

**302 KAR 81:010. Technical requirements for commercial weighing and measuring devices.**

RELATES TO: KRS 363.410, 363.510, 363.610

STATUTORY AUTHORITY: KRS 363.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590(2) requires the Director of the Division of Regulation and Inspection to promulgate administrative regulations establishing technical requirements for commercial weighing and measuring devices. This administrative regulation establishes technical requirements for commercial weighing and measuring devices and applies to any type of device and equipment covered in National Institute of Standards and Technology (NIST) Handbook 44 (Handbook 44), Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.

Section 1. Definitions.

- (1) "Active Certificate of Conformance" means a document issued based on testing by a participating laboratory, which the certificate owner maintains in active status under the National Type Evaluation Program. The document constitutes evidence of conformance of a type with the requirements of this document and the NIST Handbooks 44, 105-1, 105-2, or 105-3.
- (2) "Commercial equipment" means:
  - (a) Weighing and measuring equipment commercially used or employed in establishing the 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) Any accessory attached to or used in connection with a commercial weighing or measuring device if the accessory is designed so that its operation affects the accuracy of the device.
- (3) "Device" means any weighing and measuring device.
- (4) "Director" is defined by KRS 363.510(6).
- (5) "Manufactured device" means any commercial weighing or measuring device shipped as new from the original equipment manufacturer.
- (6) "National Type Evaluation Program" or "NTEP" means a program of cooperation between the National Conference on Weights and Measures, the National Institute of Standards and Technology, other federal agencies, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of Handbook 44.
- (7) "NIST" means National Institute of Standards and Technology.
- (8) "One-of-a-kind device" means one (1) non-NTEP device per manufacturer, which is designed to meet unique demands for a specific installation and of a specific design and that is not commercially available elsewhere.
- (9) "Participating laboratory" means any state measurement laboratory, state weights and measures agency, or other laboratory that has been authorized to conduct a type evaluation under the National Type Evaluation Program.
- (10) "Person" means both singular and plural, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.
- (11) "Remanufactured device" means a device that is disassembled, checked for wear, parts replaced or fixed, reassembled, and made to operate like a new device of the same type.
- (12) "Remanufactured element" means an element that is disassembled, checked for wear, parts replaced or fixed, reassembled, and made to operate like a new element of the same type.

(13) "Repaired device" means a device on which work is performed that brings the device back into proper operating condition.

(14) "Repaired element" means an element on which work is performed that brings the element back into proper operating condition.

(15) "Type" means a model or models of a particular device, measurement system, instrument, or element that positively identifies the design. A specific type varies in its measurement ranges, size, performance, and operating characteristics as specified in the Certificate of Conformance.

(16) "Type evaluation" means the testing, examination, and evaluation of a type by a "participating laboratory".

#### Section 2. Certificate of Conformance.

(1) A device shall be traceable to an active Certificate of Conformance prior to its installation or use for commercial purposes.

(2) By maintaining the certificate in active status, the certificate owner declares the intent to continue to manufacture or remanufacture the device consistent with the type and in conformance with the applicable requirements.

(3) For manufacturers of grain moisture meters, maintenance of active status also shall involve annual participation in the NTEP Laboratory Ongoing Calibration Program (OCP) Phase II.

(4) A device shall be traceable to an active Certificate of Conformance if it was manufactured during the period that the certificate was maintained in active status.

#### Section 3. Prohibited Acts and Exemptions.

(1) Except for a device exempted by this section, a person shall not sell a device unless it is traceable to an active Certificate of Conformance.

(2) Except for a device exempted by this section, a person shall not use a device unless it is traceable to an active Certificate of Conformance.

(3) A device in service in this state prior to July 1, 2003, shall meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 shall not be required to be traceable to an active Certificate of Conformance.

(4) A device in service in this state prior to July 1, 2003, removed from service by the owner or on which the department has issued a removal order after July 1, 2003, and returned to service at a later date shall be modified to meet all specifications, tolerance, and other technical requirements of Handbook 44 effective on the date of the return to service. The modified device shall not be required to be traceable to an active Certificate of Conformance.

(5) A device in service in this state prior to July 1, 2003, which is repaired after July 1, 2003, shall meet the specifications, tolerances, and other technical requirements of Handbook 44 and shall not be required to be traceable to active Certificate of Conformance.

(6) A device in service in this state prior to July 1, 2003, that is still in use may be installed at another location in this state if the device meets requirements in effect as of the date of installation in the new location and the device shall not be required to be traceable to an active Certificate of Conformance.

(7) A device in service in another state prior to July 1, 2003, may be installed in this state if the device meets the specifications, tolerances, and technical requirements for weighing and measuring devices in Handbook 44 and shall be traceable to an active Certificate of Conformance.

(8) One-of-a-kind device.

(a) If a device manufactured for sale by a company has been categorized and tested as a "one-of-a-kind device" and the manufacturer then decides to manufacture an

additional device or devices of that same type, the device shall not be considered any longer a one-of-a-kind device. This also shall apply to a device that has been determined to be a one-of-a-kind device by a weights and measures jurisdiction in one (1) state and the manufacturer decides to manufacture and install another device of that same type in another state. If this occurs, the manufacturer of the device shall request an NTEP evaluation on the device through the normal application process unless NTEP has already deemed that the evaluation will not be conducted.

(b) The director may accept the design of a one-of-a-kind device without an NTEP evaluation pending inspection and performance testing to determine if the device complies with Handbook 44 and is capable of performing within the Handbook 44 requirements for a reasonable period of time under normal conditions of use. Indicators and load cells in one-of-a-kind scale installations shall have an active NTEP Certificate of Conformance as evidence that the system meets the influence factors requirements of Handbook 44.

(9) Repaired device. If a person repairs or remanufactures a device, the person shall be obligated to repair or remanufacture the device consistent with the manufacturer's original design and that specific device shall not be traceable any longer to an active Certificate of Conformance.

(10) Remanufactured device. If a person repairs or remanufactures a device, the person shall repair or remanufacture the device consistent with the manufacturer's original design and that specific device shall not be traceable any longer to an active Certificate of Conformance.

(11) Copy of a device. The manufacturer who copies the design of a device that is traceable to an active Certificate of Conformance, but which is made by another company, shall obtain a separate Certificate of Conformance for the device. The Certificate of Conformance for the original device shall not apply to the copy.

(12) Device components. If a person buys a load cell or cells and an indicating element traceable to Certificates of Conformance then manufactures a device from the parts, that person shall obtain an active Certificate of Conformance for the device.

#### Section 4. Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", National Institute of Standards and Technology Handbook 44, (2019)";

(b) "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", National Institute of Standards and Technology Handbook 105-1, (2019)";

(c) "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", National Institute of Standards and Technology Handbook 105-2, (2019)"; and

(d) "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", National Institute of Standards and Technology Handbook 105-3, (2019)".

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(29 Ky.R. 598; Am. 940; eff. 10-9-2002; 46 Ky.R. 626, 1112; eff. 10-7-2019.)