

**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. "Audit trail" means an electronic count or information record of the changes to the values of the calibration or configuration parameters of a device.
2. "Automatic bulk weighing system" means a weighing system adapted to the automatic weighing of bulk commodities in successive drafts or predetermined amounts, automatically

recording the no-load and loaded weight values, and accumulating the net weight of each draft.

3. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
4. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
5. "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.
6. "Commercial weighing and measuring device" includes:
  - a. A weighing or measuring device commercially used or employed in establishing 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. An accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects the accuracy of the device.
7. "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.
8. "Liquid or liquefied petroleum gas computing pump" means a device that provides fuel or liquefied petroleum gas to a consumer.
9. "Medical marijuana" means medical marijuana as regulated by the state department of health.
10. "NCWM" means the national conference on weights and measures.
11. "NIST" means the United States department of commerce, national institute of standards and technology.
12. "Noncommercial device" means a tag 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.
13. "NTEP" means the national conference on weights and measures, national type evaluation program.
14. "Quality assurance inspected" means a tag applied to a device which either passed a quality assurance test or passed a test in response to a consumer complaint.
15. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested.
16. "Registered service person" means an individual who for hire, award, commission, or payment of any kind installs, services, repairs, or reconditions a commercial weighing or measuring device, and who registers with the commission.
17. "Rejected for repair" means a seal applied to a device which has been inspected and tested and does not meet applicable design or tolerance requirements.

18. "Retail fuel device" means a commercial, indicating fuel or fuel additive device used to deliver fuel or fuel additive used in internal-combustion engines.
19. "Seal" means marking a weighing or measuring device to show certification or rejection.
20. "Security seal" means either a crimpable lead and wire seal, a plastic and wire pressure-sensitive seal, or a pressure-sensitive adhesive sealing sticker, permanently attached to a weighing or measuring device to prevent or indicate unauthorized access to the tolerance-adjusting mechanisms of that device.
21. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
22. "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.
23. "Standard" means test equipment used for certifying weighing or measuring devices.
24. "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 basis.
25. "Weights and measures inspector" means a commission employee engaged in enforcing provisions of article 69-10 and North Dakota Century Code title 64.

**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; January 1, 2021.

**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 before the device can be used in commerce.

**History:** Amended effective April 1, 1992; August 1, 1993; July 1, 1997; July 1, 1998; January 1, 2021.

**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 or a registered service company 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; January 1, 2021.

**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. Device 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. The commission may extend the fifteen-month certification interval up to twenty-four months.

**History:** Effective July 1, 2008; amended effective January 1, 2021.

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

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

### **69-10-01-03. Certifying and sealing.**

1. A weighing or measuring device used in commerce must be certified and sealed. A security seal must be installed where applicable, to prevent or indicate unauthorized adjustments to the calibration of the device. If a security seal is unable to be installed, the device must be equipped with an audit trail. The audit trail number must be recorded on the test report.
2. A security seal must:
  - a. Be registered with the commission;
  - b. If utilizing crimpable or lead wire type, contain the year in which the security seal was applied on one side and the initials of the registered service company certifying the device on the other side;
  - c. If utilizing a pressure-sensitive adhesive sticker, contain the name of the registered service company certifying the device, the word "sealed", and a place to write the year of installation; and
  - d. If utilizing a plastic and wire pressure-sensitive seal, contain the company's name or initials and a unique numeric serial number.
3. A certification seal must:
  - a. Contain the following information:
    - (1) Name and telephone number of the commission or registered service company certifying the device;
    - (2) Prominently display the words "tested and approved"; and
    - (3) Utilize preprinted month and year indicators that are to be punched out upon device certification;
  - b. Be made of sufficient quality material, other than paper, to remain readable and unaffected by the elements; and

- c. Be installed externally and located so that it is clearly visible to the public using the device.
4. A registered service company may not use green, red, yellow, or orange certification seals. These colors are reserved for commission use.
5. It is unlawful to remove, or allow to be removed, an official tag, certification seal, or security seal without commission approval.

**History:** Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997; July 1, 1998; January 1, 2002; July 1, 2008; January 1, 2021.

**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.**

Repealed effective January 1, 2021.

**69-10-01-03.2. Equipment repair notice - Applicable usage.**

An equipment repair notice tag defaults to a rejection seal if the device is not repaired or modified to a compliant state within sixty days. 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 a liquefied petroleum gas 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 a liquefied petroleum gas 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;
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; or
5. When fifty-one percent or more of retail fuel devices tested, either by grade or by location, over-registers:
  - a. Four cubic inches [65.55 milliliters] or more when using a five-gallon [18.93-liter] test measure; or
  - b. Forty-seven cubic inches [770.19 milliliters] or more when using a one hundred-gallon [378.54-liter] prover.

**History:** Effective March 1, 2003; amended effective November 1, 2003; May 1, 2005; July 1, 2008; January 1, 2021.

**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-weight 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;
3. The manufacturer's name, type, location, serial number, class, 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); and
5. Detailed information showing that compliance with specific regulations will cause economic hardship (if applicable to the variance permit request) and must include:
  - a. Specific details on how adhering to current laws and rules places an economic hardship on the operation;

- b. Itemized list of costs associated with adhering to current laws and rules; and
- c. Any additional information requested by the commission.

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. An owner or operator shall reapply for the variance permit prior to the current variance permit expiration date.

**History:** Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008; January 1, 2021.

**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 smooth 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; and
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.

**History:** Effective February 1, 1996; amended effective July 1, 1997; July 1, 2008; January 1, 2021.

**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. A device that is rejected for repair must be modified or repaired by a registered service person within thirty days of the date it was rejected. 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; January 1, 2021.

**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 must be made through a meter having an automatic temperature compensator. The compensator must be connected, operable, and in use at all times.

**History:** Effective February 1, 1996; amended effective January 1, 2021.

**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 a weights and measures 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 sealing the device as a "noncommercial device".

**History:** Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; January 1, 2021.

**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.**

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; January 1, 2021.

**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 the North Dakota Century Code and the North Dakota Administrative Code. 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; January 1, 2021.

**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 removed from service.**

When a commercial weighing or measuring device is removed from service, a weights and measures inspector shall affix a noncommercial device seal to the device. A device that is sealed as a "noncommercial device" must not be used in commerce. A registered service person shall notify the commission in writing within seven working days when a device is removed from commercial service.

**History:** Effective May 1, 2005; amended effective January 1, 2021.

**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