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Testimony of Jim Gray, Division Director
North Dakota Department of Agriculture
Administrative Rules Committee
Prairie Room
March 13, 2013

Chairman Koppelman and members of the Administrative Rules Committee, I am Jim Gray, Director of the Pesticide and Fertilizer Division in the North Dakota Department of Agriculture.

I am here today to discuss the proposed changes in Title 7 (Agriculture Commissioner) of the Administrative Code as they pertain to dairy, meat, and anhydrous ammonia inspection rules. The Legislative Council provided a list of questions in an email to the Department on March 5. Answers to those questions are provided with this testimony.

The proposed rule changes to the dairy rules under Chapter 7-03.2-14 are to address a change in vehicle requirements. The rule changes the required temperature at which dairy products must be transported from forty-one degrees to forty-five degrees.

The Department has proposed changes to three chapters of the anhydrous ammonia rules under Article 7-12. Legislation in the 62nd Legislative Assembly transferred inspection authority for anhydrous ammonia facilities from the Insurance Commissioner to the Agriculture Commissioner. Therefore, Chapter 7-12-01 of the Administrative Code was amended to remove any reference to the Insurance Commissioner or the chief boiler inspector and replace those references with the Agriculture Commissioner. The 62nd Legislative Assembly also enacted a new chapter of the Century Code to give the Agriculture Commissioner authority to inspect risk management plans of agricultural ammonia facilities under the Clean Air Act. Chapter 7-12-03

was created so that the Department can adopt those federal regulations by reference. Last, the Department is proposing to repeal Chapter 7-12-02. These rules established critical methamphetamine use zones and required locks on anhydrous ammonia nurse tanks in Williams and McKenzie Counties. This Chapter is being repealed at the suggestion of the Attorney General's Office.

The meat and poultry inspection rules in Chapter 7-13-01 are being amended to adopt federal meat inspection regulations. It is a federal requirement for all state programs to be equal to federal requirements. The proposed rules adopt the federal regulations as of December 1, 2012.

Chairman Koppelman and members of the committee, I thank you for this opportunity to discuss recent administrative rule changes by the Department. Again, I have provided written answers to the specific questions posed in John Walstad's email to us on March 5. I would be happy to answer any questions you may have.

ADMINISTRATIVE RULES COMMITTEE MEETING
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With respect to the rules published in the April 2013 supplement, the committee is interested in and would like you to testify before the committee concerning the following matters:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

The rules for anhydrous ammonia did result from statutory changes made during the 62nd Legislative Assembly (HB 1321). The rules for dairy and meat inspection did not result from statutory changes.

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

Chapter 7-12-03 would give the Department of Agriculture the authority to regulate anhydrous ammonia facilities under the Clean Air Act Section 112(r), for risk management requirements of agricultural ammonia facilities. Dairy rules were changed to comply with interstate commerce provisions of the PMO. The meat and poultry inspection rules are required to be equal to federal requirements.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

As required, the Department sent the abbreviated notice to each official county newspaper at least 24 days before the public hearing on December 4, 2012.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

There were no complaints or objections to the proposed rules, but there were a few comments received by the Department. There was one comment on the meat inspection and poultry rules by FSIS which had to do with some additional regulation that needed to be included. There were several comments received for the anhydrous ammonia rules which had to do with minor editorial changes. There is an enclosed document in the packet which answers the specific comments that were received within the open comment period.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The cost of publication for the notice was \$2,024.52.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

Anhydrous Ammonia- Article 7-12-01, which spells out the specific requirements for anhydrous ammonia updated the national standards that must be followed (e.g. piping), and replaced all references of the Insurance Commissioner or Chief Boiler Inspector with Agriculture Commissioner in response to HB 1321. Article 7-12-02, nurse tank lock program, was repealed at the advice of the Attorney General's Office. Article 7-12-03,

was added to meet federal requirements of the Clean Air Act Section 112(r) as part of the program delegation packet which is currently under review by the EPA.

Dairy- the dairy rules changes the vehicle requirements, which will increase the temperature required to transport dairy products to forty-five degrees from forty-one degrees.

Meat and Poultry Inspection- the rules will adopt the federal meat inspection rules as part of the North Dakota Century Code. The proposed rules adopt the current regulations as of December 1, 2012.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

No regulatory analysis was issued by the Department of Agriculture.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

No regulatory analysis or economic impact statement of impact on small entities was done.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

The proposed rules changes for anhydrous ammonia will have a fiscal effect on state revenues for the State biennia 2013-2015 and 2015-2017. There will be an increase of \$8,500 to the General Fund, which was calculated by taking the number of facilities at a 10% inspection rate annually with a 25% violation rate at an average of \$500 to be paid as a civil penalty. There is no fiscal effect on Other Funds for 2013-2015 and 2015-2017.

10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

No takings assessment was prepared by the Department.

11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?

These rules were not adopted as emergency rules.

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MEMO

TO: File

FROM: Spencer Wagner, Fertilizer Specialist

DATE: January 28, 2013

RE: Fiscal Note

The proposed rules changes to N.D.A.C. Article 7-12 for anhydrous ammonia regulations have been identified to have a state fiscal effect. The fiscal effects to the Department of Agriculture appropriations compared to the appropriations anticipated under current law are described in this narrative.

There will be an increase of \$8,500 to the General Fund for the State biennia 2013-2015 and 2015-2017. This figure was calculated by taking the number of facilities at a ten percent inspection rate annually with a twenty-five percent violation rate at an average penalty of \$500 to be paid as a civil penalty.

This fiscal note is in response to the authority given to the Agriculture Commissioner during the 2011 Legislative Assembly in HB 1321, which gave civil penalty authority of up to \$10,000 for violations of the chapter.

There is no fiscal effect on Other Funds for 2013-2015 and 2015-2017.