4A

Update to Board by Dave Jones, Administrator W & M on Workshop for NAC 581.285

BOA Agenda 4 A: NAC 581 – 12 of 14 to move forward

Status:

The Division of Measurement Standards will be forwarding the following 12 of 14 NAC 581 Workshop Agenda items to the LCB for language review and hearing; two of the fourteen have been deferred based on the committee's recommended six month test period.

Note: Following the Hearing, the Division will formally request the Board of Agriculture's approval of the regulation for adoption by the Legislative Counsel.

Item 1

GENERAL PROVISIONS

NAC 581.005 Definitions. (NRS 581.050, 581.067) As used in this chapter, unless the context otherwise requires:

1. "Department" means the State Department of Agriculture.
2. "Division" means the Division of Measurement Standards of the Department.

(Supplied in codification; A by St. Sealer of Weights & Measures by R084-00, 6-22-2000, eff. 7-1-2000; R161-03, 1-27-2004)

3. ***"Feedlot" means a business that accepts livestock for fattening or growth for market, and after a predetermined time, return the livestock back to the owner for a fee based on the weight gain of the animal.***

4. ***"Stockyard" means a place where livestock such as cattle or pigs, are temporarily kept until slaughtered, shipped elsewhere, or sold.***

5. ***"Sale barn" has the same meaning as "stockyard".***

6. ***"Point-of-Sales System" means an assembly of elements including a weighing or measuring element, an indicating element, and a recording element (and may also be equipped with a "scanner") used to complete a direct sales transaction.***

Item 2

ADMINISTRATION

NAC 581.009 Adoption by reference of National Institute of Standards and Technology 105-Series Handbooks and Training Materials. (NRS 581.050, 581.067)

2. The State Sealer of Weights and Measures will review each revision issued after January 1, 2003, to ensure its suitability for this State and file a copy of each revision he approves with the Secretary of State and the State Library and Archives Administrator. The most recent revision that has been approved by the State Sealer of Weights and Measures will be available for inspection at the office of the Bureau of Weights and Measures, Division of Measurement Standards, 2150 Frazer Avenue, Sparks, Nevada 89431, or may be obtained free of charge from the Weights and Measures Division, NIST, 100 Bureau Drive, STOP 2600,

Gaithersburg, Maryland 20899-2600, or at ~~<http://ts.nist.gov>.~~ ***<http://www.nist.gov/pml/wmd/pubs/index.cfm>.***

(Added to NAC by St. Sealer of Weights & Measures by R126-97, eff. 6-23-98; A by R084-00, 6-22-2000, eff. 7-1-2000; R161-03, 1-27-2004)

Item 3

NAC 581.030 Adoption by reference of certain portions of *National Institute of Standards and Technology Handbook 130: Uniform Laws and Regulations*; effect of violation. (NRS 581.050, 581.067)

1. The State Sealer of Weights and Measures hereby adopts by reference:

(a) The "Examination Procedure for Price Verification;"

(b) The "Uniform Packaging and Labeling Regulation;"

(c) The "Uniform Regulation for the Method of Sale of Commodities;"

(d) The "Uniform Unit Pricing Regulation;"

(e) Sections 2 to 11, inclusive, of the "Uniform Regulation of Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices;"

(f) The "Uniform Open Dating Regulation;" ~~and~~

(g) The "Uniform Regulation for National Type Evaluation," ***and***

(h) Uniform Engine Fuels and Automotive Lubricants Regulation.

□ as set forth in the *National Institute of Standards and Technology Handbook 130: Uniform Laws and Regulations*, ~~2003~~ 2011 edition, and any subsequent revision of that portion of the publication that has been approved by the State Sealer of Weights and Measures for use in this State. Each revision of that portion of the publication shall be deemed approved by the State Sealer of Weights and Measures unless he disapproves of the revision within 60 days after the date of publication of the revision by the National Institute of Standards and Technology.

Item 4

NAC 581.210 Weighing and measuring devices: Tests and services for which fees will be charged; fees for tests; failure to pay fee. (NRS 581.050, 581.067, 581.075)

2. The fees for tests of devices are:

(a) For scale devices:

500 pounds and under	$25
Over 500 pounds through 2,000 pounds	50
Over 2,000 pounds through 5,000 pounds	100
Over 5,000 pounds	160
Hopper, 5,000 pounds and under	300
Hopper, over 5,000 pounds	350
Livestock or vehicle scale, 40,000 pounds and under	130
Livestock or vehicle scale, over 40,000 pounds	200
(b) For linear devices	25
(c) For meter devices:	
Dispenser, hose, meter or octane grade tested with a 5-gallon prover.	25
Dispenser tested with a prover larger than 5 gallons	95
Truck- or rack-mounted meter, rated to a maximum capacity of up to 120 gallons per minute	95
Truck- or rack-mounted meter, rated to a maximum capacity of over 120 gallons per minute	160
Nontemperature-compensated meter used to measure liquid petroleum	100

gas.....

Temperature-compensated meter used to measure liquid petroleum gas..... 200

(d) For standards of mass, volume or length, per hour:

For certification of standards for use in testing a commercial device for a service agency or serviceperson..... 40

For certification of standards for use in testing a noncommercial device..... 80

(e) For accredited certification of any standards with a National Voluntary Laboratory Accreditation Program (NVLAP) certificate of calibration..... *100*

Item 5

NAC 581.215 Point-of-Sales Systems: Inspections and service fees for which fees will be charged; ~~*fees for tests;*~~ ~~failure to pay fee~~*.*

1. The ~~*tests*~~ *inspections and services for which fees will be charged pursuant to this section include, without limitation:*

(a) An ~~*test*~~ ~~special~~ *inspection* ~~requested~~ *for a point-of-sale system. If, upon the arrival of the inspector, the inspection scheduled for the point-of-sale system cannot be performed for any reason which is not the fault of the Division or the inspector, any fee which would have been charged for that inspection remains due.*

(b) A re-inspection of a point-of sales system that scored 97% or lower on a previous price verification inspection.

2. The fees for inspections of point-of-sales systems are (TBD fee structure): *$100 $50*

Item 6

NAC 581.220 Weighing and measuring devices: Additional fees for special tests; failure to pay fee. (NRS 581.050, 581.067, 581.075)

1. In addition to the fees prescribed in NAC 581.210, the following fees will be charged for a special test or recheck except as otherwise provided in this section:

(a) For each hour for testing a device above the time normally required to perform that test..... *$50*

(b) For each hour for witnessing the test of a device that is not conducted by the Division..... 40

(c) For mileage, per mile for:

Pickup truck..... *3*

Livestock test truck..... *7*

Petroleum prover truck..... *7*

Large Weight truck and hopper test truck..... *9*

(d) For each hour of required travel of the inspector, in addition to the fees specified in paragraph (c) *(except livestock test truck)*..... *50*

(e) For each hour of required travel of two inspectors, in the livestock test truck, in addition to the fees specified in paragraph(c)..... *100*

(f) For the per diem of the inspector(s), the amounts allowed by law for state employees, under conditions set by the Division.....

~~(e) For the per diem of the inspector, the amounts allowed by law for state employees, under conditions set by the Division.~~

2. The fees for mileage, travel and per diem will be prorated among persons requiring tests of devices in the same area if all the devices can be tested during the same trip.

3. Only the fee prescribed by NAC 581.210 for a test of a device will be charged if:

(a) The test can be made during a scheduled trip for inspections in the vicinity; or

(b) The site of the test is within a minimal distance from the base of the inspector or within the same metropolitan area.

4. The amount of charges for:

(a) The testing of devices or standards not listed on the schedule of fees;

(b) Testing of standards from out of State; or

(c) Testing which requires special arrangements or conditions,

□ will be determined by agreement between the State Sealer of Weights and Measures and the owner or operator of the device or standard to be tested.

5. Failure to pay a fee required pursuant to this section within 30 days after receipt of the bill for the fee is a violation of this section.

[Dep't of Agriculture, § 4, eff. 8-6-80]—(NAC A 10-15-81; 11-3-83; A by St. Sealer of Weights & Measures, 11-1-89; 4-18-90; 10-23-91; 11-18-93; R146-98, 12-14-98; R084-00, 6-22-2000, eff. 7-1-2000; R161-03, 1-27-2004)

Item 8

NAC 581.230 Weighing and measuring devices*:* Certificate of conformance required before using certain types of devices *or systems* and accessories for commercial or governmental purpose; exceptions. (NRS 581.050, 581.065, 581.067)

1. Except as otherwise provided in subsection 2, before use for a commercial or governmental purpose, a type of:

(a) Weighing or measuring device kept or used in:

(1) Proving the size, quantity, extent, area or measurement of quantities, things, produce or articles for distribution or consumption, which are purchased, offered or submitted for sale, hire or award;

(2) Computing a basic charge or payment for services rendered on the basis of weight and measure; or

(3) Determining weight or measure when a charge is made for the determination;

(b) Accessory attached to or used in connection with a commercial weighing or measuring device which is designed so that its operation affects the accuracy of the device; and

(c) Weighing and measuring device in official use for law enforcement or the collection of statistical information by a governmental agency;

□ must have been issued a certificate of conformance.

2. The State Sealer of Weights and Measures will authorize the use of a type which has not been issued a certificate of conformance if the type:

(a) Was in use before January 2, 1995; and

(b) ~~Subsequently passes the applicable tests for tolerance and~~ ***Mmeets the requirements of National Institute of Standards and Technology Handbook 44 current addition.***

3. As used in this section:

(a) "Certificate of conformance" means a document issued by the National Institute of Standards and Technology of the Technology Administration of the United States Department of Commerce, which guarantees that a weight, measure or weighing or measuring device meets the standards set forth in the *National Institute of Standards and Technology Handbook 44*.

(b) "Type" means a model of a particular system of measurement, instrument or element or a field standard which positively identifies the design.

(Added to NAC by St. Sealer of Weights & Measures, eff. 11-2-94; A by R146-98, 12-14-98; R161-03, 1-27-2004)

Item 10

COMMERCIAL USE OF WEIGHING OR MEASURING DEVICE

NAC 581.275 License required. (NRS 581.050, 581.065, 581.067**)** A person shall not use any weighing or measuring device as commercial weighing and measuring equipment ***or system for commercial transactions*** unless the Division has issued a license for that device or system pursuant to NAC 581.280 and 581.285.

(Added to NAC by St. Sealer of Weights & Measures by R161-03, eff. 1-27-2004)

NAC 581.280 Issuance of license: Prerequisites; inspection of devices; inspection of systems; failure of inspection; period of validity of license. (NRS 581.050, 581.057, 581.065, 581.067**)**

1. To obtain a license to use a weighing or measuring device as commercial weighing and measuring equipment ***or system***, an applicant must provide to the Division information concerning the device ***or system***, including:

(a) The date on which the device was purchased or installed;

(b) The manufacturer and model or type of the device ***or system***;

(c) The address where the device ***or system*** is located; and

(d) The name of the person who installed the device ***or system***.

2. Except as otherwise provided in this section, upon receiving the information pursuant to subsection 1 about a weighing or measuring device ***or system***, the Division will, as soon as practicable, inspect the device ***or system***. If the Division determines that the device ***or system*** meets all the applicable standards and the applicant has paid the applicable fees, the Division will issue a license for the device ***or system*** to be used as commercial weighing and measuring equipment ***or commercial transaction item***.

3. The Division may waive the initial inspection of a weighing or measuring device ***or system*** required pursuant to subsection 2 if the Division determines that the device ***or system*** was adjusted after installation by a person who is registered with the Division pursuant to NRS 581.103 to adjust such a device ***or system***. If the Division waives the initial test, the Division will:

(a) Immediately issue a license for the weighing or measuring device ***or system*** to be used as commercial weighing and measuring equipment ***or commercial transaction item***; and

(b) As soon as practicable thereafter, inspect the device ***or system*** to ensure that it meets all the applicable standards.

4. If a weighing or measuring device ***or system*** fails an inspection conducted pursuant to subsection 3, the Division will immediately suspend the license issued for the device ***or system***. If, during the period for which the license was issued, the device or system:

(a) Passes an inspection conducted by the Division, the Division will reinstate the license.

(b) Fails to pass an inspection conducted by the Division, the Division may revoke the license.

5. A license issued for a weighing or measuring device ***or system*** to be used as commercial weighing and measuring equipment ***or commercial transaction items*** is valid from October 1 or the date on which it is issued, whichever is later, until the next following September 30.

~~6. If a weighing or measuring device used as commercial weighing and measuring equipment was approved by the Department for use on or after July 1, 2003, but before January 27, 2004, a license shall be deemed to have been issued for the device by the Division pursuant to this section effective on the date on which the device was approved for commercial use.~~

NAC 581.285 Renewal of license: Notice; payment of fee; inspection of device; *inspection of system;* failure of inspection. (NRS 581.050, 581.057, 581.065, 581.067)

1. On or before August 1 of each year, the Division will send a notice of renewal for each license then in force that has been issued by the Division for a weighing or measuring device to be used as commercial weighing and measuring equipment ***or a system used in commercial transactions***. If a license that is suspended as of the date the Division sends the notices of renewal is subsequently reinstated, the Division will, at the time of the reinstatement of the license, provide a notice of renewal to the holder of the license.

2. The notice of renewal must include the amount of the renewal fee which must be paid on or before September 30 of that year. If the renewal fee is paid timely, the Division will:

(a) Renew the license for the weighing or measuring device to be used as commercial weighing and measuring equipment ***and or a system used in commercial transactions***; and

(b) As soon as practicable thereafter, inspect the device ***or system*** to ensure that the device ***or system*** continues to meet all the applicable standards.

3. If, at the inspection conducted pursuant to subsection 2, a weighing and measuring device ***or system*** fails to meet the applicable standards, the Division will immediately suspend the license issued for the device of system to be used as commercial weighing and measuring equipment or point-of-sales system. If, during the period for which the renewal was issued, the device ***or system***:

(a) Passes an inspection conducted by the Division, the Division will reinstate the license.

(b) Fails to pass an inspection conducted by the Division, the Division may revoke the license.

(Added to NAC by St. Sealer of Weights & Measures by R161-03, eff. 1-27-2004)

Item 11 No action – no raising of current test fees

NAC 581.295 Licensing fees: Amount; late payment. (NRS 581.050, 581.065, 581.067, 581.075)

1. The fee for the annual licensing of a device is:

(a) For scale devices:

500 pounds and under.....

Over 500 pounds through 2,000 pounds.....

Over 2,000 pounds through 5,000 pounds.....

Over 5,000 pounds.....

Hopper, 5,000 pounds and under.....

Hopper, over 5,000 pounds.....

Livestock or vehicle scale, 40,000 pounds and under.....

Livestock or vehicle scale, over 40,000 pounds.....

(b) For linear devices.....

(c) For meter devices:

Dispenser, hose, meter or octane grade tested with a 5-gallon prover.....

Dispenser tested with a prover larger than 5 gallons.....

Truck- or rack-mounted meter, rated to a maximum capacity of not more than 120 gallons per minute.....

Truck- or rack-mounted meter, rated to a maximum capacity of more than 120 gallons per minute.....

Nontemperature-compensated meter used to measure liquid petroleum gas.

Temperature-compensated meter used to measure liquid petroleum gas.....

2. Failure to pay a fee required pursuant to this section within 30 days after receipt of the bill for the fee is a violation of this section, and the Division will, in addition to any civil penalty that may be imposed pursuant to NAC 581.260, impose a late fee equal to 50 percent of the amount of the fee that is paid late.

[Dep't of Agriculture, § 2, eff. 8-6-80]—(NAC A 10-15-81; 11-3-83; A by St. Sealer of Weights & Measures, 11-1-89; 4-18-90; 10-23-91; 11-18-93; 2-20-96; R146-98, 12-14-98; R084-00, 6-22-2000, eff. 7-1-2000; R161-03, 1-27-2004)—(Substituted in revision for NAC 581.200)

Item 12

INSTALLATION, REPAIR AND ADJUSTMENT OF WEIGHING AND MEASURING DEVICES

NAC 581.330 Requirements for certificate of registration. (NRS 581.050, 581.067, 581.103) An applicant for a certificate of registration as a serviceperson or a service agency must provide to the State Sealer of Weights and Measures proof that:

1. The applicant has read and understands the provisions of this chapter and chapter 581 of NRS;
2. The standards used by the applicant to repair or adjust weighing or measuring devices have been certified pursuant to NAC 581.350 as complying with the provisions set forth in the *National Institute of Standards and Technology Handbook 44*, which is adopted by reference pursuant to NAC 581.011, and the National Institute of Standards and Technology 105-Series Handbooks and Training Materials which are adopted by reference pursuant to NAC 581.009; and
3. The applicant has sufficient standards and equipment to test devices adequately as set forth in the notes section of each applicable code in the *National Institute of Standards and Technology Handbook 44*.

(Added to NAC by St. Sealer of Weights & Measures by R126-97, eff. 6-23-98; A by R161-03, 1-27-2004)

4. Each serviceperson of a service agency passes a written test administered by the Division.

Item 13

NAC 581.350 Schedule for certification of standards. (NRS 581.050, 581.067) The standards used by a service agency or serviceperson to repair or adjust a weighing or measuring device must be certified by a laboratory that has been qualified by the National Institute of Standards and Technology to certify such standards or the State Sealer of Weights and Measures according to the following schedule:

Standards for measuring mass.....	Every 2 years
Standards for measuring volume ***(5 gallons and less)***.....	Annually
Standards for proving volume ***(greater than 5 gallons)***.....	Every **2 (or 1)**years
Any other standards.....	As prescribed by the State Sealer of Weights and Measures

(Added to NAC by St. Sealer of Weights & Measures by R126-97, eff. 6-23-98)

Item 14

NAC 581.360 Repair or adjustment of device: Removal of tag; attachment of security seal; use of device. (NRS 581.050, 581.067)

1. After a serviceperson repairs or adjusts a weighing or measuring device that has been tagged by the State Sealer of Weights and Measures as being in need of repairs, the serviceperson shall remove the tag if the repair or adjustment made by the serviceperson causes the device to comply with the provisions of the *National Institute of Standards and Technology Handbook 44*, which is adopted by reference pursuant to NAC 581.011.

2. If a serviceperson removes a tag pursuant to subsection 1, he shall attach to the weighing or measuring device a security seal that prevents tampering with the calibration components. The seal must include a unique series of numbers or letters that has been approved by the State Sealer of Weights and Measures for identifying the serviceperson who repaired or adjusted the device. ***Failure to attach a security seal may result in loss of license and/or civil penalties, or as determined by the Division.***

Agenda Items (2) deferred until after 6 month test

Item 7 (Not determined)

NAC 581.*225* ***Point-of-Sales Systems: Additional fees for special tests/ inspection and rechecks (TBD based on payment method); failure to pay fee. (NRS 581.050, 581.067, 581.075)***

1. In addition to the fees prescribed in NAC 581.220, the following fees will be charged for a special test/inspection or recheck except as otherwise provided in this section:

(a) For each hour for inspecting a system above the time normally required to perform that inspection..... $50

(b) For each hour of required travel of the inspector, in addition to the fees specified in paragraph (a)..... $50

(c) For the per diem of the inspector, the amounts allowed by law for state employees, under conditions set by the Division.).

2. The fees for mileage, travel and per diem will be prorated among persons requiring inspections of systems in the same area if all the systems can be inspected during the same trip.

3. Only the fee prescribed by NAC 581.215 for an inspection of a system will be charged if:

(a) The test can be made during a scheduled trip for inspections in the vicinity; or

(b) The site of the inspection is within a minimal distance from the base of the inspector or within the same metropolitan area.

4. The amount of charges for:

(a) The inspection of sytems or standards not listed on the schedule of fees;

(b) Inspections of standards from out of State; or

(c) Inspections which requires special arrangements or conditions,

will be determined by agreement between the State Sealer of Weights and Measures and the owner or operator of the system or standard to be inspected.

5. Failure to pay a fee required pursuant to this section within 30 days after receipt of the bill for the fee is a violation of this section.

Item 9 (Not determined)

NAC 581.260 Violations: Notice of warning; civil penalties. (NRS 581.050, 581.067) Violations of the provisions of this chapter or chapter 581 of NRS are subject to the following:

1. Except as otherwise provided in subsection 2, for a first violation, the Division will impose a civil penalty of not less than $25 for each violation not to exceed $100.

2. If the Division determines that a first violation was unintentional, the Division will issue a notice of warning to the person who committed the violation, without imposing a civil penalty. The notice of warning must be in writing and set forth:

(a) The statute or regulation that was violated;

(b) The action necessary to remedy the violation; and

(c) The time by which the person must remedy the violation to avoid the imposition of a civil penalty. Failure to remedy the violation by the time set forth in the notice constitutes a second violation.

3. For a second violation, the Division will impose a civil penalty of not less than $50 for each violation not to exceed $500.

4. For a third or subsequent violation, th e Division will impose a civil penalty of not less than $100 for each violation not to exceed $1,000.

(Added to NAC by St. Sealer of Weights & Measures by R146-98, eff. 12-14-98; A by R161-03, 1-27-2004)