

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

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-14-762**

**ORDER SUPPLEMENTING JANUARY 7, 2015 ORDER  
SUBMITTING RULES TO ATTORNEY GENERAL**

**August 17, 2016**

On January 7, 2015, in Case No. GS-14-761, Case No. AD-14-762, and Case No. GE-14-763, the Commission adopted an Order Submitting Rules to the Attorney General for the purpose of submitting several rules changes to the Attorney General for an opinion as to legality.

Although discussed in the January 7, 2015 order, and included in all prior stages of the proceeding including the notice and hearing stages, the Commission inadvertently omitted two procedural rules changes from the actual copies of the rules attached to that order. These two changes were to North Dakota Administrative Code section 69-02-04-01, regarding individual customer notice in utility rate related cases (bill stuffers), and section 69-02-04-02, regarding appearances at formal hearings. Since these two rule changes were inadvertently omitted from the attachment to the order adopted on January 7, 2015, they were similarly omitted from the package actually submitted to the Attorney General, and consequently they were never approved by the Attorney General.

Similarly, these two procedural rule changes were not filed with the Legislative Council nor addressed by the Administrative Rules Committee.

The purpose of this Order Supplementing January 7, 2015 Order Submitting Rules to Attorney General is to supplement the January 7, 2015 order to correct the error and submit the two procedural rules to the Attorney General for an opinion as to legality.

**Order**

The Commission orders:

1. The January 7, 2015 Order Submitting Rules to Attorney General be supplemented by this order.
2. The proposed changes to North Dakota Administrative Code section 69-02-04-01

and North Dakota Administrative Code section 69-02-04-02, attached to this order and made a part of this order, be submitted to the Attorney General for an opinion as to legality.

3. The January 7, 2015 Order Submitting Rules to Attorney General, adopted in the captioned case, as well as Case No. GS-14-761 and Case No. GE-14-763, is also attached to this order and made a part of this order.

**PUBLIC SERVICE COMMISSION**

		
<hr/>	<hr/>	<hr/>
<b>Randy Christmann</b> Commissioner	<b>Julie Fedorchak</b> Chairman	<b>Brian P. Kalk</b> Commissioner

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-14-762**

**69-02-04-01. Notice.** In those proceedings in which a hearing is to be held, the commission will assign a time and place for hearing. Notice of the hearing must be posted in the office of the commission, and must be served on the parties and other persons entitled to receive notice at least twenty days prior to the date set for the hearing except in cases of emergency or as otherwise provided by law.

In any proceeding, except rulemaking proceedings, involving the rights of persons who are members of the public generally, notice of hearing must be given by legal publication in the North Dakota daily newspaper of the affected area. Notice must be published at least twenty days prior to the date of the hearing.

An electric, gas, or telecommunications public utility shall provide individual customer notice as required below by billing insert, newsletter, or other appropriate method approved by the commission. The notice must indicate the place and date of the commencement of any hearing, informal hearing, or public input session that has been ordered by the commission, and that the public is invited to attend. Subject to the power of the commission to modify its contents and when applicable, the notice must include a summary sheet describing the absolute dollar and percentage impact of any proposed rate or price changes by

the various classes of services offered by the utility and must include a list of the utility's business office locations where the proposed rate or price schedules and a comparison of present and proposed rates or prices can be examined by the public. The notice must also contain in bold type the following statement when applicable: The rate changes described in this notice have been requested by (specific utility).

For electric and gas utilities, individual customer notice is required for an application for approval of a rate increase, purchase or sale, merger, or acquisition filed by the utility, and applications by the utility for alternative regulation. For electric and gas utilities, the commission may require the utility to provide individual customer notice to potentially affected customers in other rate proceedings, complaint cases, advance determination of prudence cases, and fuel and purchased gas adjustment proceedings.

For telecommunications utilities, individual customer notice is required for an application for a certificate of public convenience and necessity resulting from the sale, merger, or acquisition of an incumbent telecommunications company. The commission may require a telecommunications utility to provide individual customer notice to potentially affected customers in complaint cases.

The individual customer notices required by this section are separate from and in addition to any other customer notices required by law or rule, unless the commission authorizes the utility to satisfy multiple notice requirements with one notice.

**History:** Amended effective October 1, 1980; September 1, 1982; September 1, 1992; January 1, 2001; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 28-32-08, 49-01-07

**69-02-04-02. Appearances.** Each interested party shall enter an appearance at the beginning of the hearing by giving the party's name and address and briefly stating the capacity in which the party appears. All appearances must be noted on the record. ~~The name and position of each member of the commission's staff participating in the hearing or investigation must be included in the record as an appearance.~~

**History:** Amended effective September 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

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

**Public Service Commission  
Gas Pipeline Safety  
Rulemaking**

**Case No. GS-14-761**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-14-762**

**Public Service Commission  
Licensing  
Rulemaking**

**Case No. GE-14-763**

**ORDER SUBMITTING RULES TO ATTORNEY GENERAL**

**January 7, 2015**

**Appearances**

Commissioners Julie Fedorchak, Randy Christmann, and Brian P. Kalk

**Preliminary Statement**

On November 6, 2014 the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice in all three captioned cases, proposing to revise several sections of the North Dakota Administrative Code.

Also on November 6, 2014, a Statement on the Regulatory Analysis, Small Entity Analysis and Impact and Takings Assessment was filed in Case No. GS-14-761 and Case No. AD-14-762.

On November 13, 2014, a Statements on Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment was filed in Case No. GE-14-763.

The Abbreviated Notice was published once in 52 official county newspapers (covering 53 counties) the week of November 12 through November 17, 2014. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing.

16 AD-14-762 Filed 01/07/2015 Pages: 26  
Order Submitting Rules to the Attorney General  
Public Service Commission

22 GE-14-763 Filed 01/07/2015 Pages: 26  
Order Submitting Rules to the Attorney General  
Public Service Commission

16 GS-14-761 Filed 01/07/2015 Pages: 26  
Order Submitting Rules to the Attorney General  
Public Service Commission

A public hearing was noticed for and held at 1:00 p.m. CST, on December 15, 2014. 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 December 26, 2014, 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 rules as originally proposed are summarized as follows:

**Case No. GS-14-761**

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

For gas pipeline safety, this rule change adopts amendments to safety regulations that have been adopted by PHMSA since June 22, 2011, current to November 6, 2014.

For hazardous liquids pipeline safety, the Public Service Commission currently has statutory authority concerning pipeline safety but hasn't initiated a safety program agreement with PHMSA.

**Case No. AD-14-762**

The proposed procedural rules consist of changes to the procedural rules in four areas: service of formal complaints; individual customer notice in utility rate related cases (bill stuffers); appearances at formal hearings, and protection of information.

The existing procedure when serving formal administrative complaints and notices related to those complaints is being clarified in the proposed rules. One additional type of utility filing will be included with the existing types of filings for which individual utility customer notice is required. The requirement that staff who work on formal cases be noted as making a formal appearance is being deleted. The changes to the rules regarding when and how the Commission will protect information from general disclosure are the most comprehensive, but do not materially change the existing process, except to make protection of certain regularly filed information easier and less costly for everyone involved.

**Case No. GE-14-763**

The proposed rules change the way a warehouse bond is determined, including requiring additional bond coverage for newer licensees, and those with substantial annual purchase volume. A reduction is available for a licensee with a shorter scale ticket conversion policy. The proposed rules also change the way the bond is determined for a roving grain buyer. The proposed rules also increase the maximum bond for all licensees.

**Public Hearing and Comment Discussion**

Commission staff and others testified at the hearing. In addition, other written comments were received as discussed below.

**Case No. GS-14-761**

No comments other than staff testimony were received and we agree with the rules as originally proposed.

**Case No. AD-14-762**

On December 12, 2014, Otter Tail Power Company submitted written comments proposing changes to Section 69-02-09-12 and Section 69-02-09-13 to correct minor errors. One proposed change was to add a new line item (69-02-09-13) to the list of sections at the beginning of the Chapter, and the other to change a mistyped number in the new language added to section 69-02-09-12. The language should have referenced section 13, not section 14. We agree that the corrections noted by Otter Tail Power Company should be made, and these are incorporated into the rules attached to this Order.

Staff recommended a change to the originally proposed rule regarding Service of Formal Complaints (N.D. Admin Code Sections 69-02-02-02 and 69-02-02-03). The rule as originally proposed calls for both the complaint and notice of hearing to be served at least 45 days prior to the hearing date. However, upon further review of the standards set forth in North Dakota Century Code Section 28-32-10, the rule should require that only the complaint must be served at least 45 days before the hearing date. This revision would allow the notice to be served with the complaint at least 45 days before the hearing, or later, so long as it is served as required by law, usually at least 20 days before the hearing. We agree with the recommendation of Staff and have incorporated the change into the rules attached to this Order.

No other comments were received.

**Case No. GE-14-763**

Commission staff, North Dakota Corn Growers Association, North Dakota Grain Dealers Association, U.S. Durum Growers Association, and North Dakota Ethanol Council testified at the hearing and provided written versions of their testimony. Steve Strege, a private citizen with over 37 years' experience working for the North Dakota Grain Dealers Association, also filed written comments.

The North Dakota Corn Growers Association and U.S. Durum Growers Association were in support of the proposed amendments to the bond rules. The North Dakota Ethanol Council expressed its neutral position on the proposed amendments. The North Dakota Grain Dealers Association stated its support of changes that will promote a strong and healthy industry, but believes the system currently in place works. The North Dakota Grain Dealers Association suggested keeping the current bands or brackets in place and raised a concern regarding the increased bonding for joint ventures between two established companies.

The Commission considered the input and revised the proposed rules to include bands or brackets, because of the inefficiency and possible expense associated with changing the bond amount every time there is a change in capacity. The Commission also considered the concern regarding increased bonding for a new licensee resulting from a joint venture between two established companies. The Commission determined there is a risk associated with any new entity and consequently there is justification for increased bonding in that event.

Having reviewed the proposed rules and based thereon on the testimony produced at the hearing, the Commission finds good cause for submitting the revised proposed rules, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

**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**

  
**Randy Christmann**  
Commissioner

  
**Julie Fedorchak**  
Chairman

  
**Brian P. Kalk**  
Commissioner

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Gas Pipeline Safety  
Rulemaking**

**Case No. GS-14-761**

**CHAPTER 69-09-03**

**GAS PIPELINE SAFETY**

Section

69-09-03-01          Safety

69-09-03-02          Adoption of Regulations

**69-09-03-01. Safety.** ~~Gas pipeline~~Pipeline facilities used for the intrastate distribution and transmission of natural and other gas, liquefied natural gas, or hazardous liquids shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

**History:** Amended effective July 1, 1986; January 1, 1988; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02, 49-02-04

**Law Implemented:** NDCC 49-02-01.2, 49-02-04

**69-09-03-02. Adoption of regulations.** The following parts of title 49, Code of Federal Regulations in effect as of ~~June 22, 2014~~November 6, 2014, are adopted by reference:

1. Part 190 - ~~Department of Transportation~~ Pipeline Safety  
Enforcement Programs and Rulemaking Procedures.
2. Part 191 - ~~Department of Transportation~~ Regulations for  
Transportation of Natural Gas and other gas by

Pipeline; Annual Reports, Incident Reports, and of  
Leaks Safety-Related Condition Reports.

3. Part 192 - Transportation of Natural and Other Gas by Pipeline:  
Minimum Federal Safety Standards.

4. Part 195 - Transportation of Hazardous Liquids by Pipeline.

~~45. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural~~  
~~Gas, and Hazardous Liquids Pipelines~~ Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission

600 East Boulevard, Dept. 408

Bismarck, ND 58505-0480

**History:** Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-01.2

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-14-762**

**69-02-02-02. Formal complaints.**

1. **Complaints.** Complaints may be made by the commission on its own motion, or by any person. Complaints will be in writing and set forth the act or omission complained of. If the complaint is against the reasonableness of any rate or charge of any heat, gas, or electrical public utility, the commission cannot entertain it unless it is signed by the governing body of the county or city, if any, within which the alleged violation occurred, or by not less than ten percent of the consumers or purchasers of such heat, gas, or electrical service.
2. **Form and content.** A formal complaint must show the venue, "Before the Public Service Commission of North Dakota" and will contain a heading showing the name of the complainant and the name of each respondent. The complaint must include the name, address, and telephone number of each complainant's attorney, if any. The complaint will be drawn to fully advise the respondent and the commission of the factual and legal grounds of the complaint, the injury complained of, and the specific relief sought.
3. **Number of copies.** At the time the complaint is filed, the complainant must also file a copy for each respondent plus seven additional copies.

4. **Sufficiency of complaint.** Upon the filing of a formal complaint, the commission will determine whether it states a prima facie case and conforms to this article. If the complaint does not state a prima facie case or does not conform to this article, the commission will notify the complainant and provide the complainant an opportunity to amend within a specified time. If the complaint is not amended, it will be dismissed. The filing of an answer is not an admission of the sufficiency of the complaint.

5. **Service.**

- a. If the complaint is sufficient, the commission will serve a copy of the complaint ~~and the commission's notice~~ on each respondent.
- b. The commission will serve the complaint and notice of hearing personally or by certified mail at least forty-five days before the time specified for hearing. The complaint must be served at least 45 days before the date of the hearing. Service of a complaint and notice of hearing may be waived, in writing, by the respondent. The parties may agree upon a time and place for hearing, with the consent of the commission.
- c. In case of an emergency the commission may notice a proceeding for hearing upon its merits upon less than forty-five days' notice. The time provided for the respondent's answer must be adjusted accordingly.
- d. However, Notwithstanding subparagraph c, hearings on a renewal, suspension, or revocation of a license may not be held on less than ten

days' notice, unless a statute specifically allows or requires suspension or revocation without a hearing.

**History:** Amended effective September 1, 1992; January 1, 2001; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 49-01-07

**69-02-02-03. Answers.**

1. **Filing.** Answers to complaints must be filed within twenty days after service of the notice of hearing and complaint.

2. **Content.** Each answer must contain:

- a. The title of the proceeding and docket number;
- b. The name and address of each answering party;
- c. A specific denial of each material allegation of the complaint which is controverted by the respondent;
- d. A statement of any new matter which may constitute a defense;  
and
- e. The name, address, and telephone number of each of the respondent's attorneys, if any.

If the answering party has no information or belief upon the subject sufficient to enable the party to answer an allegation of the complaint, the party may so state in the answer and place the denial upon that ground.

3. **Service and number of copies.** The original answer and seven copies thereof must be filed with the executive secretary of the commission. The respondent shall serve a copy of its answer personally, or by certified mail,

upon each complainant. The respondent shall certify to the commission that the service has been made.

**History:** Amended effective September 1, 1992; January 1, 2001; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 49-01-07

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-14-762**

**CHAPTER 69-02-09  
TRADE SECRET PROCEDURES FOR PROTECTING INFORMATION  
FROM DISCLOSURE**

Section

69-02-09-01	Application to Protect Information
69-02-09-02	Filing of Application
69-02-09-03	Processing the Application
69-02-09-04	Protective Order
69-02-09-05	Request for Hearing - Who May Request - Time - Burden of Proof
69-02-09-06	Request for Hearing – Contents
69-02-09-07	Viewing <del>Trade Secret</del> <u>Protected</u> Information
69-02-09-08	References to <del>Trade Secret</del> <u>Protected</u> Material at Hearings
69-02-09-09	Protection of <del>Trade Secret</del> <u>Protected</u> Information
69-02-09-10	Copies of Information Used During Hearing
69-02-09-11	Documents Certified on Appeal
69-02-09-12	Disposal of <del>Trade Secret</del> <u>Protected</u> Information
<u>69-02-09-13</u>	<u>Information filed under Sections 69-09-05-12 and 69-09-05-12.1.</u>

**69-02-09-01. Application to protect information. Except as provided in sections 69-02-09-13, An an applicant requesting trade secret protection of information in an administrative proceeding or in a response to a commission**

request for information shall file an application with the commission. The application must include at least the following:

1. A general description of the nature of the information sought to be protected;
2. The specific law or rule on which protection is based;
23. If the basis for protection is that the information is trade secret:
  - a). An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
  - 3b). An explanation of why the information is not readily ascertainable by proper means by other persons;
  - 4c). A general description of the persons or entities that would obtain economic value from disclosure or use of the information;
  - 5d). A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
  - 6e). A description of the efforts used to maintain the secrecy of the information.
4. If the basis for protection is a reason other than that the information is trade secret, the specific basis or bases upon which the information qualifies for protection.
5. A redacted public version of the information, unless this requirement is waived by the commission. The amount redacted must be as minimal as possible. If it is not possible to file a redacted public version, a specific written request for waiver of the requirement and the reasons for requesting a waiver must be filed.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-02. Filing of application.** The application must be addressed to and filed with the executive secretary of the commission. The ~~trade secret~~ protected material filed with the application must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: ~~TRADE SECRET~~ PROTECTED INFORMATION – PRIVATE. An original and seven copies of the public portion of the application must be filed unless this requirement is waived by the commision. Only one copy of the ~~trade secret~~ protected material ~~must~~ may be filed.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-03. Processing the application.** When an application for ~~trade secret~~ protection of information is filed, the commission staff shall examine the information and application, and ~~make~~ file and serve a ~~prima facie~~ response that includes a recommendation ofon whether the information qualifies for protection. If the basis for requesting protection is that the information is trade secret, the staff response must include a recommendation on whether the information is relevant and a is trade secret, under the definition of trade secret in North Dakota Century Code section 47-25.1-01. The commission will make a determination on the application from

the application and the recommendation and any response received from those served.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-04. Protective order.** Upon a determination that information qualifies for protection ~~is relevant and trade secret~~ the commission shall issue a protective order limiting disclosure.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-05. Request for hearing - Who may request - Time – Burden of proof.**

1. Upon a determination that the information ~~is relevant but not trade secret or upon a determination of irrelevance,~~ does not qualify for protection, the applicant will be notified and has seven days to request a hearing before the commission, or obtain appropriate injunctive relief from the courts. If no hearing is requested or the commission is not otherwise restrained, the information will become part of the public record without protection. The burden of proof in such a hearing is on the party seeking to prevent disclosure.
2. If any person disagrees with the designation of information as ~~trade secret~~ protected or with its nondisclosure, the person shall first attempt to informally dispose of the dispute with the party seeking to prevent disclosure. If the dispute cannot be

resolved, any person may request a hearing before the commission to determine the ~~trade secret~~protected status.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-06. Request for hearing - Contents.** A request for hearing must be in writing. An original and seven copies of the request must be filed with the executive secretary of the commission. The request must identify the reason the information should be disclosed, or not ~~considered trade secret~~ protected. In any hearing the burden of proof is on the party seeking to prevent disclosure.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-07. Viewing ~~trade secret~~protected information.**

1. The commission and its staff, and any outside counsel retained by the commission, may view protected information filed with the commission at any time. However, the commission and its staff are bound by the terms of these rules to keep the information confidential and must execute the protective agreement as required in subsection 3. The originator (applicant for ~~trade secret~~protected status) may also view the information at any time without the necessity of executing the protective agreement required in subsection 3.

2. Others who wish to view protected information, including experts ~~and~~ who are not regular full-time employees of the commission, and opposing counsel and experts, may do so only after ~~written~~ authorization from the commission. The commission may grant authorization when the person wishing to view the information submits a written request that includes all of the following:

- a. The name and address of the person who will view the information;
- b. Identification, as specifically as possible, of the information requested;
- c. A showing of good cause why the information is needed;
- d. Identification of the purpose of the review;
- e. Identification of the intended use of the information; and
- f. An estimate of the time needed for review.

The requesting person shall file ~~an~~the original ~~and seven copies of the~~ written request with the commission and serve it upon the originator at least ten days prior to the time the person desires to view the information unless the originator agrees to a shorter notice period.

3. Any person ~~requesting review of the~~reviewing protected information filed with the commission shall also execute a protective agreement form provided by the commission. A new protective agreement form must be executed for each work day in which information is viewed.

4. The commission shall disclose the information unless:
  - a). The commission is prohibited by law from disclosure under any circumstances or;
  - b). ~~the~~The originator shows good cause why disclosure should not be granted.

When disclosed, ~~trade secret~~protected information may not be removed from commission offices and must be returned for secure filing prior to the end of the workday on which the information was disclosed, and may be used only for purposes of the proceeding or case.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-08. References to ~~trade secret~~protected material information at hearings.** To the extent that reference is made to any ~~trade secret~~protected information by a person afforded access to such information during any aspect of the proceeding, the information should be referenced only by its title or its exhibit identification, or in a manner that does not unnecessarily disclose the confidential information. If specific disclosure of the confidential information is necessary during oral testimony or argument, it must be on such prior notice as is feasible and, in any event, on sufficient notice to clear the hearing room of persons not bound by this chapter.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-09. Protection of ~~trade secret~~protected information.** Any part of the record of a proceeding containing ~~trade secret~~protected information, including exhibits and transcript pages, must be protected unless otherwise ordered by the commission. If a commission order requires a finding based on ~~trade secret~~protected information, the order must reference the confidential nature of the finding and a separate, confidential document must be prepared to state fully the finding of fact and the ~~trade secret~~protected information relied upon to support the finding.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-10. Copies of information used during hearing.** Copies of the ~~trade secret~~protected information may be made for use during a hearing for persons bound by these rules. If copies are made for hearing purposes, they must be numbered. Upon the completion of the hearing, all copies of the information must be returned to the disclosing party or commission staff.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-11. Documents certified on appeal.** When an order of the commission is appealed and the documents are certified to court, copies must be made of the ~~trade secret~~protected information. The copies of ~~trade secret~~protected information must be placed in a sealed envelope, or other appropriate, sealed container, and labeled: "**TRADE SECRETPROTECTED INFORMATION - PRIVATE**". The originals of the ~~trade secret~~protected information must be retained in the commission's ~~trade secret~~protected

information file. When the court issues its decision and returns the case record to the commission, the copies of ~~trade secret~~protected information must be filed with the originals in the commission's ~~trade secret~~ protected information file.

**History:** Effective March 1, 1994; amended \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-12. Disposal of ~~trade secret~~protected information.**

Except for information filed under Section 69-02-09-13, ~~When~~when a case or file containing ~~trade secret~~protected information has been closed for one year the commission will dispose the ~~trade secret~~protected information by shredding.

**History:** Effective January 1, 2001; amended \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-13. Information filed under Sections 69-09-05-12 and 69-**

**09-05-12.1.**

Information filed to comply with sections 69-09-05-12(3)(b) or 69-09-05-12.1 is protected without need for the originator to file an application and without further action by the commission, unless the commission orders otherwise. Sections 69-02-09-01 through 69-02-09-04 do not apply to information filed to comply with sections 69-09-05-12(3)(b), or subsections 69-09-05-12.1(1), 69-09-05-12.1(2), or 69-09-05-12.1(3).

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Licensing  
Rulemaking**

**Case No. GE-14-763**

**CHAPTER 69-07-02**

**LICENSING**

Section

69-07-02-02            Grain Warehouse - Bond Schedule

69-07-02-02.1        Grain Buyer - Bond Schedule

~~69-07-02-02. Grain warehouse—Bond schedule bonds. The warehouse—A licensee's required minimum bond is determined by the licensee's total physical capacity licensed by the licensee in the state; the length of time the licensee has been licensed, the licensee's annual grain purchase volume, and the licensee's scale ticket conversion policy. A licensee's required minimum bond may not be less than \$50,000. The capacity of each warehouse, bin, annex, or any additional space must be specifically identified. The bond amounts are:~~

<del>Capacity to 100,000 bushels</del>	<del>_____</del>	<del>\$ 50,000</del>
<del>From 100,001 bushels through 125,000 bushels</del>	<del>_____</del>	<del>\$ 62,500</del>
<del>From 125,001 bushels through 150,000 bushels</del>	<del>_____</del>	<del>\$ 75,000</del>
<del>From 150,001 bushels through 175,000 bushels</del>	<del>_____</del>	<del>\$ 87,500</del>
<del>From 175,001 bushels through 200,000 bushels</del>	<del>_____</del>	<del>\$ 100,000</del>
<del>From 200,001 bushels through 225,000 bushels</del>	<del>_____</del>	<del>\$ 112,500</del>
<del>From 225,001 bushels through 250,000 bushels</del>	<del>_____</del>	<del>\$ 125,000</del>

<del>From 250,001 bushels through 275,000 bushels</del>	<del>\$ 137,500</del>
<del>From 275,001 bushels through 300,000 bushels</del>	<del>\$ 150,000</del>
<del>From 300,001 bushels through 325,000 bushels</del>	<del>\$ 162,500</del>
<del>From 325,001 bushels through 350,000 bushels</del>	<del>\$ 175,000</del>
<del>From 350,001 bushels through 375,000 bushels</del>	<del>\$ 187,500</del>
<del>From 375,001 bushels through 400,000 bushels</del>	<del>\$ 200,000</del>
<del>From 400,001 bushels through 425,000 bushels</del>	<del>\$ 212,500</del>
<del>From 425,001 bushels through 450,000 bushels</del>	<del>\$ 225,000</del>
<del>From 450,001 bushels through 475,000 bushels</del>	<del>\$ 237,500</del>
<del>From 475,001 bushels through 500,000 bushels</del>	<del>\$ 250,000</del>

~~A licensee with a capacity in excess of five hundred thousand bushels must furnish additional bond coverage of five thousand dollars for each twenty-five thousand bushels of capacity or fraction thereof.~~

~~Unless the commission determines that an increase is necessary to accomplish the purpose of North Dakota Century Code chapter 60-02, the bond of a warehouseman shall not exceed one million five hundred thousand dollars.~~

a. If no special circumstance described in this section applies, the required bond is based on capacity and years licensed.

<u>1.</u>	<u>≤6 years</u>	<u>≥7 years</u>
<u>Capacity up to 100,000 bushels</u>	<u>\$ 65,000</u>	<u>\$ 50,000</u>
<u>100,001 - 125,000 bushels</u>	<u>\$ 81,250</u>	<u>\$ 62,500</u>
<u>125,001 - 150,000 bushels</u>	<u>\$ 97,500</u>	<u>\$ 75,000</u>

<u>150,001 - 175,000 bushels</u>	<u>\$113,750</u>	<u>\$ 87,500</u>
<u>175,001 - 200,000 bushels</u>	<u>\$130,000</u>	<u>\$100,000</u>
<u>200,001 - 225,000 bushels</u>	<u>\$146,250</u>	<u>\$112,500</u>
<u>225,001 - 250,000 bushels</u>	<u>\$162,500</u>	<u>\$125,000</u>
<u>250,001 - 275,000 bushels</u>	<u>\$178,750</u>	<u>\$137,500</u>
<u>275,001 - 300,000 bushels</u>	<u>\$195,000</u>	<u>\$150,000</u>
<u>300,001 - 325,000 bushels</u>	<u>\$211,250</u>	<u>\$162,500</u>
<u>325,001 - 350,000 bushels</u>	<u>\$227,500</u>	<u>\$175,000</u>
<u>350,001 - 375,000 bushels</u>	<u>\$243,750</u>	<u>\$187,500</u>
<u>375,001 - 400,000 bushels</u>	<u>\$260,000</u>	<u>\$200,000</u>
<u>400,001 - 425,000 bushels</u>	<u>\$276,250</u>	<u>\$212,500</u>
<u>425,001 - 450,000 bushels</u>	<u>\$292,500</u>	<u>\$225,000</u>
<u>450,001 - 475,000 bushels</u>	<u>\$308,750</u>	<u>\$237,500</u>
<u>475,001 - 500,000 bushels</u>	<u>\$325,000</u>	<u>\$250,000</u>

2. If a licensee's total capacity is more than five hundred thousand bushels, additional bond is required. The additional required bond is six thousand five hundred dollars for each twenty-five thousand bushels of capacity or fraction of twenty-five thousand bushels of capacity over five hundred thousand bushels, if licensed less than seven years, and five thousand dollars for each twenty-five thousand bushels of capacity or fraction of twenty-five thousand bushels of capacity over five hundred thousand bushels, if licensed seven years or more.

- b. If the total annual grain purchase volume of a licensee is more than seven times the licensee's bonded capacity, additional bond coverage is required. The additional required bond is five thousand dollars for each twenty-five thousand bushels or fraction of twenty-five thousand bushels by which the licensee's total annual purchase volume exceeds seven times the licensee's bonded capacity. The application of this section to a new licensee will be based upon the licensee's projected annual grain purchase volume.
- c. A required bond may be reduced based on a licensee's conversion policy. The required bond is reduced by 30% for a licensee that establishes and follows a conversion policy approved by the Public Service Commission of 10 days or less, and by 15% for a licensee that establishes and follows a conversion policy approved by the Public Service Commission of 11 to 21 days. A reduction under this subsection cannot be used to reduce a required minimum bond to an amount less than \$50,000.
- d. Except as provided in subsection e, the bond of a warehouseman may not exceed two million dollars.
- e. The commission may require an increase in the amount of any bond when necessary to accomplish the purposes of North Dakota Century Code chapter 60-02.

**History:** Amended effective May 1, 1984; August 1, 1999; \_\_\_\_\_.

**General Authority:** NDCC 60-02-03

**Law Implemented:** NDCC 60-02-02, 60-02-07, 60-02-09

**69-07-02-02.1. Grain buyer—Bond schedule bonds. The grain**

~~buyer bond is determined by the three-year rolling average of grain~~

~~purchased annually in this state by the grain buyer. The bond amounts are:~~

A licensee's required minimum bond is determined by the volume of grain the licensee purchases annually in the state.

~~Up to 100,000 bushels \_\_\_\_\_ \$50,000~~

~~For each additional 100,000 bushels or fraction thereof~~

~~in excess of 100,000 and up to 1,000,000 \_\_\_\_\_ \$20,000~~

~~For each additional 100,000 bushels or fraction thereof~~

~~in excess of 1,000,000 \_\_\_\_\_ \$ 5,000~~

~~For a new licensee, the first year's bond shall be based on the projected~~

~~purchase volume and the second year's bond and third year's bond shall be~~

~~based on the average actual volume according to the above schedule.~~

~~Unless the commission determines that an increase is necessary to~~

~~accomplish the purpose of North Dakota Century Code chapter 60-02.1, the~~

~~bond of a facility based grain buyer shall not exceed one million dollars nor~~

~~shall the bond of a non facility based grain buyer exceed one million five~~

~~hundred thousand dollars.~~

a. As used in subsection b "grain purchase volume" means:

1. A three year rolling average of total annual grain purchase volume for a licensee licensed more than three years.
2. An actual three year average of total annual grain purchase volume for a licensee licensed three years.

3. An actual two year average of total annual grain purchase volume for a licensee licensed two years.
  4. Total annual grain purchase volume for a licensee licensed one year.
  5. The licensee's projected annual grain purchase volume for a new licensee.
- b. The required minimum bond for a facility-based grain buyer is:
1. Fifty cents per bushel if a licensee's total annual grain purchase volume is one hundred thousand bushels or less, with a minimum of fifty thousand dollars.
  2. If a licensee's total annual grain purchase volume is more than one hundred thousand bushels up to and including one million bushels, the required minimum bond is the amount in subdivision 1 plus twenty cents per bushel for each bushel by which the licensee's total annual grain purchase volume exceeds one hundred thousand bushels up to and including one million bushels.
  3. If a licensee's total annual grain purchase volume is more than one million bushels, the required minimum bond is the amount in subdivisions 1 and 2 plus five cents per bushel for each bushel by which the licensee's total annual grain purchase volume exceeds one million bushels.
- c. The required minimum bond for a roving grain buyer is:

1. Fifty cents per bushel if the licensee's total projected annual grain purchase volume is five hundred thousand bushels or less, with a required minimum bond of fifty thousand dollars.
2. If a licensee's total projected annual grain purchase volume is more than five hundred thousand bushels, the required minimum bond is the amount in subdivision 1 plus twenty cents per bushel for each bushel by which the licensee's total projected annual grain purchase volume exceeds five hundred thousand bushels.
- d. Except as provided in subsection e, the bond of a grain buyer may not exceed two million dollars.
- e. The commission may require an increase in the amount of any bond when necessary to accomplish the purposes of North Dakota Century Code chapter 60-02.1.

**History:** Effective August 1, 1999; amended effective August 1, 2000;\_\_\_\_\_.

**General Authority:** NDCC 60-02.1-03

**Law Implemented:** NDCC 60-02.1-03, 60-02.1-08