

## ARTICLE 69-10

### TESTING AND SAFETY

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#### CHAPTER 69-10-01 WEIGHTS AND MEASURES - GENERAL

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**69-10-01-01. Definitions.** As used in article 69-10:

1. "Automatic bulk weighing system" means a weighing system which weighs grain in successive drafts, automatically records the no-load and loaded weight values, and accumulates the net weight of each draft.
2. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
3. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
4. "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.
5. "Equipment repair notice tag" means a tag that allows a device to be operated for sixty days from its inspection date pending correction of cited defects relating to the device or any of its required peripheral equipment. The tag defaults to a rejection tag if the device is not in compliance within sixty days.
6. "Liquid or LPG computing pump" means a device that provides fuel or LPG to a consumer.
7. "NIST" means the United States department of commerce, national institute of standards and technology.
8. "Not sealed" means a sticker or seal applied to a device which has not been inspected and tested, does not meet applicable design or tolerance requirements, or is no longer being used commercially. A device that is not sealed shall not be used in commerce.
9. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested under the self-certification rules.
10. "Registered service person" means a person or agency authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to repair and certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.
11. "Rejected for repair" means a sticker or seal applied to a device which has been inspected and tested and does not meet applicable design or tolerance requirements. A device that is rejected for repair shall be modified or repaired by a registered service person within thirty days of

the date it was rejected and may not be used in commerce until placed into service.

12. "Retail fuel device" means a commercial, indicating fuel pump used to deliver fuel to individual highway vehicles in quantities of one hundred gallons [378.54 liters] or less per transaction.
13. "Seal" means marking a weighing or measuring device to show certification or rejection.
14. "Security seal" means either a lead and wire pressure-sensitive seal, a plastic and wire pressure-sensitive seal, or a sealing sticker, permanently attached to a weighing or measuring device to prevent unauthorized access to the tolerance-adjusting mechanisms of that device.
15. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
16. "Split-weighing" means determining the weight of a vehicle, combination vehicle, or a commodity by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combinations.
17. "Standard" means test equipment used for certifying weighing or measuring devices.
18. "Variance permit" means a temporary or permanent suspension of a particular rule granted to an owner or operator of a commercial weighing or measuring device because of an economic hardship, a site restriction requiring modification to the design or installation of a device, or a special installation or operational condition, to be determined by the commission on a case-by-case basis.
19. "Weights and measures inspector" means a commission employee in the testing and safety division performing duties set by the commission.

**History:** Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; August 1, 2000; January 1, 2002; March 1, 2003; November 1, 2003; July 1, 2008.

**General Authority:** NDCC 64-02-03

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

**69-10-01-02. Installation by other than a registered service person.** A person, other than a registered service person, who installs a commercial weighing or measuring device must report the installation to the commission within seven working days from the day the installation was completed. The device must then

be certified by a weights and measures inspector or a registered service person, as allowed by section 69-10-04-02.1, before the device can be used in commerce.

**History:** Amended effective April 1, 1992; August 1, 1993; July 1, 1997; July 1, 1998.

**General Authority:** NDCC 64-02-03

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

**69-10-01-02.1. Certification.** A weighing and measuring device may only be certified for commercial use by the commission or a registered service person. Certification must take place at the location of intended use unless the device is otherwise designed, in which case the device must be tested by the commission at the location of intended use within fifteen months of its installation. The commission may certify a weighing or measuring device by actual testing of the device, or by witnessing the test.

**History:** Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998.

**General Authority:** NDCC 64-02-03

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

**69-10-01-02.2. Repair and calibration.** A commercial weighing and measuring device may only be repaired, tested, calibrated, and placed into commercial service by a registered service person, or tested and adjusted, as allowed by law, and certified for commercial service by the commission, whichever is applicable.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 64-02-03

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

**69-10-01-02.3. Recertification.** The commission or a registered service person may inspect, test, and calibrate a commercial weighing or measuring device annually. The owner of any commercial weighing or measuring device is responsible for its accuracy and must have it tested once every fifteen months. Commission staff shall issue a written compliance order to the owner or operator of any commercial device that has not been tested within the fifteen-month time limit. The compliance order must allow thirty days for the owner of the device to have it recertified by a registered service person. Failure to comply with a compliance order within the thirty-day time limit will cause the device to be removed from commercial service.

**History:** Effective July 1, 2008.

**General Authority:** NDCC 64-02-03

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

**69-10-01-03. Sealing.** A weighing or measuring device used in commerce must be certified and sealed. A security seal must be installed where applicable, to prevent adjustments to the calibration of the device. An adhesive sticker that is of

sufficient quality that it remains readable and unaffected by the elements must be installed externally to show visual proof of certification. It is unlawful to remove, or allow to be removed, an official tag or seal without commission approval. Effective January 1, 1995, an adhesive sticker must contain the following information: name and telephone number of the commission or registered service company certifying the device, the words "tested and approved", and the month and year of certification.

**History:** Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997; July 1, 1998; January 1, 2002; July 1, 2008.

**General Authority:** NDCC 64-02-03

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

**69-10-01-03.1. Registration of a new or moved commercial device.** A written report must be filed with the commission by the owner or operator of any new commercial weighing or measuring device and any commercial weighing or measuring device that has been moved from its original location of certification within seven working days of installation or relocation.

**History:** Effective July 1, 1997; amended effective July 1, 1998; January 1, 2002.

**General Authority:** NDCC 64-02-03

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

**69-10-01-03.2. Equipment repair notice - Applicable usage.** An equipment repair notice tag may be used in the following circumstances:

1. During the period any one of the following is pending:
  - a. Response to a variance permit request;
  - b. Completion of design requirements; or
  - c. Repair of required peripheral equipment;
2. When a point of sale liquid-measuring device:
  - a. Is a retail liquid-measuring device that is no more than two cubic inches [32.77 milliliters] outside of the applicable tolerance for over-registration or ten cubic inches [163.87 milliliters] outside the applicable tolerance for under-registration, using a five gallon [18.93 liter] test measure;
  - b. Is a vehicle tank or wholesale liquid-measuring device that is no more than twenty-two cubic inches [360.52 milliliters] outside of the applicable tolerance for over-registration or one hundred cubic inches [1638.71 milliliters] outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] prover;

- c. Is an LPG liquid-measuring device that is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or five percent outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] test with a one hundred gallon [378.54 liter] prover;
  - d. Is an LPG or anhydrous ammonia liquid-measuring device equipped with an automatic temperature compensating system, the allowable error difference between an activated and not activated mechanical or electronic automatic temperature compensating system is no more than one-half of one percent outside of the applicable tolerance for over-registration or under-registration; or
  - e. Is a liquid hydrocarbon or agri-chemical measuring device that has an automatic temperature compensating system, the difference between the meter error (expressed as a percentage) for results determined with and without the mechanical or electronic automatic temperature compensating system activated may be no more than one-tenth of one percent outside of the applicable tolerance for over-registration or under-registration;
3. When a point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or two scale divisions outside the applicable tolerance for under-registration; or
  4. When a point of purchase or point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or under-registration.

**History:** Effective March 1, 2003; amended effective November 1, 2003; May 1, 2005; July 1, 2008.

**General Authority:** NDCC 64-02-03

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

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

Repealed effective April 1, 1992.

**69-10-01-04.1. Variance permit requests.** The operator of any commercial weighing or measuring device, other than an operator seeking a split-weigh variance permit under section 69-10-01-04.2, may make written request for a variance permit from the commission under North Dakota Century Code section 64-02-02. The request for a variance permit must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;

2. A plan for compliance over a period not to exceed one hundred eighty days if the variance permit request results from a rejection; or, a plan for compliance over a period not to exceed five years if the variance request results from economic hardship. Through reapplication, the economic hardship variance may be a permanent variance permit provided the applicant can show that compliance will continue to cause economic hardship;
3. The manufacturer's name, type, location, serial number, deck length, and capacity of the device;
4. The maximum amount that will be weighed on the device, along with a certified letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard (if applying for a variance permit that will allow a device to be used beyond its rated sectional or concentrated load capacity);
5. Detailed information showing that compliance with specific regulations will cause economic hardship (if applicable to the variance permit request); and
6. Any other information the operator believes may expedite the variance permit request.

A variance permit granted by the commission is a temporary variance permit and does not become permanent until sufficient time to conclude inspection and testing (usually two years) has elapsed. A notice of the variance permit must be conspicuously posted on the device during the time the temporary variance permit is in effect.

**History:** Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008.

**General Authority:** NDCC 64-02-03

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

**69-10-01-04.2. Split-weigh variance permit requests.** The operator of any motor truck or motor truck dump scale installed after April 1, 1965, may make written request for a permanent split-weigh variance permit from the commission under North Dakota Century Code section 64-02-02. The request for a variance permit must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;
2. The manufacturer's name, type, location, deck length, serial number, and capacity of the device;

3. The maximum amount of weight that will be placed upon the device at any time during the split-weighing operation. If that maximum weight exceeds the rated sectional capacity or concentrated load capacity of the device, the applicant must also include a letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard;
4. The maximum distance between the front and rear outer axles of the vehicle or coupled-combination vehicle that will be split-weighed;
5. A statement in the variance permit request certifying that each axle of the vehicle or each axle of the coupled-combination vehicle will rest on a straight surface, in the same plane with, and not to exceed one-third inch [8.47 millimeters] per foot [30.48 centimeters] out of level with, the scale deck during the split-weighing operation;
6. A statement in the variance permit request agreeing to the following procedures to be observed during the split-weighing operation:
  - a. Use of the vehicle brakes is prohibited;
  - b. The vehicle transmission must be in neutral; and
  - c. Chocking of the vehicle's wheels should be discouraged.
7. For an operator of a motor truck or motor truck dump scale installed after April 1, 1995, a temporary variance permit will be issued only if the operator has substantiated that it is unable to install a scale of sufficient length to allow single-draft weighing due to economic hardship. If the operator chooses to pursue the plea of economic hardship, then the operator's split-weigh variance permit request must also include a plan for compliance over a period not to exceed five years. Through reapplication, at the end of the five-year period, the economic hardship temporary variance permit may be made a permanent variance permit provided the operator can show that compliance will continue to cause economic hardship.

**History:** Effective February 1, 1996; amended effective July 1, 1997; July 1, 2008.

**General Authority:** NDCC 64-02-03

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

**69-10-01-05. Rejected devices.** Once a weighing or measuring device has been rejected, the device may not be used in commerce. The commission may install a security seal on the device to prevent its use until the device has been retested and certified or a variance permit has been granted.

**History:** Amended effective April 1, 1992; September 1, 1994; July 1, 2008.

**General Authority:** NDCC 64-02-03

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

**69-10-01-05.1. Inactive weighing or measuring devices.** An inactive commercial weighing or measuring device unused or tagged "not sealed" for longer than one year, must meet all current state laws and rules before it may be retested and certified, unless the operator receives a variance permit allowing for the use of the device.

**History:** Effective September 1, 1994; amended effective July 1, 1997; July 1, 2008.

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

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

**69-10-01-06. Liquefied petroleum gas meters.** Repealed effective April 1, 1992.

**69-10-01-06.1. Liquefied petroleum gas meters - Temperature compensation.** All sales of liquefied petroleum gas in a liquid state shall be made through a meter having an automatic temperature compensator. The compensator shall be connected, operable, and in use at all times.

**History:** Effective February 1, 1996.

**General Authority:** NDCC 64-02-03

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

**69-10-01-07. Sale of liquid fuels on other than gross volume basis prohibited.** Repealed effective July 1, 2008.

**69-10-01-08. Assisting inspector.** When requested, the owner or operator of any commercial weighing or measuring device shall supply access and assistance to the division inspector in movement of the test weights to and from and on and off the scale for testing purposes, or for returning liquids to aboveground or belowground storage tanks. Failure to provide inspector access and assistance in a timely manner may be grounds for tagging the device "not sealed".

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

**General Authority:** NDCC 64-02-03

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

**69-10-01-09. Bulk liquid fuel meters.** Repealed effective August 1, 2000.

**69-10-01-09.1. Bulk liquid fuel meters - Retail sales.** Meters designed for bulk loading use may not be used for retail fuel sales without first obtaining a variance from the commission, which may be granted for no longer than six months.

**History:** Effective September 1, 1994.

**General Authority:** NDCC 64-02-03

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

**69-10-01-09.2. Bulk liquid fuel meters - Marking.** A bulk liquid fuel meter used in commerce and not marked from the manufacturer with the liquid to be measured must be sealed with a tag indicating the product for which the meter is designed to deliver, or the liquid used to certify the meter if other than the design liquid.

**History:** Effective September 1, 1994.

**General Authority:** NDCC 64-02-03

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

**69-10-01-09.3. Bulk liquid fuel meters - Design use.** A bulk liquid fuel meter may not be used for the commercial delivery of any liquid fuel that is not substantially similar in physical properties to the liquid fuel for which it was designed, tested, and certified.

**History:** Effective September 1, 1994.

**General Authority:** NDCC 64-02-03

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

**69-10-01-10. Examination of records.** The commission may obtain copies of, and examine any weigh ticket, weigh receipt, meter printer ticket, or any other record of sale resulting from the operation of any commercial weighing or measuring device.

**History:** Effective August 1, 1993.

**General Authority:** NDCC 64-02-03

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

**69-10-01-10.1. Retention of records.** A record of a sale such as a weigh ticket, weigh receipt, meter printer ticket, or any other record resulting from the operation of any commercial weighing or measuring device must be maintained on file at the place of sale for a period of not less than two years from the date of sale.

**History:** Effective July 1, 1998.

**General Authority:** NDCC 64-02-03

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

**69-10-01-11. Device adjustments.** State weights and measures inspectors may not make adjustments to a commercial weighing or measuring device other than to zero a device or adjust the level on certain counter, dormant, and platform scales.

**History:** Effective September 1, 1994; amended effective July 1, 1997; November 1, 2003.

**General Authority:** NDCC 64-02-03

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

**69-10-01-12. Sale of anhydrous ammonia.** The sale of anhydrous ammonia after January 1, 1999, on any basis other than by certified scale or

certified meter by any new or newly expanded anhydrous ammonia dealer is prohibited.

**History:** Effective July 1, 1997.

**General Authority:** NDCC 64-02-03

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

**69-10-01-13. Enforcement.** An operator of a commercial weighing and measuring device shall ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in state and national institute of standards and technology handbook no. 44 requirements (1999 edition). The commission may require proof of compliance. The commission may file a complaint for noncompliance, and, in addition to other appropriate sanctions, assess civil penalties under North Dakota Century Code chapter 49-07 after notice and opportunity for hearing on the complaint.

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

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

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

**69-10-01-14. Inspection and testing accessibility.** A commercial weighing or measuring device must be installed so that it is easily accessible for inspection and testing.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

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

**69-10-01-15. Devices taken out of service.** When a state weights and measures inspector or a registered service person removes a commercial weighing or measuring device from service, the inspector or registered service person shall notify the commission in writing within seven working days of the removal.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

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

**69-10-01-16. Service contracts.** Registered service companies shall notify the commission of any service contract that provides for annual certification of a commercial device. Notification must be given no later than thirty days from the date of the verbal or written contract. Commercial devices under service contract that have not been tested within twelve months may be scheduled for testing by the commission.

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

**General Authority:** NDCC 64-02-03

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

**69-10-01-17. Manufacturer design deviations and limitations.**

Deviations from the manufacturer's design, installation specifications, intended application, or established limits applicable to any commercial weighing or measuring device are not permitted without approval from the manufacturer's engineering authority and a variance permit granted by the commission.

**History:** Effective July 1, 2008.

**General Authority:** NDCC 64-02-03

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