

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-16-775

**Statements on Regulatory Analysis, Small Entity Analysis
and Takings Assessment**

Aircraft Detection Lighting Systems - Section 69-06-08-01:

The Commission is proposing to amend North Dakota Administrative Code section 69-06-08-01 to add the impact on light sensitive land uses to the selection criteria, which must be at an acceptable minimum. Additionally the Commission is proposing to add a new policy criteria giving preference to wind energy projects that commit to installing aircraft detection and lighting systems subject to Federal Aviation Administration approval.

National Electrical Safety Code - Section 69-09-02-35

The Commission is proposing to amend North Dakota Administrative Code section 69-09-02-35 to adopt by reference the 2017 update to the National Electric Safety Code.

Statement on 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.

Aircraft Detection Lighting Systems - Section 69-06-08-01:

The proposed rule codifies an existing siting practice of considering the impact of flashing lights on the night sky and giving preference towards aircraft detection lighting systems that operate only when an aircraft is in the vicinity. Therefore, the proposed amendment is not expected to have an impact of \$50,000 on the regulated community.

National Electrical Safety Code - Section 69-09-02-35

Requiring compliance with the National Electrical Safety Code is not a new requirement. This rule simply updates that requirement to the current version of the code. Also, code compliance is required by other relevant regulatory authorities. Electric transmission and distribution facilities are constructed in accordance with current codes as a matter of sound engineering and construction practice regardless whether the Commission's rules reflect the latest code requirement. Therefore, the proposed amendment is not expected to have an impact of \$50,000 on the regulated community.

Statement on 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.

These proposed amendments do not affect small entities so there is no need to provide less-stringent requirements or exemptions for small entities.

Statement on 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:

1. . . . The agency's assessment must:
 - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
 - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
 - e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
 - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Given that the proposed rules do not limit the use of private real property, a written assessment of the constitutional takings is not required.