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Notice of Administrative Rules Committee Meeting

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North Dakota Legislative Council

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Legislative Council

John Walstad

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505

ADMINISTRATIVE RULES COMMITTEE MEETING

The Legislative Council's Administrative Rules Committee reviews all rules recently adopted by administrative agencies. The committee will hold its next meeting on Wednesday, June 11, 2008, in the Roughrider Room, State Capitol.

You are invited to appear before the committee and describe the procedure followed by the Public Service Commission in adopting the rules published in the July 2008 supplement to the North Dakota Administrative Code.

You are tentatively scheduled to appear before the committee at 1:40 p.m. Enclosed is a copy of the agenda for your reference. If you or a representative are unable to appear at that time, please notify me as soon as possible.

With respect to the rules published in the July 2008 supplement, the committee is interested in and would like you to testify before the committee concerning the following matters:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.
5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.
7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.
8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.
9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.
10. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

Please provide the committee with **written** testimony.

Enclosed is a copy of the July 2008 rules of the Public Service Commission in the form they will be presented to the committee at the meeting. The page numbers should be used as references for the committee because committee members will have pages with the same numbering. Please contact this office if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Walstad" with the initials "JWB" written below it.

John Walstad
Code Revisor

JW/JFB
Encs.

TITLE 69
PUBLIC SERVICE COMMISSION

JULY 2008

CHAPTER 69-05.2-08

69-05.2-08-08. Permit applications - Permit area - Vegetation and land use information.

1. The application must contain the following premining vegetation information:
 - a. A map or aerial photograph at a scale of 1:4,800 that delineates the existing mapping units within each premining land use. The mapping units for different land use categories are:
 - (1) For cropland, each soil mapping unit.
 - (2) For tame pastureland, each soil mapping unit.
 - (3) For native grasslands, each range ecological site. The soil mapping unit in each range ecological site must also be delineated.
 - (4) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs.
 - (5) For fish and wildlife habitat, each vegetation type as further specified in subparagraphs a, b, and c.
 - (a) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs;
 - (b) For wetlands, wetland classes based on ecological differentiation as set forth in Classification of Natural Ponds and Lakes in the Glaciated Prairie Region (United States department of the interior (1971)) or other approved classification system.

- (c) For grasslands (native or introduced), each soil mapping unit.
 - (6) For shelterbelts, the entire planting.
 - b. For each land use, a comprehensive species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants, developed by a thorough reconnaissance of all mapping units.
 - c. A description of each mapping unit delineated under subdivision a. This description must include:
 - (1) The acreage [hectarage] of each mapping unit for each surface owner within the permit area.
 - (2) An assessment of the productivity of cropland, tame pastureland, and native grassland based on published data, historic data, or quantitative data.
 - (3) Natural resource conservation service ~~range-condition~~ similarity index in percent for native grassland.
 - (4) A detailed description of number and arrangement of trees and shrubs, probable age of trees, height of trees, and characteristics of understory vegetation for woodland and fish and wildlife habitat where woodland is the vegetation type.
 - (5) A detailed description of community structure, assemblages of plant species, water conditions, and size for fish and wildlife habitat where wetlands are the vegetation type.
 - (6) A description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.
 - (7) When required for the proposed success standard, a quantitative assessment of applicable vegetation parameters using methods approved by the commission.
 - d. A detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a thorough reconnaissance and qualitative assessment.
- 2. When the methods selected for subdivision g of subsection 6 of section 69-05.2-09-11 require the use of reference areas:

- a. The number of reference areas proposed must be sufficient to adequately represent the permit area.
 - b. The location, approximate size, and boundaries of all proposed reference areas must be located on a map of sufficient scale to accurately show the field location of each. The boundaries of the mapping unit in which the reference area is located must also be delineated.
 - c. The permittee shall demonstrate that the proposed reference areas adequately characterize the relevant mapping units which they propose to represent. This demonstration must be done according to methods approved by the commission.
3. The application must contain, in addition to materials satisfying subdivision a of subsection 2 of North Dakota Century Code section 38-14.1-14:
 - a. A map and supporting narrative of the uses of the land existing at the time the application is filed. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use must also be described.
 - b. A narrative of land capability and productivity, which analyzes the land use description under subdivision a in conjunction with other environmental resources information required under this chapter.
 4. The application must contain a narrative description which includes information adequate to predict the potential for reestablishing vegetation on all areas to be disturbed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; July 1, 2008.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24

CHAPTER 69-05.2-10

69-05.2-10-03. ~~Permit applications~~ - Criteria for permit approval or denial.

1. The commission will not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation, or if any of the following are outstanding:
 - a. Delinquent civil penalties under North Dakota Century Code sections 38-12.1-08 and 38-14.1-32, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.
 - b. Bond forfeitures where violations upon which the forfeitures were based have not been corrected.
 - c. Delinquent abandoned mine reclamation fees.
 - d. Unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation.
 - e. Unresolved federal and state failure-to-abate cessation orders.
 - f. Unresolved imminent harm cessation orders.
2. If a current violation exists, the commission will require the applicant or person who owns or controls the applicant, before the permit is issued, to:
 - a. Submit proof that the violation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation; or
 - b. Establish that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial authority either

denies a stay applied for in the appeal or affirms the violation, then any operations being conducted under a permit issued under this section must immediately cease, until the provisions of subdivision a are satisfied.

3. Any permit issued on the basis of proof submitted under subdivision a of subsection 2 that a violation is being corrected, or pending the outcome of an appeal under subdivision b of subsection 2, will be conditionally issued.
4. The commission will not issue a permit if it finds the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any state or federal program approved under the Surface Mining Control and Reclamation Act of 1977, of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws, rules, or programs. The applicant, anyone who owns or controls the applicant, or the operator must be given an opportunity for hearing on the determination under North Dakota Century Code section 38-14.1-30.
5. After an application is deemed ready for approval, but before the permit is issued, the commission's decision to approve or disapprove the application will be made, based on the compliance review required by subsection 1, in light of any new information submitted under subsection 2 of section 69-05.2-06-01 and subsection 6 of section 69-05.2-06-02.
6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:
 - a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section ~~69-05.2-04-01~~ 69-05.2-04-01.1.
 - b. For alluvial valley floors:
 - (1) The applicant has obtained either a negative determination;
or

- (2) If the permit area or adjacent area contains an alluvial valley floor:
 - (a) The operations would be conducted according to chapter 69-05.2-25 and all applicable requirements of North Dakota Century Code chapter 38-14.1.
 - (b) Any change in the use of the lands covered by the permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.
- (3) The significance of the impact of the operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.
- (4) Criteria for determining whether a mining operation will materially damage the quantity or quality of waters include:
 - (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.
 - (b) The increases in subparagraph a will not be allowed unless the applicant demonstrates, through testing related to local crop production that the operations will not decrease crop yields.
 - (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration must be made of any observed correlation between total dissolved solids concentrations in water and crop yield declines.
 - (d) Potential increases in the average depth to water saturated zones (during the growing season) within the root zone that would reduce the amount of subirrigated land compared to premining conditions.

- (e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.
 - (f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased root zone saturation.
 - (5) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with boundaries based on enhancement of the farm's agricultural productivity not related to mining operations.
 - (6) If the commission determines the statutory exclusions of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply and that any of the findings required by this section cannot be made, the commission may, at the applicant's request:
 - (a) Determine that mining is precluded and deny the permit without the applicant filing any additional information required by this section; or
 - (b) Prohibit surface coal mining and reclamation operations in all or part of the area to be affected by mining.
- c. The applicant has, with respect to prime farmland, obtained either a negative determination or if the permit area contains prime farmlands:
 - (1) The postmining land use will be cropland.
 - (2) The permit specifically incorporates the plan submitted under section 69-05.2-09-15 after consideration of any revisions suggested by the natural resource conservation service.
 - (3) The operations will be conducted in compliance with chapter 69-05.2-26 and other standards required by this article and North Dakota Century Code chapter 38-14.1.
 - (4) The permit demonstrates that the applicant has the technological capability to restore prime farmland, within a reasonable time, to equivalent or higher yields as nonmined prime farmland in the surrounding area under equivalent management practices.

- (5) The aggregate total prime farmland acreage will not be decreased from that which existed prior to mining based on the cooperative soil survey. Any postmining water bodies that are part of the reclamation must be located within the nonprime farmland portions of the permit area. If any such water bodies reduce the amount of prime farmland that a surface owner had before mining, the affected surface owners must consent to the creation of the water bodies and the plans must be approved by the commission.
 - d. The operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.
 - e. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.
 - f. The applicant has, if applicable, satisfied the requirements for approval of a cropland postmining land use under section 69-05.2-22-01.
7. The commission may make necessary changes in the permit to avoid adverse effects on finding that operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places. Operations that may adversely affect those parks or historic sites will not be approved unless the federal, state, or local governmental agency with jurisdiction over the park or site agrees, in writing, that mining may be allowed.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997; May 1, 2001; July 1, 2008.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

CHAPTER 69-05.2-12

69-05.2-12-05.1. Performance bond - Self-bond of permit applicant.

1. The commission may accept a self-bond if the following conditions are met:
 - a. The applicant designates an agent for service of process in the state.
 - b. The applicant has been in continuous operation as a business entity the five years preceding the application. The commission may allow a joint venture with less than five years of continuous operation if each member has been in continuous operation for the five years preceding the application.
 - c. The applicant submits financial information in sufficient detail to show one of the following:
 - (1) The applicant has a current ~~Moody's investors service or Standard and Poor's~~ rating for its most recent bond issuance of "A" or higher as issued by Moody's Investors Service, Standards and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission.
 - (2) The applicant has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.
 - (3) The applicant's fixed assets in the United States total at least twenty million dollars and the applicant has a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.
 - d. The applicant submits:
 - (1) Financial statements for the last complete fiscal year audited by an independent certified public accountant, and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and
 - (2) Financial statements for completed quarters in the current fiscal year and additional information requested by the commission.
 - e. "Tangible net worth" means net worth less intangibles.

2. The commission may accept a written guarantee for an applicant's self-bond from any third-party guarantor, whenever the applicant meets the provisions of subdivisions a, b, and d of subsection 1 and the guarantor meets the provisions of subdivisions a, b, c, and d of subsection 1. The commission may require the applicant to submit information pertaining to the provisions of subdivision c of subsection 1 in order to determine the financial capabilities of the applicant. The written guarantee must provide that:
 - a. If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide to the commission funds, up to the bond amount, sufficient to complete the reclamation plan.
 - b. The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the commission at least ninety days in advance of the cancellation date, and the commission accepts the cancellation.
 - c. The cancellation may be accepted by the commission if the applicant obtains suitable replacement bond before the cancellation or if the covered lands have not been disturbed.
3. The total amount of the outstanding and proposed self-bonds for surface coal mining and reclamation operations may not exceed twenty-five percent of the applicant's or third-party guarantor's tangible net worth in the United States.
4. If the commission accepts a self-bond, an indemnity agreement executed by the applicant and any third-party guarantor must be submitted subject to the following:
 - a. The indemnity agreement is executed according to subsections 9 and 10 of section 69-05.2-12-01.
 - b. An affidavit is submitted certifying that such an agreement is valid under all applicable federal and state laws.
 - c. The guarantor provides a copy of the corporate authorization demonstrating that it may guarantee the self-bond and execute the indemnity agreement.
 - d. In the event of forfeiture, the applicant or third-party guarantor will complete the approved reclamation plan for the land in default or pay to the commission an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

5. Self-bonded permittees and third-party guarantors shall submit an update of the information required under subdivisions c and d of subsection 1 within ninety days after the close of their fiscal years.
6. If the financial conditions of the permittee or the third-party guarantor change so that the criteria of this section are not satisfied, the permittee shall notify the commission immediately and post an alternate bond in the same amount as the self-bond. If substitution is not made within thirty days, the commission may suspend the permit. If substitution is not made within ninety days, the commission shall suspend the permit and the operator shall cease surface mining activities and comply with section 69-05.2-13-11.

History: Effective May 1, 1988; amended effective January 1, 1993; July 1, 2008.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

CHAPTER 69-06-01

69-06-01-05. Designated state agencies and officers. The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. Department of health.
5. Department of human services.
6. Department of labor.
7. Department of ~~vocational~~ career and technical education.
8. Economic development commission.
9. Energy development impact office.
10. Game and fish department.
11. Geological survey.
12. Governor.
13. Highway department.
14. State Historical Society of North Dakota.
15. Indian affairs commission.
16. Job service North Dakota.
17. Land department.
18. Parks and recreation department.
19. ~~State planning division - office of intergovernmental assistance - office of management and budget~~ Division of community services - department of commerce.
20. Soil conservation committee.

21. State water commission.

History: Effective August 1, 1979; amended effective July 1, 2008.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-06. Siting fee refund. After all siting permits and certificates are issued by the commission and after all notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except five thousand dollars or the amount of the fee remaining if that amount is less than five thousand dollars. When construction and all postconstruction inspections are complete and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than fifty dollars will be processed.

History: Effective July 1, 2008.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-22

CHAPTER 69-09-02

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~2002~~ 2007 edition of the National Electrical Safety Code, issued August 1, ~~2004~~ 2006, which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003; July 1, 2008.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

CHAPTER 69-09-05.1

69-09-05.1-02. Accounting practices - Rate-regulated gas companies.

The system of accounts used by all North Dakota natural gas distribution companies subject to rate regulation by the commission must conform to the uniform system of accounts set forth in title 18, Code of Federal Regulations, part 201, prescribed by the federal energy regulatory commission.

History: Effective July 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

69-09-05.1-03. Accounting practices - Rate-regulated electric companies. The system of accounts used by all North Dakota electric companies subject to rate regulation by the commission must conform to the uniform system of accounts set forth in title 18, Code of Federal Regulations, part 101, prescribed by the federal energy regulatory commission.

History: Effective July 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

69-09-05.1-04. Accounting practices - Allowance for funds used during construction for rate-regulated gas companies. A North Dakota natural gas distribution company subject to rate regulation by the commission may not capitalize allowance for funds used during construction (AFUDC) as prescribed in title 18, Code of Federal Regulations, part 201, for projects costing less than ten thousand dollars and taking less than thirty days to complete.

History: Effective July 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

69-09-05.1-05. Accounting practices - Allowance for funds used during construction for rate-regulated electric companies. A North Dakota electric company subject to rate regulation by the commission may not capitalize allowance for funds used during construction (AFUDC) as prescribed in title 18, Code of Federal Regulations, part 101, for projects costing less than ten thousand dollars and taking less than thirty days to complete.

History: Effective July 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

CHAPTER 69-09-09
WIND TURBINE DECOMMISSIONING

<u>Section</u>	
<u>69-09-09-01</u>	<u>Definitions</u>
<u>69-09-09-02</u>	<u>Cost Responsibility</u>
<u>69-09-09-03</u>	<u>Useful Life</u>
<u>69-09-09-04</u>	<u>Decommissioning Period</u>
<u>69-09-09-05</u>	<u>Decommissioning Requirements</u>
<u>69-09-09-06</u>	<u>Decommissioning Plan</u>
<u>69-09-09-07</u>	<u>Existing Facilities</u>
<u>69-09-09-08</u>	<u>Financial Assurance</u>
<u>69-09-09-09</u>	<u>Failure to Decommission</u>

69-09-09-01. Definitions.

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission.
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

History: Effective July 1, 2008.
General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-09-02. Cost responsibility. The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

History: Effective July 1, 2008.
General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-09-03. Useful life. A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuous period of twelve months. The presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

History: Effective July 1, 2008.
General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

69-09-09-04. Decommissioning period. The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within eight months after the time the facility or turbine reaches the end of its useful life, as determined in section 69-09-09-03. Decommissioning must be completed within eighteen months after the facility or turbine reaches the end of its useful life.

History: Effective July 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-05. Decommissioning requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment to a depth of four feet [1.22 meters] and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

History: Effective July 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-06. Decommissioning plan. Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file with the commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility or turbine and a decommissioning plan that describes how the facility or turbine owner or operator will ensure that resources are available to pay for decommissioning the facility or turbine at the appropriate time. The commission shall review a plan filed under this section and shall issue an order approving or disapproving the plan within six months after the decommissioning plan was filed. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

History: Effective July 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities. Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 69-09-09-06 within one year after July 1, 2008.

History: Effective July 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-08. Financial assurance. After the tenth year of operation of a commercial wind energy conversion facility or wind turbine, the commission by order may require a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine.

History: Effective July 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-09. Failure to decommission. If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

History: Effective July 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

CHAPTER 69-10-01

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

69-10-01-02.3. 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; ~~address~~; 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

69-10-01-03.2. 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 either a one hundred gallon [378.54 liter] prover ~~or a commission-registered master meter, however, when the certifying standard is an LPG master meter the applicable tolerance is one percent for any part of the certification test regardless of acceptance or maintenance tolerances;~~
 - 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

69-10-01-04.1. 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-weight 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-weight 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

69-10-01-07. Sale of liquid fuels on other than gross volume basis prohibited. Repealed effective July 1, 2008. ~~The sale of gasoline or other refined liquid fuels, excluding liquefied petroleum gases and residual fuel oils, on any basis other than the gross volume of gasoline or other refined liquid fuel actually delivered is prohibited unless sale on a temperature corrected basis is specifically agreed to by both buyer and seller.~~

History: ~~Effective January 1, 1981.~~

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

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

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

69-10-01-16. 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 ~~thirteen~~ twelve months ~~must~~ 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

CHAPTER 69-10-02

69-10-02-05. Portable pitless scales and portable hopper scales.

A self-contained portable pitless scale and a self-contained portable hopper scale used solely to weigh materials used for government highway construction are exempt from the provisions of this article. Installation and operation of a self-contained portable pitless scale and a self-contained portable hopper scale for commercial use without a variance permit from the commission is prohibited.

History: Amended effective April 1, 1984; August 1, 1993; 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

~~**69-10-02-08. Deviations from manufacturer's design. Repealed effective July 1, 2008. Neither the length nor the width of the load receiving element, nor the indicating element of a scale shall be increased beyond the manufacturer's design dimension unless the proposed modification has been approved by competent scale engineer, and a variance has been granted by the commission. The weighbridge of a scale shall be constructed of steel of sufficient strength to ensure permanence, and shall include steel support members to provide adequate support for the platform.**~~

~~**History:** Amended effective August 1, 1993; July 1, 1997.~~

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

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

~~**69-10-02-11. Limits established by factory-rated scale capacity. Repealed effective July 1, 2008. No person shall use a scale for weighing commodities, the gross weight of which is greater than the factory-rated scale capacity, as stamped by the manufacturer on each indicating or load receiving element (whichever is less), without a variance from the commission.**~~

~~**History:** Amended effective August 1, 1993.~~

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

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

69-10-02-12. Observation windows or video cameras. Windows must be provided and must be located in such a position and manner so that the weighman scale operator has full view of the scale platform and weighing operation from the weighman's scale operator's working position, and that the weighman and indicating elements are clearly visible to interested parties. Video cameras may be substituted for windows if the substitution does not diminish the view for either the weighman scale operator or other interested parties. However, installations that exceed two hundred feet [61 meters] from the main indicating element must

be equipped with two-way audio communication and remote or video display of weight indication.

History: Amended effective August 1, 1993; September 1, 1994; July 1, 2008.

General Authority: NDCC 64-02-03

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

69-10-02-16. Automatic bulk-loading systems - Receiving. A commercial automatic bulk-loading system used for receiving grain may not be commercially operated without first receiving a variance permit from the commission. Before receiving any grain through an automatic bulk-weighing system, a certified commercial truck scale must be made available to the seller for optional check weighing.

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

General Authority: NDCC 64-02-03

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

69-10-02-19. Single-draft weighing - Exceptions. It shall be unlawful to weigh a vehicle or a combination vehicle in any method other than the single-draft method, as outlined in the NIST Handbook No. 44, section 2.20. scales, UR.3.3., Single-draft Vehicle Weighing, except for the following:

1. When the sale of the commodity being weighed is determined by destination weight;
2. For a motor truck or motor truck dump scale installed prior to April 1, 1965; or
3. For a motor truck or motor truck dump scale installed after April 1, 1965, provided a split-weigh variance permit has first been granted by the commission under section 69-10-01-04.2, and the parties involved have complied with section 69-10-02-20 prior to split-weighing.

History: Effective February 1, 1996; amended effective August 1, 2000; July 1, 2008.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-20. Split-weigh agreements. Upon approval by the commission of a variance permit allowing split-weighing, and before an individual customer is split-weighed, an approved split-weigh agreement form must be signed by both the business and that customer, and kept on file at the place where the split-weighing occurs.

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

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-24. Electronic scale data storage and retrieval. Computer programming installed on commercial scales after January 1, 2002, enabling the electronic recording or storage of scale weight must conform to the following:

1. If more than one scale is interfaced, the system must store the identity of the scale which originated the weight and all printed data must identify the scale which originated the weight;
2. Any weight which is manually entered must be identified as manually entered on all recorded weights;
3. All recorded weights must match actual scale-weight indications;
4. All recalled weights must match stored weights;
5. Stored weight must have a recorded audit trail on a dedicated line printer in a continuous format which includes an "S" indicating that it is a stored weight; a sequential reference number; a scale identifier number; a unique reference number to enable the recall of that stored weight; and the stored weight;
6. Any stored weight which is recalled must be immediately printed on a scale ticket with the following information: an "R" indicating that it is a recalled weight; the unique reference number identified in subsection 5; and the recalled weight;
7. After the transaction is completed, the recalled weight must be automatically deleted from the ~~recall~~ recalled weights data file;
8. Computer computations such as rounding off and truncation must be programmed so that the computations do not result in the degradation of the accuracy of the scale tolerance by more than one-half of one scale division; and
9. Programming must ensure all essential data is properly entered and stored before issuing a weight ticket.

History: Effective January 1, 2002; amended effective May 1, 2005; July 1, 2008.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-02-25. Law enforcement scales. Axle load scales or portable wheel load scales used ~~for weight enforcement to enforce load limit restrictions~~ by the North Dakota highway patrol may be tested annually, but must be tested at least once every fifteen months.

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

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-02-26. Hoppers scale design requirements. The owner of a commercial hopper scale shall provide a bracket or lifting arms able to utilize a hand-operated chain hoist that will facilitate testing with five hundred pounds [226.80 kilograms] or larger test weights. The brackets or lifting arms must be of sufficient strength for the intended load and permanently and legibly marked with a maximum load rating.

All commercial hopper scales, newly constructed and placed into service after the effective date of this rule, must have a minimum of three feet [.91 meter] of unobstructed clearance on all four sides to facilitate testing with large weights.

Notwithstanding the provisions of this section, automatic bulk-weighing systems with integral standards, overhead hopper scales accessible underneath, and hopper scales with capacities of five thousand pounds [2267.96 kilograms] or less are exempt from this requirement.

History: Effective July 1, 2008.

General Authority: NDCC 64-02-03

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

CHAPTER 69-10-03

69-10-03-02. Adequate standards. ~~Only standards annually certified by the commission may be used to certify commercial weighing and measuring devices. However, standards annually certified by any national institute of standards and technology accredited laboratory may be used if a legible copy of the certification is first filed with the commission. Annual recertification is subject to the following exceptions and conditions: A standard used to certify any commercial weighing and measuring device must be annually certified as traceable by a NIST-recognized metrology laboratory. The state metrologist may extend the twelve-month recertification interval up to fifteen months.~~

- ~~1. The twelve-month recertification period may be extended after consultation with the state metrologist, but not to exceed fifteen months.~~
- ~~2. The standard weights or "test weights" used in a commercial automatic bulk-weighing system must initially be certified by the commission or by another national institute of standards and technology accredited state laboratory.~~
- ~~3. The volumetric provers used to certify loading-rack meters must initially be certified by the commission or by another national institute of standards and technology accredited state laboratory, and at least once every three years thereafter.~~
- ~~4. The commission may require recertification of the "test weights" described in subsection 2, and the volumetric provers described in subsection 3 if, upon inspection, physical condition indicates a need.~~
- ~~5. Unless otherwise approved by the commission, the operator of a coal belt conveyor scale jurisdictional to the commission must conduct a material load test at least once every two years provided that electronic or other simulated load testing is done at least once every three months.~~
- ~~6. The commission may test and inspect any commercial LPG meters by using a certified master meter that has a flow rate of twelve to sixty gallons [45.4 to 227.1 liters] per minute at 0.02 percent accuracy, and has an orifice size of one and one-half inches [38.1 millimeters]. A master meter must be tested and certified quarterly with a prover traceable to national institute of standards and technology.~~

A current legible copy of the certificate of traceability must be maintained with the commission.

Annual recertification is subject to the following exceptions and conditions:

1. The standards integral to and used for recertification of a commercial automatic bulk-weighing system must be certified traceable by a NIST-recognized laboratory at least once every five years.
2. The volumetric provers used to certify loading-rack meters must be certified traceable by a NIST-recognized laboratory at least once every three years.
3. Unless otherwise approved by the commission, the operator of a coal belt conveyor scale jurisdictional to the commission must conduct a material load test at least once every two years provided that electronic or other simulated load testing is done at least once every three months.
4. A master meter may not be used as a standard to certify commercial LPG devices.
5. Notwithstanding the other provisions of this section, the commission may require recertification of any standard if upon inspection the physical condition of a standard indicates a need for recertification.

History: Amended effective April 1, 1992; 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

69-10-03-06. Metrology service. Metrology service at the commission laboratory will only be provided as set out in this section:

1. All metrology service requests must be by appointment only and will be according to the following:
 - a. Testing and safety division metrology;
 - b. State-registered service company metrology;
 - c. North Dakota law enforcement metrology;
 - d. Industrial customer metrology; and
 - e. All other metrology.
2. The director shall send out annual appointment notifications by mail to all state-registered service companies at least thirty days prior to each company's appointment date.
3. If a party with a scheduled metrology appointment needs to cancel that appointment, the party shall notify the commission of the need to cancel at least seven days in advance of the appointment. Appointments cancelled within less than seven days advance notice will lose

scheduling priorities. The party canceling a metrology appointment may request a new appointment date at that time.

4. ~~Metrology appointments will be requested and confirmed by telephone, e-mail, facsimile, or in writing by mail. A party requesting a metrology appointment should plan at least thirty days' advance notice to the commission on any metrology appointment requests. A metrology appointment must be scheduled at least thirty days in advance.~~
5. A metrology request not previously scheduled may only be serviced as time becomes available.
6. A metrology request for service beyond the scope of the laboratory's certification of recognition level will be referred to an appropriate NIST-accredited NIST-recognized metrology laboratory.

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

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-03-07. Delivery of standards for certification. Standards delivered to the metrology laboratory for testing and certification must be submitted undamaged and serviceable and must comply with the following:

1. Vehicle scale test carts must be cleaned and painted with all fluid levels topped off to their calibrated reference levels.
2. Cast iron weights must be cleaned and painted following the requirements in NIST Handbook No. 105-1, section 2, as adopted by reference in section 69-10-03-01.2.
3. Provers and test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.
4. Provers must have a simple, sturdy, and adequate leveling means on the legs allowing for adequate adjustments ~~with a single tool.~~
5. Provers must have two level indicators mounted on the body of the prover at right angles to each other for leveling purposes.
6. Mild steel provers must be periodically painted as determined by the metrologist, and as recorded in the remarks section on the previous year's calibration report.
7. Mild steel test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.

8. Class F weights must meet the applicable material and design requirements of NIST Handbook No. 105-1, as adopted by reference in section 69-10-03-01.2.
9. Fabricated weights, brass weights, and cast iron weights equal to or less than ten pounds [4.54 kilograms] may not be used.
10. Laminated weights must not be adjusted and must be removed from service when the weights fail to maintain the applicable tolerance.
11. Volume standards placed in service after January 1, 1998, must meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4.
12. A volume standard placed in service before January 1, 1998, that has maintained annual certification need not meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4, unless a standard has been removed from service for a period greater than twelve months.
13. Special seals or special tools required for the test or calibration, which is of a unique nature to a particular standard, must be supplied by the standard owner prior to the beginning of the metrology process.
14. If weights greater than one hundred pounds [45.36 kilograms] or provers with capacities greater than fifty gallons [189.27 liters] are shipped to the metrology laboratory, the weights or provers must be shipped on an open flatbed truck or trailer.
15. Standards that are not in compliance with any of the above requirements will not be accepted for testing and certification.
16. A standard that is not tested and certified may not be used to test and certify a commercial device unless a variance permit is obtained from the commission, or unless the standards is recertified.

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

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-03-08. Rejection of standards. Rejected standards must be removed from service as follows:

1. A standard that has been rejected must be conspicuously marked by sealing, tagging, or painting as appropriate to that standard.
2. A rejected standard may not be used to test and certify a commercial weighing and measuring device. The use of a rejected standard may result in commission enforcement action.

3. A standard not meeting appropriate design criteria may be allowed to remain in service for a limited time, provided a variance permit is obtained from the commission prior to certification or recertification.

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

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

CHAPTER 69-10-04

69-10-04-02. Application for registration and permitting of a service person. Annual application for registration as a registered service person must be submitted to the commission under the following requirements:

1. A first-time applicant shall:
 - a. Provide a written history of education and work experience to show that the applicant is fully qualified to repair, test, and certify a commercial weighing or measuring device; and
 - b. ~~Score seventy-five percent or more on commission testing taken from applicable sections of the adopted edition of the NIST Handbook No. 44, and from weights and measures sections of the North Dakota Century Code and North Dakota Administrative Code;~~
 - c. ~~Complete written tests that are required to obtain a permit as a registered service person. Tests must be taken at the commission's metrology lab in Bismarck, North Dakota, at a location designated by the commission, and must be administered as follows:~~
 - (1) ~~A~~ The written test will be open book, with seventy-five percent as the minimum passing score. The test material will cover the applicable sections of the adopted 1999 edition of NIST Handbook No. 44, North Dakota Century Code title 64, and North Dakota Administrative Code article 69-10; and
 - (2) ~~In the case of a test failure, an alternate test date may be scheduled~~ applicant may retake the tests after a review period of ten working days; and.
- ~~e.~~ 2. Each applicant registered by the commission shall utilize adequate standards during the testing and certification of a commercial device.
- ~~2.~~ 3. An applicant who is applying for renewal of an existing registration shall complete and submit the application at least fifteen days prior to the expiration date of the applicant's existing registration. Each applicant who has renewed an existing registration shall utilize adequate standards during the testing and certification of a commercial device.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005; July 1, 2008.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-03. Revocation of registration. The commission may, for good cause, suspend or revoke a registered service person's permit or a registered

service company's permit. A person or a company not registered with the commission but qualified to install a commercial weighing or measuring device may install but may not service, repair, or recondition a commercial weighing or measuring device without a variance permit from the commission.

History: Amended effective April 1, 1992; July 1, 1997; July 1, 1998; October 1, 1999; July 1, 2008.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-06. Quality control - Witnessing. The commission may ~~observe or reinspect~~ evaluate the work performed by a registered service person to ensure that the person is performing proper inspections and tests. The evaluation method may be by direct observation of a registered service person placing a commercial device into service or by reinspection of a device previously placed into service by a registered service person. The commission shall consider the following criteria while evaluating that person during the evaluation:

1. The results of a random sampling of at least one inspection and test per year, or more if so ordered by the commission, of the devices certified by a registered service person;
2. Complaints filed against a registered service person, and whether those complaints are valid; and
3. Other factors deemed relevant by the commission.

The quality control ~~reinspection~~ evaluation must be completed within forty-five days of the date the work is completed by the registered service person and at no charge to the owner of the device.

History: Effective September 1, 1994; amended effective February 1, 1996; October 1, 1999; July 1, 2008.

General Authority: NDCC 64-02-03

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

NORTH DAKOTA LEGISLATIVE COUNCIL

Tentative Agenda

ADMINISTRATIVE RULES COMMITTEE

Wednesday, June 11, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

- 9:00 a.m. Call to order
Roll call
Consideration of the minutes of the previous meeting
- 9:05 a.m. Presentation by the Legislative Council staff of a bill draft to eliminate the Racing Commission and to transfer its functions and to return breeders' fund money that was paid out for racing purses
- 9:10 a.m. Comments by interested persons in attendance
- 9:15 a.m. Presentation by Legislative Council staff of a bill draft relating to penalty provisions associated with occupational and professional licensing laws
- 9:20 a.m. Comments by interested persons in attendance
- 9:25 a.m. Presentation by a representative of the state lottery regarding rules of the state lottery carried over for consideration from the March 2008 committee meeting
- 9:35 a.m. Committee discussion and directives
- 9:40 a.m. Presentation by a representative of the State Board of Chiropractic Examiners regarding July 2008 rules of the board (pages 23-40)
- 10:00 a.m. Break
- 10:20 a.m. Presentation by a representative of the State Department of Health regarding July 2008 rules of the department (pages 41-72)
- 10:40 a.m. Presentation by a representative of the Department of Transportation regarding July 2008 rules of the department (pages 73-88)
- 11:00 a.m. Presentation by a representative of the Board of Nursing regarding July 2008 rules of the board (pages 89-162)
- 11:20 a.m. Presentation by a representative of the State Board of Optometry regarding July 2008 rules of the board (pages 163-174)
- 11:40 a.m. Presentation by a representative of the Education Standards and Practices Board regarding July 2008 rules of the board (pages 175-236)
- 12:00 noon Luncheon recess
- 1:00 p.m. Presentation by a representative of the State Board of Accountancy regarding rules of the board carried over for consideration from the March 2008 committee meeting
- 1:15 p.m. Committee discussion and directives
- 1:20 p.m. Presentation by a representative of the Office of Management and Budget, Human Resource Management Services Division, regarding July 2008 rules of the division (pages 1-22)
- 1:40 p.m. Presentation by a representative of the Public Service Commission regarding July 2008 rules of the commission (pages 237-276)

- 2:00 p.m. Break
- 2:20 p.m. Presentation by a representative of the Department of Human Services regarding July 2008 rules of the department (pages 277-282)
- 2:40 p.m. Presentation by a representative of the Board of Trustees of the Teachers' Fund for Retirement regarding July 2008 rules of the board (pages 283-295)
- 3:00 p.m. Committee discussion and directives
- 3:15 p.m. Adjourn

Committee Members

Senators Tom Fischer (Chairman), John M. Andrist, Layton W. Freborg, Jerry Klein, Tracy Potter
Representatives Randy Boehning, Chuck Damschen, Duane L. DeKrey, David Drovdal, Mary Ekstrom,
Rodney J. Froelich, Chris Griffin, Kim Koppelman, Jon Nelson, Louise Potter, Blair Thoreson, Dwight
Wrangham