2003; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.5. National institute of standards and technology (NIST) Handbook No. 105-2 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for field standard measuring flasks.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial manufacturers and distributors of liquid products, research and testing laboratories, and others concerned with accurate measurements of the volume of liquids in North Dakota must conform to the sections and subsections of the 1996 edition of the United States department of commerce, NIST Handbook No. 105-2, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.6. National institute of standards and technology (NIST) Handbook No. 105-7 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for dynamic small-volume provers.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing or verification of commercial liquid measurement devices in an operational line for compliance with the requirements of commercial device requirements without interrupting normal process flow in North Dakota must conform to the sections and subsections of the 1997 edition of the United States department of commerce, NIST Handbook No. 105-7, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.7. National institute of standards and technology (NIST) Handbook No. 105-8 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for field standard weight carts.

The specifications, tolerances, and other technical requirements for reference standards and field standard weight carts used for testing commercial weighing devices in North Dakota must conform to the sections and subsections of the 2019 edition of the United States department of commerce, NIST Handbook No. 105-8, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-02. Adequate standards.

A standard used to certify any commercial weighing and measuring device must be annually certified as traceable by ~~aan~~ NIST-recognized metrology laboratory. The commission may extend the ~~twelve-month~~ recertification interval ~~up to fifteen months~~ an additional ninety days provided that the request is made thirty days before the certification expires.

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~~ Standards integral to and used for recertification of a commercial automatic bulk-weighing system must be certified traceable by ~~aan~~ NIST-recognized laboratory at least once every five years.
2. ~~The volumetric~~ Volumetric graduated neck and dynamic small volume provers used to certify commercial loading-rack, processing plant, or refinery meters used for petroleum-based products must be certified traceable by ~~aan~~ 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~~ liquid petroleum gas devices.
5. Notwithstanding the other provisions of this section, the commission may require recertification of any standard if upon inspection the physical condition of a standard indicates a need for recertification.

History: Amended effective April 1, 1992; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008; October 1, 2010; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-04 SERVICE REGULATIONS

Section

69-10-04-01	Registration of Registered Service Persons - Privileges and Responsibilities
69-10-04-01.1	Registration of Registered Service Companies - Privileges and Responsibilities
69-10-04-02	Application for Registration and Permitting of a Service Person
69-10-04-02.1	Self-Certification
69-10-04-02.2	Application for Registration of a Service Company
69-10-04-02.3	Issuing a Placing in Service Permit Permits
69-10-04-03	Revocation of Registration Permit - Service Company and Service Person
69-10-04-04	Reports
69-10-04-05	Standardized Report Forms
69-10-04-06	Quality Control Assurance - Evaluation
69-10-04-06.1	Quality Control - Failures [Repealed]
69-10-04-06.2	Procedures for Evaluating Work of Registered Service Persons [Repealed]
69-10-04-06.3	Quality Control Assurance - Failures
69-10-04-07	Adequate Field Standard Requirements - Exception
69-10-04-08	Devices Taken out of Service [Repealed]

69-10-04-01. ~~Registration of~~Registered service persons - Privileges and responsibilities.

~~A registered service person has the authority to certify weighing or measuring devices described in North Dakota Century Code section 64-02-13 and to remove an official rejection, "equipment repair notice", or "not sealed" tag or sticker and place the device in service.~~ A registered service person has the authority to remove an official rejection seal, equipment repair notice tag, noncommercial device seal, device certification seal, or other mark placed on a weighing or measuring device by the authority of the commission. Furthermore, a registered service person has the authority to certify weighing or measuring devices described in North Dakota Century Code section 64-02-13.

A registered service person is responsible for installing, repairing, and adjusting devices such that the devices are adjusted as closely as practicable to zero error.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-01.1. ~~Registration of~~Registered service companies - Privileges and responsibilities.

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

History: Effective July 1, 1998; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-02. Application for registration and permitting of a service person.

An applicant must be employed by a currently permitted registered serviced company to be eligible for permitting as a registered 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 or an applicant whose permit has been expired more than two years shall:

a. Submit a complete application for registration as a registered service person on the form prescribed by the commission. The form must include certification that the applicant is fully qualified to install, service, repair, recondition, test, and certify the device types for which permitting is being requested;

b. Provide a ~~written~~ history of education ~~and~~or work experience to show that the applicant is fully qualified to install, service, repair, recondition, test, and certify a commercial weighing or measuring device; and on the form provided by the commission. Applicants may only qualify to test devices for which they have met the education and work history requirements. Education and work history requirements include:

(1) Sixty days of on the job training directly related to the installation, maintenance, repair, and calibration of all device types the applicant will be certifying or placing into service; or

(2) Satisfactorily completed a manufacturer's in-depth training course covering the installation, maintenance, repair, and calibration of each device type the applicant will be certifying or placing into service. Proof of course completion is required; or

(3) Holding a certification from another state as a registered service person, for at least sixty days, with authority to certify or place weighing or measuring devices into service. Proof of current certification must be provided.

~~b.c.~~ Complete written tests that must be taken at a location and time designated by the commission, and must be administered as follows:

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

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

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

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

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005; July 1, 2008; October 1, 2010; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-02.1. Self-certification.

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

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

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

3. Commission approval is required annually; and
4. Applications must address the following conditions:
 - a. The person doing the self-certification must be registered with the commission under section 69-10-04-02. ~~However, persons or companies who make written application to the commission describing their weighing or measuring devices, operating and maintenance procedures, testing processes including a list of testing technicians and their expertise, and reporting requirements, subject to commission approval, may be exempt from the provisions of section 69-10-04-02, except for subdivision d of subsection 1 and subdivision b of subsection 2 of section 69-10-04-02.~~
 - b. Upon testing, the device must be within commission-approved tolerance.
 - c. Whenever a weighing or measuring device is recertified, the person or company recertifying that device shall, within seven working days, report the recertification to the commission. The report must clearly identify each device, the initial test results recorded during self-certification, and the test results upon recertification.
 - d. A weights and measures inspector may randomly recertify any self-certified weighing or measuring device either by performing a test or by witnessing a test performed by a self-certified service person.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-02.2. Application for registration of a service company.

1. An annual application for registration as a registered service company must be filed with the commission prior to conducting any service work on commercial weighing or measuring devices and must include:
 - ~~1.~~ a. Acceptable evidence that all of the service standards used to test and approve commercial weighing or measuring devices have been certified under section 69-10-03-02;
 - ~~2.~~ b. A copy of the company's standardized report form, ~~if not currently on file with the commission,~~ as required by section 69-10-04-05;
 - ~~3.~~ c. A sample of the company's "tested and approved" sticker and internal seals, ~~if not currently on file with the commission~~ certification seal, and security seals, as required by section 69-10-01-03; and
 - ~~4.~~ d. An application for registration.
2. Upon acceptance and approval of an application, the commission will issue the service company an annual permit as a registered service company.

History: Effective July 1, 1998; amended effective May 1, 2005; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-02.3. ~~Issuing a placing~~ Placing in service ~~permit~~ permits.

Upon acceptance and approval of an application, the commission shall issue a placing in service permit to the ~~applicant~~ registered service person. All permits issued under this section remain the

property of the commission and must be surrendered upon demand. Permits issued will be either probationary or ~~permanent~~annual as defined in this section. Permits must be carried at all times while conducting weighing or measuring device servicing or certification and must be produced upon request.

1. **Probationary permits.**

- a. An ~~applicant with less than three months' experience repairing and placing devices into service will receive a probationary permit~~annual permitholder's permit may be downgraded to probationary for not performing proper tests and inspections or other violations deemed relevant by the commission;
- b. The duration of ~~a~~the probationary permit will be at the discretion of the commission but will not exceed six months from the effective date ~~of testing~~; and
- c. A probationary permitholder shall be accompanied by, and have each placing in service test report cosigned by, ~~a permanent~~an annual permitholder from the same service company and qualified in the same weighing or measuring device category in order for the test report or the placing in service to be considered valid.

2. **~~Permanent~~Annual permits.**

- a. An applicant ~~with more than three months' experience repairing and placing devices into service~~who has met the work history or experience requirements of a registered service person and satisfactorily completed all required tests will receive ~~a permanent~~an annual permit;
- b. An applicant who has ~~been previously tested and issued a permanent~~held an annual permit by the commission within the last ~~five~~two years, but has allowed it to expire, ~~will receive a permanent permit; or is eligible for permit reinstatement; and~~
- c. A probationary permitholder who has completed probationary time ~~assigned~~or requirements without receiving any quality ~~control~~assurance failures will receive ~~a permanent~~an annual permit.

History: Effective May 1, 2005; amended effective October 1, 2010; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-03. Revocation of ~~registration~~permit - Service company and service person.

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 place in service, service, repair, or recondition a commercial weighing or measuring device without a variance permit from the commission.

History: Amended effective April 1, 1992; July 1, 1997; July 1, 1998; October 1, 1999; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-05. Standardized report forms.

All test report forms filed with the commission ~~after July 1, 1994,~~ must be in a commission-approved format. ~~The commission will issue copies of the standardized prototype to all newly permitted~~

~~registered service companies.~~ Failure to file a test report in a commission-approved format may result in the rejection of the report.

History: Effective August 1, 1993; amended effective February 1, 1996; October 1, 1999; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-06. Quality ~~control~~assurance - Evaluation.

1. The commission may evaluate the work performed by a registered service person to ensure that the person is performing proper inspections and tests. The evaluation method may be by direct observation ~~of a registered service person placing a commercial device into service~~ or by reinspection of a device previously placed ~~into service~~ or recertified by a registered service person. The commission may consider the following criteria during the evaluation:

~~1.~~ a. ~~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~~ The results of previous quality assurance inspections;

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

~~3.~~ c. Other factors deemed relevant by the commission.

2. A quality assurance inspection ends when the tested device either fails a portion of the inspection or it passes the inspection. When a device fails a quality assurance inspection, the failure will be documented, the device will be rejected, and a followup quality assurance inspection will be conducted as soon as practical. When a device passes a quality assurance inspection, a weights and measures inspector shall affix a quality assurance inspected tag to the device. A quality assurance inspection does not take the place of the annual certification.

History: Effective September 1, 1994; amended effective February 1, 1996; October 1, 1999; July 1, 2008; October 1, 2010; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-06.2. Procedures for evaluating work of registered service persons.

Repealed effective January 1, 2021.

~~— A quality control inspection to evaluate the work of a registered service person will be conducted as set forth in this section:~~

~~— 1. — Selection criteria includes:~~

~~— a. — Location of the device in relation to location of the appropriate state inspector is a controlling factor;~~

~~— b. — Each registered service person whose annual device testing total is at least one hundred will be evaluated on one of every one hundred devices tested;~~

~~— c. — Each registered service person whose annual device testing total is less than one hundred will be assigned a quality control level related to the number of total devices tested the previous year; and~~

~~— d. — Receipt of a complaint.~~

- ~~2. A registered service person who receives multiple quality control inspections within a twelve-month period because of the number of devices tested, and has not failed on the first scheduled quality control inspection for that time period, will receive an honorary pass on the second scheduled quality control inspection. If the number of devices tested requires a third quality control inspection which the registered service person does not fail, the fourth scheduled quality control inspection will again be an honorary pass.~~
- ~~3. A specific quality control inspection ends when the tested device either fails a portion of the inspection or it passes the inspection.~~
- ~~4. When a device fails a quality control inspection, the failure will be documented, the device will be rejected, and a followup quality control inspection will be conducted as soon as practicable.~~

History: Effective May 1, 2005; amended effective October 1, 2010.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-06.3. Quality ~~control~~assurance - Failures.

A quality ~~control~~assurance evaluation test report that discloses a failure must include any alleged violations of North Dakota Century Code ~~chapter 64-03~~title 64, North Dakota Administrative Code ~~chapter 69-10-03~~title 69, and any applicable sections of the NIST Handbook No. 44, as adopted by reference in section 69-10-03-01. If a registered service person fails three ~~consecutive~~ quality ~~control~~assurance inspections within a twelve-month period, the commission may:

- 1. Issue a written warning requiring remedial action within thirty days from the date of the warning;
- ~~2. Schedule a conference with the registered service person and that person's employer;~~
- ~~3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;~~
- ~~4.3. Reduce the registered service person's permit status to probationary for up to six months; or~~
- ~~5.4. Suspend the registered service person's permit and assess a civil penalty; or~~
- 5. Other actions deemed suitable by the commission.

The results of any quality ~~control~~assurance failures and associated enforcement actions may be sent to the registered service person's employer and to the owner or operator of the affected device.

A quality ~~control~~assurance evaluation report and a record of any associated enforcement action is filed as part of the overall quality ~~control~~assurance profile of the affected registered service person and must remain part of that profile for twelve months from the date of the failure.

History: Effective October 1, 2010; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13