

STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Promulgation	)	
of Proposed Rules Regarding:	)	
Licensing of Administrators, Insurance	)	TAKINGS ASSESSMENT
Continuing Education, Accounting	)	CONCERNING
Practices and Procedures, Custodial	)	PROPOSED RULES
Agreements Requirements, Surplus	)	
Lines Insurance, Life and Health	)	FILE NO. RU-11-320
Insurance Guaranty Association,	)	
Boilers.	)	

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than 50 percent and is thus not a “regulatory taking” as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.

2. The purpose of these proposed rules is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.

3. The reasons these proposed rules are necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.

4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.

5. There is no fund identified in the agency’s current appropriation as a source of payment for any compensation that may be ordered.

6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

DATED this 3 day of November, 2011.

A handwritten signature in black ink, appearing to read "Melissa Hauer", written over a horizontal line.

Melissa Hauer
Special Assistant Attorney General
General Counsel
N.D. Insurance Department
600 East Boulevard Avenue, Dept. 401
Bismarck, ND 58505
(701) 328-2440