



**RULE-MAKING ORDER**  
**(RCW 34.05.360)**

**CR-103 (4/25/96)**

**Agency:** Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Repeal

**(1) Date of adoption:** 5/29/97

**(2) Purpose:** To establish a National Type Evaluation Program (NTEP) to ensure that weighing and measuring devices used commercially comply with the provisions of the National Institute of Standards and Technology (NIST) Handbook 44 which prescribes specifications, tolerances, and other technical requirements for weighing and measuring equipment.

**(3) Citation of existing rules affected by this order:**

Repealed:

Amended:

Suspended:

**(4) Statutory authority for adoption:** RCW 19.94.190 and 19.94.195

Other Authority:

**PERMANENT RULE ONLY**

Adopted under notice filed as WSR 97-09-102 on 4/23/97 (date).

Describe any changes other than editing from proposed to adopted version:

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**EXPEDITED REPEAL ONLY**

Under Preproposal Statement of Inquiry filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date)

**(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:**

- Yes
  - No
- If Yes, explain:

**(6) Effective date of rule:**

**Permanent Rules  
or Expedited Repeal**

**Emergency Rules**

- 31 days after filing
- Other (specify) \_\_\_\_\_\*
- Immediately
- Later (specify) \_\_\_\_\_

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)

Jim Jesernig

Signature

Title  
Director

Date  
5/30/97

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

JUN 4 1997

TIME 9:02 AM

WSR 97-12-076 PM

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	<u>6</u>	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>6</u>	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>6</u>	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

Chapter 16-664 WAC

NATIONAL TYPE EVALUATION PROGRAM

NEW SECTION

**WAC 16-664-010 Purpose.** The purpose of this rule is to assure users, sellers, manufacturers and weights and measures officials that a particular model or type of device and/or equipment is capable of meeting applicable standards.

NEW SECTION

**WAC 16-664-020 Definitions.** For purposes of this rule:

(1) "Certificate of conformance" means a document issued by the National Institute of Standards and Technology based on testing by a participating laboratory. The certificate evidences conformance of a type with the requirements of the National Institute of Standards and Technology Handbooks 44, 105-1, 105-2, or 105-3.

(2) "Device" means any weighing and measuring device as defined in subsection (4) of this section, Commercial and law enforcement equipment.

(3) "Director" means the director of the Washington state department of agriculture.

(4) "Commercial and law enforcement equipment" means:

(a) Any weighing or 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.

(b) Any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed that its operation affects the accuracy of the device.

(c) Weighing and measuring equipment in official use for the enforcement of law or for the collection of statistical information by government agencies.

(5) "National type evaluation program" means a program of cooperation between the National Institute of Standards and Technology, other federal agencies, the National Conference on Weights and Measures, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and

Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" and National Conference on Weights and Measures, Publication 14, "National Type Evaluation Program, Administrative Procedures, Technical Policy, Checklists, and Test Procedures."

(6) "One-of-a-kind device" means a device manufactured for sale that has been categorized and tested as a "one-of-a-kind" device. If the manufacturer constructs an additional device or devices, the device is no longer considered to be "one-of-a-kind." This definition also applies to any device that has been determined to be a "one-of-a-kind" device by a weights and measures jurisdiction in one state and the manufacturer decides to manufacture and install the device in another state. In this case, the device must be traceable to a Certificate of Conformance, unless NTEP decides that a Certificate of Conformance will not be required.

(7) "Participating laboratory" means any state measurement laboratory that has been accredited by the National Institute of Standards and Technology in accordance with its program for the Certification of Capability of State Measurement Laboratories, or any state weights and measures agency or other laboratory that has been authorized to conduct a type evaluation under the National Type Evaluation Program.

(8) "Person" means both plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(9) "Remanufactured device" means a device to which an overhaul or replacement of parts has been performed so the device can be installed in a new location.

(10) "Repaired device" means the maintenance or replacement of parts for a device to remain or return to service in the same location.

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

(12) "Type evaluation" means the testing, examination, and/or evaluation of a type by a participating laboratory under the National Type Evaluation Program.

#### NEW SECTION

**WAC 16-664-030 Certificate of Conformance--When required.**  
The director shall require a device to be traceable to a Certificate of Conformance prior to its installation or use for commercial or law enforcement purposes.



NEW SECTION

**WAC 16-664-040 Commercial and law enforcement equipment--Certificate of Conformance--Requirements--Exemptions--One-of-kind device--Repaired device--Remanufactured device--Device copy--Components.** (1) Except for a device exempted under subsection (6) of this section, no person shall sell a device, within the state of Washington, unless it is traceable to a Certificate of Conformance. Certificate of Conformance documentation must be provided as part of the sales transaction.

(2) No person shall use a device within the state of Washington, unless it is traceable to a Certificate of Conformance, except when the device is exempted by subsection (3), (4), or (5) of this section. Certificate of Conformance documentation must be maintained at the device location.

(3) A device in service in Washington prior to . . . . ., 19. ., that meets the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44, is not required to be traceable to a Certificate of Conformance.

(4) A device in service in Washington prior to . . . . ., 19. ., removed from service by the owner or on which the department has issued a removal order after . . . . ., 19. ., and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 effective on the date of the return to service. Such a device is not required to be traceable to a Certificate of Conformance.

(5) A device in service in Washington prior to . . . . ., 19. ., which is repaired after such date shall meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 is not required to be traceable to a Certificate of Conformance.

(6) A device in service in Washington prior to . . . . ., 19. ., and sold after such date shall be modified by the seller to meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 on or before the date sold, unless the buyer and seller agree by written contract to exchange the modification responsibility in which case modification must be completed before further commercial application. Such commercial weighing or measuring device is not required to be traceable to a Certificate of Conformance.

(7) A device in service in another state prior to . . . . ., 19. ., may be installed in Washington; however, the device shall meet the specifications, tolerances, and technical requirement for weighing and measuring devices in National Institute of Standards and Technology Handbook 44 and be traceable to a Certificate of Conformance.

(8) One-of-a-kind device -- A "one-of-a-kind" device is not required to be traceable to a Certificate of Conformance. However, if the manufacturer decides to make an additional device or devices, the device will no longer be considered to be "one-of-a-kind" and it shall be traceable to a Certificate of Conformance. For scales, the load cells and electronic indicators must be traceable to a Certificate of Conformance.

(9) Repaired device -- If a person makes changes to a device to the extent that the metrological characteristics are changed, that specific device is no longer traceable to the Certificate of Conformance.

(10) Remanufactured device -- If a person repairs or remanufactures a device, they are obligated to repair or remanufacture it consistent with the manufacturer's original design; otherwise, that specific device is no longer traceable to a Certificate of Conformance.

(11) Copy of a device -- The manufacturer who copies the design of a device that is traceable to a Certificate of Conformance, but which is made by another company, must 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(s) and an indicating element that are traceable to Certificates of Conformance and then manufactures a device from the parts, that person shall obtain a Certificate of Conformance for the device.

#### NEW SECTION

**WAC 16-664-050 Unlawful acts.** It shall be unlawful for a person to:

(1) Use a device in commercial application if a Certificate of Conformance has not been issued for such device, unless exempt under WAC 16-664-040;

(2) Sell a device for use in commercial application if a Certificate of Conformance has not been issued for such device, unless exempt under WAC 16-664-040.

#### NEW SECTION

**WAC 16-664-060 Penalty.** Any person who violates the provisions of this chapter is subject to penalties as provided under chapter 19.94 RCW.