

TESTIMONY OF
KYLE C. WANNER
EXECUTIVE DIRECTOR, NORTH DAKOTA AERONAUTICS COMMISSION
BEFORE THE
LEGISLATIVE RULES COMMITTEE
MARCH 14th, 2016

Chairman Devlin and members of the committee,

My name is Kyle Wanner and as the Director of the North Dakota Aeronautics Commission, it is my pleasure to be here with you today to provide testimony for the agency's proposed administrative laws.

These rule changes have resulted from a desire of the North Dakota Aeronautics Commission to update and modernize obsolete language in multiple sections of the administrative code. The rules were not a result from statutory changes made by the legislative assembly, but rather are intended to enhance safety and better serve the aviation community and the residents of North Dakota. I feel that it is also important to note that the North Dakota Aeronautics Commission was involved with every step of the process and voted unanimously to recommend these changes for your approval.

The only administrative rule that we are seeking changes to that relates to federal regulation is Chapter 6-02-03, Airport Runway Approach Hazards. The prior versions of these regulations had not kept up with federal requirements and was inconsistent with current federal regulations for airport runway approach hazards. Airport authorities currently have difficulty complying with the two conflicting regulatory schemes. The new language approved by the Aeronautics Commission will fix this problem and will help to better protect the approach and departure surfaces of public use airports in North Dakota.

The North Dakota Aeronautics Commission followed all required rulemaking procedures in adopting the rules. The agency provided an advertisement in all county newspapers throughout the state and provided the opportunity for the public to comment on the rules and to attend a public hearing. The North Dakota Aviation Council is an organization that represents all aviation interests in the state and has presented no concerns regarding these changes. No individuals attended the public hearing and no written or oral concerns have been made regarding these changes. The sole cost of developing and adopting the rules stemmed from the newspaper advertising costs from the North Dakota Newspaper Association which came out to be \$1,866.

No regulatory analysis was required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis. An economic impact statement on small entities is included as an attachment to this testimony.

A fiscal note on the proposed rules was also not required because these rules are anticipated to have no fiscal effect. No takings assessment was required because the rule does not limit the uses of real property. These rules do not implement legislation from the most recent legislative session and these are not emergency rules.

An explanation of the subject matter regarding the proposed rule changes will now be provided:

Article 6-01 General Administration

This article which describes the general administration of the Aeronautics Commission is being updated with the correct contact information for inquires. An additional change to this article is removing section i, since the Aeronautics Commission no longer registers pilots within the state.

Article 6-02-01 Practice and Procedure

This article currently uses antiquated language to describe grievances and appeals processes. The updated language is easier to understand and provides a streamlined process for individuals to follow.

Article 6-02-02 Aerial Applicators

This article updated obsolete language regarding aerial applicator operations throughout the state. The language is updated to reflect modern practices of aerial applicators and to ensure the safe and efficient operations of those businesses. The Aeronautics Commission also worked with the North Dakota Aerial Applicator Association in modernizing the language.

Article 6-02-03 Airport Runway Approach Hazards

This article relates to federal "Part 77 surfaces" that are currently in place and protect the airspace of public use airports. The updated language ensures that the state regulations are consistent with the federal regulations to provide consistency and to best protect the approach and departure surfaces of public-use airports.

Article 6-02-04**Intrastate Air Carriers**

The North Dakota Aeronautics Commission no longer approves the operations of intrastate air carriers and voted to repeal this antiquated section.

Article 6-02-05**Airport Grants**

This new article is intended to provide clarity on the airport infrastructure grants process. The Aeronautics Commission desires to set out easy-to-understand guidance on how the grant process works. Century code 2-05-06.5 provides the authority of the commission to allocate airport grants and also states that the commission will establish guidelines for this administrative function.

The North Dakota Aeronautics Commission respectfully requests your consideration and approval of these administrative law changes.

N.D.C.C. 28-32-08.1 requires an agency to prepare a regulatory analysis and economic impact statement regarding the impact the proposed rules would have on a small entity. Under this law, a small entity is:

- 1) a business entity, including its affiliates, which is independently owned and operated and employs fewer than twenty-five full-time employees or has gross annual sales of less than \$2,500,000,
- 2) any not-for-profit enterprise that is independently owned and operated and is not dominant in its field, or
- 3) a political subdivision with a population of less than five thousand.

The Commission believes the proposed regulations will have no, or minimal, adverse impact on small entities. However, the Commission's small entity statements are below.

Small Entity Economic Impact Statement

A. Small entities that may be subject to the proposed rule.

The small entities that may possibly be subject to these proposed rules are small aerial applicator businesses and small political subdivisions that operate airports.

B. The administrative or other costs required for small entities to comply with the proposed rule.

The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The proposed regulations regarding the procedure for complaints and appeals are simplified and inform the public that the Aeronautics Commission follows the Administrative Procedures Act. The airport runway regulations track the federal regulations on the same subject, thereby preventing airports from having to comply with two sets of disparate regulations. The aerial applicator regulations update regulatory language to be consistent with current language in the industry and are expected to impact aerial applicators minimally.

C. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule.

It is very likely that there will be no cost to private persons and consumers who are affected by the proposed rules. There may be reduced costs to the public by streamlining airport runway requirements and eliminating state regulations that potentially conflict with federal regulations.

D. The probable effect of the proposed rule on state revenues.

The rules are not reasonably expected to have an effect on state revenues.

- E. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose.

The Commission considered the administrative and financial impact of achieving the purpose of the proposed regulations. The proposed regulations are not expected to have an intrusive or costly impact on the aeronautics industry, consumers or state revenues. It is likely they will make compliance easier and possibly less costly.

Small Entity Regulatory Analysis

- A. Establishment of less stringent compliance or reporting requirements for small entities

Less stringent requirements would not be appropriate for multiple reasons. The proposed regulations track current threshold requirements in federal law, are necessary for the safety of the public and aeronautics industry employees or are necessary for the efficient operation of the Commission.

- B. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities

The proposed regulations do not contain such deadlines except for those that are found in the state Administrative Agencies Practice Act, state requirements for aircraft registration or federal law. Less stringent requirements would be inappropriate.

- C. Consolidation or simplification of compliance or reporting requirements for small entities.

To the extent possible, compliance or reporting requirements for small entities were simplified, made less onerous or made more streamlined by the proposed regulations.

- D. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule

Small entities were not given different design or operational standards to comply with than large entities.

- E. Exemption of small entities from all or any part of the requirements contained in the proposed rule

Small entities were not given different standards to comply with than large entities.