

ADMINISTRATIVE RULES COMMITTEE**March 9, 2010****2:40 p.m. – Roughrider Room****North Dakota Department of Transportation
Linda Butts, Deputy Director for Driver and Vehicle Services**

Good afternoon, Mr. Chairman and members of the committee. I'm Linda Butts, Deputy Director for Driver and Vehicle Services at the North Dakota Department of Transportation (NDDOT).

I am here to provide testimony regarding our administrative rules and any penalties we are able to impose under those rules. I will also address the question of whether the department has adopted and imposed any standards, from other than state or federal law, upon individuals or entities that we regulate.

The first question we were asked to answer was:

- 1. Has your agency imposed penalties against individuals or organizations by applying provisions in the ND Administrative Code? If so, has the action been by court proceedings or by administrative agency adjudicative proceedings?**

Answer: We have authority in our administrative rules (Article 37-10) to impose some penalties; however, the department has never actually had to impose any on anyone.

The second question we were asked to answer was:

- 2. Has the validity of rules adopted by your agency imposing penalties been challenged?**

Answer: No.

The third question we were asked to answer was:

- 3. Do you believe it would be useful to transfer penalty provisions from administrative rules to statutory provisions? If so, please identify any rules provisions imposing penalties which you believe should be transferred to statutory provisions.**

Answer: We have not had any negative consequences concerning our administrative rule penalty provisions. All of our rules have been through the formal rulemaking process, including review and approval by the Attorney General's office. Our rules (Article 37-10) also follow the specific provisions in the federal regulations which also went through the federal regulation enactment process. Consequently, the public and those affected by these rules had two opportunities for involvement and comment. Therefore, we are relatively comfortable with these rules. We look forward to any recommendations this committee makes regarding clarifying the department's authority.

We would like to clarify some information that was provided to the committee via a background memorandum prepared by Legislative Council staff in September of 2009. That memo made reference to one of our administrative rules (NDAC Section 37-10-02-02) that contains a civil penalty of up to \$10,000 that the department may impose upon an employer who is convicted of knowingly allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle in violation of a railroad-highway grade crossing under North Dakota law. Our administrative rule cites to a particular section of the federal Code of Regulations (49 CFR 383.37(d)). The memo stated that the federal provision did not make any reference to a civil penalty.

However, further review of the federal Code of Regulations shows that the civil penalty found in the administrative rule comes from another federal regulation that was not specifically cited in our rule. 49 CFR 383.53(c) specifically requires a civil penalty of not more than \$10,000 be applied to an employer who is convicted of a violation of section 383.37(d) (the section of federal law our rule is based on). Thus, federal law requires this type of penalty. Our rule is intended to enforce federal law. The department didn't advance this penalty on its own.

In addition, we enacted this administrative rule per our rule making authority under NDCC Section 39-06.2-14 based on a federal Commercial Drivers License (CDL) review that identified the need for such a rule. Because 39-06.2-14 does not specifically provide the department with authority governing imposition of civil penalties, we are prepared to advance a clarification to this section of law during the next legislative session to make it clear that we can impose this civil penalty.

Finally, the last question we were asked to answer was:

- 4. Does your agency require regulated individuals or entities to comply with any standards from other than state or federal law or rules? If so, please explain in detail and describe the source of the standards applied, and explain whether you think these standards should be incorporated in North Dakota statutory or rules provisions.**

Answer: To the best of our knowledge, we do not require regulated individuals or entities to comply with any standards from other than state or federal law or rules.

Thank you for allowing me the opportunity to testify before your committee regarding this matter. I would be happy to answer any questions you may have.