



DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA

Adam W. Hamm
Commissioner of Insurance

MEMORANDUM

TO: Legislative Council's Administrative Rules Committee

FROM: Melissa Hauer, General Counsel *MHA*

DATE: December 12, 2007

SUBJECT: Adoption of Administrative Rules (pp. 309-384 of January 2008 Supplement)

As requested, the following addresses the Administrative Rules Committee's questions regarding recent amendments to Title 45 of the North Dakota Administrative Code adopted by the North Dakota Insurance Department.

The committee requested testimony concerning the following:

1. **Whether the rules resulted from statutory changes made by the Legislative Assembly.**

Answer: The following rule changes resulted from statutory changes made by the Legislative Assembly:

- a. N.D. Admin. Code chapter 45-04-13 – Viatical Settlement Advertising – The rules are related to the enactment of 2007 Senate Bill No. 2268 which governs viatical settlement contracts.
- b. N.D. Admin. Code chapter 45-06-08 – Loss Ratios – The rule is designed to implement 2007 Senate Bill No. 2154 which reduced the loss ratios that apply to health insurers from 75% to 70% of premium received for group policyholders and 65% to 55% of premium received from individual policyholders.
- c. N.D. Admin. Code chapter 45-12-11 – Hobby Boiler Operators – The rules are related to the enactment of 2007 Senate Bill No. 2411 which governs the licensing of hobby boiler operators.

2. **Whether the rules are related to any federal statute or regulation.**

Answer: N.D. Admin. Code chapter 45-05-05 – Risk Retention and Purchasing Groups – The rule is necessary to comply with the requirements of the federal law known as the Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. No. 106-102, 113 Stat. 1338] relating to licensing reciprocity for nonresidents.

3. **A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

Answer: Notice of the rulemaking and the public hearing was published in all county newspapers as required by law. The Department of Insurance also uses a basic mailing list to provide notice of each of its rulemaking projects. Additionally, the Department constructs relevant mailing lists for specific rulemaking. A public hearing was held on October 19, 2007, at the State Capitol, Bismarck, North Dakota. Oral comments as well as any written comments that have been received are summarized along with any response to the comments that may seem appropriate and a redrafted rule incorporating any change occasioned by the comments.

4. **Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules.**

Answer: Comments received and action taken to address those comments are summarized in the attached Final Order Adopting Rules.

5. **The approximate cost of giving public notice and holding any hearing on the rules, and the approximate cost (not including staff time) of developing and adopting the rules.**

Answer: The Notice of Hearing were published once in all North Dakota official county newspapers which cost approximately \$1,647. Approximately 1,400 notices were sent by email to insurance companies and interested parties at no cost. Approximately

250 notices were sent by post office mail with the postage charge for this mailing at approximately \$103.

6. **An explanation of the subject matter of the rules and the reasons for adopting those rules.**

Answer: An explanation of the subject matter of the rules is included in the Final Order Adopting Rules, a copy of which is attached.

7. **Whether a regulatory analysis was required by N.D.C.C. § 28-32-08 and whether a regulatory analysis was issued.**

Answer: A Regulatory Analysis, Small Entity Economic Impact Statement, and Small Entity Regulatory Analysis was prepared and a copy is attached.

8. **Whether a regulatory analysis or economic impact statement for small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued.**

Answer: A Regulatory Analysis, Small Entity Economic Impact Statement, and Small Entity Regulatory Analysis was prepared and a copy is attached.

9. **Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09.**

Answer: No constitutional takings assessment was required or prepared.

10. **If these rules were adopted as emergency (interim final) rules under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.**

Answer: The rules were not adopted as emergency rules.

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I hope that this response adequately addresses the concerns of the Committee. I will be happy to answer any questions that you might have.

MH/njb

Attachments

cc: Adam W. Hamm, Insurance Commissioner

STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Promulgation)
Of Proposed Rules Regarding:)
Unfair Sex Discrimination,)
Preferred Mortality Tables,)
Loss Ratios, Accounting Practices)
and Procedures, Model Rule)
Requiring Audited Financial)
Reports, Risk Retention and)
Purchasing Groups, Licensing of)
Insurance Producers, Continuing)
Education and Prelicensure)
Education, Viatical Settlement)
Advertising, Surplus Lines, Military)
Sales Model Regulations, and North)
Dakota Boiler Rules.)

FINAL
ORDER ADOPTING RULES

FILE NO. RU-07-208

THIS MATTER regarding proposed changes to N.D. Admin. Code Title 45 came before the North Dakota Commissioner of Insurance for consideration. The Commissioner, having published notice, having held a public hearing, having considered the testimony and filed comments of all interested persons, and having been otherwise fully advised in the premises, **FINDS AND CONCLUDES THAT:**

1. A Notice of Intent to Amend Administrative Rules describing the proposed rule changes was prepared and filed on September 7, 2007. The North Dakota Insurance Department staff also prepared a Regulatory Analysis, Small Entity Economic Impact Statement, and Small Entity Regulatory Analysis on September 7, 2007.

2. The Notice and Regulatory Analysis were made available to all interested persons.

3. An Abbreviated Notice of Intent to Amend Administrative Rules was properly published once in each official county newspaper at least 20 days prior to the date of the hearing.

4. A hearing was held on October 19, 2007, in Bismarck, North Dakota, to take comments on the proposed rules.

5. At the hearing, all interested persons were given a reasonable opportunity to submit relevant oral or written comments. The record was held open for additional written comments for 10 days after the hearing.

6. In promulgating the final version of the rules in the form attached to this Order, the Commissioner considered all testimony given at the hearings and all written comments that have been filed.

**N.D. ADMIN. CODE CHAPTER 45-03-10
UNFAIR SEX DISCRIMINATION**

7. The rule updates the types of practices that will be considered as unfair in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

8. One comment was received from the American Council of Life Insurers (ACLI) in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-04-07.2
PREFERRED MORTALITY TABLES**

9. The rule recognizes and permits the use of additional valuation mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities of life insurers. The table—the 2001 CSO Mortality Table—includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite

mortality tables unless the context indicates otherwise. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

10. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-06-08
LOSS RATIOS**

11. The rule is designed to implement 2007 Senate Bill No. 2154 which reduced the loss ratios that apply to health insurers from 75% to 70% of premium received for group policyholders and 65% to 55% of premium received from individual policyholders.

12. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-03-15
ACCOUNTING PRACTICES AND PROCEDURES**

13. The rule requires every insurance company doing business in this state to file the appropriate National Association of Insurance Commissioners (NAIC) annual statement blank, prepared in accordance with the NAIC Instructions Handbook and follow the accounting procedures and practices prescribed by the March 2007 version of the NAIC Accounting Practices and Procedures Manual for property and casualty and life and health insurance.

14. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-03-20
MODEL RULE REQUIRING ANNUAL AUDITED FINANCIAL REPORTS**

15. The rule adds one item which impacts the qualifications of an independent certified public accountant. The rule provides that the Insurance Commissioner shall not recognize any person or firm as a qualified independent certified public accountant which has either directly or indirectly entered into an agreement of indemnification with respect to the audit of the insurer. It also provides that a qualified independent certified public

accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration.

16. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-05-05
RISK RETENTION AND PURCHASING GROUPS**

17. The rule is necessary to comply with the requirements of the federal law known as the Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. No. 106-102, 113 Stat. 1338] relating to licensing reciprocity for nonresidents.

18. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-02-02
LICENSING OF INSURANCE PRODUCERS**

19. The rules remove the requirement that the Department verify, at the time of licensing, that an applicant for an insurance producer's license by a business entity has an active Certificate of Authority with the North Dakota Secretary of State's office. An applicant licensed in another state who moves to this state must provide within 90 days proof of clearance from the state in which the insurance producer is currently or was most recently licensed which is needed to be consistent with statutory requirements. The rules also modify the requirements for producer licensing, prelicensing, and examinations.

20. One comment was received from the ACLI in support of the proposed rule.

21. A comment was also received from Ann Weber of Property Casualty Insurers Association of America (PCI). The commenter stated that subdivision e of subsection 4 of section 45-02-02-04 "...specifically exempts personal lines..." and, for clarification purposes, the commenter suggested that "...a personal lines license-type designation be obtainable to correlate with a personal lines exam." The commenter felt that such a clarification should assist in avoiding a situation of having a personal lines exam with a

property/casualty license and a personal lines examination with a correlating personal lines license is preferable for reciprocity purposes.

No change was made based on this comment because no change to this subdivision was proposed by the Department in this rulemaking project. In addition, the commenter misunderstands the rule. There is a personal lines license type and, although it is a reduced examination, passage of a personal lines examination is required before such a license will be issued for residents. Further, full reciprocity is granted to any person who applies for a nonresident personal lines only license type.

**N.D. ADMIN. CODE CHAPTER 45-02-04
CONTINUING EDUCATION AND PRELICENSURE EDUCATION**

22. The rule adds a definition of "insurance continuing education" and removes prelicensing education requirements for those residents wishing to be licensed as insurance producers. It also provides that a nonresident insurance producer who has satisfied the producer's home state's continuing education requirements and is in good standing in the producer's home state shall electronically submit a uniform application for individual producer license renewal/continuation through the NAIC. It repeals the rule that provides that a letter of certification is not required if the home state participates in the NAIC producer database because all states currently participate in this database and the Department can verify the license is in good standing in the insurance producer's home state via the database.

23. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-04-13
VIATICAL SETTLEMENT ADVERTISING**

24. The rules apply to the advertising of viatical settlements intended for dissemination in the state. It provides that the advertising of viatical settlements must be done in a manner to assure that product descriptions are presented in a manner that

prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by viatical settlement licensees. The rules are related to the enactment of 2007 Senate Bill No. 2268.

25. Comments were received from Michael F. Daley, Enforcement Attorney, Deputy Commissioner, North Dakota Securities Department. The comments of the Securities Department center around several definitions used in the rules and the fact that they vary from those contained in the statute which provides the authority for the rules (2007 Senate Bill No. 2268 codified at N.D.C.C. Chapter 26.1-33.3). The commenter noted that the comments were intended to clarify that the rules are intended to apply to viatical settlement contracts and not to viatical settlement purchase agreements as defined in N.D.C.C. Chapter 26.1-33.3-01(15) which by definition are securities regulated under N.D.C.C. Chapter 10-04.

The commenter suggested that the rules be changed as follows to make them consistent with the statute:

- Section 45-04-13-01(1): Delete "purchase or"
- Section 45-04-13-01(2): Delete "or other agreement"
- Section 45-04-13-01(5): Add the statutory definition from N.D.C.C. § 26.1-33.3-01(12)(a) which was omitted from the rule and re-letter (5)(a) to (5)(b) and (5)(b) to (5)(c) accordingly;
- Section 45-04-13-01(6): Add "A viatical settlement investment agent is an agent as defined in section 10-04-02"

The changes suggested by the commenter to Section 45-04-13-01(1), (2), (5), and (6) were made as proposed.

The commenter also requested that Section 45-04-13-02 be amended to clarify that this chapter applies to those required to be licensed as a viatical settlement provider or viatical settlement broker and not to viatical settlement investment agents or viatical settlement purchasers who are not required become licensed under N.D.C.C. Chapter 26.1-33.3 or to viatical settlement purchase agreements. The suggested changes were made as proposed in order to make it clear that the rules apply only to those who are required to be licensed as viatical settlement providers or viatical settlement brokers.

The commenter also requested that all references in the rule to "viatical settlement purchase agreement, product or service"; "viatical settlement purchase agreements"; and "purchasers" where found in proposed Section 45-04-13-03(3), (4)(g), and (5)(a)(c) and (f) be deleted to also be consistent with the authorizing statute. The suggested changes were made as proposed.

26. Comments were received from Marilyn Foss, General Counsel, North Dakota Bankers Association (NDBA). The comments of the NDBA center around the definition of viatical settlement contract used in the rule and the fact that it varies from that contained in the statute which provides the authority for the rules (2007 Senate Bill No. 2268 codified at N.D.C.C. Chapter 26.1-33.3). The comment notes that Section 45-04-13-01(5)(b)(2) resurrects some language that was removed from 2007 Senate Bill No. 2268 as introduced. NDBA suggested the following language for Section 45-04-13-01(5)(b)(2) to conform to the definition contained in the bill in its enrolled version:

b. "Viatical settlement contract does not include:

- (2) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of the loan or, if there is a default on the loan and the policy is transferred, the further assignment of the policy by the lender, provided that the default itself is not pursuant to an agreement or

understanding with any other person for the purpose of evading regulation.

The commenter noted that this language has been accepted by the Office of the Comptroller of the Currency and the North Dakota Department of Financial Institutions and has effectively eliminated bank regulatory agency concern about North Dakota's new viatical settlement laws.

The change suggested by the commenter was made to conform the definition in these rules to that found in the authorizing statute.

**N.D. ADMIN. CODE CHAPTER 45-09-01
SURPLUS LINES**

27. The rules delete obsolete appendices and extend the deadline for the filing of a surplus lines affidavit from 15 days to 60 days of the effective date of a policy in order to be consistent with the governing statute.

28. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-04-14
MILITARY SALES MODEL REGULATION**

29. The rules are based upon the NAIC Model Regulation concerning unfair sales practices in the sale of insurance to active duty military personnel. The rules set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair. The rules apply to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

30. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE ARTICLE 45-12
(CHAPTERS 45-12-01, 45-12-05, 45-12-10, and 45-12-11)
NORTH DAKOTA BOILER RULES**

31. The rules govern the licensing and operation of boilers. Chapter 45-12-01 is amended to update the boiler and vessel construction code of the American society of mechanical engineers to the 2007 edition for sections I, II, IV, V, VIII (divisions 1 and 3), IX, and X; and section VIII, (division 2), to the 2004 edition.

Chapter 45-12-05-16 is amended to provide that the minimum factor of safety may not be less than four (rather than four and five-tenths) for existing installations.

Chapter 45-12-10-02 is amended to update the reference to the National Board Inspection Code to be consistent with the definition and to update the American Petroleum Institute Code from the 1997 to the 2004 edition.

Chapter 45-12-11 governs the operation of hobby boiler operators. It provides that the Insurance Commissioner may not issue a hobby boiler license to an individual unless the individual: files a written application with the Commissioner on a form prescribed by the Commissioner; passes an examination developed by the Commissioner and pays an examination fee of \$25; provides evidence of the successful completion of 120 hours of apprenticeship training with a licensed hobby boiler operator; is at least 16 years of age; and pays a \$25 license fee. The rules are related to the enactment of 2007 Senate Bill No. 2411.

32. No comments were received regarding the proposed amendments to Chapters 45-12-01, 45-12-05, or 45-12-10.

33. One comment was received from Smokey Wright of the North Dakota State Threshers Association in regard to Chapter 45-12-11. The commenter noted that Section 45-12-11-03 would allow an individual who has operated a hobby boiler within this state as of July 1, 2007, to receive a license without complying with subdivisions b and c of

subsection 2 of Section 45-12-11-02 which requires passing an examination and 120 hours of boiler operation training. The commenter felt that anyone who operates a hobby boiler should be required to pass a test before receiving a license rather than being "grandfathered" into a license.

No change was made based on this comment because 2007 Senate Bill No. 2411, codified at N.D.C.C. section 26.1-22.1-14, requires that an individual who is operating a hobby boiler within North Dakota as of July 1, 2007, must be considered "...acceptable for a license without additional training or examination." A change to this state law would have to be made before testing and training requirements could be imposed on individuals who have operated a hobby boiler as of July 1, 2007.

34. One comment was received from Barbara Witteman, a North Dakota resident, regarding Chapter 45-12-11 in which she stated that she holds a hobby boiler license from Minnesota and, because of that, she hopes that any individual licensed in Minnesota would be allowed to operate a hobby boiler in North Dakota. She noted that Minnesota licensees have to complete apprentice hours and be tested and she hoped that there would be similarities between these requirements no matter the state in which the person resides.

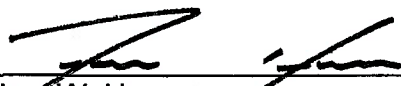
No change was made based on this comment. As noted above, 2007 Senate Bill No. 2411 provides that an individual who operates a hobby boiler within the State of North Dakota as of July 1, 2007, shall be considered acceptable for a license without additional training or examination. The individual will still need to apply for a license with the North Dakota Insurance Department; however, the testing and training requirements provided for in Section 45-12-11-02 will not need to be met by these individuals.

ORDER

IT IS, THEREFORE, ORDERED that the rules in the form attached to this Order, modified to include some of the changes recommended, be adopted and filed in accordance

with applicable provisions of state law to become effective on January 1, 2008, subject to the approval of the Administrative Rules Committee of the Legislative Council.

DATED this 15th day of November, 2007.



Adam W. Hamm
Commissioner
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STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Promulgation)	
Of Proposed Rules Regarding:)	
Unfair Sex Discrimination,)	REGULATORY ANALYSIS,
Preferred Mortality Tables,)	SMALL ENTITY ECONOMIC
Loss Ratios, Accounting Practices)	IMPACT STATEMENT, AND
and Procedures, Model Rule)	SMALL ENTITY REGULATORY
Requiring Audited Financial)	ANALYSIS
Reports, Risk Retention and)	
Purchasing Groups, Licensing of)	FILE NO. RU-07-208
Insurance Producers, Continuing)	
Education and Prelicensure)	
Education, Viatical Settlement)	
Advertising, Surplus Lines, Military)	
Sales Model Regulations)	
and Hobby Boiler Operator)	
Licensing.)	

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 60th Legislative Assembly during the 2007 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.

1. N.D. Admin. Code Chapter 45-03-10 - Unfair Sex Discrimination.
2. N.D. Admin. Code Chapter 45-04-07.2 - Preferred Mortality Tables.
3. N.D. Admin. Code Chapter 45-06-08 - Loss Ratios.
4. N.D. Admin. Code Chapter 45-03-15 - Accounting Practices and Procedures.

5. N.D. Admin. Code Chapter 45-03-20 - Model Rule Requiring Annual Audited Financial Reports.
6. N.D. Admin. Code Chapter 45-05-05 - Risk Retention and Purchasing Groups.
7. N.D. Admin. Code Chapter 45-02-02 - Licensing of Insurance Producers.
8. N.D. Admin. Code Chapter 45-02-04 - Continuing Education and Prelicensure Education.
9. N.D. Admin. Code Chapter 45-04-13 - Viatical Settlement Advertising.
10. N.D. Admin. Code Chapter 45-09-01 - Surplus Lines.
11. N.D. Admin. Code Chapter 45-04-14 - Military Sales Model Regulations.
12. N.D. Admin. Code Chapter 45-12-11 - Hobby Boiler Operator Licensing.

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

For N.D. Admin. Code Chapters 45-03-10, Unfair Sex Discrimination; 45-04-07.2, Preferred Mortality Tables; and 45-06-08, Loss Ratios, the class of persons who will probably be affected by the proposed rules are insurance companies that sell life or health insurance policies and the consumers that buy them. Each of these classes potentially bears the burden and the benefit of these proposed rules.

For N.D. Admin. Code Chapters 45-03-15, Accounting Practices and Procedures, and 45-03-20, Model Rule Requiring Annual Audited Financial Reports, the class of persons who will probably be affected are insurance companies that do business in North Dakota. This class potentially bears the burden and receives the benefit of these proposed rules.

For N.D. Admin. Code Chapters 45-05-05, Risk Retention and Purchasing Groups; 45-02-02, Licensing of Insurance Producers; 45-02-04, Continuing Education and Prelicensure Education; 45-04-13, Viatical Settlement Advertising; 45-09-01, Surplus Lines; and 45-04-14, Military Sales Model Regulations, the class of persons who will probably be affected are insurance companies and other licensees doing business in North Dakota and individuals and business entities who are licensed or who wish to become licensed as insurance producers. Each of these classes potentially bears the burden and receives the benefit of these proposed rules.

For N.D. Admin. Code Chapter 45-12-11, Hobby Boiler Operator Licensing, the classes of persons who will probably be affected are individuals who wish to become licensed to

operate hobby boilers and the public. Each of these classes potentially bears the burden and receives 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 45-03-10, Unfair Sex Discrimination, the proposed rules' probable economic impact on the regulated community is expected to be minimal given that the rule will simply allow insurers a choice in how they offer health insurance to individuals.

For N.D. Admin. Code Chapter 45-04-07.2, Preferred Mortality Tables, the proposed rules are designed to allow insurers the option to use a preferred class structure in their mortality tables for purposes of determining their life insurance reserves. The probable impact is to allow insurers more flexibility in their choice of mortality tables and can have a favorable economic impact for insurers and consumers.

For N.D. Admin. Code Chapter 45-06-08, Loss Ratios, the proposed rule is being adopted to comply with a change made to the North Dakota Century Code by 2007 Senate Bill No. 2154.

For N.D. Admin. Code Chapter 45-03-15, Accounting Practices and Procedures, the proposed rule merely updates the version of the National Association of Insurance Commissioners Accounting Practices and Procedures Manual that insurers providing property and casualty and life and health insurance must use from the March 2005 version to the March 2007 version. This rule is expected to have only a minimal impact on insurers.

For N.D. Admin. Code Chapter 45-03-20, Model Rule Requiring Annual Audited Financial Reports, the proposed rule adds one item which impacts the qualifications of an independent certified public accountant. The rule provides that the Insurance Commissioner shall not recognize any person or firm as a qualified independent certified public accountant which has either directly or indirectly entered into an agreement of indemnification with respect to the audit of the insurer. The rule could impact those who wish to qualify as independent certified public accountants.

For N.D. Admin. Code Chapter 45-05-05, Risk Retention and Purchasing Groups, the proposed rule is necessary to comply with the requirements of the federal law known as the Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. No. 106-102, 113 Stat. 1338] relating to licensing reciprocity for nonresidents.

For N.D. Admin. Code Chapter 45-02-02, Licensing of Insurance Producers, the proposed rules are expected to impact insurance producers. The proposed rules would remove the requirement that the Department verify, at the time of licensing, that an applicant for an insurance producer's license by a business entity has an active Certificate of Authority with the North Dakota Secretary of State's office. An applicant

licensed in another state who moves to this state must provide within 90 days proof of clearance from the state in which the insurance producer is currently or was most recently licensed which is needed to be consistent with statutory requirements. The proposed rules also modify the requirements for producer licensing, prelicensing, and examinations.

For N.D. Admin. Code Chapter 45-02-04, Continuing Education and Prelicensure Education, the proposed rules eliminate the need for prelicensing education for insurance producers and describe the requirements for insurance continuing education. The proposed rules are expected to impact those who wish to be licensed as resident insurance producers.

For N.D. Admin. Code Chapter 45-04-13, Viatical Settlements, the proposed rules govern the advertising of viatical settlements. The proposed rules are expected to impact individuals and business entities that engage in the business of viatical settlements in North Dakota.

For N.D. Admin. Code Chapter 45-09-01, Surplus Lines, the proposed rule is expected to impact surplus lines insurance producers and is a slight modification to the rules to be consistent with statutory timelines for filing of affidavits.

For N.D. Admin. Code Chapter 45-04-14, Military Sales Model Regulations, the proposed rules are expected to have an impact on any insurance producer or insurer who wishes to solicit the sale of life insurance to a member of the United States Armed Forces. The proposed rules may also impact members of the United States Armed Forces.

For N.D. Admin. Code Chapter 45-12-11, Hobby Boiler Operator Licensing, the proposed rules are expected to impact those who wish to operate hobby boilers at public events. The proposed rules may have an economic impact on these individuals in that they would require the payment of an examination fee and a licensing fee.

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

The probable cost to the agency of implementation and enforcement of these rules will be minimal. Many of these chapters are already in existence and, therefore, will require only minimal implementation or additional enforcement efforts. In regard to N.D. Admin. Code Chapter 45-12-11, Hobby Boiler Operating Licensing, the proposed rules will generate a minimal amount of revenue from the collection of examination and licensing fees which will offset the cost of the examinations and licensing.

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

Some of the proposed rules are the result of statutory changes and, therefore, alternative methods for achieving the purpose of the proposed rules was not possible. In any other cases, alternative methods that would lessen the impact on the regulated community were considered and adopted wherever possible.

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 insurers and insurance producers.

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. The rules will update the standard of what constitutes unfair sex discrimination in insurance, allow more choice in valuation mortality tables, amend loss ratios to be consistent with statutory changes enacted in 2007, update the accounting procedures manual to be used, remove the requirement of prelicensing education for insurance producers, regulate the advertising of viatical settlements, and the solicitation of life insurance to members of the United States Armed Forces; repeal obsolete appendices and extend the deadline in which affidavits must be filed in order to be consistent with the statute regarding surplus lines insurance producer requirements; and provide for the licensing of hobby boiler operators. There is imposed, as required by statute, an examination and a licensing fee for hobby boiler operators.

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

There could be some cost to private persons and consumers since the proposed rules affect insurance products and hobby boiler operation. The probable benefits to private persons and consumers include furthering public safety in the operation of hobby boilers, allowing additional choice of valuation mortality tables to be used by insurers to more accurately relate reserve levels to underwriting risks which can benefit consumers,

making the requirements for insurance producer licensing consistent with federal and state law requirements, and protecting members of the United States Armed Forces from unfair tactics in the sale of life insurance.

4. Probable effect of the proposed rule on state revenues

There will be little, if any, effect on state revenues from the proposed rules. The rules proposed in N.D. Admin. Code Chapter 45-12-11, Hobby Boiler Licensing, may generate a small amount of revenue collected for examination and licensing fees but the cost to administer the examination and licensing will offset this revenue.

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

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, some of the proposed rules are designed to implement or comply with statutory requirements. In those instances where alternative methods of achieving the purpose of the proposed rule were available, the alternatives were not selected because of the potential cost associated with them or because they were not equally effective.

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. However, some of the proposed rules are designed to implement or comply with statutory requirements. Many of the proposed rules are expected to lessen the regulatory burden on small entities and make it easier for them to do business in North Dakota.

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

Some of the proposed rules are designed to streamline and make consistent with federal and state laws the requirements for licensing of insurance producers. There were no less stringent schedules or deadlines for compliance or reporting that were available to be considered. The Department considered less stringent schedules or deadlines where possible.

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 (e.g., hobby boiler licensing).

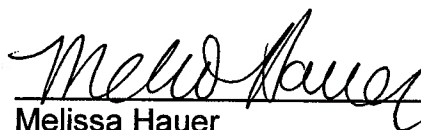
4. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule

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

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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