

AUG 06 2010



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

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Tony Clark  
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Executive Secretary  
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6 August 2010

Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

Re: Weights and Measures and Wind Decommissioning Rulemakings  
Case No. WM-10-63 and Case No. PU-10-159

Dear Mr. Walstad:

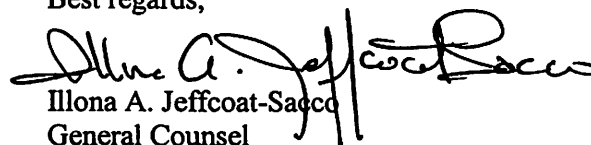
Enclosed for publication in the North Dakota Administrative Code please find copies of amendments to N.D. Admin. Code Article 69-10 regarding Weights and Measures, and to Chapter 69-09-09 regarding Wind Turbine Decommissioning.

In support of this filing, enclosed please find copies of:

- August 4, 2010, Public Service Commission motion adopting the rules as approved by the Attorney General, with rules attached;
- Letter from the Attorney General dated August 4, 2010, approving the proposed rule as to legality;
- The Commission's July 28, 2010, Order Submitting Rules to Attorney General, which includes a summary of all comments and is the written record of the agency's consideration of all comments for the captioned cases; and
- Copies of each comment received. The only written comments filed were those of Commission staff and were received at the hearing.

Thank you for your attention to this matter.

Best regards,

  
Ilona A. Jeffcoat-Sacco  
General Counsel

attachments

**25** **PU-10-159** Filed: 8/6/2010 Pages: 26  
Letter to Legislative Council requesting publication  
in ND Administrative Code

Public Service Commission  
Ilona Jeffcoat-Sacco

**24** **WM-10-63** Filed: 8/6/2010 Pages: 26  
Letter to Legislative Council requesting publication  
in ND Administrative Code

Public Service Commission  
Ilona Jeffcoat-Sacco

**APPROVED**

DATE: 8-4-10

[Signature]

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Weights and Measures  
Rulemaking**

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

**Public Service Commission  
Decommissioning  
Rulemaking**

**Case No. PU-10-159**

**MOTION**

**August 4, 2010**

Having been approved by the Attorney General, I move the Commission adopt the proposed amendments to Article 69-10 and Section 69-09-09-06 of the North Dakota Administrative Code, and forward the rules to the Legislative Council for publication, Case No. WM-10-63 and Case No. PU-10-159.

24 PU-10-159 Filed 08/04/2010 Pages: 1  
Commission Motion adopting proposed Rules and forwarding them to the Legislative Council  
Public Service Commission

23 WM-10-63 Filed 08/04/2010 Pages: 1  
Commission Motion adopting proposed Rules and forwarding them to the Legislative Council  
Public Service Commission

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

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

**ARTICLE 69-10**

**TESTING AND SAFETY DIVISION**

<b>Chapter</b>	
<b>69-10-01</b>	<b>Weights and Measures - General</b>
<b>69-10-02</b>	<b>Scales</b>
<b>69-10-03</b>	<b>Standards</b>
<b>69-10-04</b>	<b>Service Registration</b>
<b>69-10-05</b>	<b>Oil and Gas Metering Systems [Repealed]</b>

**CHAPTER 69-10-03  
STANDARDS**

<b>Section</b>	
<b>69-10-03-01</b>	<b>National Institute of Standards and Technology (NIST) Handbook No. 44</b>
<b>69-10-03-01.1</b>	<b>National Institute of Standards and Technology (NIST) Handbook No. 44 - NTEP - Exceptions</b>
<b>69-10-03-01.2</b>	<b>National Institute of Standards and Technology (NIST) Handbook No. 105-1 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Class F Field Standard Weights</b>
<b>69-10-03-01.3</b>	<b>National Institute of Standards and Technology (NIST) Handbook No. 105-3 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Graduated Neck-Type Volumetric Field Standards</b>
<b>69-10-03-01.4</b>	<b>National Institute of Standards and Technology (NIST) Handbook No. 105-4 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers</b>
<b>69-10-03-02</b>	<b>Adequate Standards</b>
<b>69-10-03-03</b>	<b>Master Test Weights and Prover Tanks [Repealed]</b>
<b>69-10-03-04</b>	<b>Enforcement [Repealed]</b>
<b>69-10-03-05</b>	<b>Weight Carts [Repealed]</b>
<b>69-10-03-06</b>	<b>Metrology Service [Repealed]</b>
<b>69-10-03-07</b>	<b>Delivery of Standards for Certification [Repealed]</b>
<b>69-10-03-08</b>	<b>Rejection of Standards</b>

**69-10-03-02. Adequate standards.** 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~~ commission may extend the twelve-month recertification interval up to fifteen months.

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

~~69-10-03-05. Weight carts. Effective January 1, 2002, weight carts not already in service in North Dakota and seeking metrology certification must meet the following design specifications: wheelbase must not exceed sixty inches [152.4 centimeters]; motors must be electric or powered by gel-core batteries, gross weight must not exceed five thousand pounds [2267.95 kilograms], tires must be of solid rubber with smooth tread, and sealing cavities must be capable of containing twenty pounds [9.072 kilograms] of lead adjustment.~~

~~History: Effective January 1, 2002.  
General Authority: NDCC 64-02-03  
Law Implemented: NDCC 64-02-02~~

~~Repealed effective \_\_\_\_\_.~~

~~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. 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 recognition level will be referred to an appropriate 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~~

~~Repealed effective \_\_\_\_\_.~~

~~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.~~
- ~~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 60-10-03-01.4, 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~~

~~Repealed effective \_\_\_\_\_.~~

**69-10-03-08. Rejection of standards. Rejected standards** Standards rejected by a NIST recognized laboratory 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  
SERVICE REGULATIONS**

<b>Section</b>	
<b>69-10-04-01</b>	<b>Registration of Service Persons</b>
<b>69-10-04-01.1</b>	<b>Registration of Service Companies</b>
<b>69-10-04-02</b>	<b>Application for Registration and Permitting of a Service Person</b>
<b>69-10-04-02.1</b>	<b>Self-Certification</b>
<b>69-10-04-02.2</b>	<b>Application for Registration of a Service Company</b>
<b>69-10-04-02.3</b>	<b>Issuing a Placing in Service Permit</b>
<b>69-10-04-03</b>	<b>Revocation of Registration</b>
<b>69-10-04-04</b>	<b>Reports</b>
<b>69-10-04-05</b>	<b>Standardized Report Forms</b>
<b>69-10-04-06</b>	<b>Quality Control - Witnessing</b>
<b>69-10-04-06.1</b>	<b>Quality Control – Failures <u>[Repealed]</u></b>
<b>69-10-04-06.2</b>	<b>Procedures for the Quality Control of Registered Service Persons</b>
<b><u>69-10-04-06.3</u></b>	<b><u>Quality Control – Failures</u></b>
<b>69-10-04-07</b>	<b>Adequate Field Standard Requirements - Exception</b>
<b>69-10-04-08</b>	<b>Devices Taken out of Service <u>[Repealed]</u></b>

**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. Complete written tests that must be taken ~~in Bismarek, North Dakota~~, at a location and time designated by the commission, and must be administered as follows:
    - (1) 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 applicant may retake the tests after a review period of ten working days.
2. Each applicant registered by the commission shall utilize adequate standards during the testing and certification of a commercial device.
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

**69-10-04-02.3. Issuing a placing in service permit.** Upon acceptance and approval of an application, the commission shall issue a placing in service permit to the applicant. All permits issued under this section remain the property of the commission and must be surrendered upon demand. Permits issued will be either probationary or permanent as defined in this section.

**1. Probationary permits.**

- a. An applicant with less than three months' experience repairing and placing devices into service will receive a probationary permit;
- b. The duration of a probationary permit will be at the discretion of the ~~testing and safety division director~~ commission but will not exceed six months from the date of testing; and
- c. A probationary permitholder shall be accompanied by, and have each placing in service test report cosigned by, a permanent permitholder from the same service company in order for the test report or the placing in service to be considered valid.

**2. Permanent permits.**

- a. An applicant with more than three months' experience repairing and placing devices into service will receive a permanent permit;
- b. An applicant who has been previously tested and issued a permanent permit by the commission within the last five years, but has allowed it to expire, will receive a permanent permit; or
- c. A probationary permitholder who has completed probationary time assigned without receiving any quality control failures will receive a permanent permit.

**History:** Effective May 1, 2005; \_\_\_\_\_.

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

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

**69-10-04-06. Quality control – Witnessing Evaluation.** The commission may 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 may consider the following criteria 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 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

~~69-10-04-06.1. Quality control -- Failures. Quality failures must include the outcome of any actual quality control inspections and tests, and any violations of title 64 of the North Dakota Century Code, title 69 of the North Dakota Administrative Code, and any applicable sections of the NIST Handbook No. 44, as adopted by reference in section 69-10-03-01. If a registered service person fails three consecutive quality control inspections within a twelve-month period, the commission may:~~

- ~~1. Issue either a verbal warning or a formal warning letter requiring remedial action within thirty days from the date of the warning;~~
- ~~2. Schedule a conference with the division director or chief inspector, the registered service person, and that person's supervisor;~~
- ~~3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;~~
- ~~4. Reduce the registered service person's permit status to probationary for up to six months; and~~
- ~~5. Suspend the registered service person's permit and assess a civil penalty.~~

~~The results of any quality control failures and associated enforcement actions may be sent to the individual permitholder's company or to the owner or operator of the affected device.~~

~~Any quality control failures and associated enforcement actions must be kept on file as part of the overall quality control profile of the registered service person for a twelve-month period from the date of the failure.~~

**History:** Effective October 1, 1999; amended effective May 1, 2005.

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

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

**Repealed effective** \_\_\_\_\_.

**69-10-04-06.2. Procedures for the ~~quality control of evaluating work of~~ registered service persons. A quality control inspection to evaluate the work of a registered service person will be conducted as set forth in this section:**

1. ~~Quality control inspection selection~~ Selection criteria is as follows includes:
  - a. ~~Established by permitholder number;~~
  - b. ~~Set at one percent, or one placing in services, of average annual production;~~
  - ea. Location of the device versus in relation to location of the appropriate state inspector is a controlling factor;
  - b. Each registered service person whose annual device testing total is at least 100 will be evaluated on one of every 100 devices tested;
  - dc. Each permitholder registered service person whose annual production device testing total is less than twenty one hundred will be placed into a special pool of which ten percent will have a quality control performed each year assigned a trigger quality control level related to the number of total devices tested the previous year;
  - ed. ~~Average annual production must be based upon the previous inspection year totals~~ Receipt of a complaint.
2. A permanent permitholder registered service person who receives multiple quality control inspections within a twelve-month period because of the holder ~~has logged a large number of devices tested~~ placing in services, and, has received not failed a "pass" on the first scheduled quality control inspection for that time period, will receive an "honorary pass" on the second scheduled quality control inspection. If the number of placing services devices tested requires a third quality control inspection for which the holder registered service person receives a "pass" does not fail, the fourth scheduled quality control inspection will again be an "honorary pass".
3. ~~The quality control inspection may be based upon the applicable tolerance, acceptance or maintenance tolerance, or design requirements that are applicable to the device.~~
4. ~~The quality control inspection must be completed within forty five days from the date of the permitholder's test report.~~

63. A specific quality control inspection ends when the tested device either fails a portion of the inspection or it passes the inspection.
64. If When a device fails a quality control inspection, the ~~failed quality control failure is~~ will be documented for that ~~permitholder~~, the device is will be rejected, and a follow-up quality control inspection must will be scheduled conducted as soon as practicable ~~on the next device placed into service by the permitholder responsible for the previous quality control failure.~~
7. ~~At the discretion of the division director, weights and measures inspectors may conduct quality control inspections of self-certifying permitholders either by performing a test on that holder's device or by witnessing the testing of a device by the self-certified permitholder.~~

**History:** Effective May 1, 2005; \_\_\_\_\_.

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

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

**69-10-04-06.3. Quality control - Failures. A quality control evaluation test report that discloses a failure must include any alleged violations of Chapter 64-03 of the North Dakota Century Code, Chapter 69-10-03 of the North Dakota Administrative Code, and any applicable sections of the NIST Handbook No. 44, as adopted by reference in section 69-10-03-01. If a registered service person fails three consecutive quality control inspections within a twelve month period, the commission may:**

- 1. Issue a written warning requiring remedial action within thirty days from the date of the warning;**
- 2. Schedule a conference with the registered service person and that person's employer;**
- 3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;**
- 4. Reduce the registered service person's permit status to probationary for up to six months;**
- 5. Suspend the registered service person's permit and assess a civil penalty.**

**The results of any quality control failures and associated enforcement actions may be sent to the registered service person's employer and to the owner or operator of the affected device.**

**A quality control evaluation report and a record of any associated enforcement action is filed as part of the overall quality control profile of the affected registered service person and must remain part of that profile for twelve months from the date of the failure.**

**History: Effective \_\_\_\_\_.**

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

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

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Public Utilities - Decommissioning  
Rulemaking**

**Case No. PU-10-159**

**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 for commission review the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or turbine and a comprehensive decommissioning plan that describes any expected effect on present and future natural resource development and how the facility or turbine owner or operator plans to pay for decommissioning the facility or turbine as required by section 69-09-10-05 at the appropriate time. 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 October 1, 2008; \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02, 49-02-27  
**Law Implemented:** NDCC 49-02-27



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
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www.ag.nd.gov

RECEIVED

AUG 03 2010

OPINION

August 3, 2010

PUBLIC SERVICE COMMISSION

Mr. Patrick J. Fahn  
Director of Compliance and Competitive Markets  
Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

Dear Mr. Fahn:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 69-10 concerning weights and measures<sup>1</sup> and proposed amendments to N.D.A.C. § 69-09-09-06 concerning decommissioning of commercial wind energy conversion facilities,<sup>2</sup> along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not issued or requested, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis was prepared but an economic impact statement was not prepared because the rules propose no additional burden on small entities,<sup>3</sup> and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem  
Attorney General

eee/pg

cc: John Walstad, Legislative Council

- 23 PU-10-159 Filed 08/03/2010 Pages: 1  
Letter Approving Administrative Rules  
Attorney General  
Attorney General Wayne Stenehjem
- 22 WM-10-63 Filed 08/03/2010 Pages: 1  
Letter Approving Administrative Rules  
Attorney General  
Attorney General Wayne Stenehjem

<sup>1</sup> Case No. WM-10-69.

<sup>2</sup> Case No. PU-10-159.

<sup>3</sup> Your transmittal letter states that the small entity analysis was not performed, but the regulatory statement for each set of rules did contain a small entity regulatory analysis. In each case, the conclusion was that there was no adverse impact, meaning that an economic impact statement was not required. I am concerned that the small entity regulatory analysis for the decommissioning rule did not appear to address the questions presented, although the rule will not have an adverse economic impact on small entities since it only repeats a statutory requirement and does not add any requirements of its own.

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Weights and Measures  
Rulemaking

Case No. WM-10-63

Public Service Commission  
Decommissioning  
Rulemaking

Case No. PU-10-159

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

July 28, 2010

Appearances

Commissioners Tony Clark, Kevin Cramer, and Brian P. Kalk

Preliminary Statement

On June 2, 2010 the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise several sections to the North Dakota Administrative Code. The proposed rules are summarized as follows:

**Weights and Measures: Case No. WM-10-63**

The North Dakota Metrology Laboratory officially closed on June 30, 2010 and all of the proposed rule changes are related to that closing. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

**Decommissioning: Case No. PU-10-159**

The proposed rule implements the requirement in 2009 House Bill 1449 (N.D.C.C. § 49-02-27) that the commission's wind farm decommissioning rules address present and future natural resource development. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

Public Hearing and Comments

The Abbreviated Notice was published once in all 52 official county newspapers the week of June 13 through June 19, 2010 with the exception of one county newspaper, the Ashley Tribune, which published on June 30, 2010. The Notice of

Intent to Amend Administrative Rules and Notice of Public Hearing and proposed rules were also sent to those identified as interested or affected parties. The notices were also forwarded on June 3, 2010 to the Legislative Council for publication.

A public hearing on the proposed rule changes was noticed for and held at 1:30 p.m. July 14, 2010. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until July 26, 2010, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

The only written comments filed were received at the hearing and were those of Commission staff.

### **Discussion**

#### **Weights and Measures: Case No. WM-10-63**

Staff prepared and filed a statement regarding the required regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes relate to the North Dakota Metrology Laboratory closing of June 30, 2010, and summarized the required changes relating to that closing. Staff also testified that the proposed changes also relate to providing flexibility to administer written tests at Bismarck or another location and to allow scheduling of written testing by the Weights and Measures Program Coordinator/Inspector.

No other comments were received and no changes are being made to the rules as originally proposed.

#### **Decommissioning: Case No. PU-10-159**

Staff prepared and filed a statement regarding the required regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes implement the requirement in 2009 House Bill 1449 (N.D.C.C. § 49-02-27) that the commission's wind farm decommissioning rules address present and future natural resource development.

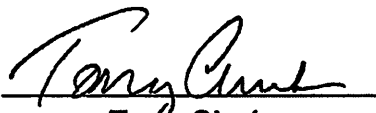
No other comments were received and no changes are being made to the rules as originally proposed.

**Order**

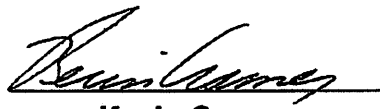
The Commission orders:

The proposed changes to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to legality.

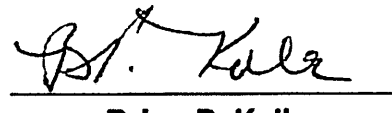
**PUBLIC SERVICE COMMISSION**



**Tony Clark**  
**Commissioner**



**Kevin Cramer**  
**Chairman**



**Brian P. Kalk**  
**Commissioner**

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Weights and Measures  
Rulemaking**

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

**PUBLIC SERVICE COMMISSION STAFF TESTIMONY**

**July 14, 2010**

I am Patrick Fahn, Director of the Compliance and Competitive Markets Division with the Public Service Commission.

The proposed amendments repeal language to directly or indirectly reflect action by the legislature 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. The North Dakota Metrology Laboratory officially closed on June 30, 2010, and metrology services must be obtained elsewhere.

The amendment to section 69-10-04-02 (1) (b), which is unrelated to the laboratory closure, provides flexibility to administer written tests at Bismarck or another location. The intent is to allow scheduling of written testing by the Weights and Measures Program Coordinator/Inspector at a location and time that can be coordinated with the Inspector's other statewide duties. It is also the intention that administering tests at locations other than Bismarck not result in additional expense to the Commission.

In the amendment to section 69-10-04-06, the use of the word “may” is consistent with other permissive language of this section.

The language currently in section 69-10-04-06.1 is moved to new section 69-10-04-06.3 so that language concerning quality control failures follows the language concerning quality control evaluation. The new section includes more specific references to the North Dakota Century Code and North Dakota Administrative Code.

The language proposed in section 69-10-04-06.2 is intended to clarify the procedures the Commission is currently using for evaluating the work of registered service persons.

A Statement on Regulatory Analysis, Takings Assessment, and Small Entity Regulatory Analysis was prepared and filed on June 2, 2010, for this Weights and Measures rulemaking proceeding.

The Commission has not received any written comments concerning this proceeding.

This concludes my testimony. I would be happy to answer any questions at this time.

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Decommissioning  
Rulemaking**

**Case No. PU-10-159**

**PUBLIC SERVICE COMMISSION STAFF TESTIMONY**

**July 14, 2010**

I am Jerry Lein, Public Utilities Analyst with the Public Service Commission.

The proposed rule implements the requirement in 2009 House Bill 1449 (N.D.C.C. § 49-02-27) that the commission's wind farm decommissioning rules address present and future natural resource development.

The proposed rule amends N.D. Admin. Code section 69-09-09-06 to require developers to describe any expected effect on present and future natural resource development in the decommissioning plan required under that section.

A Statement on Regulatory Analysis, Takings Assessment, and Small Entity Regulatory Analysis was prepared and filed on June 2, 2010, for this Decommissioning rulemaking proceeding.

The Commission has not received any written comments concerning this proceeding.

This concludes my testimony. I would be happy to answer any questions at this time.