

STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation)
 of Proposed Rules Regarding:)
 Licensing of Insurance Producers,)
 Insurance Continuing Education,)
 Regulation of and Standards for)
 Companies Deemed to be in)
 Hazardous Financial Condition,)
 Accounting Practices and Procedures,)
 Property and Casualty Actuarial)
 Opinion, Annual Audited Financial)
 Reports, Use of Clearing Corporations)
 and Federal Reserve Book-Entry)
 System by Insurance Companies,)
 Variable Life Insurance, Viatical)
 Settlement Advertising, Risk Retention)
 and Purchasing Groups, Group Health)
 Insurance Purchasing Cooperatives,)
 Boilers, and Life Settlements)

**REGULATORY ANALYSIS, SMALL
 ENTITY ECONOMIC IMPACT
 STATEMENT, AND SMALL ENTITY
 REGULATORY ANALYSIS**

FILE NO. RU-09-251

I. REGULATORY ANALYSIS

The North Dakota Insurance Department issues this regulatory analysis as required by N.D.C.C. § 28-32-08. An agency must issue a regulatory analysis if a written request for an analysis is filed by the Governor or a member of the Legislative Assembly or a proposed rule being adopted by the agency is expected to have an impact on the regulated community in excess of \$50,000. *Id.*

Some of the changes involved in this rulemaking are a result of law changes made by the 61st Legislative Assembly during the 2009 legislative session so the impact on the regulated community or a small entity is a result of the law change and not this rulemaking. These rule changes, however, are collectively expected to have an impact on the regulated community in excess of \$50,000.

A. The Classes of Persons Who Probably Will Be Affected by the Proposed Rules

For N.D. Admin. Code Chapters 45-02-02 - Licensing of insurance producers, surplus lines insurance producers, and consultants and 45-02-04 - insurance continuing

education, the classes of persons who will probably be affected by the proposed rules are insurance producers, surplus lines insurance producers, consultants, insurance continuing education course providers, and insurance companies. Each of these classes potentially bears the burden and the benefit of these proposed rules.

For N.D. Admin. Code Chapters 45-03-13 - Regulation of and standards for companies deemed to be in hazardous financial condition, 45-03-15 - Accounting practices and procedures, 45-03-20 - Model rule requiring annual audited financial reports, and 45-03-23 - Regulation on the use of clearing corporations and federal reserve book-entry system by insurance companies, the classes of persons who will probably be affected by the proposed rules are insurance companies. This group will potentially bear the burden as well as the benefit of the proposed rules.

For N.D. Admin. Code Chapter 45-03-19.1 - Property and casualty actuarial opinion, the classes of persons who will probably be affected by the proposed rules are property and casualty insurance companies doing business in North Dakota. These insurance companies potentially bear the burden and the benefit of these proposed rules.

For N.D. Admin. Code Chapter 45-04-04 - Variable life insurance, the class of persons who will probably be affected are insurance companies that issue life insurance policies and individuals or entities who purchase life insurance policies. The group will potentially bear the burden as well as the benefit of the proposed rules.

For N.D. Admin. Code Chapter 45-05-05 - Risk retention and purchasing groups, the classes of persons who will probably be affected by the proposed rules are insurance producers acting or holding themselves out to be a risk retention group representative or a purchasing group representative. Each of these classes potentially bears the burden and the benefit of these proposed rules.

For N.D. Admin. Code Chapter 45-06-09 - Group health insurance purchasing cooperatives, the classes of persons who will probably be affected by the proposed rule are group health insurance purchasing cooperatives who wish to self-insure. This class potentially bears the burden as well as the benefit of the proposed rule.

For N.D. Admin. Code Article 45-12 - North Dakota boiler rules, the classes of persons who will probably be affected by the proposed rules are individuals who operate boilers and the individuals who inspect boilers. Each of these classes potentially bears the burden and receives the benefit of these proposed rules.

For N.D. Admin. Code Article 45-16 - Life settlements, the classes of persons who will probably be affected by the proposed rules are applicants for a provider's or broker's license, providers, brokers, insurance producers, and owners of life insurance policies. Each of these classes potentially bears the burden and the benefit of these proposed rules.

B. A Description of the Probable Impact Including the Economic Impact of the Proposed Rules

For N.D. Admin. Code Chapter 45-02-02 - Licensing of insurance producers, surplus lines insurance producers, and consultants, the proposed rules' impact on the regulated community will be that all producers will file a biennial continuation and all will pay the biennial continuation fee of \$25. The rule is adopted to comply with changes to N.D.C.C. Chapter 26.1-26 by 2009 House Bill No. 1192. The probable economic impact is that some individual producers who formerly did not have to renew their licenses will be required as of January 1, 2010, to file a biennial continuation and pay the fee.

For N.D. Admin. Code Chapter 45-02-04 - Insurance continuing education, the rule is adopted to comply with changes to the North Dakota Century Code by 2009 House Bill No. 1192. The probable economic impact on producers is expected to be minimal, given that the timing of their continuing education report will change but not the fact of their reporting.

For N.D. Admin. Code Chapters 45-03-13 - Regulation of and standards for companies deemed to be in hazardous financial condition, 45-03-15 - Accounting practices and procedures, 45-03-20 - Model rule requiring annual audited financial reports, the proposed rules' impact, including economic impact, on the regulated community will be that insurers might be deemed to be hazardous to its policyholders, creditors or the general public and may have to take corrective action to remedy that situation which could cause the company to incur some expenses in order to comply. Insurers may incur some expense if they are not following the required accounting practices and procedures or filing appropriate annual audited financial reports. The proposed rules are not materially different from existing regulatory requirements and will impose no significant additional costs on insurers.

For N.D. Admin. Code Chapter 45-03-19.1 - Property and casualty actuarial opinion, the rules are expected to impact property and casualty insurance companies through the new requirement of filing statement of actuarial opinion and actuarial opinion summary. However, the economic impact is expected to be minimal, since companies have been preparing and filing these documents already for some time. The economic impact of preparing an actuarial report and workpapers is likewise expected to be minimal since companies have been preparing these documents already for some time. The economic impact of providing an actuarial report and workpapers upon request to the Commissioner is expected to be minimal.

For N.D. Admin. Code Chapter 45-03-23 - Regulation on the use of clearing corporations and federal reserve book-entry system by insurance companies, the proposed rules' safeguards and reporting requirements for custodial arrangements are not materially different from existing regulatory requirements and will impose no significant additional costs on insurers or custodians. Department costs in conducting financial examinations associated with the review of custodial arrangements and

verification of insurer securities will not increase as a result of this proposed rulemaking. While this proposed rulemaking has no immediate fiscal impact on the general public, the general public will benefit to the extent that adoption of the proposed rules enhance regulatory safeguards against the loss or theft of securities held by insurers to meet obligations under insurance policies.

For N.D. Admin. Code Chapter 45-04-04 - Variable life insurance, the probable impact, including economic impact, of the proposed rule, is expected to be minimal on the insurers that issue variable life insurance policies. There may be a slight cost to insurers for including the required provisions for policy loans and to establish one or more separate accounts, and ensuring that all persons with access to the cash, securities, or other assets of the separate account must be under bond in the amount of not less than a value indexed to the fidelity bonding recommendations of the NAIC in effect in 2009 regarding personnel handling general account assets.

For N.D. Admin. Code Chapter 45-05-05 - Risk retention and purchasing groups, the probable impact and economic impact are expected to be minimal, given that the rule amends terminology and removes obsolete references.

For N.D. Admin. Code Chapter 45-06-09 - Group health insurance purchasing cooperatives, the probable impact, including economic impact, is expected to be nonexistent or minimal because the rule is merely being updated to conform to statute. The statute allows group health insurance purchasing cooperatives to self-insure.

For N.D. Admin. Code Article 45-12 - North Dakota boiler rules, the probable impact, including economic impact, is expected to be minimal due to the fact that the proposed rules merely update the applicable version of the National Board of Boiler and Pressure Vessel Inspectors Inspection Code and specify how reporting to the state will be made. The proposed updated applicable code editions and reporting requirements are not materially different from existing regulatory requirements and will impose no significant additional costs on boiler operators or inspectors.

For N.D. Admin. Code Article 45-16 - Life settlements, the rule implements 2009 House Bill No. 1297, codified at N.D.C.C. Chapter 26.1-33.4. The probable impact of proposed Chapter 45-16-01 - Life settlement licenses is virtually nil for providers because the license fees remain the same; reduced economic impact for brokers regarding license fees because broker license renewal fees will decrease; virtually nil for life insurance producers regarding the initial license because the fee remains the same; and some additional economic cost to brokers due to the new requirement of obtaining 15 hours of training every two years. The current cost to brokers who may already engage in training is not reported and, therefore, is not known. The probable impact of proposed Chapter 45-16-02 - Life settlement advertising is expected to be minimal because the substantive provisions regarding what an advertisement may and may not do remain virtually unchanged.

C. The Probable Costs to the Agency of Implementation and Enforcement of the Proposed Rule and Any Anticipated Effect on State Revenues

For N.D. Admin. Code Chapter 45-02-02 - Licensing of insurance producers, surplus lines insurance producers, and consultants, the probable cost to the agency of implementation and enforcement of these rules is expected to be of minimal impact on the Department's operations or expenditures. The anticipated effect on state revenues is estimated to be decreased revenue in the 2009-2011 biennium, followed by increased revenue in the 2011-2013 biennium, due to a transition period. These rules implement 2009 House Bill No. 1192, which changed the biennial renewal date for insurance producer licenses to be based on the producer's birth month; brings holders of limited lines licenses into the population of persons who must file a biennial license renewal and pay the fee; and authorizes a transition period. During the transition period, revenues are expected to decrease an estimated \$49,579 for the 2009-2011 biennium. The transition period will be complete by the 2011-2013 biennium at which time revenues are expected to be \$102,750 higher than the 2007-2009 biennium.

For N.D. Admin. Code Chapter 45-02-04 - Insurance continuing education, the probable cost to the agency of implementation and enforcement is expected to be of minimal impact on the Department's operations or expenditures over the next two years. There will be little, if any, effect on state revenues from the proposed rules

For N.D. Admin. Code Chapters 45-03-13 - Regulation of and standards for companies deemed to be in hazardous financial condition, 45-03-15 - Accounting practices and procedures, and 45-03-20 - Model rule requiring annual audited financial reports, the probable costs to the agency of the implementation and enforcement of the proposed rules is expected to nonexistent or minimal because the changes are merely to amend existing rules. The anticipated effect on state revenues is expected to be nonexistent.

For N.D. Admin. Code Chapter 45-03-19.1 - Property and casualty actuarial opinion, the probable cost to the agency of implementation and enforcement is expected to be of minimal impact on the Department's operations or expenditures over the next two years. There will be little, if any, effect on state revenues from the proposed rules.

For N.D. Admin. Code Chapter 45-03-23 - Regulation on the use of clearing corporations and federal reserve book-entry system by insurance companies, the probable cost to the agency of implementation and enforcement is expected to be nonexistent or minimal. Department costs in conducting financial examinations associated with the review of custodial arrangements and verification of insurer securities will not increase as a result of this proposed rulemaking. There will be little, if any, effect on state revenues from the proposed rules.

For N.D. Admin. Code Chapter 45-04-04 - Variable life insurance, the probable cost to the agency of implementation and enforcement is expected to be of minimal

impact on the Department's operations or expenditures. The Department currently reviews all insurers' policy forms and will continue to do so under the proposed rule. There will be little, if any, effect on state revenues from the proposed rules

For N.D. Admin. Code Chapter 45-05-05 - Risk retention and purchasing groups, the probable cost to the agency of implementation and enforcement is expected to be of minimal impact on the Department's operations or expenditures over the next two years. There will be little, if any, effect on state revenues from the proposed rules.

For N.D. Admin. Code Chapter 45-06-09 - Group health insurance purchasing cooperatives, the probable cost to the agency of implementation and enforcement is expected to be of minimal impact on the Department's operations or expenditures. There will be little, if any, effect on state revenues from the proposed rules.

For N.D. Admin. Code Article 45-12 - North Dakota boiler rules, the probable cost to the agency of implementation and enforcement is expected to be of minimal impact on the Department's operations or expenditures. There will be little, if any, effect on state revenues from the proposed rules.

For N.D. Admin. Code Article 45-16 - Life settlements, the probable cost to the agency of implementation and enforcement is expected to be of minimal impact on the Department's operations or expenditures over the next two years. There will be little, if any, effect on state revenues from the proposed rules, as the number of licensees involved is small.

D. A Description of Any Alternative Methods for Achieving the Purpose of the Proposed Rules That Were Seriously Considered by the Agency and the Reasons Why the Methods Were Rejected in Favor of the Proposed Rules

For N.D. Admin. Code Chapter 45-02-02 - Licensing of insurance producers, surplus lines insurance producers, and consultants, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, much of the proposed rule content implements new statutory requirements, and most of the remainder is a reorganization rather than new content. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Chapter 45-02-04 - Insurance continuing education, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, most of the proposed rule content implements new statutory requirements or repeals obsolete content. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Chapters 45-03-13 - Regulation of and standards for companies deemed to be in hazardous financial condition, 45-03-15 - Accounting

practices and procedures, and 45-03-20 - Model rule requiring annual audited financial reports, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, much of the proposed rule content implements new model regulation changes. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Chapter 45-03-19.1 - Property and casualty actuarial opinion, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. The proposed rules codify current practice that is familiar to the regulated community. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Chapter 45-03-23 - Regulation on the use of clearing corporations and federal reserve book-entry system by insurance companies, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, much of the proposed rule content implements new model regulation language which is required for accreditation by the National Association of Insurance Commissioners (NAIC). The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Chapter 45-04-04 - Variable life insurance, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, the rule is being proposed merely to fill in blanks that were inadvertently left in the current version of the rule. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Chapter 45-05-05 - Risk retention and purchasing groups, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. The proposed rules remove obsolete references and align terminology referring to insurance producers with current statutes. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Chapter 45-06-09 - Group health insurance purchasing cooperatives, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, the proposed rule implements a statutory requirement. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Article 45-12 - North Dakota boiler rules, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, much of the proposed rule content implements merely updated versions of codes that deal with boiler operations and inspections. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

For N.D. Admin. Code Article 45-16 - Life settlements, the Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Proposed Chapter 45-16-01 - Life settlement licenses implements new statutory requirements. Proposed Chapter 45-16-02 - Life settlement advertising maintains existing substantive requirements, while aligning the terminology with the new statute on life settlements. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

II. SMALL ENTITY ANALYSES

N.D.C.C. § 28-32-08.1 requires that an agency prepare a regulatory analysis and an economic impact statement of the impact of the rule changes on a small entity. "Small entity" is defined by state law to include small businesses, small organizations, and small political subdivisions. *Id.* "Small business" is defined to mean a business entity, including its affiliates, which is independently owned and operated and employs fewer than 25 full-time employees; or has gross annual sales of less than \$2,500,000. *Id.* "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. *Id.* "Small political subdivision" means a political subdivision with a population of less than 5,000. *Id.*

A. Small Entity Economic Impact Statement

1. Small entities subject to the proposed rule

The small entities that may possibly be subject to these proposed rules are insurance producers, insurance companies, risk retention groups, purchasing groups, life settlement providers, and life settlement brokers that meet the statutory definition of "small entity".

2. Administrative and other costs required for compliance with the proposed rule

The administrative and other costs required for compliance with the proposed rules are expected to be minimal. For N.D. Admin. Code Chapters 45-02-02 - Licensing of insurance producers, surplus lines insurance producers, and consultants, 45-02-04 - Insurance continuing education, 45-04-04 - Variable life insurance, 45-06-09 - Group health insurance purchasing cooperatives, and Article 45-16 - Life settlements, the rules implement statutory changes. For proposed N.D. Admin. Code Chapters 45-03-13 -

Regulation of and standards for companies deemed to be in hazardous financial condition, 45-03-15 - Accounting practices and procedures, 45-03-19.1 - Property and casualty actuarial opinion, 45-03-20 - Annual audited financial reports, 45-03-23 - Regulation on the use of clearing corporations and federal reserve book-entry system by insurance companies, the rules codify current practice already followed by the regulated community so there is no new administrative cost. For N.D. Admin. Code Chapter 45-05-05 - Risk retention and purchasing groups, the rules update terminology and remove obsolete references so there is no new administrative cost. For N.D. Admin. Code Article 45-12 - North Dakota boiler rules, the rules update the boiler inspection codes already being used so there is expected to be minimal administrative costs for compliance with the proposed rule.

3. Probable cost and benefit to private persons and consumers who are affected by the proposed rules

It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to insurance producers, insurance companies, risk retention groups, purchasing groups, and other business entities; any cost to private persons and consumers would be indirect and not susceptible of measurement. Many of the proposed rules implement statutory changes outside the discretion of the Department to consider cost and benefit. The probable benefits to private persons and consumers include furthering consumer protection by improved licensing procedures for insurance producers, and codifying property and casualty company actuarial opinion statements and supporting documents.

4. Probable effect of the proposed rule on state revenues

For N.D. Admin. Code Chapter 45-02-02 - Licensing of insurance producers, surplus lines insurance producers, and consultants, the anticipated effect on state revenues is estimated to be decreased revenue estimated at \$49,579 in the 2009-2011 biennium, followed by increased revenue estimated at \$102,750 in the 2011-2013 biennium, due to a transition period. There will be little, if any, effect on state revenues from the proposed rules for N.D. Admin. Code Chapters 45-02-04 - Insurance continuing education, 45-06-09 - Group health insurance purchasing cooperatives, and Article 45-16 - Life settlements, because the rules implement statutory changes. For proposed N.D. Admin. Code Chapters 45-03-13 - Regulation of and standards for companies deemed to be in hazardous financial condition, 45-03-15 - Accounting practices and procedures, 45-03-19.1 - Property and casualty actuarial opinion, 45-03-20 - Annual audited financial reports, 45-03-23 - Regulation on the use of clearing corporations and federal reserve book-entry system by insurance companies, 45-03-19.1 - Property and casualty actuarial opinion, 45-04-04 - Variable life insurance, 45-05-05 - Risk retention and purchasing groups, and Article 45-12 - North Dakota boiler rules, the probable effect on state revenues is expected to be nonexistence or minimal. For N.D. Admin. Code Article 45-16 - Life settlements, there will be little, if any, effect on state revenues from the proposed rules, as the number of licensees involved is small.

5. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule

The Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Requirements in the proposed rules are either mandated by statute (insurance producer licensing, insurance continuing education, life settlements, group health insurance purchasing cooperatives); carried over from the current version of the rule (insurance continuing education, life settlement advertising); or codification of current practice familiar to the regulated community (life settlement advertising, property and casualty actuarial opinion, standards for companies deemed to be in hazardous financial condition, accounting practices and procedures, clearing corporations, annual audited financial reports, and boiler rules). In view of these circumstances, no less intrusive or less costly alternative methods were identified.

B. Small Entity Regulatory Analysis

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

Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are either mandated by statute (insurance continuing education, group health purchasing cooperatives, life settlements); carried over from the current version of the rule (insurance continuing education, life settlement advertising); or codification of current practice familiar to the regulated community (life settlement advertising, property and casualty actuarial opinion, standards for companies deemed to be in hazardous condition, accounting practices and procedures, clearing corporations, annual audited financial reports, and boiler rules). Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

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

The Commissioner considered less stringent schedules or deadlines where possible. Schedules or deadlines for compliance or reporting requirements that appear in the proposed rules are set by statute directly or indirectly, making an alternate schedule or deadline inappropriate. Where no statutory schedule or deadline has been set, as for life settlement advertising, the schedule or deadline has been set to be minimally stringent for all licensees regardless of size.

3. Consolidation or simplification of compliance or reporting requirements for small entities

To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

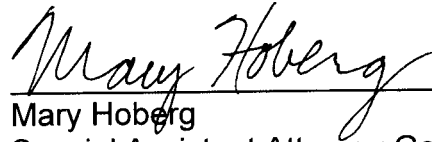
4. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule

Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

5. 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.

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