

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
2010 Weights and Measures Rules  
Rulemaking**

**Case No. WM-10-63**

**STATEMENT ON REGULATORY ANALYSIS, SMALL ENTITY ANALYSIS  
AND TAKINGS ASSESSMENT**

The purpose of the 2010 Weights and Measures rule amendments consist of the following: In 2009 House Bill 1008 and in the Commission's 2009-2011 budget, the 2009 Legislature determined that the North Dakota Metrology Laboratory should be closed. Neither the Commission's proposed budget nor the Governor's 2009-2011 recommended budget included any funding for the state metrology program. In his 2007-2009 budget, the Governor recommended that both state and private working standards be sent to the NIST-accredited metrology laboratory in St. Paul, Minnesota. The Commission agreed with that recommendation. The metrology laboratory will officially close on June 30, 2010. All of the rule changes in this proceeding are either a direct or indirect result of that legislative action.

**Regulatory Analysis**

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The law provides, in part:

2. The regulatory analysis must contain:
  - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
  - b. A description of the probable impact, including economic impact, of the proposed rule;
  - c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
  - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

The proposed rules are not expected to impact the regulated community in excess of fifty thousand dollars. In addition, the rule changes are required due to legislation closing the Metrology Lab.

### **Small Entity Regulatory Analysis**

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
  - a. Establishment of less stringent compliance or reporting requirements for small entities;
  - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
  - c. Consolidation or simplification of compliance or reporting requirements for small entities;
  - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
  - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by these rule changes and consequently, they will have no economic impact on small entities and no accommodation is necessary.

### **Takings Assessment**

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

1. . . . The agency's assessment must:
  - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
  - b. Clearly and specifically identify the purpose of the proposed rule.

- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

No regulatory taking of private real property is associated with these proposed rules.