Public Service Commission
State of North Dakota

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7 January 2015

The Honorable Wayne Stenehjem
North Dakota Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0040

RE: Gas Pipeline Safety, Practice and Procedure, and Licensing Rulemakings
Case No. GS-14-761, Case No. AD-14-762, and Case No. GE-14-763

Dear Attorney General Stenehjem:

Enclosed please find proposed amendments to the North Dakota Administrative Code by the North Dakota Public Service Commission. In accordance with N.D.C.C. § 28-32-14, the North Dakota Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code.

Enclosed for purposes of review is a copy of each of the following:

- The January 7, 2015 Public Service Commission Order Submitting Rules to the Attorney General which summarizes the written and oral comments and the Commission's consideration of them, and states the Commission's conclusions. The proposed rules as ordered, some of which were revised from those originally proposed, are attached to the Commission's January 7, 2015 Order;
- The rule changes as originally proposed by the Commission;
- Full Notice of Intent to Amend Administrative Rules;
- Abbreviated Notice of Intent to Amend Administrative Rules;
- Affidavit of Publication from the North Dakota Newspaper Association;
- A copy of one of the actual notices, as published (others are available if you want them);
- North Dakota Newspaper Association invoice showing the names of the newspapers in which the abbreviated Notice was published;
- A copy of the cover letter filing the Notice and Administrative Rules with the Legislative Council, with the filing acknowledgment;
- A statement for each rule case regarding the required regulatory analyses, takings assessments, and small entity regulatory analyses; and

- Testimony from the public hearing and other written comments received.
- Copy of rules with highlighted changes that were made from the rules as originally proposed.

Thank you for your consideration of the rules. If you have any questions please do not hesitate to call or email.

Best regards,

Illona A. Jeffcoat-Sacco
General Counsel

enclosures

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.

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	**Julie Fedorchak**	**Brian P. Kalk**
Commissioner	**Chairman**	**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, 2011~~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.

~~4~~5. 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 ~~Trade Secret~~ Protected Information
69-02-09-08	References to ~~Trade Secret~~Protected Material at Hearings
69-02-09-09	Protection of ~~Trade Secret~~Protected 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 ~~Trade Secret~~Protected Information
69-02-09-13	Information filed under Sections 69-09-05-12 and 69-09-05-12.1.

69-02-09-01. Application to protect information. Except as provided in sections 69-02-09-13, ~~A~~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;

~~2~~3. 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;

   ~~3~~b). An explanation of why the information is not readily ascertainable by proper means by other persons;

   ~~4~~c). A general description of the persons or entities that would obtain economic value from disclosure or use of the information;

   ~~5~~d). A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and

   ~~6~~e). 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 commisison. 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 ~~of~~on 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 SECRET~~PROTECTED 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 **Case No. GE-14-763**
Licensing
Rulemaking

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:~~

~~Capacity to 100,000 bushels~~	~~$ 50,000~~
~~From 100,001 bushels through 125,000 bushels~~	~~$ 62,500~~
~~From 125,001 bushels through 150,000 bushels~~	~~$ 75,000~~
~~From 150,001 bushels through 175,000 bushels~~	~~$ 87,500~~
~~From 175,001 bushels through 200,000 bushels~~	~~$ 100,000~~
~~From 200,001 bushels through 225,000 bushels~~	~~$ 112,500~~
~~From 225,001 bushels through 250,000 bushels~~	~~$ 125,000~~

~~From 250,001 bushels through 275,000 bushels $ 137,500~~

~~From 275,001 bushels through 300,000 bushels $ 150,000~~

~~From 300,001 bushels through 325,000 bushels $ 162,500~~

~~From 325,001 bushels through 350,000 bushels $ 175,000~~

~~From 350,001 bushels through 375,000 bushels $ 187,500~~

~~From 375,001 bushels through 400,000 bushels $ 200,000~~

~~From 400,001 bushels through 425,000 bushels $ 212,500~~

~~From 425,001 bushels through 450,000 bushels $ 225,000~~

~~From 450,001 bushels through 475,000 bushels $ 237,500~~

~~From 475,001 bushels through 500,000 bushels $ 250,000~~

~~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.

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

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

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

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, 2011~~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

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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.

~~4~~5. 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

69-02-04-01. 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
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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 and notice of hearing may be served separately or together, so long as each is 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 ~~Trade Secret~~ Protected Information
69-02-09-08	References to ~~Trade Secret~~Protected Material at Hearings
69-02-09-09	Protection of ~~Trade Secret~~Protected 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 ~~Trade Secret~~Protected Information

69-02-09-01. Application to protect information. Except as provided in sections 69-02-09-13, ~~A~~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;

~~2~~3. 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;

   ~~3~~b). 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;

   ~~5~~d). A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and

   ~~6~~e). 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 commisison. 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 ~~of~~on 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 SECRET~~PROTECTED 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 69-02-09-14, ~~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 **Case No. GE-14-763**
Licensing
Rulemaking

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. ~~The capacity of each warehouse, bin, annex, or any additional space must be specifically identified. The bond amounts are:~~

~~Capacity to 100,000 bushels~~	~~$ 50,000~~
~~From 100,001 bushels through 125,000 bushels~~	~~$ 62,500~~
~~From 125,001 bushels through 150,000 bushels~~	~~$ 75,000~~
~~From 150,001 bushels through 175,000 bushels~~	~~$ 87,500~~
~~From 175,001 bushels through 200,000 bushels~~	~~$ 100,000~~
~~From 200,001 bushels through 225,000 bushels~~	~~$ 112,500~~
~~From 225,001 bushels through 250,000 bushels~~	~~$ 125,000~~
~~From 250,001 bushels through 275,000 bushels~~	~~$ 137,500~~

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~~From 275,001 bushels through 300,000 bushels $ 150,000~~

~~From 300,001 bushels through 325,000 bushels $ 162,500~~

~~From 325,001 bushels through 350,000 bushels $ 175,000~~

~~From 350,001 bushels through 375,000 bushels $ 187,500~~

~~From 375,001 bushels through 400,000 bushels $ 200,000~~

~~From 400,001 bushels through 425,000 bushels $ 212,500~~

~~From 425,001 bushels through 450,000 bushels $ 225,000~~

~~From 450,001 bushels through 475,000 bushels $ 237,500~~

~~From 475,001 bushels through 500,000 bushels $ 250,000~~

~~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.

   1. For a licensee with capacity up to five hundred thousand bushels, the required bond is sixty-five cents per bushel with a minimum bond of sixty-five thousand dollars, if licensed less than seven years, and the required bond is fifty cents per bushel with a minimum bond of fifty thousand dollars, if licensed seven years or more.

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

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 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 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 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 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 minimum of fifty thousand dollars.

2. If a licensee's total projected annual grain purchase volume is more than five hundred thousand bushels, the required 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

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**

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES AND NOTICE OF PUBLIC HEARING

November 6, 2014

PLEASE TAKE NOTICE that the Public Service Commission intends to amend its administrative rules with proposed amendments to the following parts of the North Dakota Administrative Code: Sections 69-09-03-01 and 69-09-03-02, Pipeline Safety (Case No, PU-14-761), Article 69-02, Practice and Procedure (Case No. AD-14-762), Sections 69-07-02-02 and 69-07-02-02.1, Grain Warehouse and Grain Buyer Bonds (Case No. GE-14-763).

The Public Service Commission will hold a public hearing to address the proposed amendments at **1:00 p.m. CST, on December 15, 2014, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.**

The proposed revisions to the North Dakota Administrative Code are:

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.

3 GE-14-763 Filed 11/06/2014 Pages: 3
Notice of Intent to Amend Administrative Rules and Notice of Public Hearing

4 AD-14-762 Filed 11/06/2014 Pages: 3
Notice of Intent to Amend Administrative Rules and Notice of Public Hearing

4 GS-14-761 Filed 11/06/2014 Pages: 3
Notice of Intent to Amend Administrative Rules and Notice of Public Hearing
Public Service Commission

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, but not changed. 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 the warehouseman 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 rule changes and the statements concerning the Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes or the statements contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888, or NDPSC@ND.gov. This information is also available to view on the Commission's web site at www.psc.state.nd.us under "Formal Actions/Case Search".

Interested persons may attend the hearing and may submit written comments on the proposed rules. Written comments should be filed with Darrell Nitschke, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or NDPSC@ND.gov. The comment period closes 10 days after the hearing. Comments must be received by the close of business on December 26, 2014.

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION

Randy Christmann **Commissioner**	**Brian P. Kalk** **Chairman**	**Julie Fedorchak** **Commissioner**

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**

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
NOTICE OF PUBLIC HEARING
November 6, 2014

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to Gas Pipeline Safety, Practice and Procedure, and Licensing.

The public hearing will be held at **1:00 p.m., CST, on December 15, 2014, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota**. Written comments may be submitted to the Public Service Commission until the close of business on **December 26, 2014**.

A copy of the proposed rules may be obtained from the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY: 1-800-366-6888, or NDPSC@ND.gov. This information is also available to view on the Public Service Commission's web site at www.psc.state.nd.us under "Formal Actions/Case Search".

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION

Randy Christmann **Commissioner**	**Brian P. Kalk** **Chairman**	**Julie Fedorchak** **Commissioner**

4 GE-14-763 Filed 11/06/2014 Pages: 1
Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing

5 AD-14-762 Filed 11/06/2014 Pages: 1
Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing

5 GS-14-761 Filed 11/06/2014 Pages: 1
Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing

NDNA
NORTH DAKOTA NEWSPAPER ASSOCIATION

RECEIVED
DEC - 4 2014
NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Affidavit of Publication

Colleen Park, being duly sworn, states as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of: **Public Service Commission – administrative rules relating to Gas Pipeline Safety, Practice & Procedure and Licensing; 1** time(s) as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Colleen Park

State of North Dakota

County of Burleigh

Subscribed and sworn to before me this 2 day of December, 20 14.

Sharon L. Peterson

SHARON L. PETERSON
Notary Public
State of North Dakota
My Commission Expires Nov. 8, 2017

9 AD-14-762 Filed 12/04/2014 Pages: 1
Affidavit of Publication – verified
North Dakota Newspaper Association

9 GE-14-763 Filed 12/04/2014 Pages: 1
Affidavit of Publication – verified
North Dakota Newspaper Association

9 GS-14-761 Filed 12/04/2014 Pages: 1
Affidavit of Publication – verified
North Dakota Newspaper Association

PUBLIC NOTICE ADVERTISING DEADLINE

IS MONDAY,
4:00 PM FOR
PUBLICATION ON THE
FOLLOWING MONDAY

PHONE (701) 241-5595
FAX(701) 241-5406

e-mail:
legals@forumcomm.com

Public Notices
can be viewed on-line at
www.inforum.com

North Dakota Public Notices

BY CERTIFIED FUNDS MADE PAYABLE TO RUSMORE LOAN MANAGEMENT SERVICES and mailed to the undersigned attorney to cure the default, plus any accrued interest, subsequent payments or late charges which become due and any further expenses for preservation of the property which may be advanced. PLEASE CONTACT THE UNDERSIGNED FOR THE EXACT AMOUNT DUE THROUGH A CERTAIN DATE

NOTICE BEFORE FORECLOSURE

NOTICE OF HEARING

INVITATION TO BID
Sealed Bids for
Equipment
Will be received by:

NOTICE

NOTICE OF SALE
Civil No. 09-2014-CV-01667

NOTICE OF SPECIAL MEETING

AMENDED SUMMONS
File No. 49-2013-JV-12

NOTICE TO CREDITORS

NOTICE TO CREDITORS
Probate No. 09-2014-PR-00123

Request for Qualifications
Commissioning Services For
NDSU STEM Building
North Dakota State University

Case No. 09-2014-CV-02987
SUMMONS

ABBREVIATED NOTICE OF INTENT TO AMEND & REPEAL ADMINISTRATIVE RULES

relating to Registration and Examination of Physical Therapists and Physical Therapy Assistants.

ND Board of Physical Therapy

will hold a public hearing to address proposed changes to the N.D. Administrative Code dealing with the registration and examination of physical therapists and physical therapy assistants.

Offices of Wheeler Wolf Law Firm
220 N. 4th St.
Bismarck, ND
Mon., December 8, 2014
10:00 a.m. CT

A copy of the proposed rules may be obtained by writing or calling the board at 106 Eastern Avenue, Grafton, ND 58237, phone (701) 352-0125, or may be viewed or downloaded at the board's web page, under the current news category, www.ndptpt.org. If you plan to attend the public hearing, and will need special facilities or assistance relating to a disability, please contact the board's counsel listed below at least five days prior to the December 8 public hearing.

Dated: November 5, 2014.
By: /s/ Jack McDonald, Counsel
Special Assistant Attorney General

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

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
NOTICE OF PUBLIC HEARING
November 6, 2014

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code relating to Gas Pipeline Safety, Practice and Procedure, and Licensing.

The public hearing will be held at 1:00 p.m. CST, on December 15, 2014, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Written comments may be submitted to the Public Service Commission until the close of business on December 26, 2014.

A copy of the proposed rules may be obtained from the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0850, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY, 1-800-366-6888, or NDPSC@ND.gov. This information is also available to view on the Public Service Commission's web site at www.psc.state.nd.us under "Formal Actions Case Search".

If you require any auxiliary aids or services such as readers, signers or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION

Randy Christmann **Commissioner**	**Brian P. Kalk** **Chairman**	**Julie Fedorchak** **Commissioner**

11-17 Fargo

North Dakota Newspaper Association

1435 Interstate Loop
Bismarck, North Dakota 58503
Phone: 1-701-223-6397 Fax: 1-701-223-8185

RECEIVED
DEC - 4 2014
NORTH DAKOTA
PUBLIC SERVICE COMMISSION

INVOICE

December 02, 2014

Order: **14114PP0** Invoice# **3849**

Attn: **Darrell Nitschke**
Public Service Commission
600 E. Boulevard Ave., State Capitol
Bismarck, North Dakota 58505

Voice: 1-701-328-4076 Fax:

Advertiser: **Public Service Commission**
P.O.#: **admin rules**
Brand:
Campaign
Amount Due: $3,899.06

Please detach and return this portion with your payment

Public Service Commission Invoice# 3849 P.O.#: admin rules

Run Date	*Ad Size*	*Rate Type*	*Rate*	*Color Rate*	*Total*	*Discount*	*(%)*	*Amount after Discount*	*Page*
Ashley Tribune (Ashley, North Dakota)									
11/12/2014	11.00	Notice Display	$0.00		DID NOT RUN	$0.00	(0.00%)	$0.00	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
11/19/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**22.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Beach, Golden Valley News (Beach, North Dakota)									
11/13/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Bismarck Tribune (Bismarck, North Dakota)									
11/14/2014	11.00	Notice Display	$12.37		$136.07	$0.00	(0.00%)	$136.07	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$12.37**	**$0.00**	**$136.07**	**$0.00**		**$136.07**	
Bottineau Courant (Bottineau, North Dakota)									
11/18/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Bowbells,Burke County Tribune (Bowbells, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Bowman County Pioneer (Bowman, North Dakota)									
11/14/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Cando, Towner County Record Herald (Cando, North Dakota)									
11/15/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Carrington, Foster County Independent (Carrington, North Dakota)									
11/17/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									

8 AD-14-762 Filed 12/04/2014 Pages: 5
Invoice #3849 $3899.06
North Dakota Newspaper Association

8 GE-14-763 Filed 12/04/2014 Pages: 5
Invoice #3849 $3899.06
North Dakota Newspaper Association

8 GS-14-761 Filed 12/04/2014 Pages: 5
Invoice #3849 $3899.06

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Carson Press (Elgin, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Cavalier Chronicle (Cavalier, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Center Republican (Hazen, North Dakota)									
11/13/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Cooperstown, Griggs County Courier (Cooperstown, North Dakota)									
11/14/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Crosby, The Journal (Crosby, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Devils Lake Journal (Devils Lake, North Dakota)									
11/14/2014	11.00	Notice Display	$8.41		$92.51	$0.00	(0.00%)	$92.51	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$8.41**	**$0.00**	**$92.51**	**$0.00**		**$92.51**	
Dickinson Press (Dickinson, North Dakota)									
11/14/2014	11.00	Notice Display	$8.41		$92.51	$0.00	(0.00%)	$92.51	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$8.41**	**$0.00**	**$92.51**	**$0.00**		**$92.51**	
Elgin, Grant County News (Elgin, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Ellendale, Dickey County Leader (Ellendale, North Dakota)									
11/13/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Fargo, The Forum (Fargo, North Dakota)									
11/17/2014	11.00	Notice Display	$12.37		$136.07	$0.00	(0.00%)	$136.07	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$12.37**	**$0.00**	**$136.07**	**$0.00**		**$136.07**	
Finley, Steele County Press (Finley, North Dakota)									
11/14/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Garrison, McLean County Independent (Garrison, North Dakota)									
11/13/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Grafton, Walsh County Record (Grafton, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Grand Forks Herald (Grand Forks, North Dakota)									
11/13/2014	11.00	Notice Display	$12.37		$136.07	$0.00	(0.00%)	$136.07	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$12.37**	**$0.00**	**$136.07**	**$0.00**		**$136.07**	
Harvey, The Herald-Press (Harvey, North Dakota)									
11/15/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Hazen Star (Hazen, North Dakota)									
11/13/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Hettinger, Adams County Record (Hettinger, North Dakota)									
11/14/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Jamestown Sun (Jamestown, North Dakota)									
11/12/2014	11.00	Notice Display	$8.41		$92.51	$0.00	(0.00%)	$92.51	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$8.41**	**$0.00**	**$92.51**	**$0.00**		**$92.51**	
Killdeer, Dunn County Herald (Killdeer, North Dakota)									
11/14/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
LaMoure Chronicle (LaMoure, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Lakota American (Lakota, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Langdon, Cavalier County Republican (Langdon, North Dakota)									
11/17/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Linton, Emmons County Record (Linton, North Dakota)									
11/13/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Lisbon, Ransom County Gazette (Lisbon, North Dakota)									
11/17/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Mandan News (Mandan, North Dakota)									
11/14/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Mayville, Traill Co Tribune (Mayville, North Dakota)									

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
11/15/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
McClusky Gazette (McClusky, North Dakota)									
11/13/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Medora, Billings County Pioneer (Beach, North Dakota)									
11/13/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Milnor The Sargent County Teller (Milnor, North Dakota)									
11/14/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Minnewaukan Benson County Farmers Press (Minnewaukan, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Minot Daily News (Minot, North Dakota)									
11/14/2014	11.00	Notice Display	$12.37		$136.07	$0.00	(0.00%)	$136.07	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$12.37**	**$0.00**	**$136.07**	**$0.00**		**$136.07**	
Mohall Renville County Farmer (Mohall, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Napoleon Homestead (Napoleon, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
New England Herald (New England, North Dakota)									
11/14/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
New Rockford Transcript (New Rockford, North Dakota)									
11/17/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Rolla Turtle Mountain Star (Rolla, North Dakota)									
11/17/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Rugby Pierce County Tribune (Rugby, North Dakota)									
11/15/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Stanley Mountrail County Promoter (Stanley, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	

Public Service Commission Invoice# 3849 P.O.#: admin rules

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Steele Ozone & Kidder County Press (Steele, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Towner Mouse River Journal (Towner, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Valley City Times-Record (Valley City, North Dakota)									
11/14/2014	11.00	Notice Display	$0.00		DID NOT RUN	$0.00	(0.00%)	$0.00	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
11/20/2014	11.00	Notice Display	$8.41		$92.51	$0.00	(0.00%)	$92.51	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**22.00**		**$8.41**	**$0.00**	**$92.51**	**$0.00**		**$92.51**	
Wahpeton, The Daily News (Wahpeton, North Dakota)									
11/14/2014	11.00	Notice Display	$8.41		$92.51	$0.00	(0.00%)	$92.51	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$8.41**	**$0.00**	**$92.51**	**$0.00**		**$92.51**	
Watford City McKenzie County Farmer (Watford City, North Dakota)									
11/12/2014	11.00	Notice Display	$6.06		$66.66	$0.00	(0.00%)	$66.66	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$6.06**	**$0.00**	**$66.66**	**$0.00**		**$66.66**	
Williston Herald (Williston, North Dakota)									
11/14/2014	11.00	Notice Display	$8.41		$92.51	$0.00	(0.00%)	$92.51	
Caption: relating to Gas Pipeline Safety, Practice & Procedure, and Licensing									
Subtotal:	**11.00**		**$8.41**	**$0.00**	**$92.51**	**$0.00**		**$92.51**	

Gross Advertising	$3,899.06	Total Misc	$0.00	Amount Paid	$0.00
Agency Discount	$0.00	Tax	$0.00	Adjustments	$0.00
Other Discount	$0.00	Total Billed	$3,899.06	Payment Date	
Service Charge	$0.00	Unbilled	$0.00	Balance Due	$3,899.06

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We accept Visa, Mastercard, Discover, and AMEX. Or you can pay your bill online at www.ndna.com/billpay. Thank you!

Public Service Commission
State of North Dakota

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TDD: 800-366-6888 or 711

10 November 2014

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

Re: Notice of Intent to Amend Administrative Rules
Case Nos. GS-14-761, AD-14-762, and GE-14-763

Dear Mr. Walstad:

Enclosed please find copies of:

- Commission Motion Proposing Amendments, Scheduling Hearing, Issuing Notice of Intent to Amend Rules and Notice of Hearing, and Issuing an abbreviated Notice
- Proposed rule changes on the following:
  - Sections 69-09-03-01 and 69-09-03-02, Pipeline Safety
  - Article 69-02, Practice and Procedure
  - Sections 69-07-02-02 and 69-07-02-02.1, Grain Warehouse and Grain Buyer Bonds
- Notice of Intent to Amend Administrative Rules and Notice of Hearing
- Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Hearing

If you have any questions please do not hesitate to call.

Best Regards,

Illona A. Jeffcoat-Sacco
General Counsel

enclosures

Received by the office of the Legislative Council this 10 day of November, 2014
By: SJB

6 GE-14-763 Filed 11/10/2014 Pages: 30
Letter to Legislative Council with enclosures
Public Service Commission

7 AD-14-762 Filed 11/10/2014 Pages: 30
Letter to Legislative Council with enclosures
Public Service Commission

7 GS-14-761 Filed 11/10/2014 Pages: 30
Letter to Legislative Council with enclosures
Public Service Commission

State of North Dakota
Public Service Commission

Public Service Commission
Gas Pipeline Safety
Rulemaking

Case No. GS-14-761

Statement
Regulatory Analysis, Small Entity Analysis and Impact, Takings Assessment

November 6, 2014

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. A summary/explanation of the specific changes to be adopted by reference for gas pipeline safety is attached.

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. The Public Service Commission has submitted a budget to the Governor (or is it in the Governor's budget already – going to the legislature???) that includes additional full time employee positions to implement a hazardous liquids pipeline safety program under PHMSA. In order to implement the program, in additional to receiving the appropriation of additional staff, the Public Service Commission must adopt all pipeline safety rules adopted by PHMSA. The Commission is proposing to adopt PHMSA regulations for hazardous liquids pipeline safety in effect as of November 6, 2014.

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.

North Dakota individuals subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state gas pipeline safety program include intrastate natural gas transmission pipeline operators, intrastate natural gas distribution system operators, and certain natural gas gathering system operators. North Dakota individuals subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state hazardous liquids pipeline safety program include intrastate hazardous liquids transmission system operators and certain intrastate hazardous liquids gathering system operators.

The Commission acts as agent for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities within the state. This is accomplished by entering into a 601055(a) Title 49 agreement with the United States Department of Transportation which requires North Dakota to adopt all of the federal gas safety standards, along with any future amendments to those standards. This rulemaking is a part of that ongoing agreement.

The intrastate natural gas transmission pipeline operators and intrastate natural gas distribution system operators must comply with the federal amendments and therefore were impacted in excess of fifty thousand dollars when PHMSA adopted the amendments. Adoption of these amendments for the state gas pipeline safety program will have no additional impact on the regulated community.

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.

A Chapter 28-32-08.1 small entity regulatory analysis and an economic impact statement are not required because the proposed amendments to existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

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:

The proposed rules should not limit the use of private property so a Takings Assessment has not been made.

State of North Dakota
Public Service Commission

Public Service Commission
Practice and Procedure
Rulemaking

Case No. AD-14-762

Statement
Regulatory Analysis, Small Entity Analysis and Impact, Takings Assessment

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, but not changed. 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.

None of these changes should have any sort of negative impact, financial or otherwise, on regulated industry, consumers, other stakeholders, the Commission, or the public. On the contrary, the proposed rules make the administrative process more efficient and most will save resources for both the regulated community and the agency.

Formal Complaints – N.D. Admin Code Sections 69-02-02-02 and 03

The proposed changes to the rule regarding serving formal complaints and notices of hearing on formal complaints, and the rule for filing an Answer to a formal complaint, simply incorporate current practice. The existing language can be ambiguous, and the proposed changes are intended to clarify that the complaint and notice may, but are not required to, be served at the same time. It is usually more efficient to serve the complaint first, and then schedule the hearing and issue notice after the parties have knowledge of the action and input into the hearing date and time frame.

Rate Case Bill Stuffers – N. D. Admin. Code Section 69-02-04-01

The proposed change to section 69-02-04-01 adds one type of case, an advance determination of prudence case, to the list of cases in which the applicant utility must provide individual notice of the application to customers. An advance determination of prudence application has ratemaking consequences and that is the reason for requiring individual customer notice. Currently, even though the specific type of application is not mentioned in the rule, individual customer notices have been required and provided in

advance determination of prudence cases because of the ratemaking impact. The proposed change will make the rule consistent with current practice and will have no fiscal or other impact on industry, customers, other stakeholders or the public.

Formal Appearance of Staff Analysts – N. D. Admin. Code Section 69-02-04-02

Existing rule requires the staff **analysts** who work on a case to be noted in the Appearances. While the staff who work on a case are introduced by counsel at hearings, the rule requiring those persons to be listed in the Appearances has been inconsistently followed and serves no discernable purpose. Repealing that language will have no impact on any stakeholder.

Protection of Information N.D. Admin. Code Chapter 69-02-09

Since the Commission's trade secret rules were originally written, the legislature has added several types of open records exemptions. The procedural rules are being revised to accommodate filings that may deserve protection from disclose under current state law, but are not strictly trade secret filings. In addition, for certain telecommunications filings, case by case protection applications and consequent Commission decisions will no longer be necessary, saving time and costs for both the telecommunications companies and the state.

Incorporating these changes will make the rules more generally applicable, more useful, easier to implement and more clear to those asking for protection for other than trade secret information. These changes will have no negative fiscal impact on the Commission, the state, any stakeholder or the public. These changes will also have no other impact on any party, except to make filing and processing such applications easier and more efficient.

The only alternative considered was not making these changes at this time, which would work to continue to make protection applications harder and less efficient to file and process. The alternative is not the best choice.

Small Entity Analysis and Economic Impact Statement

Each proposed rule could impact a small entity. However, the impact will be neutral or positive. Several of the proposals make the process involved more efficient and will save time and money for applicants and others interacting with the Public Service Commission. No alternatives were considered other than making no changes at all, which imposes a greater economic and regulatory burden on all impacted entities, including small entities and the agency.

Regulatory Analysis and Takings Assessment

Since none of the proposals will impact the regulated community by more than $50,000, and no one has requested a regulatory analysis, none is being prepared at this time for any of the proposed rule changes.

Since none of the proposed rules constitutes a taking of private real property, no Taking Assessment is being prepared.

State of North Dakota
Public Service Commission

Public Service Commission
Licensing
Rulemaking

Case No. GE-14-763

Statements on Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment

November 13, 2014

The Commission is proposing amendments to North Dakota Administrative Code Sections 69-07-02-02 and 69-07-02-02.1. The proposed rules change the way a grain 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.

Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires that an agency issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars or if a written request for the analysis is filed by the governor or a member of the legislative assembly.

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.

While it is not possible to determine an exact impact, it is likely the proposed rules will impact the regulated community in excess of fifty thousand dollars.

The proposed changes will affect new grain warehouse licensees, licensees that handle a substantial annual grain purchase volume, and licensees currently bonded at the current maximum. The proposed changes will also affect roving grain buyer licensees that handle more than one hundred thousand bushels of grain and grain buyers that handle a substantial annual purchase volume.

Grain Warehouse Bonds

A grain warehouse licensee currently operating a 50,000 bushel facility is required to file a $50,000 bond. The following is an example of the proposed bond costs for a licensee operating a 50,000 bushel grain warehouse with an annual grain purchase volume of 2,600,000 bushels (50,000 bushels a week X 52 weeks). Under the proposed rules, the bond for this facility would increase substantially.

Bond – based on capacity and years licensed:			
1-6 years	$ 65,000	≥7 years	$ 50,000
Additional Bond - 20¢ per bushel:			
>7 times capacity, add	$450,000		$450,000
Total Bond	**$515,000**		**$500,000**
Credit for Conversion Policy			
≤10 days-30% discount	$154,500		$150,000
Total Bond	**$360,500**		**$350,000**
Credit for Conversion Policy			
11-21 days-15% discount	$ 77,250		$ 75,000
Total Bond	**$437,750**		**$425,000**

Using the example above, farmers will benefit from the proposed rules in the event a licensee becomes insolvent since there should be more trust fund proceeds available to distribute to unpaid noncredit-sale contract claimants. However, farmers may also be negatively affected by the proposed rules because they will likely bear the additional costs incurred by a licensee because these additional operating costs will be passed on to the farmers in the form of lower grain prices.

Increasing the maximum warehouse bond from $1,500,000 to $2,000,000 will affect twelve existing licensees. Of these twelve licensees, six will be required to increase

their bond to an amount less than $2,000,000 and six will be required to increase their bond to $2,000,000. A licensee required to increase its bond from $1,500,000 up to $2,000,000 dollars will realize additional bond costs of approximately ten dollars per thousand.

Grain Buyer Bonds

Increasing the maximum facility-based grain buyer bond from $1,000,000 to $2,000,000 will affect five existing licensees. Of these five licensees, three will be required to increase their bond from $1,000,000 to an amount less than $2,000,000 and two will be required to increase their bond to $2,000,000. A facility-based grain buyer licensee required to increase its bond from $1,000,000 up to $2,000,000 will realize additional bond costs of between five and ten dollars per thousand.

Increasing the maximum roving grain buyer bond from $1,500,000 to $2,000,000 will affect eight existing licensees who will be required to increase their $1,500,000 bond to $2,000,000. A number of additional roving grain buyer licensees will be required to increase their bonds ranging from minimal amounts to more than double current bonds and will realize additional bond costs that will likely be passed on to the farmers in the form of lower grain prices.

Probable Impact of Higher Bonds

There are a number of factors that affect bond premiums, including the costs charged by different sureties and the licensee's net worth, working capital, and business history. Although these factors may affect each licensee differently, making it difficult to identify a specific impact due to higher bond premiums, it is very likely the additional bond premium costs alone will exceed $50,000 total impact on regulated industry.

One possible impact of requiring a higher bond during the first six years of business is that a higher bond could make it more difficult or impossible for a new grain business to get established or for a beginning business to continue operating. Another possible impact on regulated industry is that when a licensee is required to collateralize a higher bond, the higher bond may make it difficult or impossible for the licensee to obtain or maintain its operating cash flow. This may force a licensee to close.

In the broadest sense, it may be the farmers who will be significantly impacted if higher operating costs result in lower grain prices or in a grain business failing. If a licensee is forced to close its doors, a farmer may have to drive a longer distance to sell his grain which will create additional operating expenses for the farmer.

On the other hand, if a farmer sells to a licensee that is inadequately bonded and the licensee becomes insolvent, this ultimately will result in a loss of income for the farmer. Raising required bonds should result in additional protection to the farmers.

Probable Cost to Agency

There should be no cost to the agency to implement and enforce the proposed rules unless these changes result in a need for additional staff for monitoring or enforcement.

Purpose of Proposed Rules

The North Dakota Office of the State Auditor performed an audit of the Public Service Commission for the biennium ended June 30, 2013. The report issued by the State Auditor included a recommendation that the Commission take steps to increase grain buyer bonds. Over the years, the Public Service Commission has considered the issue of grain bond levels and the impact of the bonding requirements on recovery in the event of insolvency. In 2008 and 2009 the Public Service Commission met with various members of the agriculture community and interested legislators to identify and discuss alternative bond options. In January 2010, the Commission testified before the Interim Legislative Agriculture Committee about whether the current bonds were inadequate, whether bonds should be increased, whether a new "processor" class should be created, or whether current bonds should remain as is. Bond discussions have been ongoing and the Commission is proposing these rules to address bonding concerns. All suggestions or comments from interested parties are welcome.

Alternatives for Achieving Purpose

The purpose of the bond is to protect holders of outstanding receipts. Recent insolvencies have resulted in noncredit-sale contract claimants recovering less than 100% and as little as 7%, in one instance. There is no way to guarantee 100% bond protection for farmers. Raising bonds too high could make bonding unattainable or unfordable for licensees. Lowering bonds to save the impact of higher bond costs, results in no increase in protection. The only possible alternative to raising bonds to an amount that provides 100% protection for farmers is to create an indemnity fund for noncredit-sale contract claimants. This would require a change in statute, not in rule.

Small Entity Regulatory Analysis and Economic Impact

North Dakota Century Code section 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:

1. As used in this section:

    a. "Small business" means a business entity, including its affiliates, which:

        (1) Is independently owned and operated; and

(2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;

b. "Small entity" includes small business, small organization, and small political subdivision;

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. . . .

6. This section does not apply to rules mandated by federal law.

There is a good chance that requiring additional bonding could make it impossible for small businesses first licensed within the past six years to continue operating, or for a new licensee to establish a grain business in North Dakota. Requiring additional bonding for new licensees may be challenged as discriminatory. If so, licensees could initiate legal action against the State of North Dakota, resulting in legal costs to the State for defending such an action.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property.

None of the proposed rules constitutes a taking of private real property so no Taking Assessment is being prepared.

Hamre, John G.

From: jfyhrie@otpco.com
Sent: Friday, December 12, 2014 9:50 AM
To: Nitschke, Darrell D.; Hamre, John G.
Cc: bgerhardson@otpco.com
Subject: FW: PSC proposed Rules
Attachments: PSC Proposed Rules.pdf

Mr. Darrell Nitschke and Mr. John Hamre,

Otter Tail Power Company does not oppose any of the proposed amendments or changes to the rules in Cases GS-14-761, AD-14-762, and GE-14-763. However, Otter Tail would like to offer two administrative recommendations to the Commission's proposal to rules in Section 69-02-09, which is part of Case No. AD-14-762.

Specifically addressing pages 12 and 20 of the attached PSC Proposed Rules PDF regarding Chapter 69-02-09.

- Recommend adding a line item to list of rules for the added Section 69-02-09-13 as follows:
  - 69-02-09-13 Information filed under Sections 69-09-0512 and 69-09-05-12.1

- Section 69-02-09-12 – Except for information filed under Section 69-02-09-14, ~~When~~when a case…
  - We believe this number should be 69-02-09-13 not 69-02-09-14

Thank you for considering these recommendations.

Jess
Jessica Fyhrie | **Otter Tail Power Company**
Regulatory Compliance Specialist
(218) 739-8395
jfyhrie@otpco.com

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From: Hamre, John G. [mailto:jghamre@nd.gov]
Sent: Monday, November 10, 2014 4:04 PM
To: Thomas D. Kelsch (tdkelsch@kelschlaw.com); Matt Loftus (matthew.p.loftus@xcelenergy.com); David Moeller (dmoeller@allete.com); John Morrison (jmorrison@crowleyfleck.com); Zeviel Simpser (zsimpser@briggs.com); Mark B. Bring (mbring@ottertail.com); derrick@baumstarkbraaten.com; Brian R. Bjella (bbjella@crowleyfleck.com); Todd J. Guerrero (tguerrero@fredlaw.com); Lawrence Bender (lbender@fredlaw.com); Beth Wald (bwald@crowleyfleck.com); Dave Sederquist (dave.sederquist@xcelenergy.com); Dave Sederquist (dave.sederquist@xcelenergy.com); Todd J. Guerrero (tguerrero@fredlaw.com); Gerhardson, Bruce; Jillian Rupnow (jrupnow@fredlaw.com); Seth Thompson (sathompson@vogellaw.com); Kelsey A. Krapp (kkrapp@esattorneys.com); Mitch Armstrong (marmstrong@smithbakke.com)
Cc: Jeffcoat-Sacco, Illona
Subject: PSC proposed Rules

This is an EXTERNAL email. DO NOT open attachments or click links in suspicious email.

Attached are the PSC proposed Administrative Rules.

Regards,

10 GE-14-763 Filed 12/12/2014 Pages: 2
Comments
Otter Tail Power Company
Jessica Fyhrie

10 AD-14-762 Filed 12/12/2014 Pages: 2
Comments

10 GS-14-761 Filed 12/12/2014 Pages: 2
Comments

John

John G Hamre
North Dakota Public Service Commission
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Gas Pipeline Safety
Rulemaking

Case No. GS-14-761

PUBLIC SERVICE COMMISSION STAFF TESTIMONY
December 15, 2014

My name is Patrick Fahn. I am the Director of the Compliance and Competitive Markets Division with the Public Service Commission. The Commission's gas pipeline safety program is one of the Division's tasks. The purpose of my testimony is to explain the proposed changes to the Commission's administrative rules pertaining to adopting, 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 proposed rule change adopts rule amendments to safety regulations that have been adopted by PHMSA since June 22, 2011, current to November 6, 2014. A description of those PHMSA rule amendments is attached.

For hazardous liquids pipeline safety, the Public Service Commission currently has statutory authority concerning pipeline safety but hasn't initiated a hazardous liquids safety program agreement with PHMSA. The Commission intends to initiate a safety program agreement with PHMSA in 2015 and is therefore adopting PHMSA hazardous liquids pipeline safety rules.

12 GS-14-761 Filed 12/15/2014 Pages: 2
PSC staff testimony
Public Service Commission

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

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Practice and Procedure
Rulemaking

Case No. AD-14-762

PUBLIC SERVICE COMMISSION STAFF TESTIMONY
December 15, 2014

Good afternoon Commissioners, my name is Austin Lafferty. I am a legal intern with the Public Service Commission's legal department. The proposed procedural rules before the Commission create changes in four areas: (1) the service of formal complaints; (2) individual customer notice in utility rate related cases (bill stuffers); (3) appearances at formal hearings, and (4) protection of information.

(1) <u>Service of Formal Complaints (N.D. Admin Code §§ 69-02-02-02 and 03)</u>

The existing procedure for serving formal complaints is being clarified, rather than changed by the proposed rules. The current language can be ambiguous, and the proposed changes incorporate current practices to clarify that the complaint and notice of hearing may be served concurrently, or separately.

The proposed rule currently 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, we recommend that the proposed rule be revised to require that only the complaint must be served at least 45 days before the hearing date. This change 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. This proposed change is attached to this testimony for your review.

The proposed rules also slightly alter when an answer to a complaint may be filed, changing it to twenty days from service of the complaint rather than from service of the complaint and notice of hearing. It is usually more efficient to serve the complaint alone first, and then later schedule the hearing and issue notice after the parties have knowledge of the case and are able to provide input.

(2) Rate Case Bill Stuffers (N.D. Admin Code § 69-02-04-01)

The existing rule lists several cases in which the applicant utility must provide individual notice of the application to customers. The proposed change adds one additional type of case, an advanced determination of prudence, case, to this list. Advanced determination of prudence cases have ratemaking consequences and thus should require individual customer notice. Current practice is to require and provide individual customer notices in these types of cases due to the ratemaking consequences, so the rule change should have no impact on industry, customers, the public, or other stakeholders.

(3) Appearances at Formal Hearings (N.D. Admin Code § 69-02-04-02)

The existing rule requires that staff analysts who work on the case be noted in the Appearances. At hearings, counsel introduces the staff working on the case, but the rule requiring these staff members be listed in the Appearances has been inconsistently followed and serves no discernable purpose. Repealing that language would have no impact on any stakeholder.

(4) <u>Protection of Information (N.D. Admin. Code Chapter 69-02-09)</u>

The current rules provide the procedure to use when an applicant wants to protect information from disclosure under North Dakota's open records requirements. As written, the rules appear to apply only to requests regarding "trade secret information," although they have been used when processing applications to protect other types of information, as well. Since the writing of the exisiting rules, the legislature has added several additional open records exemptions. This chapter is being revised to reflect the existence of these additional exemptions and accommodate filings that may deserve protection under current state law, but would not be considered "trade secret filings." Additionally, for certain telecommunications filings, case by case applications for protection, and case by case processing, will no longer be necessary, saving time and costs for both the telecommunications companies and the state.

To date, there was only one comment filed on the proposed rules, specifically for Chapter 69-02-09, Protection of Information. This comment addressed two typographical errors that should be made. One is 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 reference section 13, not section 14.

These changes make the rules more versatile, more useful, more easily implemented, and clearer to those asking for protection for information, especially for information that is not strictly "trade secret." These changes will have no negative impact on regulated industry, the Commission, the state, the

public or any other stakeholder. The only impact from these changes will be to make filing and processing of applications to protect information easier and more efficient for everyone involved.

Richter, Susan K.

From:	Steve Strege <sdstrege@gmail.com>
Sent:	Monday, December 15, 2014 10:51 AM
To:	Kalk, Brian P.; Christmann, Randel D.; Fedorchak, Julie L.; Nitschke, Darrell D.; Jeffcoat-Sacco, Illona; Richter, Susan K.
Cc:	sletcher@ndgda.org; Cheryal Welle; Sue Benson
Subject:	Steve Strege comments on PSC licensing rulemaking GE-14-763
Attachments:	Steve Strege comments on PSC Case GE-14-763 Licensing Rulemaking.docx

Ladies and Gentlemen,
Some old geezers keep on talking even after they retire.

I hope to connect and watch the hearing this afternoon.

Regards and Merry Christmas to all.

Steve

RE: ND PSC Case No. GE-14-763 Licensing Rulemaking
Comments of private citizen Steve Strege
December 15, 2014

These comments draw on my 37+ years of experience (1976-2014) working for the North Dakota Grain Dealers Association (NDGDA), but they are my personal comments as a private citizen. Discussions between the PSC and NDGDA leading up to this rulemaking began prior to my May 31, 2014 retirement so I feel a part of it. Readers may have heard me say some of this before. However, no implication is made that these comments represent or are in agreement or disagreement with NDGDA.

Those 37+ years included almost 36 years being a licensed ND insurance agent writing grain warehouse bonds through the NDGDA agency. I hope this background will be helpful regarding this matter. Over those years it was my pleasure to be part of a collaborative effort by about a dozen Commissioners, numerous PSC staff persons, legislators, NDGDA and other industry participants in building up and promoting a reliable grain handling system to serve farmers, customers and the state. I anticipate that cooperation will continue.

<u>If you are going to increase bonds I strongly suggest you stick with the bond amount brackets in 69-07-02-02 instead of going to the proposed per bushel calculation.</u> The per bushel calculation of 50 cents or 65 cents per bushel would mean a bond increase process for the elevator, its bond agent, the bonding company and the PSC for as little as a one bushel capacity increase. You don't want that. It's possible your own inspectors might measure a bin on two separate occasions and come up with slightly different capacities. Under a per bushel calculation rule any increase would trigger a bond increase process. Instead, if you are going to 65 cents per bushel on newer businesses, simply add another column to the table with a 30% increase in the bond amount. For example, the 175,001 through 200,000 bushel bracket would have a column with the current bond amount of $100,000 if licensed seven years or more and a new column for those licensed less than seven years with a bond amount of $130,000. For licensees over 500,000 bushels you could keep the $5000 bond for every additional 25,000 bushels for those in business seven years or longer and go to $6500 bond for every additional 25,000 bushels for those in business less than seven years.

It appears the proposal to require more bond of those whose handle exceeds seven times licensed capacity is aimed at processors. A review of insolvencies reveals some processors have been problems. <u>But so too have been specialty and organic operations</u>. The type of crops being handled might be a better indicator than volume of a higher potential for problems. The most recent insolvency of an otherwise common farmers elevator involved a specialty crop. I don't have a silver bullet solution for you, but the type of commodity and breadth of its market is an issue. In contrast, markets for more

common crops are more established, broader, always open and most have futures market protection mechanisms.

The current 45 days scale ticket conversion deadline used to be 30 days. I was involved in industry discussions with PSC that resulted in adding those additional 15 days. I think you could add more days and still find some tickets going past the new deadline. Some farmers don't want to make a decision until the last possible moment, and then some. And some elevator managers, responding to the requests of their customers, accommodate that procrastination. I doubt if changing the required bond amount because of the elevator's scale ticket conversion policy will accomplish much more than adding confusion to the code. I wouldn't do that if I were you. If this is a critical issue then more education and rethinking enforcement may be necessary.

I wish you well in your deliberations and consultations.

Respectfully submitted,

Steve Strege
3243 37th Ave S
Fargo, ND 58104

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Case No. GE-14-763**
Licensing
Rulemaking

PUBLIC SERVICE COMMISSION STAFF TESTIMONY
December 15, 2014

Good afternoon Commissioners. For the record, my name is Sue Richter. I'm the Public Service Commission's Licensing Division Director. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota.

The Commission is proposing amendments to change the way grain warehouse and grain buyer bonds are determined. The reason for this rulemaking is twofold. First, the last rulemaking revising bond requirements was in 1999. Since 1999, there have been 16 insolvencies with payments to noncredit-sale contract (cash) claimants of less than 10% in three failures, 31% to 43% in two failures, 62% to 72% in two failures, and 93% to 100% in eight failures. For one failure, the Commission didn't make payment because claims were withdrawn. The three insolvencies in which claimants received less than 10% of their valid cash claims involved a roving grain buyer and two processing facilities. Only one of the 16 insolvencies involved a facility-based grain buyer. Eleven of the 16 insolvencies involved entities licensed less than seven years.

Over the years, the Commission has considered the issue of grain bond levels and the impact of the bonding requirements on recovery in the event of insolvency. In 2008 and 2009 the Public Service Commission met with various members of the agriculture community and interested legislators to discuss whether current bonds were

inadequate, whether bonds should be increased, whether a new "processor" class should be created, or whether current bonds should remain as is. Bond discussions have been ongoing.

The second reason for this rulemaking is in response to an audit by the North Dakota Office of the State Auditor of the Public Service Commission for the biennium ended June 30, 2013. The report issued by the State Auditor included a recommendation that the Commission take steps to increase grain buyer bonds.

The Commission is proposing these rules to address the Commission's bonding concerns, as well as the recommendation by the State Auditor.

Grain warehouse bonds are set forth in North Dakota Administrative Code section 69-07-02-02. These current levels have been in place since August 1999 and equal approximately $.50 per bushel for a licensee with a capacity up to 500,000 bushels, plus $.20 per bushel for each bushel over 500,000 bushels.

The bond levels prior to the 1999 rulemaking were $1 per bushel for a licensee with a capacity up to 500,000 bushels, plus $.20 per bushel for each bushel over 500,000 bushels. The proposed reduction in 1999 was due in part to a hugh shift in marketing practices – a shift away from noncredit-sale contract (cash) to credit-sale contract transactions which are not protected under a grain warehouse or grain buyer bond if a licensee becomes insolvent.

This shift away from cash transactions to credit-sale contract transactions means there are far fewer bushels that are eligible for protection under bonds. In 1999, Staff estimated credit-sale contract transactions were as high as 60% of a grain warehouseman's business. Based on information obtained during grain warehouse

examinations, Staff estimates today's use of credit-sale contract transactions may be as high as 65 to 70% of a licensees business. A credit-sale contract indemnity fund was created by the 2003 Legislature to provide partial protection for unpaid credit-sale contracts in grain elevator or grain buyer insolvencies which was not available in 1999. There was no protection available to claimants with valid credit-sale contract transactions prior to the indemnity fund.

The Commission is proposing rules that will change the way a grain warehouse bond is determined, including requiring 30% additional bond coverage for newer licensees licensed less than seven years and additional bond coverage for licensees with substantial annual grain purchase volume. Since the 1999 rulemaking, approximately 69% of the failures occurred during the first seven years of business. This supports the requirement of additional bond for new licensees.

The Commission is proposing rules that will provide a reduction in the required bond for a licensee that establishes and follows a shorter scale ticket conversion policy approved by the Commission. Under North Dakota Century Code section 60-02-11, a grain warehouseman must issue a scale ticket for each load of grain received and all scale tickets must be converted into, cash, warehouse receipt, or credit-sale contract within 45 days after the grain is delivered. In the event of insolvency, the untimely conversion of scale tickets creates a greater risk to the farmer. When a scale ticket is converted in a shorter period of time, the risk to a farmer decreases and less bond may be needed.

Substantially larger liabilities may be associated with insolvencies of licensees that purchase larger volumes of grain. Because of this increased risk, the Commission

is proposing rules that will require additional bond to help alleviate some of this risk. A grain warehouse licensee with an annual purchase volume of more than seven times its licensed capacity must file additional bond of $.20 per bushel for each bushel that exceeds this amount. A licensee that handles a smaller volume of grain has a smaller risk and is not required to file additional bond.

Facility-based grain buyer and roving grain buyer bonds are set forth in North Dakota Administrative Code section 69-07-02-02.1. These bonding requirements were changed in August 1999, amended in August 2000, and have been in place ever since. A facility-based grain buyer is a grain buyer who operates a facility under the United States Warehouse Act (USWA) and whose storage obligations are governed by the USWA license. Only the cash and credit-sale contract transactions of a facility-based grain buyer are governed by North Dakota law. A roving grain buyer is a grain buyer who does not operate a facility in North Dakota where grain is received.

Currently, the bond for a facility-based grain buyer and a roving grain buyer is determined by the three-year rolling average of grain purchased annually in North Dakota by the licensee. The bond amounts are $.50 per bushel for the first 100,000 bushels, plus $.20 per bushel for each bushel over 100,000 and up to 1,000,000 bushels, plus $.05 per bushel for each bushel in excess of 1,000,000. For a new licensee, the first year's bond is based on the projected grain purchase volume and the second year's bond and third year's bond are based on the average actual volume.

The proposed rules do not change the way the bond for a facility-based grain buyer is determined, they do however, change the way the bond for a roving grain buyer is determined. A roving grain buyer bond will be based on the total projected annual

grain purchase volume at a rate of $.50 per bushel for the first 500,000 bushels, plus $.20 per bushel for each bushel in excess of 500,000.

The proposed rules will also increase the maximum required bond for all licensees. Currently, the maximum bond for a grain warehouseman and a roving grain buyer is $1,500,000 and the maximum bond for a facility-based grain buyer is $1,000,000. The maximum required bond for all licensees will be $2,000,000. The $50,000 minimum bond for all licensees will not change. 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 and 60-02.1.

Farmers will benefit from these proposed rules in the event a licensee becomes insolvent since there should be more bond available to distribute to unpaid noncredit-sale contract (cash) claimants.

Staff created a power point presentation outlining the current and proposed bonding requirements. Also included was an example using the proposed rules to calculate a grain warehouse bond based on capacity, years licensed, a large annual grain purchase volume, and bond credit for a shorter scale ticket conversion policy. Attached to my testimony are the relevant pages.

This concludes my testimony. I'll try to respond to any questions you might have.

Current Grain Warehouse Bond

- ND Admin. Code Section 69-07-02-02
- $50,000 – minimum bond
- 50¢/bushel first 500,000 bushels
- + 20¢/bushel for each bushel over 500,000
- $1,500,000 – maximum bond

Proposed Grain Warehouse Bond

- <u>Licensed 7 years or more</u>
- $50,000 – minimum bond
- 50¢/bushel first 500,000 bushels
- + 20¢/bushel for each bushel over 500,000
- $2,000,000 – maximum bond

- <u>Licensed less than 7 years</u>
- $65,000 – minimum bond
- 65¢/bushel first 500,000 bushels
- + 26¢/bushel for each bushel over 500,000
- $2,000,000 – maximum bond

- If annual grain purchase volume is more than 7 times licensee's capacity, additional bond of 20¢/bushel for each bushel that exceeds 7 times capacity is required.

Proposed Grain Warehouse Bond

- Scale ticket – under 60-02-11 all scale tickets must be converted into cash, warehouse receipt or credit-sale contract within 45 days after the grain is delivered to the warehouse

- Reduce required bond if establish & follow conversion policy
- 10 days or less – 30% reduction of required bond
- 11-21 days – 15% reduction of required bond

Example – Grain Warehouse Bond

- Proposed bond - for a licensee operating a 50,000 bu. grain warehouse with an annual grain purchase volume of 2,600,000 bu. (50,000 bu. a week X 52 weeks).
- Bond – based on capacity and years licensed:

1-6 years	$ 65,000	≥7 years	$ 50,000
Additional Bond - 20¢ per bushel:			
>7 times capacity, add	$450,000		$450,000
Total Bond	**$515,000**		**$500,000**
Credit for Conversion Policy			
≤10 days-30% discount	$154,500		$150,000
Total Bond	**$360,500**		**$350,000**
Credit for Conversion Policy			
11-21 days-15% discount	$ 77,250		$ 75,000
Total Bond	**$437,750**		**$425,000**

- Current Bond - $50,000

Facility-Based Grain Buyer Bond

- Current Bond - ND Admin. Code Section 69-07-02-02.1
- Based on projected/actual annual purchase volume (3 year average)
- $50,000 – minimum bond
- 50¢/bushel first 100,000 bushels, plus
- 20¢/bushel for each bushel over 100,000 and up to 1,000,000, plus
- 5¢/bushel for each bushel in excess of 1,000,000
- $1,000,000 – maximum bond

- Proposed Bond
- Based on projected/actual annual purchase volume (same as above)
- $2,000,000 – maximum bond

Roving Grain Buyer Bond

- Current Bond - ND Admin. Code Section 69-07-02-02
- Based on projected/actual annual purchase volume (3 year average)
- $50,000 – minimum bond
- 50¢/bushel first 100,000 bushels, plus
- 20¢/bushel for each bushel over 100,000 and up to 1,000,000, plus
- 5¢/bushel for each bushel in excess of 1,000,000
- $1,500,000 – maximum bond

- Proposed Bond
- Based on projected annual purchase volume (not 3 year average)
- $50,000 – minimum bond
- 50¢/bushel first 500,000 bushels, plus
- 20¢/bushel for each bushel in excess of 500,000 bushels
- $2,000,000 – maximum bond

Increase In Any Bond

- The Commission may require an increase in the amount of any bond when necessary to accomplish the purposes of North Dakota Century Code Chapters 60-02 and 60-02.1.

Testimony of Randal E. Melvin

Public Policy Committee Chairman

North Dakota Corn Growers Association

Before the

North Dakota Public Service Commission

On

Chapter 69-07-02

Licensing

December 15, 2014

15 GE-14-763 Filed 12/15/2014 Pages: 4
Testimony
North Dakota Corn Growers Association
Randal Melvin

Good Afternoon Chairman Kalk, and Commissioners Christmann and Fedorchak. My name is Randy Melvin. I am a fourth generation farmer from Buffalo, North Dakota in Cass County. I currently serve as the public policy committee chairman for the North Dakota Corn Growers Association, which represents over 1,300 members across our state. I appreciate the opportunity to give input on behalf of our organization as to why changes to our bonding laws are necessary.

The North Dakota Corn Growers Association supports improvements to our bonding laws in order to better protect farmers in the case of financial defaults. On August 21, 2009 the Corn Growers and a number of other organizations submitted testimony on the structure of bond levels in North Dakota. At that point in time the Corn Growers were convinced that our capacity based system of bonds was outdated. We stated in a letter dated September 30, 2009 that the commission should consider financial value vs. physical storage capacity as a mechanism for issuing bonds. There were no changes that came out of the 2009 hearings.

In 2013-14 we co-funded a study along with the North Dakota Soybean Growers Association and the US Durum Growers Association. This study by Dr. William Wilson and Bruce Dahl of the Department of Agribusiness and Applied Economics at North Dakota State University entitled "Risk Exposure of Financial Failure for North Dakota Grain Handling" was concluded in October of 2014. The report documents the risks to growers and the mechanisms used to mitigate risks related to buyer default. Along with our testimony here today, we wish to place a copy of this report into the public record.

The report contains five sections, with recommendations on page 24. Dr. Wilson compiled a detailed analysis of mechanisms our state and others offer to protect farmers. At the heart of the matter is market volatility. Dr. Wilson's work suggests that volatility (as conventionally measured) has increased from about .18 in the early 1980's to about .4 or more in recent years. This increase is due to a change in commodity price levels, and the increased cost and value of inputs (notably fertilizer). Other key points in the study are an evaluation of how volumes handled by individual shippers have increased, and a simulation model

(or stress test) ranking the most-to-least important factors that would contribute to financial stresses. In 2000-01, 100 car shippers were 9% of total grain handling capacity. In 2012-13, these facilities accounted for 44% of total grain capacity. Clearly we have seen more concentration in the last 12 year period.

Rather than reading the report in its entirety, I would like to focus on the recommendations on page 24 and summarize them.

Recommendations for further review and/or analysis: The purpose of this study was to identify the changes in relevant risks that confront grain and oilseed producers in North Dakota and to assess the adequacy of mechanisms designed to mitigate these risks. The intent was not to prescribe specific changes but, rather, to identify those areas worthy of consideration for legislative changes to assure protections for growers. It appears that the most important considerations for North Dakota include:

1) Increasing the maximum payment from the indemnity fund. Currently, the fund pays 80% of the claims, up to a maximum of $280,000 per producer.

   Given the increase in producer size, production and market volatility, this value is probably inadequate. Indeed, given current market parameters, the maximum would have to increase to provide equivalent coverage as originally intended by this mechanism.

Allow me to add to this point: In 1991, estimated gross receipts per farm were $100,000. In 2012, that number was $803,351.

2) There are several recent insolvencies that could potentially lower the Indemnity fund balance to near $3.6 million, which is much less than earlier minimum levels at which assessments would be re-imposed.

3) Re-evaluating the structure of the mechanisms. Alternatives include considering
   - Value of the commodity. Currently, the mechanisms in North Dakota are based on storage capacity (or sales).
   - Whether to use indemnity funds or bonding, or to use both. Currently, North Dakota is one of the few states that uses both methods.
   - Adding net worth requirements. Typically, minimum net worth requirements are imposed and an additional bond is required to make up the difference for shortfalls.

- The relationships between claims and indemnity fund min/max suggest that, if average payouts for claims increase, then minimums and maximums for the indemnity fund would likely need to increase to be consistent with other states.

4) Dry beans: This crop has greater risks than other crops. Other states' bonding requirements for dry beans are much greater than those in North Dakota.

In conclusion, the North Dakota Corn Growers Association will go on record as supporting a thorough review of North Dakota's current bonding structure. We view the study "Risk Exposure of Financial Failure for North Dakota Grain Handling" as good analysis. We believe this will help enhance the dialogue for the Public Service Commission to make the most beneficial changes. We thank the Commission for your attention to the issue of improving farmer protections. I would be happy to answer any questions but would defer any technical questions on this study to Dr. William Wilson to accurately answer.

Agribusiness & Applied Economics Report 732 October 2014

Risk Exposure of Financial Failure for North Dakota Grain Handling

William W. Wilson

and

Bruce Dahl

Department of Agribusiness and Applied Economics
Agricultural Experiment Station
North Dakota State University
Fargo, ND 58108-6050

16 GE-14-763 Filed 12/15/2014 Pages: 41
Written Comments - Risk Exposure of Financial Failure of ND Grain Handling
North Dakota Corn Growers

Acknowledgments

Thank you to the ND Corn Council, ND Soybean Council, and the US Durum Growers Association for the research funding.

The author would like to thank Greg McKee, Ryan Larsen, Frayne Olson, and David Saxowsky for their constructive comments.

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Risk Exposure of Financial Failure for North Dakota Grain Handling

Introduction

An important element of risk for North Dakota grain and oilseed growers is commonly referred to as "counter-party" risk for transactions involving grain sales and input purchases. Growers are exposed to some elements of risk related to default on transactions with buyers and input suppliers. Mechanisms exist in North Dakota (and in most states) to protect growers against buyer default. The purpose of these mechanisms is to protect grain sellers against default of the grain buyer. These mechanisms include requiring buyers to be licensed and to have bond coverage. Detailed statutes explain these mechanisms and requirements in addition to the process of reclaiming losses.

The exposure to risk has escalated in recent years. There have been important changes that impact risk of default. First, price levels have increased. Whereas corn, soybeans and wheat were traditionally in areas of $3, $7 and $5/bushel, these values have now increased by a factor of nearly two and are more recently in the area of $4-6, $11-12 and $7-8, respectively, and, have since declined. Second, the volumes handled by individual shippers have increased due, in part, to the shift in commodities, the adoption of shuttle facilities and consolidation. Third, volatility (risk) for all prices has increased. Our work suggests that the volatility (as conventionally measured) has increased from about .18 in the early 1980s to about .4 or more in recent years. Fourth, the increased cost and value of inputs as well as their volatility (notably fertilizer) have escalated. The combination of these changes has heightened the risk exposure for all firms in this industry and its supply chain. While the grain handling sector is well managed and has had limited defaults, the mechanisms and protections offered to growers will escalate in importance as these changes ensue.

The purpose of this report is to document risks to growers and the mechanisms used to mitigate risks related to buyer default. This report is structured as follows: First, current North Dakota programs are discussed. Second, mechanisms used in other states are examined, and proposed/recent changes are summarized. Third, changes in growers' risk exposure in North Dakota are examined, and changes in North Dakota grain-elevator characteristics are summarized. Fourth, estimated default probabilities for U.S. grain handlers are examined over time. Fifth, results from a simulation model are presented. Finally, recommendations are discussed.

North Dakota Grain Buyer/Warehouse Bankruptcy Programs

North Dakota has two programs that provide coverage for grain-buyer financial failures. The first has two parts: the grain warehouse licensing and bonding program, and the grain buyer licensing and bonding program. These programs require warehouses and grain buyers to be

licensed and to submit a bond which is dependent on the warehouse's rated storage capacity and on the grain buyer's average sales over the last 3 years.

The second program is the North Dakota grain insurance fund which provides coverage for credit sales (which are not covered by the grain buyer's bond). The North Dakota grain insurance fund, or credit-sale indemnity fund, was established in 2003 to cover credit sales deferred for more than 30 days. The fund assesses $2 per $1,000 of credit sales' value; when the fund rises to $10 million, the assessment is dropped until the fund declines to $6 million; then, the assessment is re-imposed. In 2007, the maximum fund was dropped from $10 million to $6 million, and the minimum was lowered from $6 million to $3 million. The indemnity fund pays 80% of claims, up to a maximum of $280,000 per producer.

North Dakota licenses warehouses for storage and requires bonding, with a minimum bond of $50,000 up to a maximum of $1.5 million. The minimum bond requirements are assessed from a bond schedule based on storage capacity. Grain buyer licenses can be either facility based, or for roving grain buyers. There is also a federal bond that is required for licensed federal storage capacity. The federal bond also requires a minimum bond of $50,000 and a maximum of $1 million. The minimum bond requirement is based on the average the last 3 years of volumes handled. Bonds on file for ethanol plants appear to be equal to the required bond for the warehouses' storage capacity.[1]

There have been 40 insolvencies for the North Dakota Grain Warehouse and Buyer Programs since 1975, with periods of multiple insolvencies (the early and late 1980's, the late 1990's to early 2000's, and from 2007 forward (Figure 1). There have been 11 insolvencies since 2007 (Appendix Table B1). The recent insolvencies included nine grain warehouses and two roving grain buyers, and three of these insolvencies made claims on the Credit-Sale Contract Indemnity fund. The insolvencies included two in 2007, three in 2009, two in 2010, one in 2011, two in 2012 and one in 2013. The total payouts for claims against the three Indemnity fund insolvencies ranged from $110,315 to $330,630.

A recent insolvency, Earth Harvest Mills in 2013, which was still in process when Appendix Table B1 was developed, was recently completed with the claims paid amounting to $948,630 (ND PSC, 2014a). This claim was the largest one paid, to date, from the Indemnity fund and left a balance around $4.5 million in the fund (Port, 2014). Three other claims (Mitchell Feeds, Anderson Seed and Falkirk Farmers Elevator Co) are still in the process of completion with significant claims on the Indemnity fund for at least two of them (ND PSC 2013a,b). These two claims could potentially lower the Indemnity fund balance to near $3.6 million, and the balance could be further impacted depending on what occurs with the Mitchell

[1] Ethanol plants have lower bonding requirements because the bond is based on storage capacity. Ethanol plants usually have a higher turnover rate than elevators having similar storage capacity.

Feeds insolvency. There is a trend for the size of the claims paid by the Indemnity fund. These claims have increased from 2007 with the latest one being the largest at $948,953.

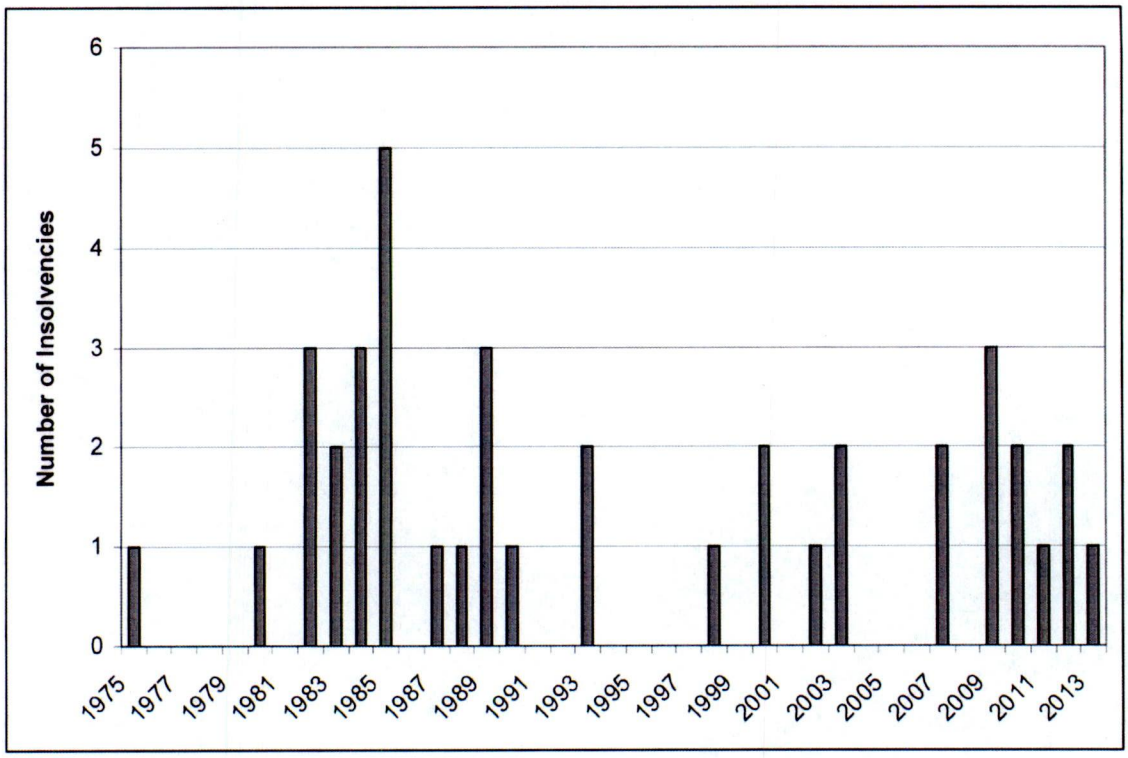


Figure 1. North Dakota Warehouse/Grain Buyer Insolvencies per Year.

The probability of insolvencies occurring for any year was estimated (Figure 2). The probabilities calculated indicates that North Dakota warehouse/grain buyer programs experienced no insolvencies per year about 46% of the time, 1 insolvency 23% of the time, 2 insolvencies about 18% of the time, etc. from 1975 to 2013. The estimated probabilities also indicate that the likelihood of at least 1 insolvency in a year is about 54%. The probability of 1 or less insolvencies in a year was 69%; two or less insolvencies was 87%; and 3 or less insolvencies was 97% (Figure 3).

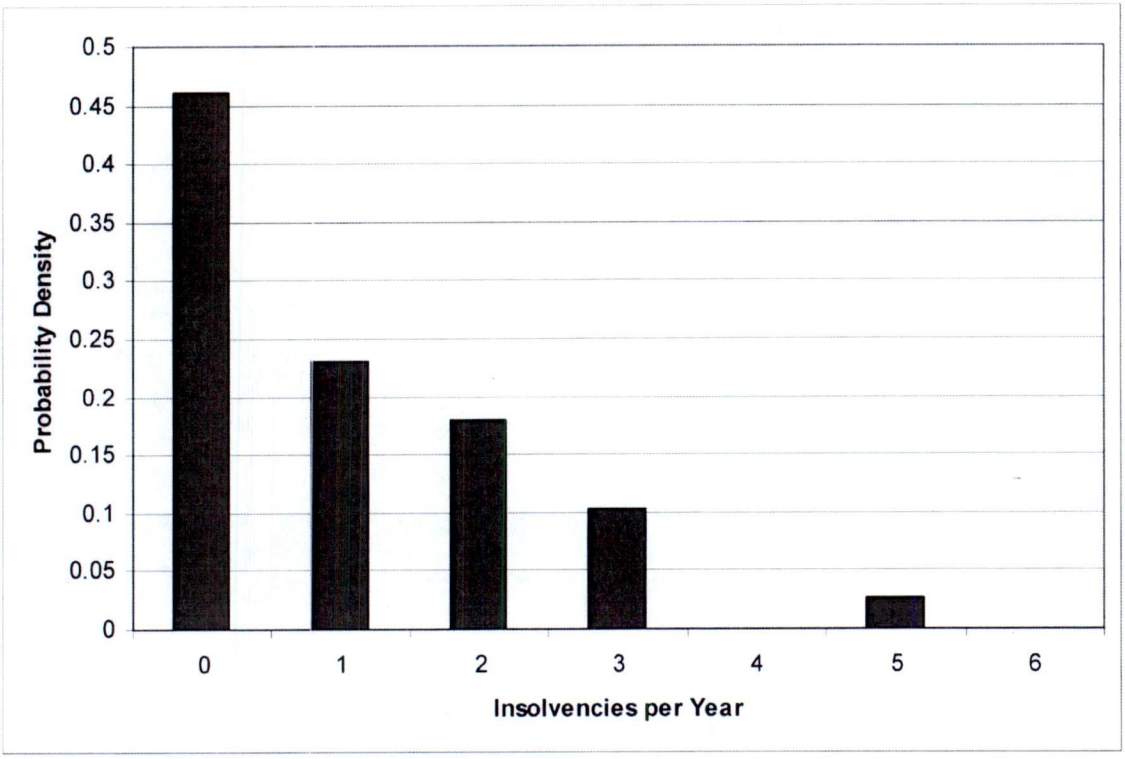


Figure 2. Probability of Given Number of Insolvencies Occurring per Year.

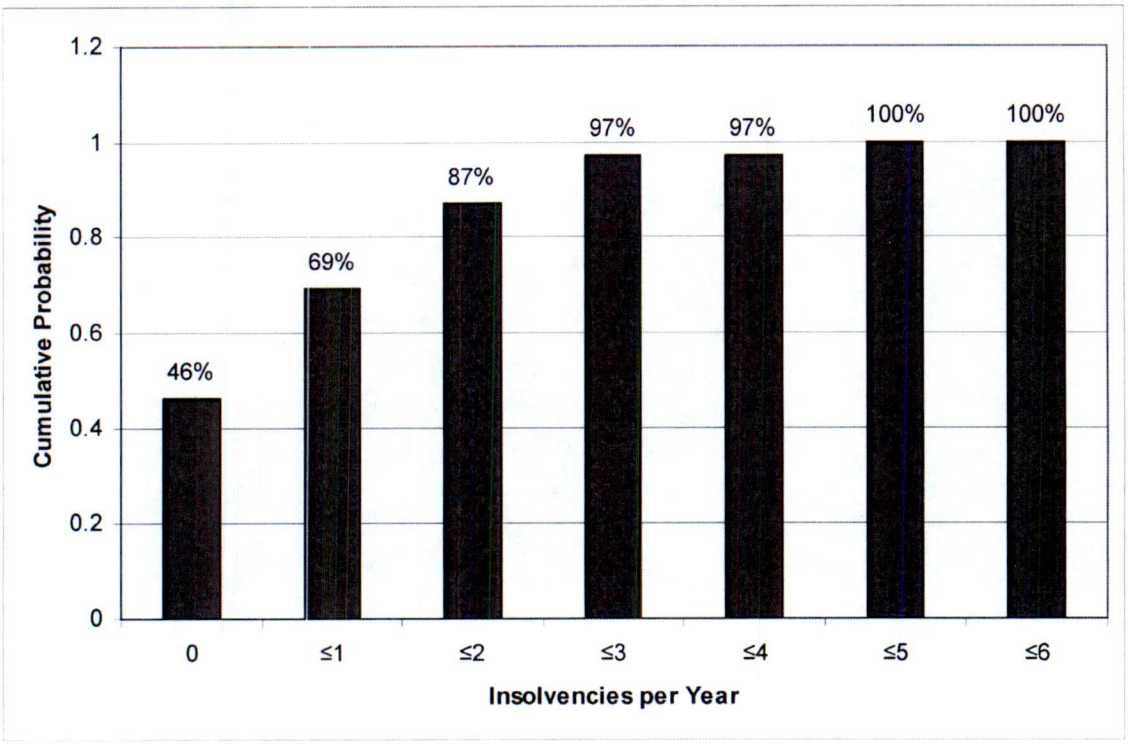


Figure 3. Cumulative Probability of Insolvencies per Year.

Mechanisms in Other States

States generally have either indemnity funds or bonding programs. Only North Dakota and Oklahoma have both, while Oregon has neither. States that only have bonding include: Alabama, Arkansas, Colorado, Georgia, Kansas, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, South Dakota, Texas, Virginia and Wyoming. States that only have indemnity funds include: Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, New York, Ohio, South Carolina, Tennessee, Washington and Wisconsin (AGRO, 2014).

Most states with bonding have warehouse bonding requirements. A few have both warehouse and grain buyer bonding requirements (Alabama, Colorado, Georgia, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Dakota and Virginia). It is notable that other states with grain buyer bonding requirements apply the bond based on a percentage of the value of agricultural commodities purchased in the prior year (Colorado, Minnesota, Missouri, Montana, Nebraska and South Dakota) while North Dakota uses a three year average for volumes handled as the basis for its bonding requirements.

Two of the states with bonding apply different requirements for dry bean warehouse storage bonding requirements than for commodity grains (Colorado and Wyoming). The Colorado requirements for dry beans imply bonding requirements could be up to three times higher than for a similarly sized non-dry bean facility over one for commodity grains. Nebraska varies the bonding requirement based on the type of storage (normal vs. without turning or aeration capabilities). Virginia splits its bonding requirements into two categories: grain dealers (who can purchase or store grain from Virginia growers) and grain handlers (who can buy bulk grain and either resell the grain or grain products, but cannot purchase or store grain from Virginia growers).

Several states also impose net worth requirements which, if violated, require an additional bond to be licensed (Colorado, Kansas, Missouri, Nebraska, Texas and Wyoming). These net worth bonding requirements typically require net worth to equal 20 to 25 cents/bu. of storage capacity, and an additional bond is required to make up the difference for shortfalls. Most states treat bonds for grain buyers and warehouses separately, so a firm that both buys and stores grain would require two bonds. Colorado determines it's bonding requirements as the maximum of either the estimated bond for the warehouse or the grain buyer.

In addition to state regulations, there are bonding requirements to become a federal warehouse. These rules are similar to state level bonding requirements in several of the states. Bond requirements are scaled based on storage capacity and require 20 cents/bu. for the first 1 million bushels of storage, 15 cents/bu. for 1 million to 2 million bushels and 10 cents/bu. for storage capacity over 2 million bushels. The minimum bond required is $50,000, and the

maximum is $500,000. Also, an additional bond is required if the firm's net worth falls below 25 cents/bu. of storage capacity.

The Association of Grain Regulatory Officials (AGRO) conducted a study on the characteristics of indemnity funds for those states that offered them (AGRO, 2013). It found minimum and maximum sizes for insurance funds varied by state. The lowest specified minimum for an insurance fund was $1 million dollars for New York and Oklahoma. The highest minimum was $10 million dollars for Idaho and Indiana. Maximum amounts for the insurance funds ranged from a low of $3 million in Washington to a high of $15 million in Indiana (Table 1).

Most insurance funds covered "priced later" sales. Only Iowa, Louisiana and Oklahoma did not cover "priced later" sales. The maximum coverage for claims varied from 80 to 100%, with the lowest coverage by Indiana, Kentucky, North Dakota, New York and Ohio; and the highest coverage was by South Carolina. North Dakota and Illinois also impose maximum limits on farmer payouts in addition to coverage limits. North Dakota limits farmer payouts to $280,000 per farmer while Illinois limits the amount to $250,000 per farmer. The insurance funds have been in operation for a range of years. The Oklahoma fund started in 1980 and was the oldest. The Louisiana fund started in 2008 and was the newest.

Table 1 shows the total failures and claims paid, from which we calculated the average failure per year of operation and the average claims paid per failure. Most states had failures that averaged less than one per year and average claims were generally less than $400,000 per failure.

The average claims per failure, by state, were fitted for a relationship with either the maximum or minimum of the state's indemnity fund (Appendix Figures A1-A2). These relationships suggest that North Dakota actually has a slightly higher minimum indemnity fund value related to its average claims per failure than in other states, although the value is not as high as Ohio, Indiana or Idaho. For the relationship between average claims per failure and the indemnity fund's maximum, North Dakota is about on average with that implied across all states with indemnity funds (Appendix Figure A2). These relationships suggest that North Dakota's Indemnity fund minimum and maximum values are in line with other states. These relationships also suggest that if average payouts for claims increase, the size of the minimum and maximum for the state's indemnity fund would likely need to increase to be consistent with other states.

If we include the latest insolvency against the indemnity fund (The Earth Harvest Mills insolvency was not completed at the time of the AGRO study), this increases North Dakota's average claim per failure from $94,363 to $216,937. This value does not include potential payouts for the several unresolved insolvencies which could increase average claims per failure to around $341,000. This level of average claims per failure further shifts North Dakota's

position for minimum and maximum fund sizes to a smaller than average position across the states. It is notable that North Dakota's average claims per failure $216,937 would still be less than that observed in most other states (Idaho, Illinois, Indiana, Iowa, Louisiana, Ohio and Oklahoma) ranging from $251,350 in Iowa to $853,205 in Idaho. Only Kentucky, Michigan, New York, South Carolina, Tennessee, Washington and Wisconsin have lower average claims per failure. At $341,000 per claim, only Idaho, Indiana, Louisiana and Ohio would have higher claims per insolvency.

Table 1. Selected Characteristics of State Indemnity/Insurance Funds[1]

State	Minimum ($ Million)	Maximum ($ Million)	Cover Price Later Sales	Max Coverage (Percent)	Farmer Max Payout ($)	Established Year	Failures Total	Average Failures per Year	Total Claims Paid ($)	Average Claims/Failure ($)
ID	10	12	Y	90		1989	12	0.50	10,238,459	853,205
IL	2	6	Y	85	250,000	1983	82	2.73	21,203,519	258,580
IN	10	15	Y	80		1996	11	0.65	4,280,703	389,155
IA	3	8	N	0		1986	58	2.15	14,578,304	251,350
KY		4	Y	80		1984	14	0.48	2,415,267	172,519
LA	3	6	N	0		2008	1	0.20	400,000	400,000
MI	3	5	Y	90		2003	6	0.60	920,382	153,397
ND	3	6	Y	80	280,000	2003	6	0.60	566,178	94,363
NY	1	4	Y	80		1984	64	2.21	4,565,386	71,334
OH	8	10	Y	80		2004	37	4.11	12,710,798	343,535
OK	1	6	N	0		1980	14	0.42	4,300,000	307,143
SC	1.5	5	Y	100		1982	107	3.45	2,850,353	26,639
TN		10	Y	85		1990	6	0.26	958,995	159,833
WA		3	Y	Sliding		1987	0	0.00	0	0
WI	1	6	Y			2002	0	0.00	0	0

Source: Derived from ARGO (2013).

[1] Only states having indemnity funds are shown. Many Midwestern wheat producing states including the nearby states of MN, MT and SD only have bonding programs

Changes/Proposed Changes to State Regulations

South Dakota requires licensing and bonding of warehouses and grain buyers. Warehouses are required to submit a minimum bond that is equal to the maximum of $25,000 times the number of facilities or 50% of the value of grain in storage. The value of grain in storage must be reported monthly (SD Public Utilities Commission, 2014). In 2013, the South Dakota law was changed from requiring the last annual financial report to be licensed to requiring more frequent information about financials, thus requiring buyers to self-report financial difficulties to the South Dakota Public Utilities Commission if the firm experiences financial trouble (GrainNet, 2013). The South Dakota Public Service Commission proposed changing the rules for oral credit sales in July 2013, and changes were enacted in September 2013. The new rule required that contracts be mailed to the farmer; then, the farmer has 48 hours to object in writing, or the contract goes into effect (Pates, 2013).

Iowa has an indemnity fund with a maximum of $6 million. The fund assesses .014 cents/bu. on grain transactions and .014 cents/bu. on storage capacity for grain warehouses, and producers are charged .25 cents/bu. on grain sold. The fee was stopped in 1989, however, fees are still collected for grain buyer's license fees. This fund only covers loses for cash sales and does not cover losses on credit sale contracts (South Dakota Farmers Union, 2013).

In 2013 Ohio increased the size of its indemnity fund and made farmers first in line for assets in the case of a bankruptcy (Seachrist, 2013). The language covering the order of claims on assets removed the ambiguity of preferences on claims but retained farmers as having prioity. The Ohio indemnity fund allows lenders to participate. Ohio increased the indemnity fund minimum/maximum from $8/$10 million to $10/$15 million. The fund, which contained $8 million, would collect a ½ cent/bu. levy until the fund cap of $15 million is reached. Then, the levy is suspended until funds drop to $10 million. The fund generally reimburses 100% for storage grain, deferred payments up to 90 days with a signed agreement and insufficient funds checks (Moore, 2012). The fund provides 100% coverage for the first $10,000 and 80% of the balance for delayed price grain and basis grain. Lenders have the ability to use the grain indemnity fund by asking handlers to utilize state warehouse receipts (OABA, 2014).

The Texas Grain Producer Indemnity Board proposed an indemnity fund that would be designed to mitigate up to 90% of losses when grain buyers fail (Texas Department of Agriculture, 2013). The fund would have made an assessment of 0.2% to 0.6% of the final value of the sale to fund the indemnity at the first point of sale grain buyer. However, the proposal required a two-thirds vote to be adopted, and growers voted not to adopt the Texas Grain Producer Indemnity Board (Smith, 2013).

Nebraska has a bonding/surety mechanism. The Nebraska Public Service Commission brought up the idea of an indemnity fund in 2008 and 2009. Little support existed from the state's commodity and farm groups in 2009 (Dakota Farmer, 2009).

Changes in Risk Exposure for Growers

Crops grown and farm sizes have changed over time for North Dakota farmers. In an effort to examine the risk exposure of farmers, we constructed an average size farm and applied planted and harvested acres, yields and marketing year prices to derive a measure of gross receipts. Farm sizes were taken from Swenson (Various), reported an average size farm for commercial operators in North Dakota. Crop mix was estimated as the proportion of total planted acres devoted to individual crops by year. The ratio of harvested to planted acres was estimated from actual North Dakota planted and harvested acres, by year, from 1990 to 2013 (USDA-NASS, 2014). Yields and marketing year prices were also obtained from USDA-NASS (2014). Gross receipts from crop sales were estimated by crop and aggregated. Gross receipts were estimated by multiplying harvested acres by yields and marketing year average prices.

Estimated gross receipts per farm grew from about $100,000 in 1991 to $803,351 in 2012 (Figures 4-5). The increase in gross receipts was due to increased farm sizes, changes in crop mix, increased yields, and higher prices for crops. Farm size grew from 1,387 acres in 1991 to around 2,000 acres from 2007 forward. The crop mix shifted toward higher production of corn, soybeans, canola and durum wheat, and away from barley, sunflowers, spring wheat and winter wheat. Marketing year average prices for 2013 increased, on average, from 1.8 to 4.1 times 1991 prices, with corn rising 1.8 times and flax increasing 4.1 times 1991 prices.

The gross receipts per farm increased from about $100,000 in 1991 to over $800,000 in 2012, reflecting a large increase in farmers' risk exposure given the coverage limits for the bonding and indemnity programs. The indemnity fund limits farmer payouts to 80% of the claim, up to a maximum of $280,000 per producer. This limit suggests that, in the early 1990's to early 2000's, an average farmer would likely not run into the maximum per farm limits. From 2007 forward, an average farmer in North Dakota would have significant risk exposure if all crops were sold to a single firm and, even if split evenly between bonding and indemnity programs, may exceed grower limits for maximum payments. In fact, in the most recent insolvency, two claimants had claims exceeding the $280,000 payout limit (ND PSC, 2014a).

The indemnity fund would potentially provide coverage for up to a maximum of $350,000 ($280,000/.80) in gross receipts. For a farm in 1991 to obtain gross receipts of about $350,000, a farm size of about 4,725 acres is implied. In 2003, the year the indemnity fund

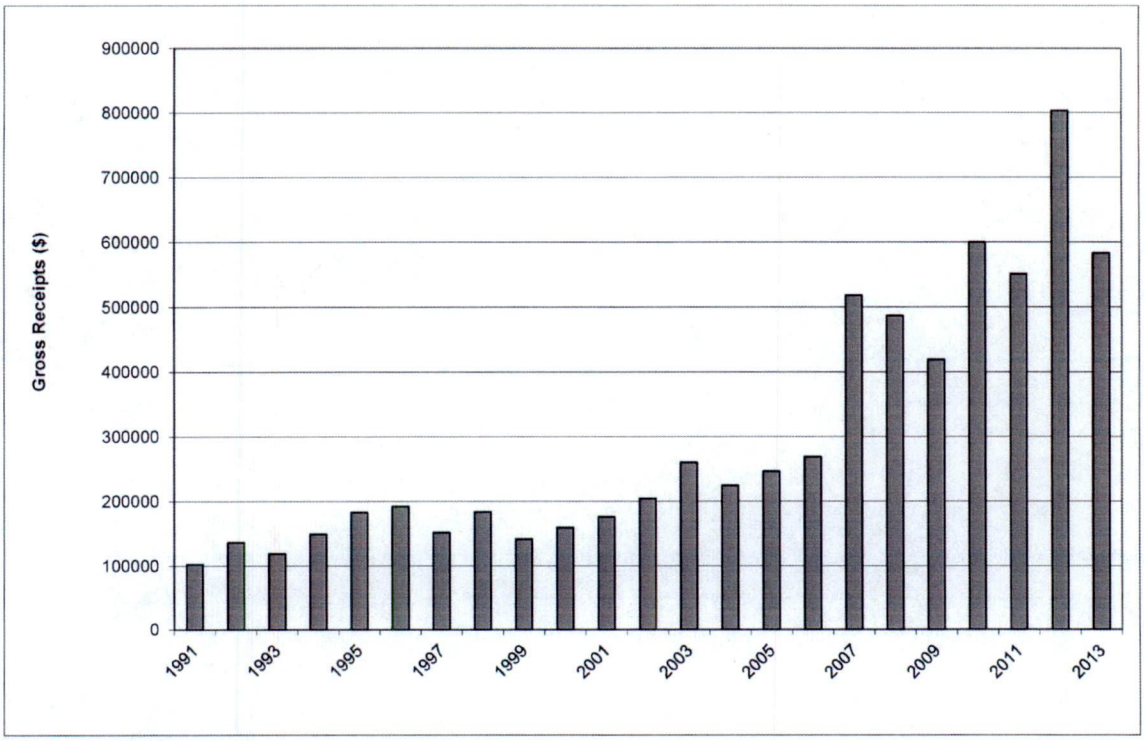


Figure 4. Gross Receipts for an Average Size Farm, North Dakota, 1991 to 2013.

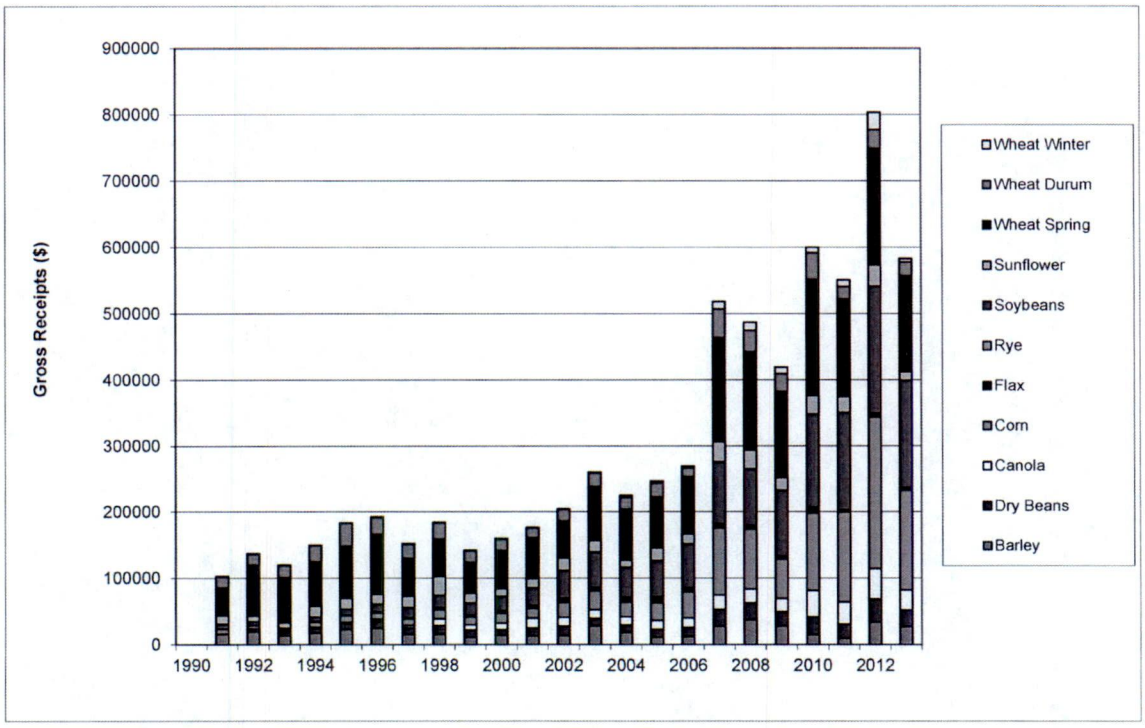


Figure 5. Gross Receipts for an Average Size Farm, North Dakota, 1991 to 2013, by Crop.

was established, this limit would cover an average farm of 2,680 acres. In 2013, the payment limit would only imply an average farm size of 1,160 acres. If the maximum payment were to provide the same coverage for the same size farm as in 1991, this would imply a maximum payment of $1,140,000 ($1,426,352 gross receipts *.8). If the maximum payment were to cover a farm size equivalent to that in 2003, this would imply a maximum payment of about $650,000 ($809,021 gross receipts *.8). Thus, the indemnity fund should provide less coverage to fewer and smaller farms in 2013 than it did in 2003.

Volatility of monthly prices received by growers was evaluated by marketing year from 1990 to 2013 for North Dakota (Appendix Figures C.1-C.7). These figures show changes over time with volatilities increasing for some crops (soybeans, durum and spring wheat) and declining for others (dry beans). The increase in volatilities adds risk for both growers and elevators. The results also show that dry beans are somewhat more risky than other crops. This is complicated further in that price risks for dry beans are not readily hedgeable..

Changes for North Dakota Grain Handlers

Changes in the number, size and distribution of grain elevators in North Dakota have been ongoing (Vachal and Benson, Various). The number of firms has declined from 363 in 2000/01 to 292 in 2012/13, and the total storage capacity has increased from 209,474,000 to 302,048,000 bushels (Figure 6). With declining firms and increased total storage capacity, the distribution of firms by type of elevator shipping capability has also changed. The proportion of elevators by type is largely similar from 2000 to 2012 for firms with No Rail, Single Car or Multi-Car capabilities. The proportion of 100 car shippers has increased and Unit trains have decreased in importance (Figure 7). This relationship changes dramatically when we look at the share of storage capacity. Most elevator shipping types declined in terms of their share of total capacity while the 100 car shippers grew from about 9% of capacity in 2000/01 to 44% of storage capacity in 2012/13 (Figure 8).

The average volume handled by size of rail shipping capabilities, shows increased volumes per elevator, especially for the 100 car shippers (Figure 9). 100 car shippers grew in average volume from 8 million bushels per elevator in 2000/01 to over 16 million bushels per elevator in 2012/13. While the turnover ratios for this category of grain elevators have been declining, the size of storage capacity has been increasing (Figures 9-10). The net effect on bushels handled has been for volumes to continue increasing (Figure 11).

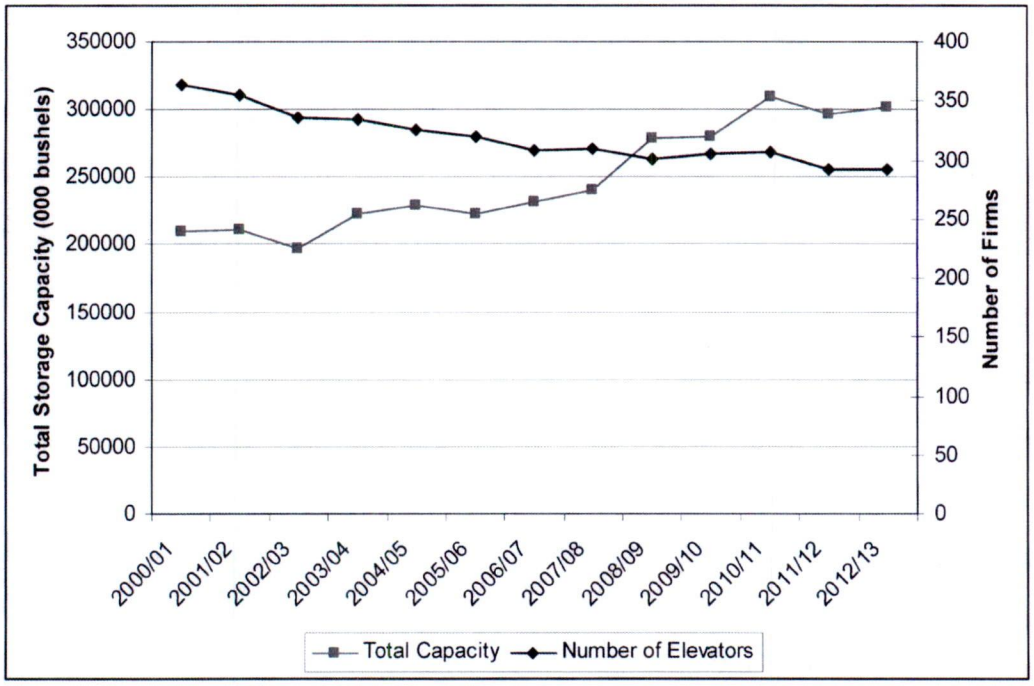


Figure 6. Total Storage Capacity and Number of Grain Elevators in North Dakota, 2000/01 to 2012/13.

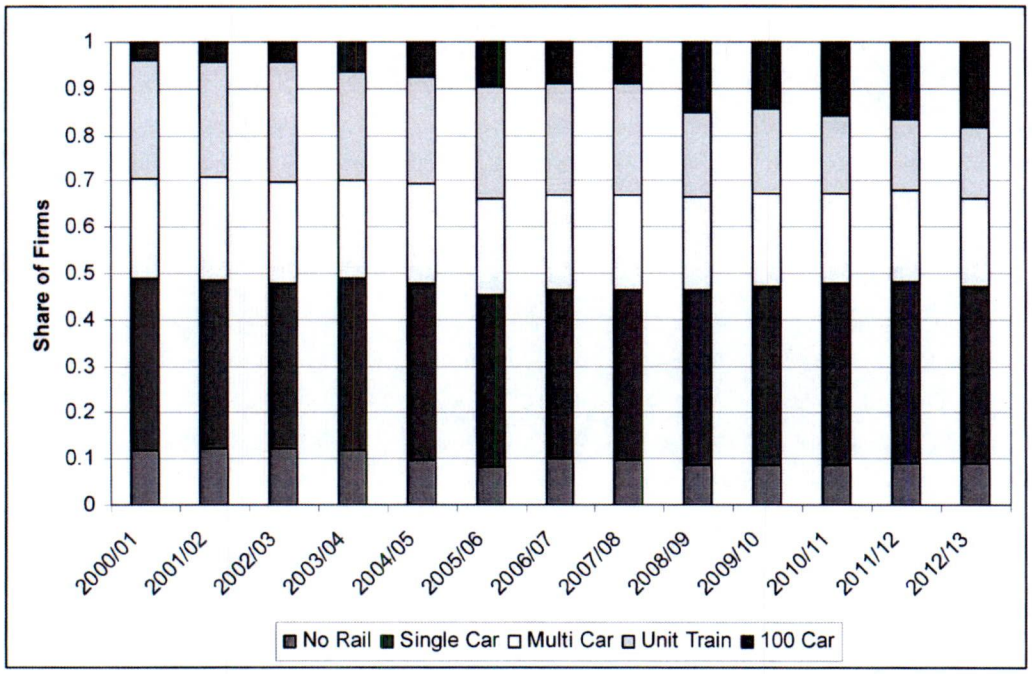


Figure 7. Share of Grain Elevators in North Dakota, by Shipping Type, 2000/01 to 2012/13.

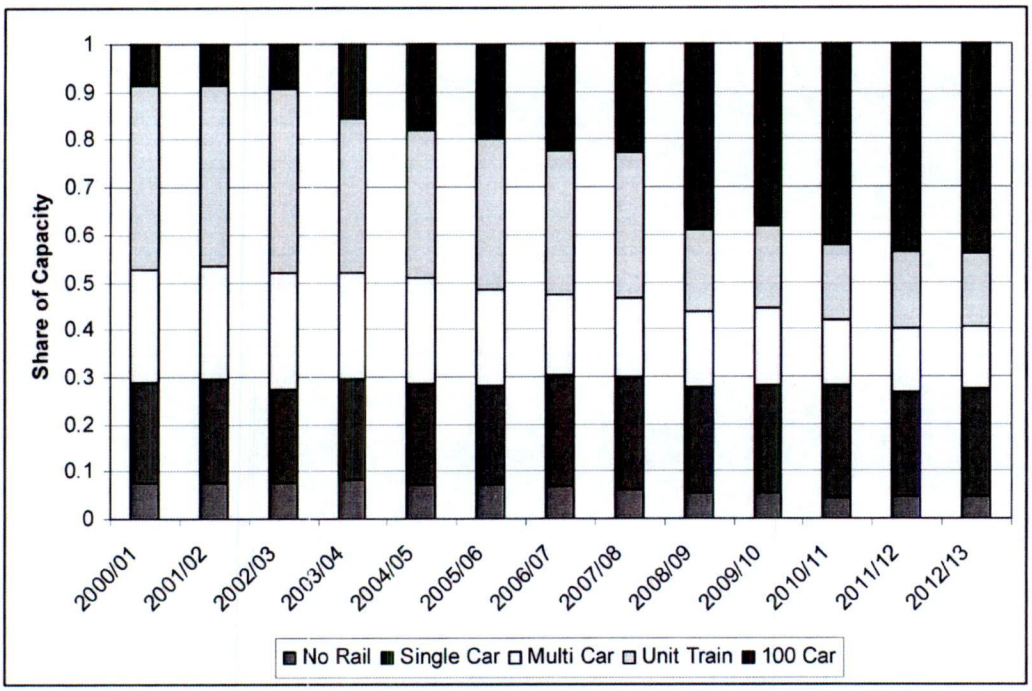


Figure 8. Share of Grain Elevator Storage Capacity in North Dakota, by Shipping Type, 2000/01 to 2012/13.

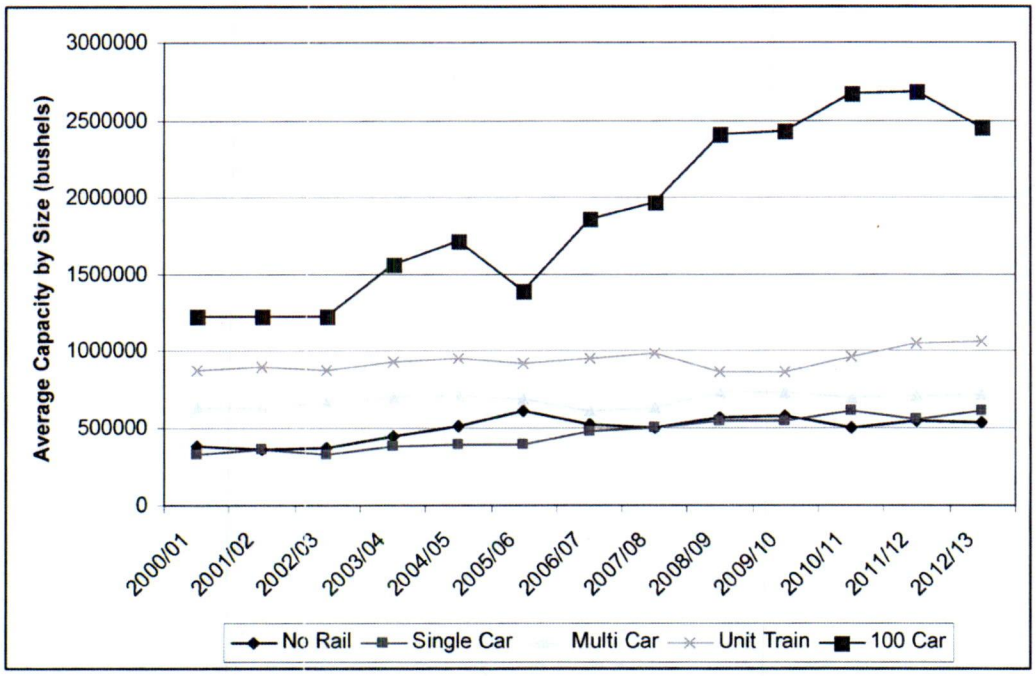


Figure 9. Average Storage Capacity, by Shipping Type, for Grain Elevators in North Dakota, 2000/01 to 2012/13.

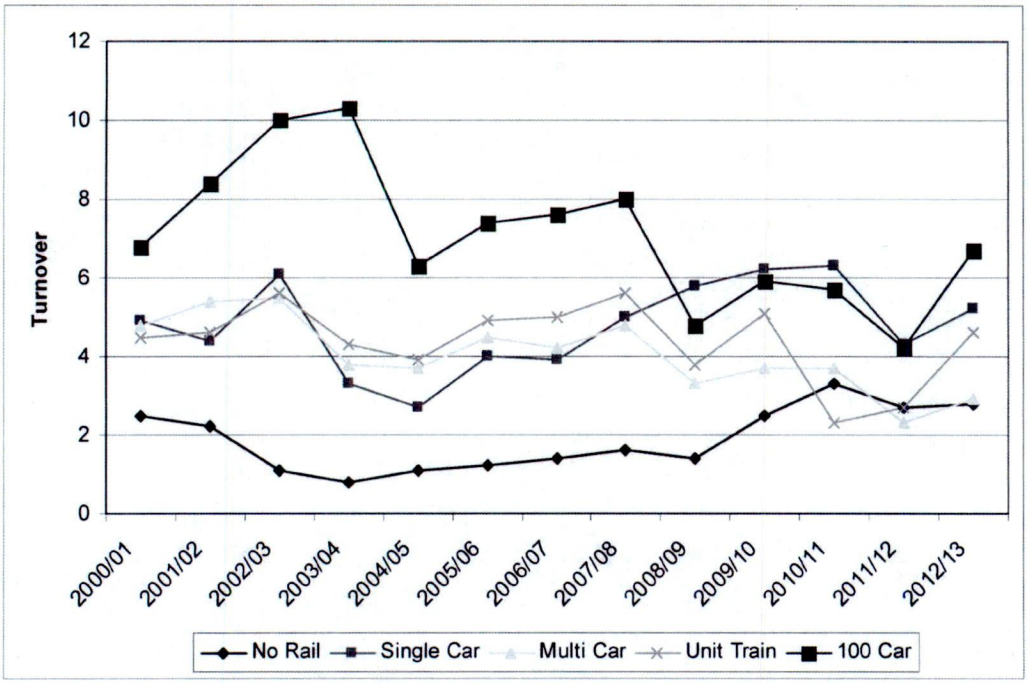


Figure 10. Average Turnover, by Shipping Type, for Grain Elevators in North Dakota, 2000/01 to 2012/13.

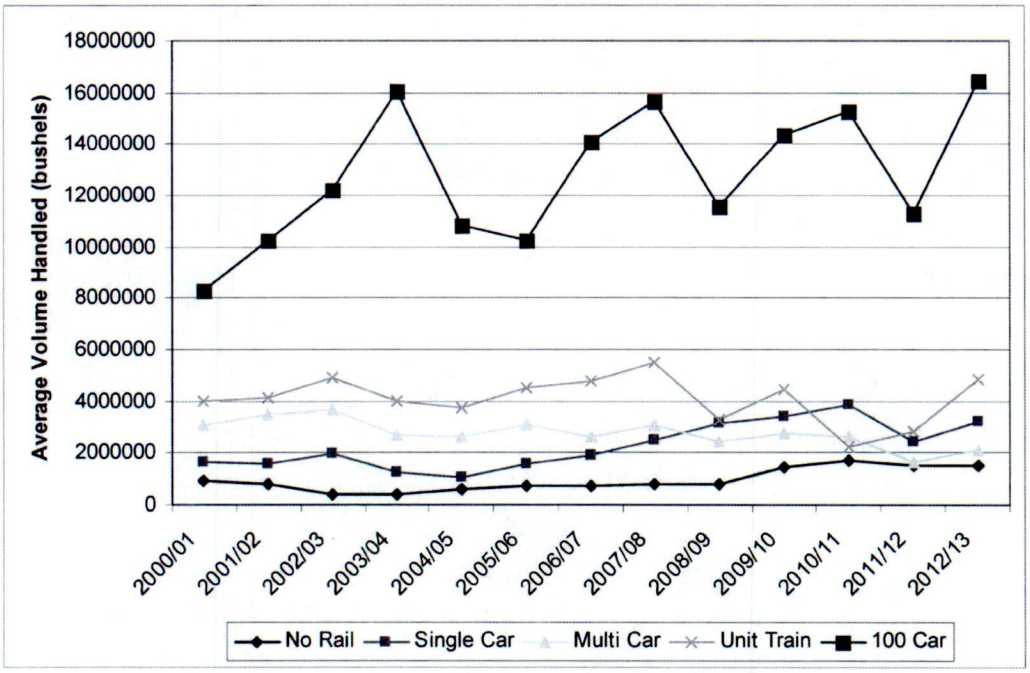


Figure 11. Average Volume Handled (Average Capacity * Average Turnover), by Shipping Type, for Grain Elevators in North Dakota, 2000/01 to 2012/13.

Characteristics of North Dakota Ethanol Processors

Characteristics of North Dakota ethanol producers were developed from the North Dakota PSC (2014b,c). These reports list grain storage licenses for licensed storage capacity and bonding levels. Average rated capacities were obtained from industry sources. Using storage capacity and rated capacities, prospective turnover rates were estimated assuming plants run at rated capacities. Estimated turnover rates for the three ethanol plants were 6 for Underwood, 18 for Casselton and 33 for Hankinson (Table 2). These turnover rates are much higher than averages reported for grain elevators (Vachal and Benson, Various)).

Table 2. Characteristics of Ethanol Plants, North Dakota 2014.

City	Licensed Storage Capacity	Corn Use Based on Ethanol Production	Storage Turnover Rate	ND Grain Storage Bond 2014
	Bushels	Bushels	Turns/year	
Casselton	3,006,000	54,642,857	18	5,000,000
Underwood	3,644,000	21,867,857	6	880,000
Hankinson	1,441,000	47,142,857	33	40,000

Sources: ND PSC (2014bc) and Industry Sources.

Estimated Default Probability of U.S. Grain Handlers

Industry studies of annual reports typically evaluate characteristics of annual reports by industry and publish these for use in benchmarking participants in the industry. RMA is one agency that publishes annual studies by industry (RMA, 2014). An industry similar to grain elevators is that for Wholesale Grain and Field Bean Wholesalers (424510). RMA (2014) reported 5 year histories of estimated 1 and 5 year default probabilities, including the mean and 25% and 75% percentiles.

These default probabilities show that, for U.S wholesale grain and field bean wholesalers, the distribution of 1 year default probabilities was generally less than 1% for 2003/04 to 2012/13, except for the 3 years from 2007/08 to 2009/10, with the largest increase in 2008/09. In 2008/09, the 1 year defaults ranged from 1.76%, 3.75% and 7.36% for the lower quartile, median and upper quartile of the distribution. The quartile results imply 25% of default probabilities would be lower than 1.75%, 25% would be between 1.76 and 3.75%, 25% would be from 3.75 to 7.36% and 25% would be over 7.36%. Five year estimated default rates show the same pattern, with most years from 2003/04 to 2012/13 below 8%; with the 5-year default rates increasing to 7%, 11% and 20% for the lower quartile, median and upper quartile of the distribution, respectively. Again, the quartiles imply 25% of the 5 year default probabilities would be less than 7%, that 25% would be from 7% to 11%, that 25% would be from 11% to 20% and that 25% would be above 20%.

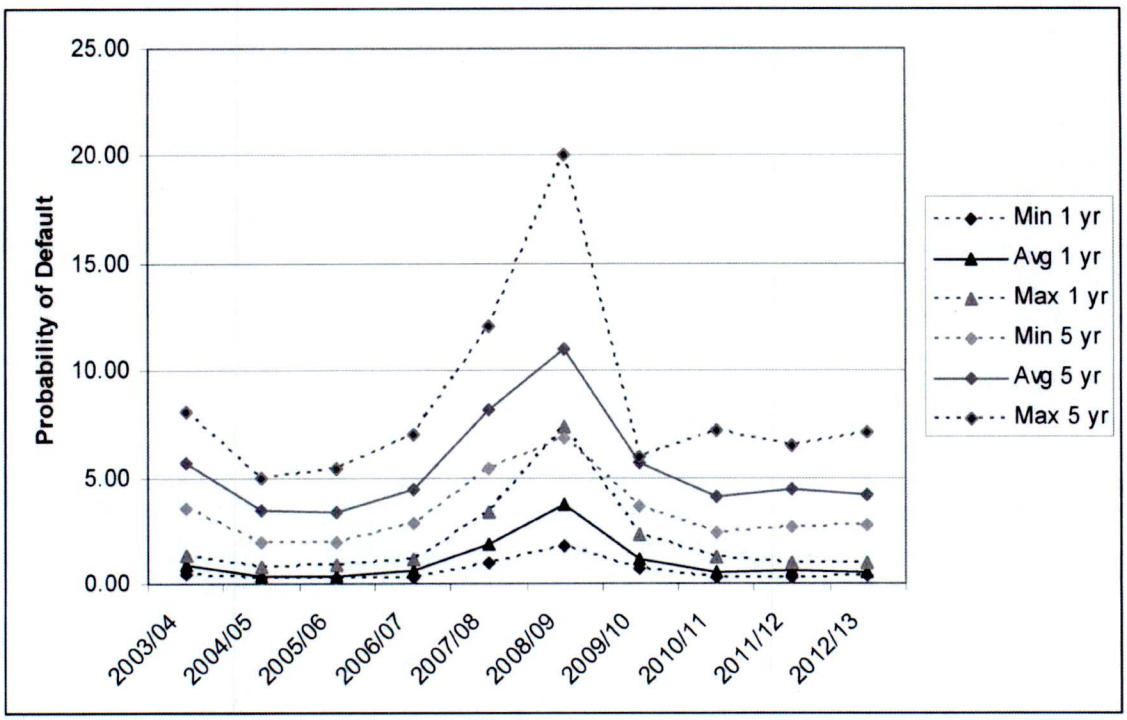


Figure 12. Estimated 1 and 5 Year Default Probabilities for Wholesale Grain and Field Bean Wholesalers, 2003/04 to 2012/13.
Source: RMA (2014).

Simulation Model

In order to quantify and illustrate the prospective risks of failure, we developed a stochastic simulation model for a representative grain merchandiser (co-op and corporate) in North Dakota. The model was used to illustrate the effect of risk and stresses on profitability. A stochastic simulation model from McKee, Wilson and Dahl (forthcoming) was adapted for a co-op and corporate structure representative of a North Dakota firm. This model simulated the profitability of a North Dakota cooperative or corporate firm where distributions for volume handled and gross margins were random.[2]

Volume handled for corn, soybeans and wheat was defined as representative of a North Dakota shuttle elevator located in Stutsman County. The average handle was 17 million bushels per year, ranging from a minimum of 15.3 to a maximum of 18.7 million bushels per year. Volumes per crop were estimated as the proportion of grain handled by elevators in Crop Reporting District 5 (CRD5) for corn (48%), soybeans (34%) and wheat (19%), respectively, and

[2] A detailed description and the assumptions for the model used here are in Appendix D.

were estimated from Vachal and Benson (2013) for 2012/13.[3] Representative distributions were based on industry contacts (Table 3) for gross margins.

Table 3. Parameters for Gross Margin Distributions of a Representative North Dakota Elevator.

	Minimum	Most Likely	Maximum
Corn	$0.10	$0.25	$0.40
Soybeans	0.12	$0.30	$0.60
Wheat	$-0.20	$0.35	$2.00

Rail costs (tariff and fuel service charges) were assumed to be included in the gross margin calculations. Shuttle premiums were modeled based on secondary car markets for daily car values (DCV). These DCVs were either added to gross margins, if DCVs were negative, or subtracted from gross margins, if DCVs were positive, implying a high cost for shuttle rail freight. Distributions for DCVs were estimated using data from Tradewest Brokerage Co. (Various) from 2006 to 2014. Primary car values were obtained from BNSF (2014), and distributions were estimated from 2006 to 2014. A discount rate of 6% was used.

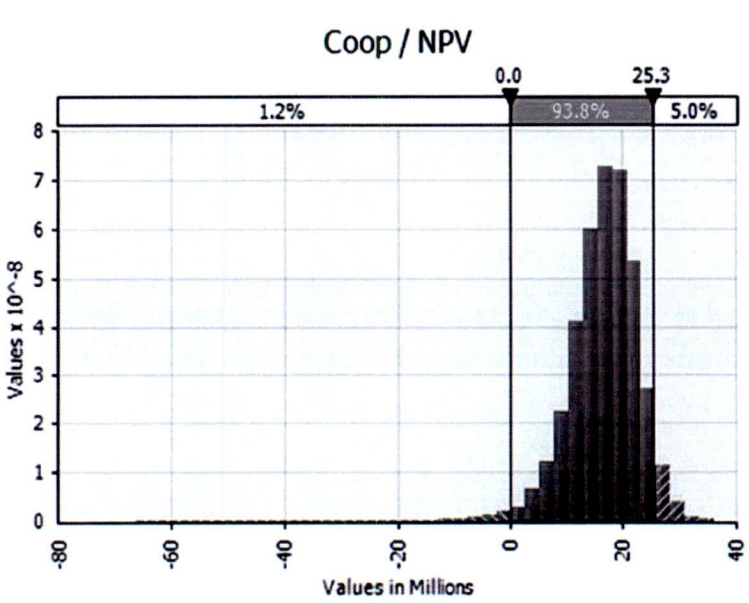
The model was run which represented a cooperative firm, and for a corporate firm. The reason for modeling both ownership types is the difference in tax treatment across ownership structures. Three cases were simulated. The first assumed a cooperative elevator with managed freight as part of its operations, so freight was assumed to be limited in variability (co-op-fixed). In this case the elevator has covered its freight and for this reason, freight values were not at risk. The second was for a corporate elevator which was also assumed to manage freight operations, so freight was, again, considered to be limited in variability (corporate-fixed). The third assumed a cooperative elevator where freight was not covered and had to be procured for all shipments in the secondary market (co-op-risky).

Results: The three models were simulated in an unstressed version where all distributions were assumed to be equal to the base case; then, the distribution for freight (DCV) in year 1 was stressed,[4] representing a year with adverse changes in freight costs. The results showed distributions for net present values (NPV) for the elevator operated over a 10 year time frame. Average NPVs were profitable for all three unstressed cases, showing little probability of negative NPVs during the 10 year horizon (Table 4).

[3] Volumes of corn and soybeans shipped from CRD5 are only reported in Vachal and Benson (Various) for the most recent year available, 2012/13. Volumes for state level shipments of corn, soybeans and wheat from 2006/07 to 2012/13 reveal large shifts from wheat toward corn and soybeans.

[4] The distribution in Year 1 for freight (DCV) was stressed by forcing the distribution to only allow the choice of values in the top 10% of the distribution, thus only allowing for high costs for freight.

The NPV was higher for the co-op than for the corporate elevator, largely due to different tax treatment. Variability of NPVs nearly doubled in size when freight was shifted from fixed (limited variability) to risky (reflecting the full purchase of freight in the secondary market). The probability of NPV being negative increased from .02% to 1.2% (Figure 13). While this result is not the probability of bankruptcy, it is the closest that can be approximated.



Statistics	
	Coop 2 / NPV
Cell	Input Value!H47
Minimum	-66,366,036.33
Maximum	36,024,967.50
Mean	16,669,082.88
Mode	19,101,206.29
Median	17,169,056.74
Std Dev	6,092,478.96
Skewness	-1.4656
Kurtosis	13.4280
Values	10000
Errors	0
Filtered	0
Left X	0.00
Left P	1.2%
Right X	25,346,288.70
Right P	95.0%
Dif. X	25,346,288.70

Figure 13. Distribution for NPV for a Co-op with Risky Freight Costs.

The sensitivity of NPV to changes in the value of random inputs shows that the base unstressed co-op and corporate firms with fixed freight were similarly affected by randomness. Both cases were affected the most by margins for wheat, soybeans and corn, with margins in early years having the largest impact and then declining with time. For example, a 1 unit increase in wheat margins in year 1 would increase the NPV by .34 while a 1 unit increase in wheat margins in year 10 would only increase NPV by .20 (Table 4). The sensitivity of the co-op-risky case to input distributions showed a change, where freight costs (DCV) had the largest impact on NPV, followed by margins for wheat, soybeans and corn. Here, a 1 unit increase in freight costs, reduced the NPV by .33 in year 1 and by .19 in year 10. The effect of the crop margins on the co-op risky case also declined in impact from the freight fixed cases. Thus, a 1 unit increase in wheat margins in year 1 only increased the NPV by .20 while, in the fixed freight cases, it increased NPV by .34.

When we stress the cost for freight in year 1 (of the 10 year time horizon) to be in the top 10% of the distribution, it has limited impacts on NPV when freight is fixed. However, where freight is risky, the co-op's mean NPV drops by over $4 million; the standard deviation increases by $800,000; and the probability of a negative NPV goes from 1.2% to 3.7%. Thus, one bad

year with uncovered freight in the top 10% of the secondary market costs can dramatically impact the financial performance of an elevator.

We also stressed margins so that the distributions for corn, soybeans and wheat were in the lower 25% of the distributions for each. This had limited impacts on the probability of a negative NPV occurring (Table 5). The average NPV declined by $1.9-$2.5 million, and the standard deviation of NPV declined by $104,000 to $237,000. Similarly, when we stressed margins in year 1 to the lowest 10% of the distributions for corn, soybeans and wheat, the average NPV declined by $2.5 million to $3.2 million. Standard deviations declined by $103,000 to $251,000. Restricting margins to the lower 10% of distributions did impact the probability of a negative NPV for the corporate and risky co-op cases. The non-risky corporate probability of a negative NPV increased from 0.4% to 3%, and the risky co-op increased from 1.2% to 2.3% (Table 6).

Table 4. Results for the Simulation Model, Unstressed and Freight Stressed, in Year 1 ($).

	Unstressed			Freight Stressed in Year 1		
	Co-op-Fixed	Corp-Fixed	Co-op-Risk	Co-op-Fixed	Corp-Fixed	Co-op-Risk
Mean	16,854,099	7,026,782	16,669,083	16,108,239	6,454,111	12,630,695
Std. Dev.	3,561,601	2,735,160	6,092,479	3,600,321	2,770,929	6,896,045
Prob NPV Negative	0.02%	0.4%	1.2%	0.03%	0.7%	3.7%
Tornado Graph: Range of Regression Coefficients for the Sensitivity of Results to Random Input Draws from Year 1-Year 10						
Most Important	Wheat Margin .34-.20	Wheat Margin .34-.20	DCV -.33 to -.19			
	Soybean Margin .13-.08	Soybean Margin .13-.08	Wheat Margin .20-.12			
	Corn Margin .11-.07	Corn Margin .11-.07	Soybean Margin .08-.05			
	DCV -.10 to -.06	DCV -.10 to -.06	Corn Margin .07-.04			
Least Important	Volume Handled .06-.04	Volume Handled .06-.04	Volume Handled .04-.02			

Table 5. Results for the Simulation Model, Unstressed and Margins Stressed, in Year 1 to Lower 25% of Distribution ($)						
	Unstressed			Margins Stressed in Year 1 to Lower 25%		
	Co-op-Fixed	Corp-Fixed	Co-op-Risk	Co-op-Fixed	Corp-Fixed	Co-op-Risk
Mean	16,854,099	7,026,782	16,669,083	14,3424,90	5,103,322	14,145,889
Std. Dev.	3,561,601	2,735,160	6,092,479	3,324,397	2,554,617	5,988,536
Prob NPV Negative	0.02%	0.4%	1.2%	0.03%	1.8%	1.9%

Table 6. Results for the Simulation Model, Unstressed and Margins Stressed, in Year 1 to Lower 10% of distribution ($)						
	Unstressed			Margins Stressed in Year 1 to Lower 10%		
	Co-op-Fixed	Corp-Fixed	Co-op-Risk	Co-op-Fixed	Corp-Fixed	Coop-Risk
Mean	16,854,099	7,026,782	16,669,083	13,655,270	4,576,788	13,451,800
Std. Dev.	3,561,601	2,735,160	6,092,479	3,310,809	2,544,649	5,989,334
Prob NPV Negative	0.02%	0.4%	1.2%	0.03%	3.00%	2.30%

Conclusions and Recommendations

Grain and oilseed growers confront numerous risks. One of the uncertainties relates to the risk that buyers may become insolvent, ultimately resulting in losses for the grower. Most states, including North Dakota, have mechanisms that partially protect against these losses. However, the grain market has changed drastically, giving rise to increased risks. These mechanisms serve to protect grain sellers against default by the grain buyer. These mechanisms include requiring buyers and storage facilities to be licensed and to have bond coverage. The purpose of this report is to document risks to growers and the mechanisms used to mitigate the risks related to buyer default.

***Risks confronting growers*:** Growers confront a number of risks when selling grains and oilseeds. First, growers are becoming larger operators. The average farm size increased from 1,387 acres in 1991 to around 2,000 acres from 2007 forward. The mix of crops planted has shifted toward higher production of corn, soybeans, canola and durum wheat and away from barley, sunflowers, spring wheat and winter wheat. Along with recent increases in price levels and volatility for most agricultural commodities, the combination of these changes has resulted in the value of gross receipts for an average farmer increasing dramatically and being subject to

higher variability. Estimated gross receipts per farm grew from about $100,000 in 1991 to $803,351 in 2012.

The grain elevator industry is also experiencing trends toward consolidation and concentration into larger shuttle loading facilities with higher volumes handled. Notably, the elevator industry in North Dakota is larger in capacity and volumes handled, and the volumes handled are becoming more concentrated at large shuttle facilities.

***Mechanisms in North Dakota*:** Mechanisms exist in North Dakota (and in most states) to protect growers against buyer default. The purpose of these mechanisms is to protect grain sellers against default by the grain buyer. North Dakota has two basic programs to deal with buyer defaults. The first program includes a licensing and bonding program for grain warehouses and for grain buyers. These mechanisms require warehouses and grain buyers to be licensed and to submit a bond which is dependent on the rated storage capacity of the warehouse and on the 3 year average sales volume for grain buyers. The second program is the North Dakota grain insurance fund which provides coverage for credit sales (which are not covered by the grain buyer's bond). The North Dakota grain insurance fund, or credit-sale indemnity fund, was established in 2003 to cover credit sales deferred for more than 30 days.

The North Dakota Indemnity fund has a maximum farmer payout. The farmer's payout limit is more limiting now than in 2003 when the Indemnity fund was created. The average claims paid from the indemnity fund per insolvency suggest that this issue has not been a big issue yet, although it has impacted claims for one of the recent insolvencies. The size of claims per insolvency on the Indemnity fund has increased, with the largest claims being the most recent ones. The balance for the Indemnity fund is currently around $4.5 million, but the balance could drop to around $3.6 million or lower depending on outcomes from the unresolved insolvencies.

When comparing programs in other states, most states either have an indemnity fund or warehouse/grain buyer bonding. States that focus on corn and soybeans tend to have indemnity funds while more traditional wheat producing states tend toward bonding programs. Only two states do both (North Dakota and Oklahoma).

Most other states with bond funds apply the bond to a proportion of the value of grain handled (value * volume) over the last three years. North Dakota calculates the bond value based on storage capacity. Discussions about changing North Dakota's bond schedule have included moving to a 3 year average based on either the volume or value of grain handled.

Changes for bond funds have also included handling dry bean facilities/buyers and processors differently than other grain handlers. Colorado and Wyoming apply higher bonding requirements for dry bean facilities than other grain handlers. In Colorado, there is about a

threefold increase in the bonding level required for a dry bean facility than a similar sized facility that handles other grains. Processors, primarily ethanol producers in North Dakota, can have much higher turnover rates than country elevators, suggesting that there might be a higher risk for a given storage level for a processor than for a country elevator.

***Mechanisms in other states that do not exist in North Dakota*:** Most other states base bonding requirements on a proportion of the average value of grains handled in the last 3 years. Several other states also require a bond on net worth to cover shortfalls below 25%. South Dakota appears more proactive in this area, requiring within year reporting for financial conditions and imposing legal requirements on elevators to report net worth issues within the year. Many states with bonding programs also require an additional bond to make up shortfalls in net worth below a minimum (usually 25%).

Ohio modified its indemnity program in 2013 and made farmers first in line for bankruptcies. This change is being watched by Ohio and other states because it may have adverse impacts on elevator borrowing.

Risks confronting elevators in North Dakota: A couple of results are shown to depict the risks of elevator failure. One of these is from existing studies, and the other one is a model we developed to illustrate these risks in North Dakota.

The RMA publishes annual studies, by industry, on the probability of bankruptcy (RMA, 2014). Projections for the probabilities of 1 and 5 year bankruptcies were estimated for the wholesale grain and field bean wholesalers in the U.S. These indicated the distribution of 1 year default probabilities was generally less than 1% for 2003/04 to 2012/13, except for the 3 years from 2007/08 to 2009/10. In 2008/09, 25% of the 1 year default probabilities would be lower than 1.75%; 25% would be between 1.76 and 3.75%; 25% would be from 3.75 to 7.36%; and 25% would be over 7.36%. Five year estimated default rates show the same pattern, with most years from 2003/04 to 2012/13 below 8%. The distribution for 5 year defaults in 2008/09 being 25% would be less than 7%, 25% from 7% to 11%, 25% from 11% to 20% and 25% above 20%.

We also developed a model to quantify and illustrate the prospective risks of failure for a representative grain merchandiser (co-op and corporate) in North Dakota. The model was used to illustrate the effect of risk and stresses on profitability. The model analyzed the impacts of overall risks on profitability as well as the impact of the recent rise in secondary freight costs on grain elevators. The base case suggested that the probability of negative NPV's was in the area of .02% to 1.2%. Stressing the parameters for freight costs reduced the mean NPV by over $4 million; the standard deviation increased by 800,000; and the probability of a negative NPV went from 1.2% to 3.7%. Thus, one bad year with uncovered freight in the top 10% of the secondary market costs at the beginning of a 10-year time horizon can dramatically impact financial

performance of an elevator. These results showed that freight management can have a significant impact on elevator profitability.

Recommendations for further review and/or analysis: The purpose of this study was to identify the changes in relevant risks that confront grain and oilseed producers in North Dakota and to assess the adequacy of mechanisms designed to mitigate these risks. The intent was not to prescribe specific changes but, rather, to identify those areas worthy of consideration for legislative changes to assure protections for growers. It appears that the most important considerations for North Dakota include:

1) Increasing the maximum payment from the indemnity fund. Currently, the fund pays 80% of the claims, up to a maximum of $280,000 per producer.

   Given the increase in producer size, production and market volatility, this value is probably inadequate. Indeed, given current market parameters, the maximum would have to increase to provide equivalent coverage as originally intended by this mechanism.

2) There are several recent insolvencies that could potentially lower the Indemnity fund balance to near $3.6 million, which is much less than earlier minimum levels at which assessments would be re-imposed.

3) Re-evaluating the structure of the mechanisms. Alternatives include considering
   - Value of the commodity. Currently, the mechanisms in North Dakota are based on storage capacity (or sales).
   - Whether to use indemnity funds or bonding, or to use both. Currently, North Dakota is one of the few states that uses both methods.
   - Adding net worth requirements. Typically, minimum net worth requirements are imposed and an additional bond is required to make up the difference for shortfalls.
   - The relationships between claims and indemnity fund min/max suggest that, if average payouts for claims increase, then minimums and maximums for the indemnity fund would likely need to increase to be consistent with other states.

4) Dry beans: This crop has greater risks than other crops. Other states' bonding requirements for dry beans are much greater than those in North Dakota.

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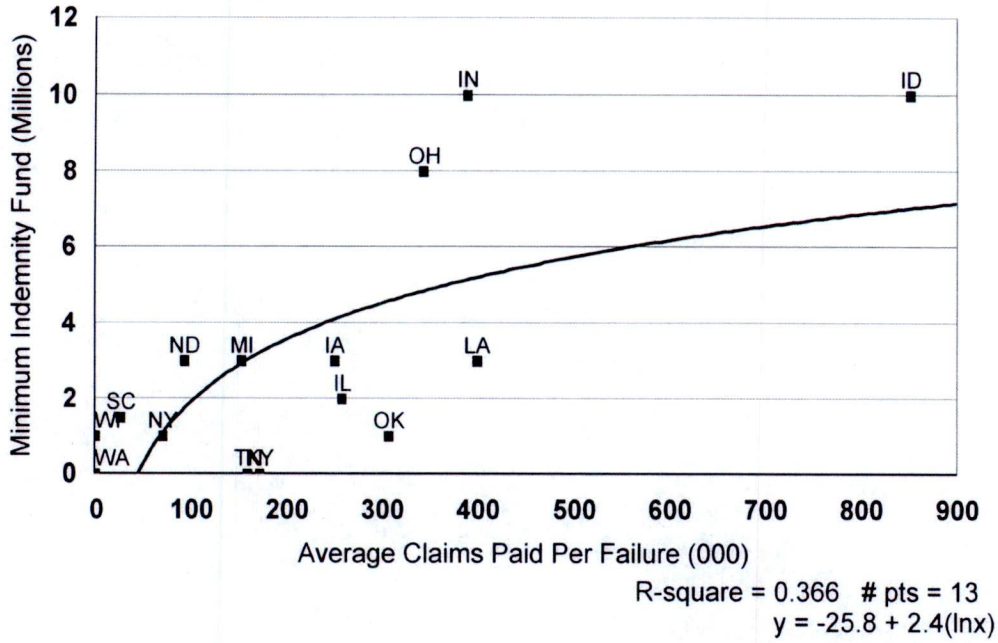


Figure A1. Relationship Between Average Claims Paid per Failure and Minimum Indemnity Fund.

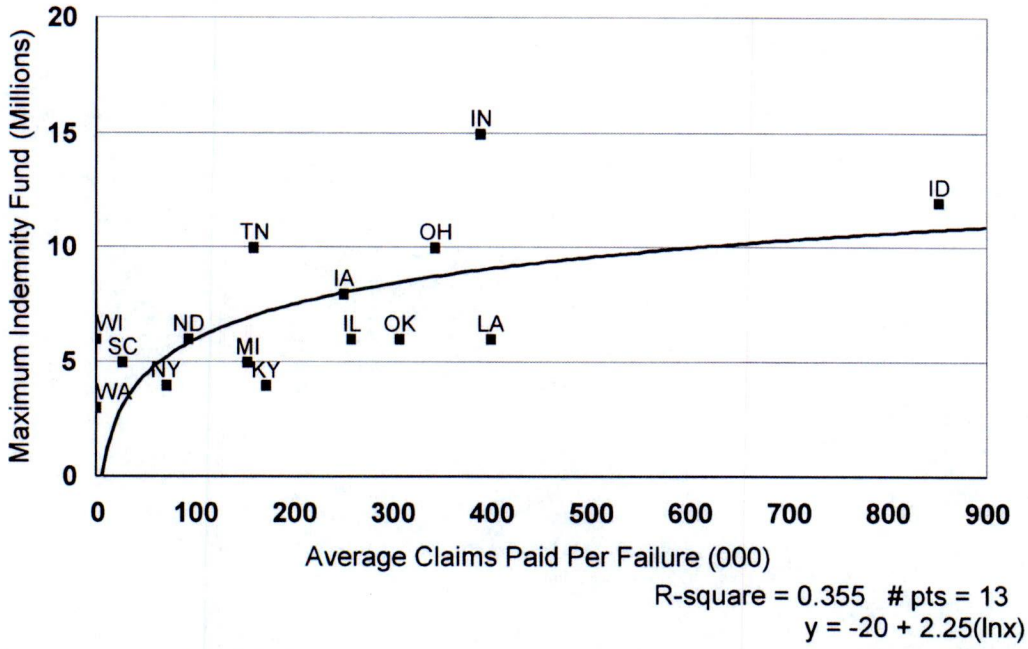


Figure A2. Relationship Between Average Claims Paid per Failure and Maximum Indemnity Fund.

Appendix Table B1. NORTH DAKOTA PUBLIC SERVICE COMMISSION

Grain Warehouse/Grain Buyer Insolvencies – 2007 through Current

Updated February 2013 – Page 1

Licensee Location(s) License Type Case Filed Case Closed	Total Claims Filed	Valid Cash Claims Filed	Valid CSC I-Fund Claims Filed	Invalid Claims Filed	Grain Proceeds	Bond on File & Bond Proceeds Used	Interest Earned on Trust Account	Valid Cash Claim Payments (% Payment)	Interest Paid To Cash Claimants [5]	CSC I-Fund Claim Payments (80%)	Total Claims Paid & Expenses Reimbursed [6]
Minnesota Grain, Inc., Rhame, ND (GW) March 2007 February 2009	$930,365.67	$323,117.58	$137,893.69	$467,920.69	$0	$100,000 Entire Bond	$1,429.19	$101,429.19 31%		$110,314.95	$211,744.14
Specialty Export Productions, Inc., Hatton & East Fairview, ND (GW) August 2007 September 2008	$190,485.55	$188,019.22	$0	$2,466.33	$61,463.92	$200,000 $142,243.17	$450.69	$195,991.24 100%		$0	$195,991.24 $8,166.54
Northwood Mills, LLLP, Northwood, ND (GW) January 2009 October 2009	$880,009.90	$880,009.90 11 Claims	$0	$19,477.95	$0	$50,000 $50,000	$129.05	$50,129.05 5.8%	$0	$0	$50,129.05 $0
Sustainable Systems, LLC dba Montola, Culbertson, MT (RGB) March 2009 December 2009	$617,663.45 19 Claims	$561,629.40 19 Claims	$0	$54,095.83	$0	$130,000 $130,000	$241.66	$130,241.66 77% + 23% [7]	$241.66	$0	$130,241.66 $1,307.11 [8]
VeraSun Hankinson, LLC, Hankinson, ND (GW) March 2009 September 2011	$132,784.85	$132,784.85 2 Claims	$0	$0	$0	$380,000 $3,908.83 [9]	$0	N/A	N/A	$0	N/A $3,908.83

GW – Grain Warehouse RGB – Roving Grain Buyer CSC – I Fund – Credit-Sale Contract Indemnity Fund (provides maximum payment of 80% not to exceed $280,000 for each insolvency)

[5] If funds are available, cash claimants can be paid interest at the weighted average prime rate charged by the Bank of North Dakota since the date of insolvency.

[6] The statute provides for the reimbursement of expenses incurred by the Commission in the administration of the insolvency.

[7] The Montana Dept. of Agriculture liquidated available assets. ND claimants received 77% of each valid claim from the Montana liquidation proceeds, 23% from ND trust fund proceeds, and a proportionate share of interest earned on the ND trust fund.

[8] The Montana Dept. of Agriculture reimbursed the Commission for the insolvency expenses incurred.

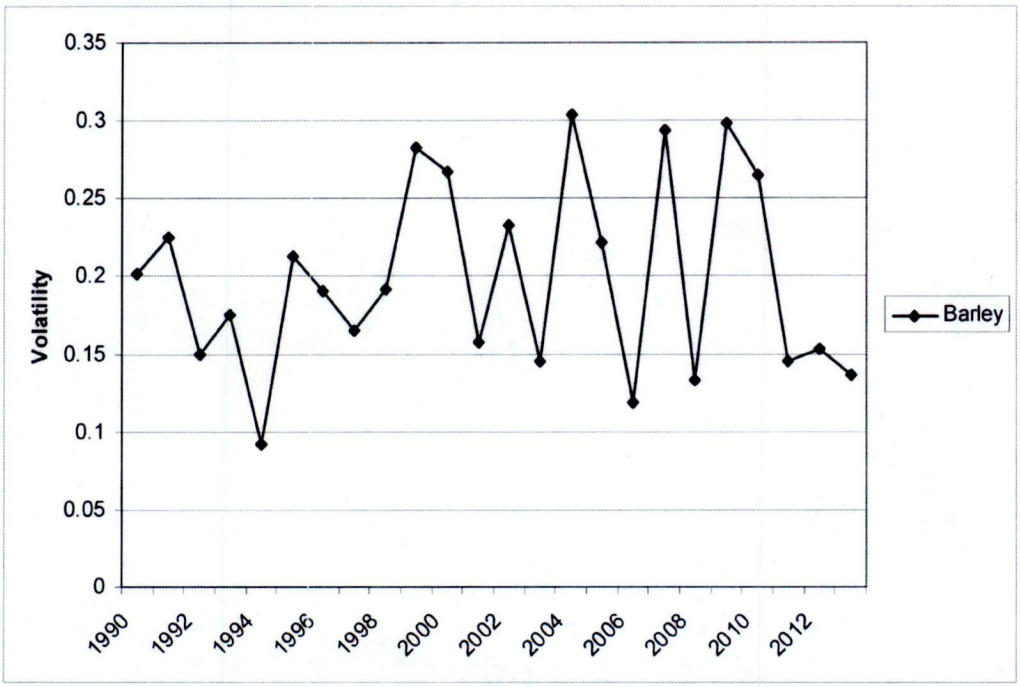
[9] Two claims were filed and eventually withdrawn by the claimants. The Commission was reimbursed for its insolvency expenses from the bond proceeds.

Appendix Table B1. (continued) NORTH DAKOTA PUBLIC SERVICE COMMISSION
Grain Warehouse/Grain Buyer Insolvencies – 2007 through Current
Updated February 2013 – Page 2

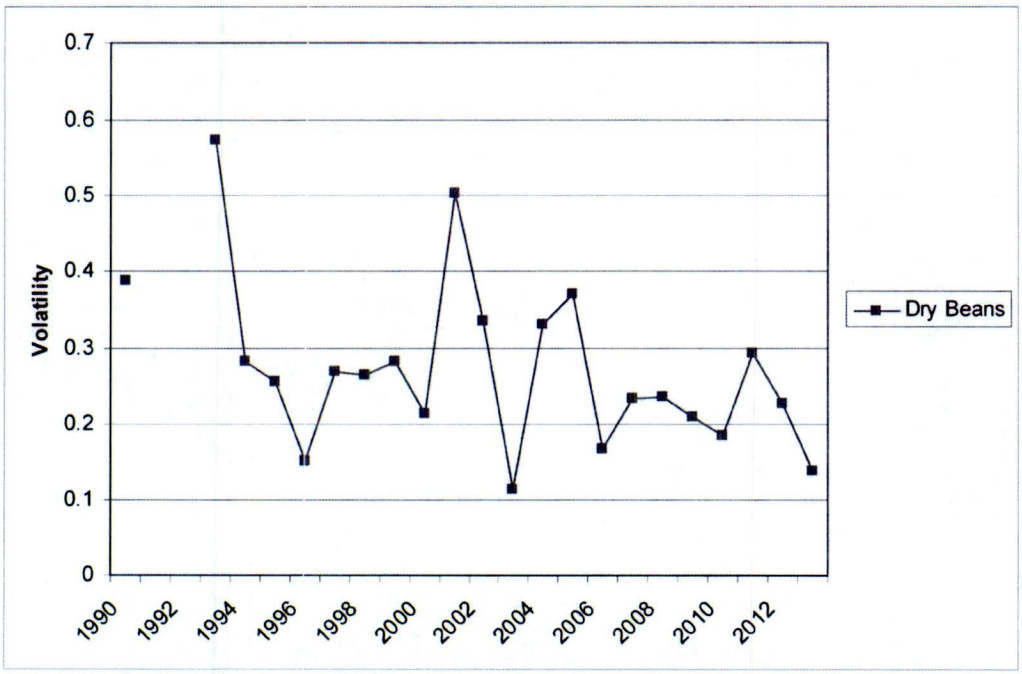
Licensee Location(s) License Type Case Filed Case Closed	Total Claims Filed	Valid Cash Claims Filed	Valid CSC I-Fund Claims Filed	Invalid Claims Filed	Grain Proceeds	Bond on File & Bond Proceeds Used	Interest Earned on Trust Account	Valid Cash Claim Payments (% Payment)	Interest Paid To Cash Claimants	CSC I-Fund Claim Payments (80%)	Total Claims Paid & Expenses Reimbursed
Organic Grain & Milling, Inc., Clyde, ND (GW) June 2010 September 2011	$193,467.24	$17,276.88 1 Claim	$160,829.65 4 Claims	$8,276.62 1 Claim	$28,148.74 [10]	$62,500 $0	$41.43	$17,276.88 100%	$531.05	$128,663.72	$147,607.24 $1,135.60
Grabanski Grain, LLC, Grafton, ND (GW) July 2010 May 2013	$848,296.08	$184,964.03 7 Claims	$409,002.41 7 Claims	$266,329.68	0	$340,000 $201,376.20		$184,964.03 100% + interest	$12,984.47	$327,201.92 + ½ expenses = ($330,629.62)	$532,005.82 $6,855.40[11]
Mitchell Feeds, Inc., Fargo, ND (RGB) February 2011						$70,000 bond on file					
Anderson Seed Co., Inc., Durbin & Selz, ND (GW) February 2012	$4.1 Million [11]	2.233 Million	$809,000			$280,000 bond on file					
Falkirk Farmers Elevator Co, Falkirk, ND (GW) October 2012	$2 Million [11]	1.7 Million	$279,000 7 Claims	1 Claim		$380,000 bond on file					
Earth Harvest Mills, Inc., Harvey, ND (GW) February 2013	$4.3 Million [11]	$81,000 7 Claims	2.4 Million 18 Claims			$50,000 bond on file				$948,952.69 [10]	

[10] The unused proceeds, totaling $9,246.64, were returned to Organic Grain & Milling, Inc.
[11] Insolvency expenses totaled $6,855.40 with ½ paid from the trust fund and ½ paid from the CSC I-Fund.
[10.] Two claimants in the Earth Harvest Mills, Inc. insolvency exceeded the $280,000 Indemnity Fund Cap.
[11] Additional claims information was added for Anderson Seed, Falkirk Farmers Elevator and Earth Harvest Mills (ND PSC 2013a, 2013b, 2014).

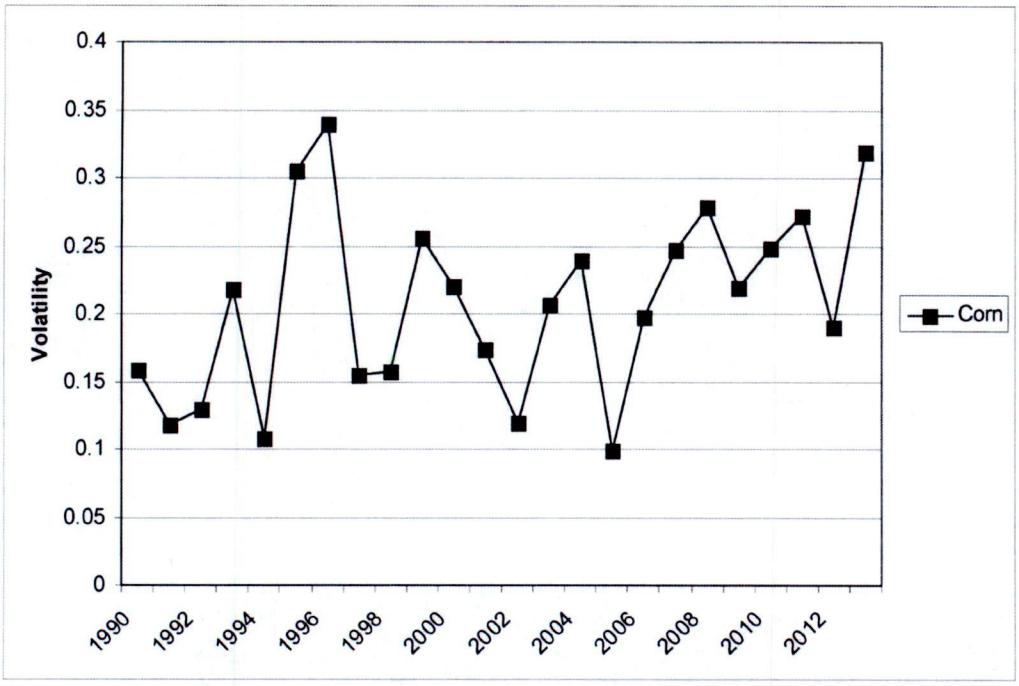
Appendix C. Volatility of Monthly Prices by Crop



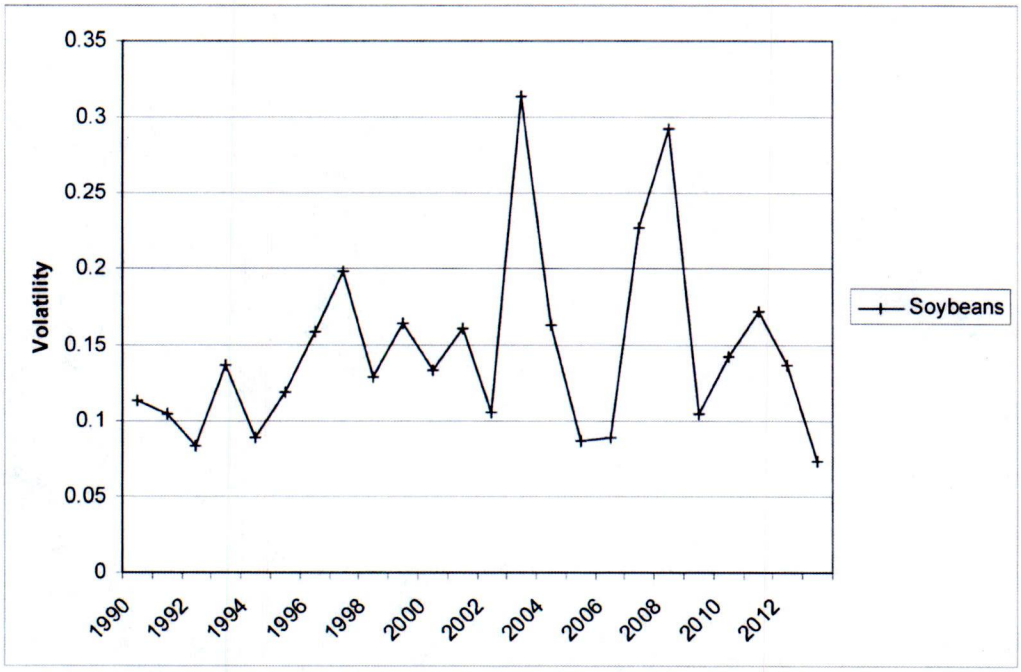
Appendix Figure C1. Volatility of Monthly Prices Received by Growers, Barley, North Dakota, 1990-2013.



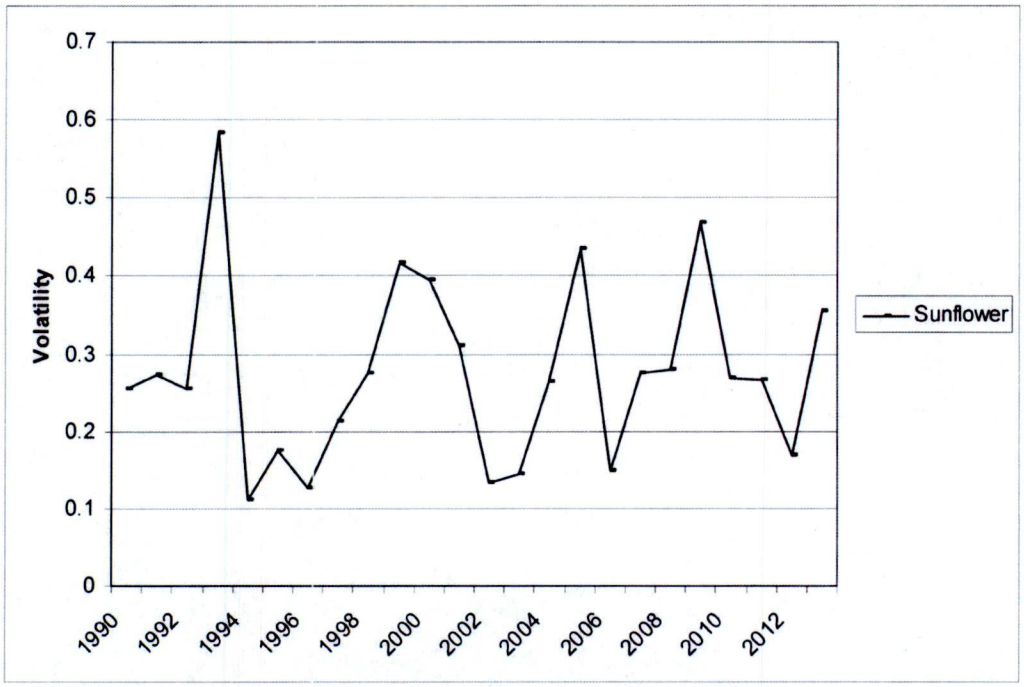
Appendix Figure C2. Volatility of Monthly Prices Received by Growers, Dry Beans, North Dakota, 1990-2013.



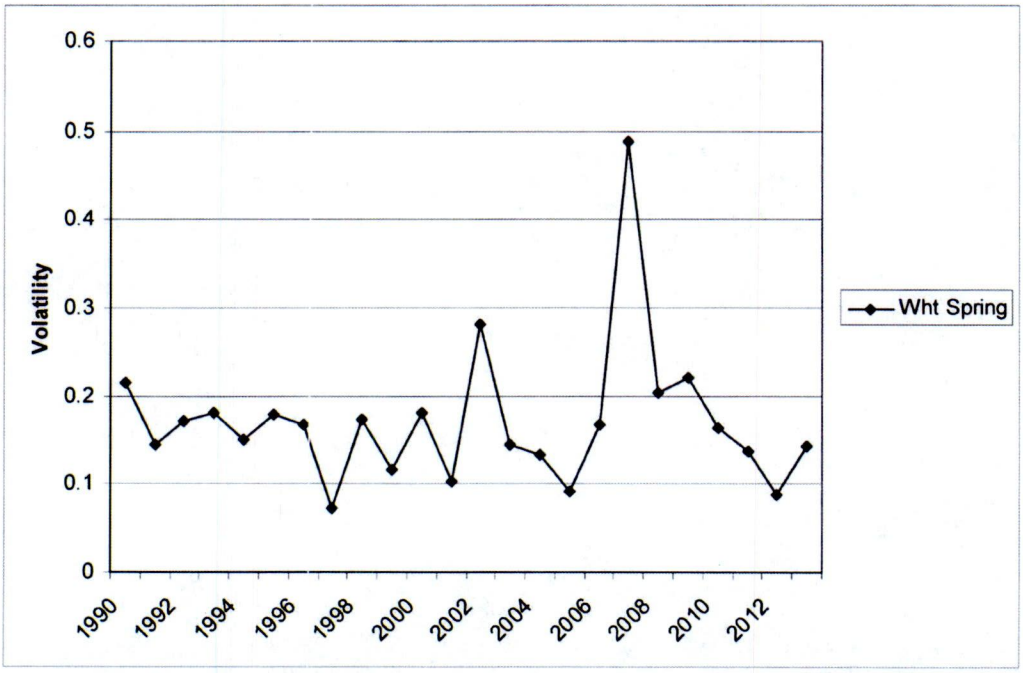
Appendix Figure C3. Volatility of Monthly Prices Received by Growers, Corn, North Dakota, 1990-2013.



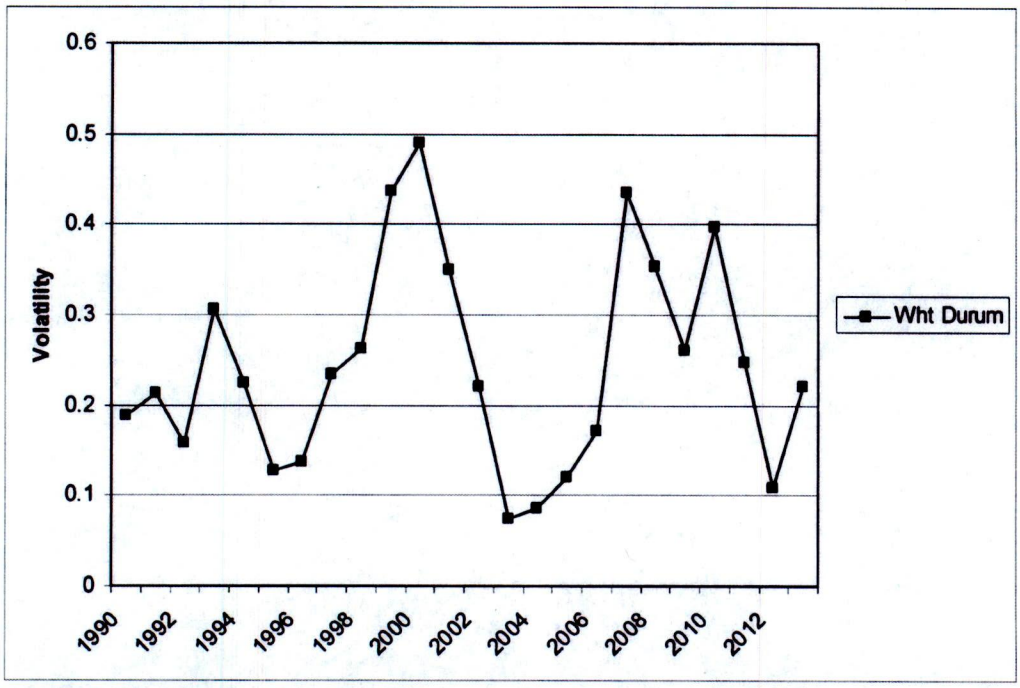
Appendix Figure C4. Volatility of Monthly Prices Received by Growers, Soybeans, North Dakota, 1990-2013.



Appendix Figure C5. Volatility of Monthly Prices Received by Growers, Sunflowers, North Dakota, 1990-2013.



Appendix Figure C6. Volatility of Monthly Prices Received by Growers, Hard Red Spring Wheat, North Dakota, 1990-2013.



Appendix Figure C7. Volatility of Monthly Prices Received by Growers, Durum Wheat, North Dakota, 1990-2013.

Appendix D. Simulation Model Description and Assumptions

A stochastic simulation model for a grain merchandiser (co-op and corporate) was modeled to illustrate the effect of certain stresses on profitability. A stochastic simulation model from McKee, Wilson and Dahl (forthcoming) was adapted for a co-op and corporate structure representative of a North Dakota firm. This model simulated profitability of a North Dakota cooperative or corporate firm where distributions for volume handled and gross margins were random.

Volumes handled for corn, soybeans and wheat were defined as representative of a North Dakota shuttle elevator handling 17 million bushels per year, on average, but ranging from 15.3 to 18.7 million bushels per year. Volumes per crop were estimated as the proportion of grain handled by elevators in Crop Reporting District 5 (CRD5) for corn (48%), soybeans (34%) and wheat (19%), respectively, and were estimated from Vachal and Benson (2013) for 2012/13.[12] Distributions for the gross margins were determined based on industry contacts.

Appendix Table D1. Parameters for Gross Margin Distributions for a Representative North Dakota Elevator.

	Minimum	Most Likely	Maximum
Corn	$0.10	$0.25	$0.40
Soybeans	$0.12	$0.30	$0.60
Wheat	$-0.20	$0.35	$2.00

Rail costs (tariff and fuel service charges) were assumed to be contained in the gross margin calculations. However, shuttle premiums were modeled based on the secondary car markets for daily car values (DCV). These DCVs were either added to the gross margins, if DCVs were negative, or subtracted from gross margins, if DCVs were positive, implying a high cost for shuttle rail freight. Distributions for DCVs were estimated from Tradewest Brokerage Co. (Various) from 2006 to 2014. Primary car values were obtained from BNSF (2014), and distributions were estimated from 2006 to 2014.

The model was run representing both a cooperative firm, and a corporate firm. Three cases were simulated. The first assumed that a cooperative elevator managed freight as part of its operations, so freight was assumed to be limited in variability (co-op-fixed). The second represented a corporate elevator that also was assumed to manage freight operations, so freight was limited in variability (corporate-fixed). The third assumed a cooperative elevator where freight was not covered and had to be procured for all shipments in the secondary market (co-op-risky). Freight was assumed to be from loglogistic distributions for all three models. However,

[12] Volumes of corn and soybeans shipped from CRD5 are only reported in Vachal and Benson (Various) for the most recent year available, 2012/13. Volumes for state level shipments of corn, soybeans and wheat since 2006/07 2012/13 reveal large shifts in shipments from wheat toward corn and soybeans.

for the co-op-fixed and corporate fixed models, distributions had means of .01 c/bu. and a standard deviation of .026 c/bu. The third case, co-op-risky, had a mean of .01 c/bu. and a standard deviation of .14 c/bu. This result was derived utilizing fitting weekly observations for secondary market values for freight from 2006 to 2014 (Tradewest Brokerage Co., Various).

The models were simulated 10,000 times, at which time results converged to within stopping criteria. Then, year 1 distributions for freight were stressed, assuming that values were in the top 90% of the assumed distributions.

NDGDA Comments-Proposed licensing changes December 2014

The North Dakota Grain Dealers Association represents over 90% of the licensed grain warehouses in the North Dakota. Organized in 1911, our purpose is to further the interests of the cooperative and independent concerns of North Dakota engaged in the handling, processing and distribution of grain and other like commodities. We have worked closely with the PSC in the past toward the same goal-A healthy industry serving it's customers with honesty and integrity. With that goal in mind we offer the following points regarding the proposed licensing changes.

- The proposed changes would remove the current capacity "bands" and increase the amount of bond required on facilities in the 1st 1-6 years of operation. We understand the reason for proposing more bonding on companies that have been in business a shorter amount of time and don't necessarily see a problem with it, but removing the 25,000 bu. bands could pose a problem for bond agencies and facilities alike as well as the PSC who must process the increases. Any change in capacity will require a new bond regardless of the size of capacity change. We suggest keeping the current "bands" and implementing a percentage increase for companies that fall into the 1-6 year category. Another consequence is joint ventures between two established companies-Will the increased bonding be required for those?
- The proposed rules would require additional bonding for those facilities that have a purchase volume greater than 7 times the storage capacity. Once again we understand the reasoning for additional bonding. Most of those type of facilities are engaged in some type of processing, but we would rather see a measure that addresses processors specifically. This rule could unintentionally penalize elevators that are among the financially strongest in the industry.
- The proposed rules would offer a bond reduction for those facilities willing to implement a conversion policy shorter than the 45 days currently in the law. We don't see this being implemented widely in the industry. Here is an example-An elevator that has a capacity of 1,000,000 would require a $350,000 bond. A 30% reduction (10 day conversion policy) would make that a $245,000 bond. The bond premium saving amounts to less than $800 which would not be enough of an incentive to implement conversion policy. Another factor to consider is who will be doing the checking for compliance and how much time would be involved for such a compliance check.

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Testimony
North Dakota Grain Dealers Association

- The proposed rule changes would increase the amount of the maximum bond from 1.5 million to 2 million. May impact a few elevators. Probably won't be a problem for those that it would impact.
- The proposed rule changes would increase the amount of bond required by roving grain buyers. Don't see a problem with this requirement. May not affect many members.

Closing comments: As stated earlier, NDGDA wants a strong and healthy industry and will support changes that will promote that, but we also believe the system we have in place works. The question we would ask is this: Would any of these changes have prevented any of the insolvencies that have happened in the past 10 years? If not, then why make any of these changes?

U.S. Durum Growers Association
PROMOTING THE PRODUCTION AND MARKETING OF DURUM AND SEMOLINA
P.O. Box 1091 • Bismarck, ND 58502 • (701) 214-3203
office@durumgrowers.com • www.durumgrowers.com

Testimony of Russell Doe
Chairman, US Durum Growers Association
In Support of Proposed Amendments to the Bond Rules
December 15, 2014

Chairman Kalk and Commissioners Christmann and Fedorchak, my name is Russell Doe, and I am here today as a farmer from southwest North Dakota as well as the chairman of the US Durum Growers Association (USDGA). On behalf of the USDGA, I would like to voice support of the proposed amendments to the bond rules.

The purpose of the USDGA is to promote the production and marketing of durum wheat and semolina, and lobby on domestic policy issues that affect the durum producer. Our mission is to increase the profitability of durum production through effective domestic policy development and promotion, and coordinated communication and educational outreach.

Recognizing the increasing value of commodities and volatility of markets, the US Durum Growers Association partnered with the North Dakota Corn Growers Association and the North Dakota Soybean Growers Association to co-fund a study by Dr. William Wilson and Bruce Dahl of the Department of Agribusiness and Applied Economics at North Dakota State University. The purpose of the study was to identify the changes in relevant risks that confront grain and oilseed producers in North Dakota and to assess the adequacy of mechanisms designed to mitigate these risks. The study found that the increase in commodity prices and the increased cost and value of inputs has led to an increase in volatility in recent years. Also, the estimated gross receipts

per farm in 1991 were $100,000, compared to $803,351 in 2012. It is no secret that today's producers are facing much higher risks than ever before.

The US Durum Growers Association is supporting the proposed amendments to the bond rules as it will provide additional protection for durum producers in our nation's number one durum producing state, North Dakota. Based on conversations with local elevators, USDGA understands the proposed changes would not be significantly cost prohibitive for elevators and that the revisions specifically target those facilities with the most liability and vulnerability. In a time when high-priced commodities and volatile markets place extreme risk on producers, our organization recognizes the proposed rules as a step in the right direction toward better protecting grain producers.

We appreciate your time and would stand for any questions you may have.

North Dakota Ethanol Council

December 15, 2014

North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: Proposed Amendments to Grain Warehouse and Grain Buyer Bonds

Dear Commissioners Kalk, Christmann, and Fedorchak:

On behalf of North Dakota's ethanol industry, the North Dakota Ethanol Council (NDEC) would like to express its neutral position on the proposed amendments to the grain warehouse and grain buyer bonds. We appreciate the work the Public Service Commission (PSC) is doing to ensure a balance between protecting North Dakota agriculture producers and providing affordable bonding for the state's ag processors, which are adding value to North Dakota commodities.

We recognize the need for change given recent insolvencies and do not feel the proposed amendments will put a significant financial burden on the state's ethanol plants. However, we also are not confident this solution provides the level of protection needed for producers given the value of today's commodities and volatility of the markets. At the same time, the cost to ensure 100 percent bonding coverage in every scenario may not be cost-effective for businesses and may be a barrier for processors considering locating in the state. As the Commission explores this important topic, we would be happy to participate in consideration of other possible enhancements to improve the outcome in the case of an insolvency.

Please feel free to contact us for additional information or Deana Wiese, executive director, at 701-355-4458 or clearone@btinet.net.

Sincerely,

Jeff Zueger
North Dakota Ethanol Council Chairman
Blue Flint Ethanol
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Neil Crocker
Hankinson Renewable Energy
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North Dakota Ethanol Council

Revised Proposed Rules

(showing changes from original proposed rules)

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 ~~and notice of hearing may~~ must be served ~~separately or together, so long as each is 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 ~~Trade Secret~~ Protected Information
69-02-09-08	References to ~~Trade Secret~~Protected Material at Hearings
69-02-09-09	Protection of ~~Trade Secret~~Protected 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 ~~Trade Secret~~Protected Information
69-02-09-13	Information filed under Sections 69-09-05-12 and 69-09-05-12.1.

69-02-09-01. Application to protect information. Except as provided in sections 69-02-09-13, ~~A~~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;

~~2~~3. 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;

   ~~3~~b). 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;

   ~~5~~d). A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and

   ~~6~~e). 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 commisison. 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 ~~of~~on 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 SECRET~~PROTECTED 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).

Case No. GE-14-763
Licensing - Rulemaking

Language highlighted in yellow is being deleted and language with a blue font is new language.

State of North Dakota
Public Service Commission

Public Service Commission **Case No. GE-14-763**
Licensing
Rulemaking

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:~~

~~Capacity to 100,000 bushels~~	~~$ 50,000~~
~~From 100,001 bushels through 125,000 bushels~~	~~$ 62,500~~
~~From 125,001 bushels through 150,000 bushels~~	~~$ 75,000~~
~~From 150,001 bushels through 175,000 bushels~~	~~$ 87,500~~
~~From 175,001 bushels through 200,000 bushels~~	~~$ 100,000~~
~~From 200,001 bushels through 225,000 bushels~~	~~$ 112,500~~
~~From 225,001 bushels through 250,000 bushels~~	~~$ 125,000~~

~~From 250,001 bushels through 275,000 bushels $ 137,500~~

~~From 275,001 bushels through 300,000 bushels $ 150,000~~

~~From 300,001 bushels through 325,000 bushels $ 162,500~~

~~From 325,001 bushels through 350,000 bushels $ 175,000~~

~~From 350,001 bushels through 375,000 bushels $ 187,500~~

~~From 375,001 bushels through 400,000 bushels $ 200,000~~

~~From 400,001 bushels through 425,000 bushels $ 212,500~~

~~From 425,001 bushels through 450,000 bushels $ 225,000~~

~~From 450,001 bushels through 475,000 bushels $ 237,500~~

~~From 475,001 bushels through 500,000 bushels $ 250,000~~

~~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.

   1. For a licensee with capacity up to five hundred thousand bushels, the required bond is sixty-five cents per bushel with a minimum bond of sixty-five thousand dollars, if licensed less than seven years, and the

required bond is fifty cents per bushel with a minimum bond of fifty thousand dollars, if licensed seven years or more.

1.

	≤6 years	≥7years
Capacity up to 100,000 bushels	$ 65,000	$ 50,000
100,001 - 125,000 bushels	$ 81,250	$ 62,500
125,001 - 150,000 bushels	$ 97,500	$ 75,000
150,001 - 175,000 bushels	$113,750	$ 87,500
175,001 - 200,000 bushels	$130,000	$100,000
200,001 - 225,000 bushels	$146,250	$112,500
225,001 - 250,000 bushels	$162,500	$125,000
250,001 - 275,000 bushels	$178,750	$137,500
275,001 - 300,000 bushels	$195,000	$150,000
300,001 - 325,000 bushels	$211,250	$162,500
325,001 - 350,000 bushels	$227,500	$175,000
350,001 - 375,000 bushels	$243,750	$187,500
375,001 - 400,000 bushels	$260,000	$200,000
400,001 - 425,000 bushels	$276,250	$212,500
425,001 - 450,000 bushels	$292,500	$225,000
450,001 - 475,000 bushels	$308,750	$237,500
475,001 - 500,000 bushels	$325,000	$250,000

2. If a licensee's total capacity is more than five hundred thousand bushels, additional bond is required. The additional required bond is twenty-six cents per bushel for each bushel 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 twenty cents per bushel for each bushel 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 twenty cents per bushel for each bushel 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