

**STATE OF NORTH DAKOTA**  
**BEFORE THE INSURANCE COMMISSIONER**

<b>In the Matter of the Promulgation of Proposed Rules Regarding Boilers.</b>	) ) ) ) )	<b>TAKINGS ASSESSMENT CONCERNING PROPOSED RULES  FILE NO. RU-13-411</b>
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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 to adopt the latest American Society of Mechanical Engineers (ASME) Code and National Board Inspection Code, to correct incorrect wording in the current rule, to add “Repairs and Alterations” to shop inspections and shop reviews, to allow backflow preventers approved by the State Plumbing Board instead of the State Plumbing Code, to change to 4 from 4.5 for the factor of safety for nonstandard boilers, and to update the ASME Code and National Board Inspection Code to the 2013 edition for unfired pressure vessels.

3. The reasons these proposed rules are necessary to substantially advance that purpose is because the rules would allow manufacturer and repair firms to use the latest codes as opposed to outdated codes and to make other common sense amendments to the rules. Without the proposed rules, a hardship on the manufacturers and repair firms would result and our current administrative rules on boilers would often go against common sense. Ultimately, without the proposed rules North Dakota would have a less than relevant set of rules that would be difficult to enforce. North Dakota might lose its regulatory effectiveness in the long run along with the trust and respect of those we deal with on code issues.

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 18<sup>th</sup> day of July, 2013.

  
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