

**STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SERVICE
WEIGHTS AND MEASURES DIVISION**

**In the Matter of the Adoption of
the Proposed Adoption of Minn.
Rules, Parts 7601.0100 through
7601.7100.**

**STATEMENT OF NEED
AND REASONABLENESS**

I. INTRODUCTION

The Department of Public Service is authorized by Minnesota Statutes, section 239.06 to prescribe and adopt such rules as it deems necessary to carry out its mission to the people of the State of Minnesota. The Department has determined through internal review that many of the requirements contained in the current rules are obsolete. The agency will present oral evidence which will show both the need and reasonableness for the proposed rules. Many provisions of the current rules are obsolete and/or redundant. This fact has prompted the Division to repeal the current rules and replace them with a more comprehensive set of rules. The Weights and Measures Rules have not been substantially amended for several decades. In an effort to make the rules both current and relevant, the Department of Public Service, Weights and Measures Division, is proposing these changes. Primary witness for the agency will be Michael F. Blacik, Director of the Weights and Measures Division. Regional Supervisors Richard Johnson, Sherrill Mullenmaster, David Koets, and Mark Buccelli may also be called to testify. No witnesses from outside the agency will be solicited for testimony.

II. STATUTORY AUTHORITY

The Department's authority to adopt such rules is set forth in Minnesota Statutes, Section 239.06, and extends to secs. 239.011 and 239.23 (1992).

III. STATEMENT OF NEED

Minnesota Statutes, Chapter 14 (1992) requires the Department to make an affirmative presentation of facts establishing the need for and the reasonableness of the rules as proposed. To the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires immediate attention. The need for the rules is discussed below.

IMPACT AND NEED: NATIONAL TYPE EVALUATION PROGRAM

The National Type Evaluation Program (NTEP) is needed because, while evaluations in Minnesota were previously conducted primarily on a jurisdiction by jurisdiction basis, with the advent of the electronics era, along with influence factor based tolerance requirements (NIST Handbook 44 T.N. 8, Influence Factors), such evaluations would be much more involved and expensive if conducted on that basis.

IMPACT AND NEED: RAILROAD TRACK SCALES

Currently, Departmental Rules contain 29 unique, local requirements for railroad track scales. All 29 requirements are enforced in addition to, or in place of, the requirements in National Institutes of Standards and Technology Handbook 44.

Of these 29 requirements, the Department proposes to repeal

15 of 17 general rules, and 10 of 12 specific design requirements. The four remaining rules are needed, as amended, because they simplify and clarify the requirements to be met regarding railroad track scales, hopper scales, and automatic bulk weighing systems.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
HANDBOOK 44, "SPECIFICATIONS, TOLERANCES, AND OTHER
TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES"

The Department intends to incorporate by reference the 1993 version of National Institute of Standards and Technology Handbook 44. Versions of Handbook 44 have been incorporated into Department Rules since 1966. The Department currently enforces the 1985 version of Handbook 44, which was incorporated into the rules in 1986. Handbook 44 is published by the United States Department of Commerce, National Institute of Standards and Technology. It is developed, written, and annually revised by the National Conference on Weights and Measures, a voluntary organization of Weights and Measures officials from all fifty states. Each state is allowed one voting membership. The conference is sponsored and assisted by NIST. Associate, nonvoting conference members include manufacturers and users of weighing and measuring equipment, commercial producers and packagers of weighed and measured commodities, and many other interested persons, associations and companies. All proposed revisions, amendments, and additions to Handbook 44 are prepared by the Conference Committee on Specifications and Tolerances, a

standing committee of five voting members. Proposals from the states are discussed by the Committee and, if approved, presented to the full Conference for discussion. Eventually, the Conference may vote to approve or reject proposed revisions. All revisions are incorporated into the handbook the year following approval. Minnesota is represented at the National Conference by the Director of the Weights and Measures Division of the Department of Public Service.

The Department proposes to incorporate the 1993 version of Handbook 44 because it is important for Minnesota to keep abreast of the development of uniform national weights and measures regulations. Incorporating and enforcing current national standards helps minimize the burden on interstate commerce by allowing manufacturers to produce and market standardized weighing and measuring equipment for nationwide use. Manufacturers can maintain lower equipment prices if they are not required to meet unique and conflicting local codes. Minnesota businesses benefit because they will be able to purchase a wide variety of equipment at competitive prices.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

HANDBOOK 133, "CHECKING THE NET CONTENTS OF PACKAGED GOODS"

The Department proposes to incorporate the 1993 version of Handbook 133 to bring Minnesota into a uniform national system of net content regulation. Adoption of this rule will allow the Department, for the first time in Minnesota history, to apply reasonable variations to individual packages, and to require the

average net content of a group of similar packages to agree with the labeled net content.

STANDARDS AND SPECIFICATIONS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES, LIQUIFIED PETROLEUM GAS LIQUID MEASURING DEVICES, AND PLACING IN SERVICE REQUIREMENTS

Several areas of the rules needed to be clarified. Requirements for fertilizer hopper scales have been clarified because it was necessary to help control the cost of the product. A method of recording transactions on livestock and animal scales was needed to protect buyers and sellers. Specifications for scale pits needed to be amended to account for new technology in construction. It was necessary to clarify the language in the section on placing in service so that privately employed persons may more easily understand what is required of them when placing a scale in service. Changes in the requirements for standards and testing equipment were needed so that the Director may publish a list of required equipment. Changes were also needed in the part of the rules covering variances.

IV. STATEMENT OF REASONABLENESS

Minnesota Statutes, Chapter 14 (1992) requires the Department to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is a rational basis for the Department's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rule as a Whole

The overall approach that the rules take to solving the problem described in the Statement of Need is reasonable in that it incorporates by reference the requirements of National Institute of Standards and Technology Handbook 44 and eliminates redundant and confusing information through the amendment and repeal of certain rules.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules as amended.

Part 7601.0100 Definitions.

Part 7601.0100 provides definitions to be used for specific terms used throughout the Rule. This is reasonable because it eliminates confusion and ambiguity concerning the meaning of such terms. Subparts one, two, three, and four define the terms "Department," "Division," "Commissioner," and "Director," respectively. This is reasonable because these terms identify the parties responsible for enforcing the Rules.

Subpart 5 provides: "National Institute of Standards and Technology" and "NIST" mean the United States Department of Commerce, National Institute of Standards and Technology." This is reasonable because the National Institute of Standards and Technology has replaced the National Bureau of Standards as the governing body for national weights and measures standards.

Subpart 6 provides that "National Type Evaluation Program" and "NTEP" mean a program of weighing and measuring device

evaluation and certification operated by the United States Department of Commerce, National Institute of Standards and Technology." This is reasonable for several reasons. The National Type Evaluation Program was conceived to give a consistent, one-stop evaluation that was cost effective for all parties.

The NTEP system is reasonable in its procedure. To request an NTEP evaluation, a manufacturer submits a request for a new (often a prototype, or pre-production) device to the Office of Weights and Measures (OWM). OWM "logs" the request into the system and assigns it to an approved laboratory.

Using standardized checklists, the device is evaluated and a report is forwarded to OWM. Based on that report, OWM will determine whether to issue a Certificate of Conformance or to advise the manufacturer that the device does not conform to NIST Handbook 44.

Based on the Certificate of Conformance, the manufacturer places the device into production. An initial verification test is performed by the jurisdiction. As part of this test, the jurisdiction determines whether the device has a Certificate of Conformance and, if it does, whether the device conforms to the certificate. The device is then evaluated for field performance, such as tolerances, user requirements, etc., and may then be approved for use.

This process does not preempt the jurisdiction's approval prerogatives; rather it assists and supports the process, but

does not replace any legal or regulatory requirements regarding the actual approval of a device.

All parties in the weights and measures process will benefit from the adoption of NTEP. For the weights and measures official, the process frees resources, such as laboratory facilities and personnel, to address other priority needs within the jurisdiction.

For users involved with more than one jurisdiction, the Certificate of Conformance process provides a uniform passport between jurisdictions. Equipment purchased and placed in service in one jurisdiction with a Certificate of Conformance is acceptable in another NTEP jurisdiction provided local inspection requirements are satisfied. In addition, the Certificate of Conformance may be viewed as a standard seal of approval for certified weighing operations.

For manufacturers, the Certification of Conformance system provides a means to insure that commercial equipment sold in a certain jurisdiction meets a common technical standard.

Subpart 7 defines "Weighing and Measuring Equipment" as any instrument or device used to determine the weight, measure, or count of commodities, or things sold on the basis of weight, measure, or count; or used to compute the charge for services rendered on the basis of weight, measure, or count. This is reasonable because it makes clear in broad terms what is considered appropriate equipment for purposes of the Rule.

Subparts 8, 9, 10, and 11 define the terms "Railroad Track

Scale," "Vehicle Scale," "Animal and Livestock Scale," and "Hopper Scale," respectively. This is reasonable because these scales are subject to zone charges and owners need to know what category their scale falls under.

Subpart 12 identifies the term "Minnesota Seal" as a security seal placed on commercial weighing and measuring equipment to prevent unauthorized adjustment of the equipment. This is reasonable because it aids the Division in maintaining and enforcing uniform standards.

Subpart 13 defines the terms "Scale Division" as the value of the smallest subdivision or unit that can be indicated by a scale. This is reasonable because it aids in accuracy of measurement.

Subpart 14 defines "Section" as that part of a vehicle, livestock, or railroad track scale that consists of a pair of load-bearing supports arranged in a position transverse to the direction of the load applied to the scale platform. This is reasonable because it aids in delineating between sectioned and nonsectioned scales.

Subpart 15 defines "Sensitivity Requirement" as a performance requirement for a scale with an indicator which is not automatic. The requirement is stated in terms of scale divisions. For example, a load equivalent of two divisions must cause the prescribed change in the rest position of the indicator. This is reasonable because the requirement allows the Division to monitor equipment more accurately.

Subpart 16 defines "Soil Bearing" as the load that can be placed upon soil without causing deformation, settling, or soil failure. This is reasonable because it provides an objective aid by which to assess accuracy in weighing operations.

Subpart 17 defines "Registration Certificate" as an annual certificate issued by the Division to a person who voluntarily registers with the Division and who works with commercial weighing and measuring equipment. This is reasonable because it aids in the uniformity of NTEP.

Subpart 18 defines "Registered Person," or "Registrant," as a person who has voluntarily registered with the Division and who works with commercial weighing and measuring equipment. This is reasonable because it aids in the uniformity of NTEP.

Subpart 19 defines "Place in Service" as the authorization of commercial use of newly installed or repaired equipment pending an inspection by the division, and only a registered person may perform this type of authorization. This is reasonable because it gives the division a systematic method placing equipment in service.

Part 7601.3000 Railroad Track Scales; Plans to be Furnished by Manufacturer and Purchaser

Part 7601.3000 requires the manufacturer of a railroad track scale to provide complete design, assembly, and construction plans to the purchaser. The purchaser must furnish these plans, including soil bearing information, to the Weights and Measures Director. This information is essential in granting a permit to

install a new scale. This rule is reasonable in that it clarifies the rule's original wording.

Part 7601.3010 Railroad Track Scale Permits

Part 7601.3010 provides that a railroad track scale cannot be installed without a permit issued by the Director of the Weights and Measures Division, and is functionally unchanged. This rule is reasonable because its purpose is to help purchasers of new track scales get the greatest benefit from their substantial investment in new equipment. A normal, problem-free installation of a new track scale can cost \$120,000 to \$150,000. The Division will use the permit requirements to help scale purchasers to comply with Department rules, and to help them purchase and install accurate scales with long term reliability. This is reasonable because the Division will not recommend or require specific makes or models of scales, and the plan review and permit process will be used only to ensure proper installation.

Part 7601.3020 Railroad Track Scale Foundation

Part 7601.3020, subpart 1 requires a soil bearing test to determine whether the soil will support the expected loads. Formerly, a soil bearing of 4,000 pounds per square foot was required. Subpart 2 requires a reinforced, poured concrete foundation installed according to the scale manufacturer's instructions. Specific design requirements have been removed. Subpart 3 requires a foundation depth (inside) of seven feet. This is unchanged.

These three requirements are reasonable because they are intended to ensure that railroad track scale foundation will be durable, and that scales will remain accurate in the extreme climate and soil conditions encountered in Minnesota. They are written in general terms to allow the greatest flexibility for each installation.

Part 7601.3030 Approach Rails and Piers

Part 7601.3030, subpart 1 provides that a railroad track scale must be installed with approach rails at the end of the scale. Subpart 2 requires that reinforced concrete approach panels must be built at both ends of the scale to support the approach rails. This rule is reasonable because it provides standards to ensure a permanent and level approach to the scale.

Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices

The Department has not adopted each annual revision of Handbook 44 since 1985 because the changes have often been insignificant. However, the 1993 version contains improvements, clarifications, and format changes in the scale code and the liquid measuring device (gasoline pumps) code. These changes are significant and must be incorporated into Departmental Rules.

Scales

Section 2.20 of Handbook 44, the Scale code, has undergone significant revision in the areas of Specifications, Notes, Tolerances, and User Requirements. In the Specifications subsection several provisions have been added, including a

provision for sealing a device to detect tampering, and a balance indicator requirement for equal-arm scales.

The Notes subsection has added provisions for unmarked scales and for postal scales. Also added were standards regarding radio frequency interference and other electromagnetic interference susceptibility, and provisions regarding necessary operating temperatures for accurate weighing.

The T.N. Tolerances subsection has added provisions for uncoupled-in-motion weighing for railway track scales, and for in-motion weighing for monorail scales. A provision concerning the agreement of indications has been added for multiple indicating/recording elements, for single indicating/recording elements, and for single indicating element/multiple indications. This subsection also adds a provision concerning radio frequency interference and other electromagnetic interference susceptibility.

The User Requirements subsection has amended a provision for the minimum load for weighing livestock, and has added a new provision for coupled-in-motion railway track scale weighing.

Section 2.21 of Handbook 44, the code for Belt-Conveyor Scale Systems is not applicable because belt-conveyor scale systems in the State of Minnesota are considered noncommercial.

Section 2.22 of Handbook 44 regulates Automatic Bulk Weighing Systems. In the Specifications subsection are added provisions for temperature limits and for accuracy classifications.

The Notes subsection has added provisions for test weights, a test for change of zero-balance or no-load reference value change, and a discrimination test.

The Tolerance subsection has added a provision for the application of tolerances to decreasing-load tests, and to tests involving digital indications or representations. Provisions have been added to apply minimum tolerance values to systems used to weigh construction materials, as well as for basic tolerance values for systems used to weigh grain, and for all other systems. Also added to this subsection are provisions concerning time dependence factors in testing, discrimination in digital automatic indicating scales, and influence factors applicable to tests conducted under certain controlled conditions. These factors included temperature, barometric pressure, and electric power supply.

The User Requirements subsection has added provisions concerning selection and loading requirements for systems used to weigh grain and other commodities.

Section 2.23 of Handbook 44 regulates Weights. In the Notes subsection regarding testing procedures, the provision has been changed.

The Tolerances subsection, Table 1, has added a provision for tolerance in milligrams for avoirdupois weights.

LIQUID MEASURING DEVICES, VEHICLE TANK METERS, LIQUIFIED
PETROLEUM GAS

Section 3.30 of Handbook 44 regulates Liquid Measuring

Devices. The major change in the section concerns multiple unit pricing dispenser. Any new locations which offer cash/credit pricing must purchase equipment that computes both pricing modes and allows the consumer to select a mode on the dispenser. In other words, at any new location which offers product at more than one unit price, the dispenser must display and compute all types of pricing. After January 1, 1999, all devices offering more than one unit price must compute and display all prices offered.

Section 3.31 of the Liquid Measuring Device code regulates Vehicle-Tank Meters. There has been a major change in the tolerance on meters used to measure agricultural chemicals. The maintenance tolerance has increased to plus or minus 1%. This is a relatively wide tolerance given the cost of most agricultural chemicals, and may reflect the ability of these meters to hold accuracy. The addition of tolerances for mass flow meters (pounds) will not have an effect on device users or consumers. The tolerances appear to reflect volume tolerances converted to weight.

Section 3.32 of the Liquid Measuring Device code regulates Liquified Petroleum Gas. Incorporating the 1993 edition of Handbook 44 will have little impact on the public or the industry regulated by the Office of Weights and Measures. There may be a slightly higher rate of rejection for under-registration. Since the Office of Weights and Measures adjusts liquid petroleum gas meters, no extra cost will be incurred by the device owner. The

public will not be adversely affected by the increase in the over-registration tolerance because the change is small and historical patterns show the devices drifting to the plus side.

Because of the added cost the use of mass flow meters will be limited. The use of meters to deliver anhydrous ammonia may increase. The filling of anhydrous nurse tanks on sight, without a scale, may be an option. The current liquid petroleum gas provers used by the Office of Weights and Measures are unable to handle anhydrous. If the use of meters to sell anhydrous becomes widespread, an investment in another prover will have to be made.

Incorporating Handbook 44 by reference is reasonable because it enables the Department to stay current on uniform national standards. A detailed list of all the changes to Handbook 44 is attached to this Statement. Further information, or copies of specific sections of the handbook can be obtained by contacting

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NIST Handbook 133 "Checking the Net Contents of Packaged Goods"

Part 7601.1100 provides that Handbook 133 is incorporated by reference subject to the laws of Minnesota, the rules of the Minnesota Department of Public Service, and labeling rules of the Minnesota Department of Agriculture. This is reasonable because adoption of the proposed rule will ease the regulatory burden on Minnesota businesses and improve Minnesota's position in interstate commerce by allowing manufacturers to produce and

market standard packages for nationwide sale. Manufacturers should be able to improve their competitiveness and maintain lower prices if they are not required to meet unique and conflicting local codes. Further information, or copies of specific sections of Handbook 133 can be obtained by contacting Mr. Blacik at the Office of Weights and Measures.

Standards and Specifications for Commercial Weighing and Measuring Devices, Liquefied Petroleum Gas Liquid Measuring Devices, and Placing in Service Requirements

Part 7601.5000 Hopper Scales.

Part 7601.5000 provides for standards for hopper scales used to weigh fertilizer. Subpart 1 requires that NTEP Class III or Class IIIIL fertilizer scales have a minimum of 2,000 scale divisions throughout their range. This is reasonable because it aids in accuracy of weight and tolerance. Subpart 2 requires that the load capacity for hopper scales be at least eighty percent of the capacity of the weight indicator, and that load capacity be determined by using the highest density material that will normally be weighed in the hopper. This is reasonable because fertilizer is a high-cost item and it is necessary to ensure that scale tolerance be such that both the buyer and seller are protected from inaccurate weights. Subpart 3 requires that accuracy in weighing must not be affected by the air flow of a dust control system, and that if scale accuracy could be affected by adjusting dampers or flow control devices, those devices must be sealed to prevent adjustment. This is reasonable

because it fits in with the overall goal of the Department to put in place rules that will ensure the highest level of accuracy in weighing.

Part 7601.4020 Vehicle and Livestock Scale Approaches

Part 7601.4020 describes the dimensions of vehicle and livestock scale approaches. Subpart 2(B) requires that the first ten feet of each approach be a reinforced concrete panel and that the remaining length be paved with concrete or asphalt. This is reasonable because it provides a uniform standard for the construction of scale approaches for vehicles and livestock.

Part 7601.4030 Animal and Livestock Scales; Printer Required

Part 7601.4030 requires that a printing device be connected to the scale so that both buyer and seller may have a permanent, printed record of each transaction. This is reasonable because a permanent record of each transaction protects both buyer and seller from future disputes concerning weight.

Part 7601.4010 Vehicle and Livestock Scale Foundations

Part 7601.4010, subpart 1, requires that pit scales be installed either in a concrete pit or above grade level on concrete piers. This is reasonable because it establishes uniformity in construction, ensuring more consistent and accurate weights. Subpart 3(A) requires, for above-ground scale foundations, that the weighing elements be supported on reinforced concrete piers. Subpart 3(B) requires concrete surface slabs to be poured independently between the main

foundation piers. Subpart 3(F) requires that the area surrounding the scale platform be designed to allow access for cleaning underneath the platform and around the weighing elements. Subpart 3(G) requires that, for outdoor scales, the tops of the piers, as well as the slab surface, be above the existing grade level to allow for proper drainage. Subpart 3(H) requires that the vertical surfaces of the end walls and the horizontal surfaces of the end piers have hooks or other devices to allow installation of surface mounted heating cables. These requirements are reasonable because they reflect construction standards for scales with concrete foundations, as well as providing a way for scale owners to keep them clean and assuring more accurate weights.

Part 7601.6000 Temperature Correction for Measuring Liquified Petroleum Gas

Part 7601.6000 provides a volume correction factor table for when liquid petroleum gas is sold by liquid measurement and must be corrected to a temperature of 60 degrees Fahrenheit. This is reasonable because it takes into account temperature variations in measuring, and the section does not apply to unit sales or deliveries made direct to mobile fuel tanks consisting of less than 100 gallons.

Part 7601.7000 Placing in Service Program; Purpose and Policy

Part 7601.7000, subpart 1 provides the rationale behind the program. This is reasonable because it makes clear what persons can be registered and it minimizes the compliance burden on

owners and operators.

Subpart 2 provides that non-registered persons may repair commercial weighing measuring equipment but that any repairs done by non-registered persons be approved by the division of weights and measures. This is reasonable because it decreases delay in getting equipment repaired while ensuring that repairs are done correctly.

Part 7601.7010 Voluntary Registration

Part 7601.7010 provides the procedure a service person must follow to register to service weighing and/or measuring devices. Subpart 1 states that the director will accept applications and will issue annual registration certificates to qualified persons. This is reasonable because it allows anyone to register but allows the director to retain control over those who are approved by the division. Subpart 2 provides the information required to be on the application for voluntary registration, informing the applicant on how to apply for voluntary registration in the placing in service program, as well as what is involved in the program. This is reasonable because it lets the person know the details of what the division expects of its registrants. Subpart 3 provides the information required of the applicant. This is reasonable because it gives the division a record of who its registrants are and evidence that the applicant has the required test equipment available for use, and has met the equipment calibration requirements required by rule part 7601.7400.

Part 7601.7030 Registration Fee

Part 7601.7030 provides for an annual fee for each registration certificate issued, and that such fee is set by rule part 7602.0100. This is reasonable because part 7602.0100 considers all costs when setting appropriate fees.

Part 7601.7040 Reciprocity

Part 7601.7040 provides that the director may issue a registration certificate to a person who is registered in a placing in service program in another state. This is reasonable because it respects the qualifications of a person registered in another state and does not subject that person to duplicate testing.

Part 7601.7050 Privileges of a Voluntary Registrant

Part 7601.7050 authorizes a registrant to remove official rejection tags and security seals placed on weighing and measuring equipment by the division, repair and place in service weighing and measuring equipment that had been rejected by the division, and place in service new or newly installed weighing and measuring equipment. This is reasonable because it promotes efficiency in that registrants are able to place equipment in service without having to wait for official approval from the division.

Part 7601.7060 Responsibilities of a Voluntary Registrant

Part 7601.7060 require that a registrant fulfill certain responsibilities. Subpart 1 requires the registrant to ensure that all equipment that the registrant places in service complies

with Department of Public Service Rules, including Handbook 44; that the registrant personally perform or observe all procedures involved in the placing in service of equipment; and only use standards and test equipment that meet the requirements of part 7601.7400. This is reasonable because it keeps registrants accountable to the division even when not directly supervised. Subpart 2 requires the registrant to place into service all commercial weighing and measuring equipment when the registrant has either installed the equipment, repaired the equipment following an official rejection by the division, or has removed a Minnesota security seal from the equipment. This is reasonable because it is expedient to have commercial weights and measuring devices readily available for commercial use.

Subpart 3 provides for reporting requirements when a registrant does work authorized by part 7601.7250. The registrant must accurately complete a placed in service form, submit the original to the division within five days of completing the work, submit a copy to the owner or operator of the equipment upon completion, and retain a copy for the registrant's records. This is reasonable for traceability reasons. All parties having copies of the report and can compare should a problem arise. Subpart 4 requires that a registrant the registrant replace a security seal after removing one from the adjusting or calibrating mechanism of a weighing or measuring device. The new seal must be installed in a manner that would prevent adjustment of the device without removing or defacing the

seal and must be imprinted with the registrant's placing in service number. This is reasonable because it allows the registrant or the division to detect tampering.

Part 7601.7070 Placed in Service Report

Part 7601.7070 requires the director to furnish a registrant with a supply of placed in service reports if the registrant so requests. This is reasonable because the director is responsible for the gathering of information generated by completed reports.

Part 7601.7080 Standards and Testing Equipment

Part 7601.7080, subpart 1, requires the director to publish a list of the standards and test equipment required for registration in each category of weighing and measuring equipment service. Subpart 2 requires the registrant to submit the required standards and test equipment for inspection, testing, and calibration by the division's metrology laboratory, or to an NIST certified laboratory in another state annually. This is reasonable because it eliminates confusion concerning which standards and test equipment is considered appropriate by the division, and it allows the division to monitor the accuracy of such equipment used by registrants.

Part 7601.7090 Problem Resolution System; Certificate of Registration

Part 7601.7090 provides for procedures to be followed by the division in suspending or revoking a registrant's certificate of registration. Subpart 1 provides that the director shall inspect repairs at any time, and can for good cause shown,

suspend or revoke a registration certificate. This is reasonable as the Director is the enforcing agent in the Division. The director has discretion, depending on the specific situation. Subparts 2 through 7 describe the remedial actions available to the Director to correct problems. The director may write a letter warning a registrant who fails to submit a placing in service report for a weighing or measuring device that the registrant installed, adjusted, or repaired; or who submits a placing in service report that is complete, or contains inaccurate information.

The director may suspend, for up to thirty (30) days, the placing in service permit of a registrant who fails to submit a placing in service report for three or more weighing or measuring devices that the registrant has installed, adjusted, or repaired within a period of ninety (90) days; or who submits three or more placing in service reports that are incomplete, or contain inaccurate information, within a period of ninety (90) days. If the director chooses to suspend a registrant for this reason, the director must notify the registrant of the date upon which the suspension will begin and the date upon which it would end.

The director may suspend, for up to ninety (90) days, and notify the owner, the placing in service permit of a registrant who installs, adjusts, or repairs weighing or measuring equipment while the registrant's permit is under suspension. If the director chooses to suspend a registrant for this reason, the director must notify the registrant of the date upon which the

suspension would begin and the date upon which it would end.

The director may revoke, after ninety (90) days, the placing in service permit of a registrant who has made no good faith effort to comply with this rule part 7601.7450. Subpart 1 is reasonable because it gives the director a procedure to ensure that departmental policy is adhered to by registrants and that registration permits are kept current. The director may require additional training, offered by division personnel, for registrations who have not met the requirements of chapter 7601. This is reasonable because it is the division's intent to aid registrants comply with division standards whenever possible. This part of the rule is reasonable because it allows the Director and Division personnel the ability to work with registrants to correct problems.

Part 7601.7100 Lists of Registered Service Persons

Part 7601.7100 provides that the director, rather than the commissioner, may publish and supply upon request lists of registered service persons. This is reasonable because the director is more directly involved with registered service persons than is the commissioner.

Part 7601.0200 Variances

Part 7601.0200, subpart 1 provides that the director shall grant a variance to any part of Department of Public Service Rules, Chapter 7601, except a rule that specifies a tolerance or the value of a scale division. Subpart 2 provides that an owner or an operator of commercial weighing or measuring equipment may

apply to the director for a variance to any part of chapter 7601. The request made must be in writing and must explain the need for a variance, and explain the proposed alternative to the rule, including drawings for railroad track, vehicle, and livestock scales, to illustrate the design, construction, and location of the scale. These subparts are reasonable because they recognize the need for flexibility as well as the need for accuracy in measurement, they enable owners and operators of commercial weighing and measuring devices to have input into the rulemaking process, and they aid the director in formulating rules. Subpart 3 provides that a request for a variance may be granted if the rule for which the hardship is sought causes an undue hardship for the applicant, or if it is impossible for the applicant to comply, that the variance will not harm the owner or operator, or to their customers, and that the director is able to determine that the weighing and measuring equipment will remain accurate. Subpart 4 provides that the director shall refuse to grant a variance if the request does not meet the requirements of subparts 2 and 3. Subpart 5 provides that the division must respond in writing to a written request for a variance, and must set forth the reasons for granting, or refusing to grant, the requested variance. These subparts are reasonable because they provide guidelines for the owner or operator to use when requesting a variance, they give the director control over whether the guidelines are met, and they ensure that a written record is made and kept for each request made.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. sec. 14.115, subd. 2 (1992) requires the Department, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. sec. 14.115 (1992). As a result, the Department has considered the above-listed methods for reducing the impact of the rule on small businesses.

A) ESTABLISHMENT OF LESS STRINGENT COMPLIANCE OR REPORTING REQUIREMENTS

One of the purposes of this proposed rulemaking is to establish requirements that are less stringent, more understandable and easier to apply. The requirements will apply equally to all railroad track scales, heavy capacity hopper scales and automatic bulk weighing systems operated by small businesses and large businesses.

Small businesses will benefit from the elimination of obsolete and restrictive design requirements, elimination of some permit requirements that are unique to Minnesota. Small businesses will be able to purchase and install less expensive scales that have been designed to meet national standards, rather than expensive special equipment designed to meet unique Minnesota standards.

The basic purpose of adopting uniform national standards, such as those contained in National Institute of Standards and Technology Handbook 44, is to promote uniformity and accuracy in commercial weighing and measuring. Less stringent compliance or reporting requirements decrease accuracy and increase losses due to inaccuracy. Special, or less stringent, requirements for small businesses would violate the intent of Minnesota Statutes, Chapter 239, and would result in increased costs for many small businesses due to increased measurement losses.

This same purpose of uniformity is also behind the incorporation by reference National Institute of Standards and Technology Handbook 133. The proposed standards are less stringent than current practice because they allow reasonable variations in individual packages. However, overall packaging accuracy is not lost because all packages must comply with the "reasonable variation" limits set by the rule, and because the average net content of a "lot" of similar packages must agree with the labeled net content.

Small businesses that weigh fertilizer will benefit from the

adoption of rules which require that a more narrow standard be met than that currently in place because accuracy in measurement will be preserved to a greater extent, creating savings on both sides of each transaction. Also, the standards for load capacity and for dust control systems will aid small businesses in controlling the weighing environment and costs.

Formerly, the rules stated that the first ten feet of vehicle and livestock scale approaches had to be constructed with reinforced concrete, and that the remaining length could be paved with concrete or asphalt. The new rule states that the remaining length must be paved with concrete or asphalt. The department believes that the new rule is simply a clarification of the former language and that compliance would not impose an additional burden on scale owners.

Animal and livestock scales will be required to have a printing device attached so that both the buyer and seller have a permanent record of each transaction. Compliance with this requirement does not place an undue burden on scale owners and is actually no more burdensome than the old requirement that scales be equipped with full capacity type registering weighbeams or automatic weighbeams. It merely recognizes improvements in industrial scale technology.

The rule parts regulating the placing in service program have been clarified. This includes placing in service application forms provided by the division and the information required of the registrant when applying, registration fees,

reciprocity, and certificates of registration. The privileges of a voluntary registrant have expanded to include not only the authority to remove an official rejection tag that had been placed on weighing and measuring equipment by the division, but also to remove a Minnesota security seal installed on that equipment. Voluntary registrants also have authority to repair and place in service equipment rejected by the division, and place into service new equipment.

The increased privileges afforded voluntary registrants ease the compliance burden they face since they now have wider discretion in repairing, adjusting, and placing equipment into service.

The Division has clarified statements of responsibility. No new responsibilities are added by these proposed rules.

The registrant is required to make an accurate record when placing equipment in service. Forms are obtained through the division and compliance is not burdensome. The director is required to furnish a list of standards and test equipment required for each category of service. Also, the registrant must submit the test equipment for inspection. Compliance with this part is not burdensome, since the division will develop the list of required equipment.

There are new standards concerning the procedures for revocation of a registrant's certificate of registration. The director may issue a warning letter to a registrant who fails to submit, or who submits an incomplete, placing in service report.

Compliance and reporting standards remain unchanged, but the rule allows the director to expedite the procedure if the registrant fails to respond within the time set by this rule.

The rule allows the director to take further corrective action in cases where the registrant consistently fails to submit appropriate documentation of placing in service. However, compliance and reporting requirements are not more stringent as a result of the adoption of this part of the rule. Adopting less stringent compliance requirements than those already in place would result in a loss of control over the placing in service program currently in place and in increased fees and costs to small businesses through inaccurate weights and measurements.

B. ESTABLISHMENT OF LESS STRINGENT SCHEDULES OR DEADLINES FOR COMPLIANCE OR REPORTING REQUIREMENTS FOR SMALL BUSINESSES

Through the incorporation of Handbook 44 the Office of Weights and Measures has set January 1, 1999 as the compliance date for the phase out of old equipment, including mechanical pumps, which offer a cash/credit pricing scheme but do not compute both pricing modes and also allow the consumer to make the selection on the dispenser. While this may adversely affect some small businesses in Minnesota who may not be able to afford the added costs to upgrade, the Department believes that the compliance date is reasonable, and that the costs of implementation will be recovered through savings generated by greater accuracy in measurement.

C. CONSOLIDATION OR SIMPLIFICATION OF COMPLIANCE OR REPORTING
REQUIREMENTS FOR SMALL BUSINESSES

One of the purposes of the proposed rulemaking is to consolidate and simplify the requirements for railroad track scales, heavy capacity hopper scales and automatic bulk weighing systems. The proposed improvements in the rules apply equally to all businesses.

Handbook 44 contains detailed technical requirements for commercial weighing and measuring equipment. Even though the requirements are complicated, the system of compliance is very simple. The requirements are interpreted and applied by Division personnel during official inspections. New or noncomplying equipment is usually installed or repaired by persons who are registered with and approved by the Division. They also understand how to apply the technical requirements. This type of installation, inspection and repair system places the burden of knowledge on trained personnel. Business owners and operators need not understand the technical requirements to comply. All businesses which place weighing or measuring equipment in service are subject to these rules, regardless of size.

Handbook 133 contains detailed requirements for packaged goods, reasonable variations in net content and package checking procedures. Though the requirements are complicated, the system of compliance is simple. The requirements are interpreted and applied by Department personnel during official inspections. The results of each inspection, and any recommendations for

corrective actions, are discussed with each business owner or manager during the inspection visit. Each business is given ample opportunity to comply before any enforcement action is taken.

D. ESTABLISHMENT OF PERFORMANCE STANDARDS TO REPLACE DESIGN OR OPERATIONAL STANDARDS

Many design standards will be eliminated by adoption of these proposed rules. While some basic design standards will remain, the entire system of heavy capacity scale rules will become more oriented toward performance requirements, and less dependent on restrictive design requirements.

Handbook 44 contains performance, design, and operational requirements for weighing and measuring equipment. These requirements are cohesive and interrelated. Elimination of any part of the rules would effectively negate the usefulness of the remaining requirements. The design requirements in this rule are minimum requirements. Further, the performance standards herein do not replace any design requirement. Handbook 133 contains only performance standards.

E. EXEMPTION OF SMALL BUSINESSES FROM ANY OR ALL REQUIREMENTS OF THE RULE

The basic purpose of weights and measures regulation is to promote uniformity in measurement and to give all businesses, small and large, an equal foundation of accuracy. Exempting a specific class of businesses from the proposed rules would have a severe negative impact on measurement uniformity and equity in

Minnesota commerce. Further, there is no provision in Minnesota Statutes Chapter 239 (1992) to exempt certain classes of businesses.

VI. CONCLUSION

Based on the foregoing, the proposed Minn. Rules parts 7601.0100 through 7601.7100 are both needed and reasonable.