

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Weights and Measures
Rulemaking**

Case No. WM-20-369

**Public Service Commission
Pipeline Safety
Rulemaking**

Case No. GS-20-370

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

October 21, 2020

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Preliminary Statement

On August 26, 2020, the North Dakota Public Service Commission (Commission) issued a formal Notice of Intent Adopt and Amend Administrative Rules and Notice of Public Hearing and Abbreviated Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing, proposing amendments to Article 69-10 and proposing to amend Section 69-09-03-02 of the North Dakota Administrative Code.

On August 26, 2020 and September 2, 2020, Commission Staff (Staff) filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments for the captioned cases.

On August 26, 2020, the Commission forwarded the notices to the Legislative Council for publication at least 30 days in advance of the hearing.

The Abbreviated Notice was published in each of the 51 official county newspapers in the state during the weeks of September 1 through September 7, 2020.

On September 28, 2020, the Commission held the public hearing as noticed, beginning at 10:00 a.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed a comment period until October 8, 2020, during which the Commission received and considered data, views, or written and oral comments concerning the proposed rulemaking as part of the rulemaking record.

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The proposed rules and amendments are summarized as follows:

Case No. WM-20-369 - 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 amendments are not expected to have an impact on the regulated community in excess of \$50,000.

Case No. GS-20-370 - Section 69-09-03-02 – Pipeline Safety

The purpose of this amendment is to adopt by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). This rule change adopts amendments to safety regulations that have been adopted by PHMSA current to August 20, 2020. The proposed change is not expected to have an impact on the regulated community in excess of \$50,000.

Public Hearing and Comments

The Commission reviewed and considered all comments. The written and oral comments that were received are summarized and discussed below by case number.

Case No. WM-20-369 - Article 69-10 - Testing and Safety

Written and oral comments by Konrad Crockford of Staff were provided at the hearing. The Commission received written comments from Prairie Scale Systems, Inc. (Prairie). There were also comments that Capital Scale Co. (Capital) provided to Staff on September 3, 2020, which Staff memorialized and provided for Commission consideration.

Staff commented that many of the proposed changes are non-substantive and clarify the manner of which the current program is currently being administered. The substantive amendments are described as follows:

Proposed section 69-10-01-02.3 allows the Commission to extend the device certification interval up to 24 months if necessary, consistent with what is provided in N.D.C.C. § 64-02-13. The flexibility to extend device certification intervals from the current 15 months to 24 months at the Commission's discretion because evident during the current state of emergency.

Proposed section 69-10-01-03 provides the security seals must meet certain criteria and must contain preprinted month and year indicators to be punched out upon certification, made of material other than paper, and limits certain colors from being used to prevent confusion.

Proposed repeal of section 69-10-01-03.1 is due to it being an unnecessary requirement with no added value to regulatory oversight.

Proposed section 69-10-01-03.2 limits the enforcement of National Institute of Standards and Technology Handbook 44 to point of sale liquid-measuring devices subject to Commission regulation when 51% or more of retail fuel devices tested, either by grade or location, over-registers by four cubic inches or more when using a five gallon test measure, or 47 cubic inches or more when using a one hundred gallon prover. 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.

Proposed section 69-10-02-05.1 reduces the clearance distance from the I-beam to the slab from 12 inches to 10 inches. This change will allow the reduction of issued variances and does 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 installations of floating slab foundations since 2013 by providing a variance permit, and based on these variances, Staff finds a floating slab foundation to be a suitable foundation type and recommends that it be added to section 69-10-02-05.1 to reduce certification requirements.

Proposed section 69-10-02-12 allows the use of photoelectric eyes for unattended scale applications for future use of pay to weigh systems in North Dakota.

Proposed section 69-10-02-27 requires a specific class of scale 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.

Proposed section 69-10-03-01 adopts by reference the 2020 edition of the National Institute of Standards and Technology (NIST) Handbook 44 and applicable sections.

Proposed section 69-10-03-01.1 requires commercial weighing and measuring devices to have a National Conference on Weights and Measures National Type Evaluation Program (NTEP) certification to be used in North Dakota. Devices used prior to publication will be grandfathered.

The proposed rules adopt the following NIST handbooks adopted by reference for clarity of application: 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 Liquefied Petroleum Gas and Anhydrous Ammonia Volumetric Provers – 2016; 105-7: Specifications and Tolerances for Dynamic Small Volume Provers – 1997 (new adoption); and 105-8: Specifications and Tolerances for Field Standard Weight Carts – 2019 (new adoption).

Proposed section 69-10-03-02 extends a certification timeframe of a standard by a NIST-recognized metrology laboratory for calibration from one to two years provided the NIST-recognized laboratory issues a two-year certificate of calibration.

Proposed section 69-10-04-01 requires a registered service person to adjust devices as closely as practicable to zero to ensure the device is providing an equitable transaction.

Proposed section 69-10-04-02 adds the requirement that a registered service person applicant be currently employed by a registered service company to be eligible for a permit. The amendments also provide additional specifications for type of work performed that satisfies the work history requirement and increases the testing standard from 75% to 80%.

Proposed repeal of section 69-10-04-02.1 removes the exemption for registered service person applicants employed by a self-certifying company to take the registered service person exam.

Proposed section 69-10-04-2.3 removes the current probationary permit option for an applicant to test without meeting the work history requirement. The amendments also provide that an applicant who previously held a registered service permit within the last two years is eligible for permit reinstatement — reduced from five years.

Proposed section 69-10-04-06.2 provides more flexibility in carrying out evaluation of registered services persons while maintaining that it is conducted in a fair and just manner.

Proposed section 69-10-04-06.3 provides that three quality assurance failures within a twelve-month period may require potential action against the registered service person. This change from three consecutive quality assurance failures is more consistent with a full evaluation of the registered service person's history and competence.

Prairie expressed concerns and provided recommendations to the proposed amendments. These concerns are summarized as follows:

Proposed section 69-10-01-03(2)(b) will require registered service companies to purchase new crimping devices annually for all registered service persons. Prairie expresses that this could become expensive, cumbersome, and may require registered

service persons to have different crimping devices for different states. As a result, Prairie recommends against the amendment.

On proposed section 69-10-02-05.1, Prairie comments that the current variance process for floating slab foundations for above-ground scales should continue to ensure that the foundation is installed correctly with state oversight. Prairie expresses that many manufacturers and installers will use minimal rebar, thin concrete, and fail to take into consideration site conditions. Without the additional Commission oversight, Prairie expects future issues with fixed pitless scales that will be detrimental to the general public. Prairie also provides that if the Commission allows floating slab foundations without a variance, the Commission should specify that “the concrete washout slabs shall be poured independently of the load bearing piers” to be consistent with neighboring states and create a clear differentiation between pier and floating slab foundations for fixed pitless scales.

On proposed section 69-10-02-05.1(1)(a), Prairie recommends against reducing the amount of clearance underneath a fixed pitless scale from 12” to 10”. Prairie states that 10” of clearance is inadequate for proper cleaning, maintenance, and operation of a fixed pitless scale. A reduction will create more problems with material and snow buildup underneath the scale. Instead, Prairie recommends an increase from 12” to 18” to ensure proper maintenance and accurate weighing.

On proposed section 69-10-02-05.1(1)(d), Prairie recommends adding the following language to provide a minimum standard of rebar in the foundation to ensure foundations are properly installed: “the floating slab foundation shall consist of a minimum of 2 mats of #5 rebar 12” on center.”

On proposed 69-10-02-12, Prairie recommends against sole use of photoelectric eyes for verifying the placement of vehicles on a scale, due to difficulty operating them in dusty or dirty environments. Prairie also notes that they are commonly turned off when they fail or are damaged by trucks or snow removal equipment.

On proposed section 69-10-03-02, Prairie recommends against extending the schedule of standards used to certify any commercial weighing and measuring device to two years. Prairie states that some registered service companies do not take proper precautions to protect their standards from the elements and this could negatively impact standards used to certify commercial devices.

Capital provided several recommendations during its discussion with Staff. Specifically, Capital Scale recommended:

On proposed section 69-10-02-05.1(1)(a) and 69-10-02-05.1(2)(a), that the reduction of clearance remain at 12”.

On proposed section 69-10-02-05.1(1)(b), adding a four-foot minimum depth to the pier foundation requirement.

On proposed section 69-10-02-26, increasing the minimum three feet of unobstructed clearance on all sides of a hopper scale.

On proposed section 69-10-03-02, the field standard certification requirement to remain at twelve months.

Having considered the comments and recommendations, the Commission addresses the comments by section.

Section 69-10-01-03(2)(b): Prairie's recommendation against the proposed amendments is out of concern of additional costs, cumbersome requirements, and the possibility of needing different seals for different states. The Commission considered these concerns, and being a service provider itself, considers the additional costs and requirements to be minimal relative to the benefit. Upon review of current vendors, the Commission places the costs at \$25 per die — each die lasting through the year. This cost, even for the larger third-party service providers operating within the state, would likely be in the hundreds of dollars. Relative to the benefit to the public and the inspectors, the Commission believes this minor cost to be necessary. The Commission adopts this section as proposed.

Section 69-10-02-05.1: Having considered Prairie's on floating slabs, the Commission disagrees that the variance process should continue for floating slab foundation scales, but agrees with the recommendation to add verbiage clarifying that concrete washout slabs shall be poured independently of the load bearing piers to ensure a clear distinction between pitless scale pier foundations and floating slab foundations. Additional Commission testing over the past few years has not identified concerning trends regarding the floating slab scales. The device would still be subject to standard annual testing and review if floating slab scales have issues. In the event that concerning trends arise, the Commission may reconsider this in the future.

Section 69-10-02-05.1(1)(a): Prairie's recommendation to increase the clearance from 12" to 18" instead of lowering it to 10", and Capital's general recommendation to have it remain at 12" was considered by the Commission. It is worth noting that the 12" clearance will not be changing for scales already installed, but only for future installations. The Commission understands the concern regarding build-up of snow and materials, and the ability to clean and maintain the scale. However, there are currently scales in operation under variance with a 10" clearance and there have been no issues expressed to the Commission over the past few years for scales operating with less than a 12" clearance. Ultimately the burden of cleaning and maintaining the scale is upon the operator. To the extent that a larger clearance is needed for adequate cleaning and

maintenance, it is the operator's prerogative to provide such a clearance. As with the floating slab foundations, the scale operator would still be subject to standard annual testing and review.

Sections 69-10-02-05.1(1)(b),(d), and 69-10-02-26: Prairie's recommendation specifying a minimum standard or rebar for floating slab foundations, Capital's recommendation for adding a four-foot minimum depth to the pier foundation requirement, and Capital's recommendation for increasing the minimum three feet of unobstructed clearance on all sides of the hopper scale are not revisions that the Commission intends to make based upon the comments received at this time. The Commission will conduct additional evaluation and consider these recommendations for a future rulemaking proposal.

Having considered the comments and recommendations, section 69-10-02-05.1 is adopted as proposed.

Section 69-10-02-12: Prairie recommends that photoelectric eyes not be the only source of verification that vehicles are properly placed on the scale due to issues with maintenance or damage. Having considered these comments and concerns, the proposed rule is revised to provide language making it clear that if the photoelectric eye is not operational and it is the sole source for vehicle placement verification, then the scale cannot be used.

Section 69-10-03-02: Prairie and Capital recommend against the proposal to extend the annual certification to two years. Prairie expressed that it may subject the public to scale inaccuracies. Having considered these comments, proposed 69-10-03-02 is revised back to an annual certification.

Having considered the comments, the Commission adopts the rules with the discussed revisions.

Case No. GS-20-370 - Section 69-09-03-02 – Pipeline Safety

Written and oral comments by Caleb Simburger of Staff were provided at the hearing. The Commission received no further comments regarding this section.

Staff testified that this rule change adopts amendments to safety regulations that have been adopted by PHMSA current to August 20, 2020.

The Commission received no further comments regarding this section and proposes to adopt the amendment without revision.

Discussion

Having reviewed the proposed rules, and considered the testimony and comments received, the Commission finds good cause for submitting the proposed rule in Case No. WM-20-369 as revised and the proposed rules in Case No. GS-20-370 as originally proposed, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

ORDER

The Commission orders that the revised proposed rules and amendments in Case No. WM-20-369, attached and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

The Commission orders that the proposed rules and amendments in Case No. GS-20-370, attached to and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

PUBLIC SERVICE COMMISSION

 _____ Julie Fedorchak Commissioner	 _____ Brian Kroshus Chairman	 _____ Randy Christmann Commissioner
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Weights and Measures
Rulemaking

WM-20-369

ARTICLE 69-10
TESTING AND SAFETY

Chapter	
69-10-01	Weights and Measures - General
69-10-02	Scales
69-10-03	Standards
69-10-04	Service Regulations
69-10-05	Oil and Gas Metering Systems [Repealed]

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	Recertification
69-10-01-03	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 <u>[Repealed]</u>
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 <u>[Repealed]</u>
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 <u>[Repealed]</u>
69-10-01-08	Assisting Inspector
69-10-01-09	Bulk Liquid Fuel Meters <u>[Repealed]</u>
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
69-10-01-11	Device Adjustments
69-10-01-12	Sale of Anhydrous Ammonia
69-10-01-13	Enforcement

69-10-01-14	Inspection and Testing Accessibility
69-10-01-15	Devices Taken Out of 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.
12. "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.
23. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
34. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
45. "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.
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.
57. "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.~~
68. "Liquid or ~~LPG~~ liquefied petroleum gas computing pump" means a device that provides fuel or ~~LPG~~ liquid petroleum gas to a consumer.
9. "Medical marijuana" means medical marijuana as regulated by the North Dakota department of health.

- ~~9-10.~~ "NCWM" means the national conference on weights and measures.
- ~~7~~11. "NIST" means the United States department of commerce, national institute of standards and technology.
12. "NTEP" means the national conference on weights and measures, national type evaluation program.
- ~~8~~13. ~~"Not-sealed-Non-Commercial Device" means a sticker tag 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.~~
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.
- ~~9~~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.~~
- ~~40~~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.~~
- ~~41~~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.~~
- ~~42~~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.~~
- ~~43~~20. "Seal" means marking a weighing or measuring device to show certification or rejection.
- ~~44~~21. "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.
- ~~45~~22. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.

4623. "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.
4724. "Standard" means test equipment used for certifying weighing or measuring devices.
4825. "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.~~
4926. "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 North Dakota Century Code title 64 and North Dakota Administrative Code article 69-10.

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; _____, 2020.

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; _____, 2020.

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; _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-01-02.2. Repair and calibration.

A commercial weighing and measuring device may only be repaired, tested, calibrated, and placed into commercial service by a registered service person, or tested and adjusted, as allowed by law, and certified for commercial service by the commission, whichever is applicable.

History: Effective July 1, 1997.

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 _____, 2020.

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. An certification seal must:
 - a. Contain the following information:
 - i. Name and telephone number of the commission or registered service company certifying the device,
 - ii. Prominently display the words "tested and approved", and
 - iii. 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; _____, 2020.

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.

~~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

Repealed effective _____, 2020.

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

An equipment repair notice tag may be used in the following circumstances: 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 ~~LPG~~ liquid 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~~ liquid 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 51% 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; _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-01-04. Registration of new devices - Moving existing devices.

Repealed effective April 1, 1992.

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);
 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; _____, 2020.

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.
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; July 1, 2008; _____, 2020.

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; _____, 2020.

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 sealed "non-commercial device" 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; July 1, 2008.

General Authority: NDCC 28-32-02, 64-02-03

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

69-10-01-06. Liquefied petroleum gas meters.

Repealed effective April 1, 1992.

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 ~~shall~~ must be connected, operable, and in use at all times.

History: Effective February 1, 1996; amended effective _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-01-07. Sale of liquid fuels on other than gross volume basis prohibited.

Repealed effective July 1, 2008.

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 "non-commercial device".

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-01-09. Bulk liquid fuel meters.

Repealed effective August 1, 2000.

69-10-01-09.1. Bulk liquid fuel meters - Retail sales.

Meters designed for bulk loading use may not be used for retail fuel sales without first obtaining a variance from the commission, which may be granted for no longer than six months.

History: Effective September 1, 1994.

General Authority: NDCC 64-02-03

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

69-10-01-09.2. Bulk liquid fuel meters - Marking.

A bulk liquid fuel meter used in commerce and not marked from the manufacturer with the liquid to be measured must be sealed with a tag indicating the product for which the meter is designed to deliver, or the liquid used to certify the meter if other than the design liquid.

History: Effective September 1, 1994.

General Authority: NDCC 64-02-03

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

69-10-01-09.3. Bulk liquid fuel meters - Design use.

A bulk liquid fuel meter may not be used for the commercial delivery of any liquid fuel that is not substantially similar in physical properties to the liquid fuel for which it was designed, tested, and certified.

History: Effective September 1, 1994.

General Authority: NDCC 64-02-03

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

69-10-01-10. Examination of records.

The commission may obtain copies of, and examine any weigh ticket, weigh receipt, meter printer ticket, or any other record of sale resulting from the operation of any commercial weighing or measuring device.

History: Effective August 1, 1993.

General Authority: NDCC 64-02-03

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

69-10-01-10.1. Retention of records.

A record of a sale such as a weigh ticket, weigh receipt, meter printer ticket, or any other record resulting from the operation of any commercial weighing or measuring device must be maintained on file at the place of sale for a period of not less than two years from the date of sale.

History: Effective July 1, 1998.

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; _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-01-12. Sale of anhydrous ammonia.

The sale of anhydrous ammonia after January 1, 1999, on any basis other than by certified scale or certified meter by any new or newly expanded anhydrous ammonia dealer is prohibited.

History: Effective July 1, 1997.

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)~~ North Dakota Century Code and 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; _____, 2020.

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

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

69-10-01-14. Inspection and testing accessibility.

A commercial weighing or measuring device must be installed so that it is easily accessible for

inspection and testing.

History: Effective May 1, 2005.

General Authority: NDCC 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 is removed from service, a weights and measures inspector shall affix a non-commercial device seal to the device. A device that is sealed as a "non-commercial device" must not be used in commerce. from service, the inspector or 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 _____, 2020.

General Authority: NDCC 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 twelve months may be scheduled for testing by the commission.

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

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: Effective July 1, 2008.

General Authority: NDCC 64-02-03

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

**CHAPTER 69-10-02
SCALES**

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69-10-02-01. Livestock scales - Specifications.

A commercial livestock scale must be equipped with a type registering print device, and the value of the minimum graduated interval must not be greater than five pounds [2.27 kilograms], provided, however, that for scale capacities in excess of fifty thousand pounds [22679.6 kilograms] the scale may indicate and record in ten-pound [4.54-kilogram] divisions. A scale rack on a livestock scale must be securely mounted on the scale platform, with adequate clearance between the outside of the rack and other obstructions. The steel yard or beam rod must be connected directly to the transverse lever.

History: Amended effective July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-02. Livestock scales - Installation.

All livestock scales must be installed so as to permit ready access for large capacity testing equipment. At the one end of a livestock scale there must be a straight concrete approach the full width of the scale platform, in the same plane as the scale platform and equal in length to the width of the scale platform in order to provide a clean and level area for the purpose of unloading test weights used in testing the scale. Provisions must be made to allow the test truck to back up to the approach by providing an entrance of adequate height and width to enable the test truck to be reasonably level when weights are unloaded. A livestock scale newly constructed after July 1, 1993, must have a minimum entrance and approach width and height of twelve feet [3.66 meters].

A livestock ring scale constructed after January 1, 1998, must have an approach that is level with the scale platform and at least twenty-eight feet [8.53 meters] in length and ten feet [3.05 meters] in width.

History: Amended effective August 1, 1993; July 1, 1997.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

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

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

History: Effective August 1, 1993; amended effective _____, 2020.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-03. Twister head extensions.

The twister head extensions cannot be used under any conditions in the installation of motor truck, motor truck dump, or livestock scales. Extension levers used on motor truck, livestock, or motor dump truck scales must be securely anchored to or suspended from concrete of the neck or walls of the scale pit.

History: Amended effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-04. Steel yard rod.

The steel yard rod connecting the weighbeam to the transverse lever on all scales must be installed or shielded to prevent interference.

General Authority: NDCC 64-02-03

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

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; July 1, 2008.

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 ~~must~~ 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 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 1,500 pounds per square foot;
- c. Be supported on a monolithic, steel reinforced, concrete slab a minimum of 12 inches thick poured on top of a base of uniform, compacted, permeable aggregate, at least 24 inches 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; _____, 2020.

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.

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.

General Authority: NDCC 64-02-03

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

69-10-02-08. Deviations from manufacturer's design.

Repealed effective July 1, 2008.

69-10-02-09. Deck lengths.

1. A motor truck or motor truck dump scale installed and operational before January 1, 1995, must have at least twelve feet [3.66 meters] or a distance equal to one-third of deck length, whichever is greater, of straight driveway on either end of the scale deck not over one-third inch [8.47 millimeters] per foot [30.48 centimeters] out of level with the platform. The first twelve feet [3.66 meters] from the scale must be of a hard surface (concrete or asphalt). An inside scale must measure a minimum of four feet [1.22 meters] of metal, wood, asphalt, or reinforced concrete between the scale deck and the inside of the doorsill at both ends of the scale.
2. A motor truck or motor truck dump scale installed on or after January 1, 1995, must have at least twelve feet [3.66 meters] or a distance equal to one-third of deck length, whichever is greater, of straight approaches beginning in a level plane with the surface of the scale deck. The slope of the approaches away from the scale deck may not exceed one-third inch [8.47 millimeters] per foot [30.48 centimeters]. The first twelve feet [3.66 meters] of approach from the scale must be of metal or concrete. An inside scale must measure a minimum of five feet [1.52 meters] of reinforced concrete between the scale deck and the inside of the doorsill at both ends of the scale. However, grating of sufficient strength to withstand all loads equal to the concentrated load capacity of the scale may be installed on either end of that inside scale.

History: Amended effective September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

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

69-10-02-10. Indicating and printing elements.

A beam-type or dial-type indicating element must be installed in a level and plumb position, mounted on concrete piers, or on a concrete slab, and fastened securely to the concrete walls or neck of the scale pit. These mechanical indicating element foundations must be independent of the scalehouse floor, weighing room, or other similar structures. The installation of a dial must allow for adequate clearance for service between the cabinet of the dial and the wall. Motor truck, motor truck dump, railroad track, and livestock scales installed after July 1, 1973, and used in commerce, must be equipped with a ticket printing device with a copy of the printed receipt issued to the customer at the time of the delivery. Notwithstanding the above, for a scale installed prior to July 1, 1973, equipped with any type of ticket printing capability, its operator must use that ticket printing capability for all sales, with a copy of the printed ticket to be issued to the customer at the time of

the delivery. A shoulder or stop must be provided on each weighbeam bar to prevent the poise from traveling and remaining behind the zero graduation. An indicating or printing element must be adequately protected against environmental damage.

History: Amended effective 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

69-10-02-11. Limits established by factory-rated scale capacity.

Repealed effective July 1, 2008.

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 which 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; _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-02-13. Inspection and testing accessibility.

Repealed effective May 1, 2005.

69-10-02-14. Assisting inspector.

Repealed effective August 1, 1993.

69-10-02-15. Counter computing scales.

Repealed effective August 1, 2000.

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; amended effective July 1, 2008.

General Authority: NDCC 64-02-03

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

69-10-02-17. Coal belt conveyor scales jurisdictional - Exemption.

Coal belt conveyor scales not used for coal sales to the general public, or not used for the sale of coal on behalf of leasehold interests, are exempt from the provisions of this article.

History: Effective September 1, 1994; amended effective January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-03-07

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 _____, 2020.

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 (CPU), are exempt from the provisions of this article.

History: Effective January 1, 2002; amended effective _____, 2020.

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-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; July 1, 2008.

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; amended effective July 1, 2008.

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.

General Authority: NDCC 64-02-03

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

69-10-02-22. Sensitivity response.

The sensitivity response of a motor truck or motor truck dump scale designed with a division size of five pounds [2.27 kilograms] and without a balance indicator may not exceed four scale divisions.

History: Effective October 1, 1999.

General Authority: NDCC 64-02-03

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

69-10-02-23. Stored tare weight.

A stored tare weight across a motor truck or motor truck dump scale may not be used for more than one commercial transaction.

History: Effective January 1, 2002.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

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 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; July 1, 2008.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

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; _____, 2020.

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 five hundred pounds [226.80 kilograms] 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 [.91 meter] 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 five thousand pounds [2267.96 kilograms] or less are exempt from this requirement.

History: Effective July 1, 2008.

General Authority: NDCC 64-02-03

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

69-10-02-27. Medical Marijuana - Requirements.

Scales used in the packaging and sale of medical marijuana in quantities of one ounce or less must be an NTEP class I or II scale with a scale verification division of 0.01 grams or less.

History: Effective _____, 2020.

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
<u>69-10-03-01.2.1</u>	<u>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.</u>
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
<u>69-10-03-01.5</u>	<u>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</u>
<u>69-10-03-01.6</u>	<u>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.</u>
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 subsection ~~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 Ave., 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; _____, 2020.

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 – National Type Evaluation Program-NTEP –Exceptions.

~~North Dakota may consider the requirements of the 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 [date of publication] is exempt from NTEP requirements provided the device is certified in accordance with section 69-10-01-02.3.~~

History: Effective January 1, 2002; amended effective _____, 2020.

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 Ave., Dept. 408

Bismarck, ND 58505-0480

History: Effective March 1, 2003; amended effective _____, 2020.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.2.1. 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 Ave., Dept. 408
Bismarck, ND 58505-0480

History: Effective _____, 2020.

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 Ave., Dept. 408
Bismarck, ND 58505-0480

History: Effective March 1, 2003; amended effective _____, 2020.

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 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 Ave., Dept. 408
Bismarck, ND 58505-0480

History: Effective March 1, 2003; amended effective _____, 2020.

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. 105-7 - 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 Ave., Dept. 408
Bismarck, ND 58505-0480

History: Effective _____, 2020.

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. 105-8 - 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 Ave., Dept. 408
Bismarck, ND 58505-0480

History: Effective _____, 2020.

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 a NIST-recognized metrology laboratory. The commission may extend the ~~twelve-month~~ recertification interval ~~up to fifteen months~~ an additional 90-days provided that the request is made 30-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 a 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 a 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; _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-03-03. Master test weights and prover tanks.

Repealed effective April 1, 1992.

69-10-03-04. Enforcement.

Repealed effective May 1, 2005.

69-10-03-05. Weight carts.

Repealed effective October 1, 2010.

69-10-03-06. Metrology service.

Repealed effective October 1, 2010.

69-10-03-07. Delivery of standards for certification.

Repealed effective October 1, 2010.

69-10-03-08. Rejection of standards.

Standards rejected by a NIST-recognized laboratory 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; amended effective July 1, 2008; October 1, 2010.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

CHAPTER 69-10-04 SERVICE REGULATIONS

Section

69-10-04-01	Registration of Service Persons
69-10-04-01.1	Registration of Service Companies
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69-10-04-02.1	Self-Certification
69-10-04-02.2	Application for Registration of a Service Company
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69-10-04-06	Quality Control - Evaluation
69-10-04-06.1	Quality Control - Failures [Repealed]
69-10-04-06.2	Procedures for Evaluating Work of Registered Service Persons <u>[Repealed]</u>
69-10-04-06.3	Quality Control - 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 Registered of 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 shall have the authority to remove an official rejection seal, equipment repair notice tag, non-commercial 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; _____, 2020.

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 _____, 2020.

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) 60-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 60-days, with authority to certify or place weighing or measuring devices into service. Proof of current certification must be provided. ~~and~~
 - 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; _____, 2020.

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; _____, 2020.

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, certification seal and security seals ~~if not currently on file with the commission,~~ 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. All permits issued remain the property of the commission and must be surrendered upon demand.

History: Effective July 1, 1998; amended effective May 1, 2005; _____, 2020.

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 permit holder'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, an ~~permanent~~ 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~~ is eligible for permit reinstatement; ~~or 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; _____, 2020.

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; _____, 2020.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-04. Reports.

A registered service person must, within seven working days, send a test report on all commercial weighing or measuring devices certified, recertified, serviced, or inspected and tested by the person to the commission, and shall furnish a copy of the test report to the owner or operator of the device.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997.

General Authority: NDCC 64-02-03

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

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; _____, 2020.

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 ~~by a registered service person, 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 follow up 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; _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-04-06.1. Quality control - Failures.

Repealed effective October 1, 2010.

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

Procedures for evaluating work of registered service persons must be provided in a fair and just manner. 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; _____ 2020.

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 article 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;~~
32. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;
43. Reduce the registered service person's permit status to probationary for up to six months; ~~or~~
54. 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 _____, 2020.

General Authority: NDCC 64-02-03

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

69-10-04-07. Adequate field standard requirements - Exception.

All state weights and measures inspectors and registered service companies shall make available minimum test weights and test loads as required by NIST Handbook No. 44, table 4, during tests of commercial weighing devices. However, during highway load restrictions as announced by the North Dakota department of transportation, shift tests, load-bearing tests, and section tests required by section 69-10-02-21 and NIST Handbook No. 44, table 4, may be performed with a test load of ten thousand pounds [4535.9 kilograms].

History: Effective July 1, 1998.

General Authority: NDCC 64-02-03

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

69-10-04-08. Devices taken out of service.

Repealed effective May 1, 2005.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Pipeline Safety
Rulemaking**

Case No. GS-20-370

**CHAPTER 69-09-03
PIPELINE SAFETY**

Section
69-09-03-01 Safety
69-09-03-02 Adoption of Regulations

69-09-03-01. Safety.

Pipeline facilities used for the intrastate distribution and transmission of natural and other gas, liquefied natural gas, or hazardous liquids shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

History: Amended effective July 1, 1986; January 1, 1988; April 1, 2015;_____.

General Authority: NDCC 28-32-02, 49-02-04

Law Implemented: NDCC 49-02-01.2, 49-02-04

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, 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;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2