



North Dakota
Insurance Department
Adam W. Hamm, Commissioner

MEMORANDUM

TO: Legislative Council's Administrative Rules Committee

FROM: Mary N. Hoberg, Legal Counsel *Mary N. Hoberg*

DATE: March 9, 2010

SUBJECT: Adoption of Administrative Rules (April 2010 Supplement)

- Licensing of Insurance Producers (45-02-02)
- Insurance Continuing Education (45-02-04)
- Property and Casualty Actuarial Opinion (45-03-19.1)
- Viatical Settlement Advertising (45-04-13)
- Risk Retention and Purchasing Groups (45-05-05)
- Life Settlements (45-16-01 and 45-16-02)

Chairman Klein and members of the Administrative Rules Committee, I am Mary Hoberg, Legal Counsel with the North Dakota Insurance Department.

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 45-02-02 – Licensing of Insurance Producers, Surplus Lines Insurance Producers and Consultants – The rules are related to the enactment of 2009 House Bill No. 1192 which relates to insurance producer licensing.

- b. N.D. Admin. Code chapter 45-02-04 – Insurance Continuing Education – The rules are related to the enactment of 2009 House Bill No. 1192 which relates to insurance producer licensing.
- c. N.D. Admin. Code chapters 45-04-13, 45-16-01, and 45-16-02 – Viatical Settlements and Life Settlement Licensing and Advertising – The rules are related to the enactment of 2009 House Bill No. 1284 which relates to viatical settlements and life settlements.

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

Answer: The rules listed above are not related to any federal statute or regulation.

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 December 10, 2009, 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: There were no comments received on the rules listed above.

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 was published once in all North Dakota official county newspapers which cost approximately \$1,888. 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 and the postage charge for this mailing was approximately \$103.

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

Answer: N.D. Admin. Code Chapter 45-02-02 – Licensing of Insurance Producers (p. 67 of supplement). These rules resulted from statutory changes made in the enactment of 2009 House Bill No. 1192 which relates to insurance producer licensing. The rule establishes a cycle for license continuation based on individual producer birth month, adds a definition of surety, and improves organization of the examination requirements. The rule implements the new statutory scheme under which all producers file a biennial continuation and all pay the biennial continuation fee. No comments were received on this rule.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education (p. 72 of supplement). These rules resulted from statutory changes made in the enactment of 2009 House Bill No. 1192 which relates to insurance producer licensing. The rule establishes a cycle for reporting compliance with continuing education requirements based on birth month, repeals obsolete provisions, clarifies that producers are responsible for the accuracy of their continuing education records, and applies continuing education requirements so as to prevent avoidance of the requirements by manipulation of the licensing process. No comments were received on this rule.

N.D. Admin. Code Chapter 45-03-19.1 – Property and Casualty Actuarial Opinion (p. 81 of supplement). These rules did not result from statutory changes. It is proposed at this time to codify existing practices that insurers and their

actuaries are familiar with and have been doing for some time. The rule will not require insurers to create anything new beyond what they have been doing in North Dakota and in other states.

The rule addresses three types of documents that deal with the adequacy of reserves reported in the financial statements of a property and casualty insurer doing business in North Dakota. The rule requires property and casualty insurance companies to submit an annual statement of actuarial opinion (unless exempt) and an actuarial opinion summary (required for domestic companies; upon request for nondomiciliary companies). The rule requires an insurer to prepare an actuarial report and underlying workpapers to support each actuarial opinion and to furnish these to the Commissioner upon request.

N.D. Admin. Code Chapter 45-04-13 – Viatical Settlement Advertising (p. 129 of supplement). This rule repeal resulted from the enactment of 2009 House Bill No. 1284 which relates to life settlements. The rule repeals this chapter, although the content of Section 45-04-13-03, relating to disclosure requirements, is substantially retained in new N.D. Admin. Code Chapter 45-16-02, relating to life settlement advertising. It was decided to repeal this chapter and relocate most of its content in a new chapter with other life settlement rules in order to have all the rules affecting life settlements together for ease of reference. No comments were received on this rule.

N.D. Admin. Code Chapter 45-05-05 – Risk Retention and Purchasing Groups (p. 130 of supplement). This rule did not result from statutory changes. It is a housekeeping rule. The rule amends Section 45-05-05-06, relating to risk retention group representatives and purchasing group representatives, to align terminology referring to insurance producers with current statutes, remove an obsolete distinction between resident and nonresident insurance producers who act as representatives, and remove references to a bond that no longer exists. No comments were received on this rule.

N.D. Admin. Code Chapters 45-16-01 and 45-16-02 – Life Settlement Licensing and Advertising (p. 151 of supplement). These rules resulted from the enactment of

2009 House Bill No. 1284 which relates to life settlements.

Chapter 45-16-01 – Life Settlement Licensing implements licensing aspects of the new life settlement chapter at N.D.C.C. ch. 26.1-33.4. The rule incorporates definitions, establishes provider license fees and renewal schedule, establishes broker license fees and renewal schedule, sets the schedule for required training for brokers and penalty for failure to submit proof of training, and establishes a consumer guide. A life insurance producer deemed to meet the licensing requirements of N.D.C.C. § 26.1-33.4-02 must pay an initial broker license fee of \$100. Required broker training related to life settlements and life settlement transactions must be reported every two years on the anniversary date of the license. The penalty for failure to submit proof of training is that the license will not be renewed. The two-year reporting cycle and the penalty are comparable to what will exist for insurance producers generally.

Chapter 45-16-02 contains a definitions section that incorporates statutory definitions for consistency. The rule establishes the disclosure requirements as applicable to any advertisement for life settlement used in North Dakota, prompts provider and broker compliance by means of a statement of compliance regarding advertising, and clarifies that providers and brokers are not required to file their advertising materials with the Commissioner except upon the Commissioner's request or order. The specific requirements for advertisements currently set out in Section 45-04-13-03, relating to disclosure requirements, are substantially retained.

No comments were received on this rule.

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: A Takings Assessment Concerning Proposed Rules was prepared and a copy is attached.

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.

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

MNH/njb

Attachments

cc: Adam Hamm, Commissioner

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)

FINAL ORDER ADOPTING RULES

FILE NO. RU-09-257

THIS MATTER regarding proposed changes to N.D. Admin. Code Title 45 came before the North Dakota Insurance Commissioner 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 October 5, 2009. The North Dakota Insurance Department staff also prepared a Regulatory Analysis, Small Entity Economic Impact Statement, and Small Entity Regulatory Analysis dated October 5, 2009, and a Takings Assessment Concerning Proposed Rules dated October 5, 2009.

2. The Notice and Regulatory Analyses 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 December 10, 2009, 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 hearing and all written comments that have been filed.

**N.D. ADMIN. CODE CHAPTER 45-02-02
LICENSING OF INSURANCE PRODUCERS, SURPLUS LINES
INSURANCE PRODUCERS AND CONSULTANTS**

7. The rule establishes a cycle for license continuation based on individual producer birth month, adds a definition of surety, and improves organization of the examination requirements. The rule implements the new statutory scheme under which all producers file a biennial continuation and all pay the biennial continuation fee. The proposed 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. No comments were received.

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

9. The rule establishes a cycle for reporting compliance with continuing education requirements based on birth month, repeals obsolete provisions, clarifies that producers are responsible for the accuracy of their continuing education records, and applies continuing education requirements so as to prevent avoidance of the requirements by manipulation of the licensing process.

10. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-03-13
REGULATION OF AND STANDARDS FOR COMPANIES
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION**

11. The rules provide additional standards to determine whether the continued operation of any insurer might be deemed to be hazardous to its policyholders, creditors or the general public. In addition, the revisions describe the Commissioner's authority to issue an order requiring companies deemed to be in hazardous financial condition to take corrective action.

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 an annual statement that is prepared in accordance with the National Association of Insurance Commissioners (NAIC) Instructions Handbook and the NAIC Accounting Practices and Procedures Manual. The rule change specifies the most recent (2009) version of the Accounting Practices and Procedures Manual to be used.

14. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-03-19.1
PROPERTY AND CASUALTY ACTUARIAL OPINION**

15. The rule addresses three types of documents that deal with the adequacy of reserves reported in the financial statements of a property and casualty insurer doing business in North Dakota. The rule requires property and casualty insurance companies to submit an annual statement of actuarial opinion (unless exempt) and an actuarial opinion summary (required for domestic companies; upon request for nondomiciliary companies). The rule requires an insurer to prepare an actuarial report and underlying workpapers to support each actuarial opinion and to furnish these to the Commissioner upon request.

16. No comments were received.

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

17. The rules improve the state's surveillance of the financial condition of insurers by requiring an annual audit by independent certified public accountants (CPA) of the financial statements reporting the financial position and the results of operations. The amendments strengthen requirements related to CPA independence. In addition, the amendments include new corporate governance standards, primarily requiring that an insurer have an audit committee that is responsible for the appointment, oversight and compensation of the CPA. The amendments also require that management of insurers that meet a minimum premium threshold shall provide the state with an assessment of its internal control over financial reporting. The name of the chapter was changed to accurately reflect its current purpose.

18. One comment was received on this chapter. The commentor requested that the following language from the second paragraph of Section 45-03-20-01 not be deleted as proposed:

“, except a company, so defined, which is licensed only in North Dakota. The commissioner may exempt an insurer, or type of insurer, from the requirements of this chapter”

The commentor felt that retaining this exemption is important to North Dakota county mutuals, which do not have the resources to comply with the requirement for an annual audited financial statement. As these companies are limited to writing coverage only in North Dakota, the national reciprocity purpose of the regulation does not apply to them. The change suggested was made to the proposed rule and the language noted above remains in the rule.

**N.D. ADMIN. CODE CHAPTER 45-03-23
REGULATION ON THE USE OF CLEARING CORPORATIONS AND
FEDERAL RESERVE BOOK-ENTRY SYSTEM BY INSURANCE COMPANIES**

19. The rules provide guidelines for the custody of securities owned by an insurer and for the custodial agreement between the insurer and the custodian, to establish requirements for deposits with affiliated insurers and to provide forms for a custodian affidavit in three scenarios.

20. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-04-04
VARIABLE LIFE INSURANCE**

21. The rule provides that every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in the state must contain certain provisions for policy loans after the policy has been in force for three full years. It also provides any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to state law and 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.

22. No comments were received.

23. During the review by the Attorney General's office of the rules, it was noted that in Section 45-04-04-05(1)(c), reference was made to an index published by the National Association of Insurance Commissioners, but did not indicate which publication contains the index. The language of this section was revised to clarify which publication contains the index.

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

24. The rule repeals this chapter, although the content of Section 45-04-13-03, relating to disclosure requirements, is substantially retained in new N.D. Admin. Code ch. 45-16-02, relating to life settlement advertising.

25. No comments were received.

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

26. The rule amends Section 45-05-05-06, relating to risk retention group representatives and purchasing group representatives, to align terminology referring to insurance producers with current statutes, remove an obsolete distinction between resident and nonresident insurance producers who act as representatives, and remove references to a bond that no longer exists.

27. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-06-09
GROUP HEALTH INSURANCE PURCHASING COOPERATIVES**

28. The rule is repealed to reflect that group health insurance purchasing cooperatives may now self-insure.

29. No comments were received.

**N.D. ADMIN. CODE ARTICLE 45-12
(CHAPTERS 45-12-01, 45-12-02, 45-12-03, AND 45-12-10)
NORTH DAKOTA BOILER RULES**

30. Chapter 45-12-01 is amended to update the National Board of Boiler and Pressure Vessel Inspectors Inspection Code from the 2004 edition to the 2007 edition.

Chapter 45-12-02 is amended to provide that all boiler inspections must be reported to the Chief Boiler Inspector on Form SFN 10706.

Chapter 45-12-03 is amended to provide that steam traction engine inspections must alternate between internal inspections, external inspections, and hydrostatic tests. It also provides that noncertificate inspections must be made between certificate inspections.

Chapter 45-12-10 is amended to update the American Society of Mechanical Engineers Boiler and Pressure Vessel Code from the 2004 edition to the 2007 edition for Section VIII, Division 1 or 3 of the code and the 2004 edition for Section VIII, Division 2 of the code.

31. No comments were received.

**N.D. ADMIN. CODE CHAPTERS 45-16-01 AND 45-16-02
LIFE SETTLEMENT LICENSING AND ADVERTISING**

32. Chapter 45-16-01 implements licensing aspects of the new life settlement chapter at N.D.C.C. ch. 26.1-33.4. The rule incorporates definitions, establishes provider license fees and renewal schedule, establishes broker license fees and renewal schedule, sets the schedule for required training for brokers and penalty for failure to submit proof of training, and establishes a consumer guide. A life insurance producer deemed to meet the licensing requirements of N.D.C.C. § 26.1-33.4-02 must pay an initial broker license fee of \$100. Required broker training related to life settlements and life settlement transactions must be reported every two years on the anniversary date of the license. The penalty for failure to submit proof of training is that the license will not be renewed. The two-year

reporting cycle and the penalty are comparable to what will exist for insurance producers generally.

Chapter 45-16-02 contains a definitions section that incorporates statutory definitions for consistency. The rule establishes the disclosure requirements as applicable to any advertisement for life settlement used in North Dakota, prompts provider and broker compliance by means of a statement of compliance regarding advertising, and clarifies that providers and brokers are not required to file their advertising materials with the Commissioner except upon the Commissioner's request or order. The specific requirements for advertisements currently set out in Section 45-04-13-03, relating to disclosure requirements, are substantially retained.

33. No comments were received.

ORDER

IT IS, THEREFORE, ORDERED that the rules in the form attached to this Order, modified to include recommended changes, be adopted and filed in accordance with applicable provisions of state law to become effective on April 1, 2010, subject to the approval of the Administrative Rules Committee of the Legislative Council.

DATED this 25th day of January, 2010.



Adam Hamm
Commissioner
N.D. Insurance Department
600 East Boulevard Avenue, Dept. 401
Bismarck, ND 58505
(701) 328-2440

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)**

SUMMARY OF COMMENTS

FILE NO. RU-09-257

A hearing to receive comments regarding the proposed rules was held on December 10, 2009, in Bismarck. General Counsel Melissa Hauer presided at the hearing. Written comments were accepted through December 21, 2009.

No oral comments were received on the rules. Written comments were received on the proposed rules. The following summarizes the comments received and the Commissioner's action, if any, in response to the comments.

N.D. ADMIN. CODE CHAPTER 45-02-02
LICENSING OF INSURANCE PRODUCERS, SURPLUS LINES
INSURANCE PRODUCERS AND CONSULTANTS

1. The rule establishes a cycle for license continuation based on individual producer birth month, adds a definition of surety, and improves organization of the

examination requirements. The rule implements the new statutory scheme under which all producers file a biennial continuation and all pay the biennial continuation fee.

The proposed rule would update 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.

2. No comments were received.

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

3. The rule establishes a cycle for reporting compliance with continuing education requirements based on birth month, repeals obsolete provisions, clarifies that producers are responsible for the accuracy of their continuing education records, and applies continuing education requirements so as to prevent avoidance of the requirements by manipulation of the licensing process.

4. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-03-13
REGULATION OF AND STANDARDS FOR COMPANIES
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION**

5. The rules provide additional standards to determine whether the continued operation of any insurer might be deemed to be hazardous to its policyholders, creditors or the general public. In addition, the revisions give the Commissioner additional authority to issue an order requiring companies deemed to be in hazardous financial condition to take corrective action.

6. No comments were received.

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

7. The rule requires every insurance company doing business in this state to file an annual statement that is prepared in accordance with the National Association of

Insurance Commissioners (NAIC) Instructions Handbook and the NAIC Accounting Practices and Procedures Manual. The rule change would specify the most recent (2009) version of the Accounting Practices and Procedures Manual to be used.

8. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-03-19.1
PROPERTY AND CASUALTY ACTUARIAL OPINION**

9. The rule addresses three types of documents that deal with the adequacy of reserves reported in the financial statements of a property and casualty insurer doing business in North Dakota. The rule requires property and casualty insurance companies to submit an annual statement of actuarial opinion (unless exempt) and an actuarial opinion summary (required for domestic companies; upon request for nondomiciliary companies). The rule requires an insurer to prepare an actuarial report and underlying workpapers to support each actuarial opinion and to furnish these to the commissioner upon request.

10. No comments were received.

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

11. The purpose of these rules is to improve the state's surveillance of the financial condition of insurers by requiring an annual audit by independent certified public accountants (CPA) of the financial statements reporting the financial position and the results of operations. The proposed amendments strengthen requirements related to CPA independence. In addition, the proposed amendments include new corporate governance standards, primarily requiring that an insurer have an audit committee that is responsible for the appointment, oversight and compensation of the CPA. The proposed amendments also indicate that management of insurers that meet a minimum premium threshold shall provide the state with an assessment of its internal control over financial reporting. The name of the chapter was changed to accurately reflect its current purpose.

12. One comment was received on this chapter. The commentor requested that the following language from the second paragraph of Section 45-03-20-01 not be deleted as proposed:

“, except a company, so defined, which is licensed only in North Dakota. The commissioner may exempt an insurer, or type of insurer, from the requirements of this chapter”

The commentor felt that retaining this exemption is important to North Dakota county mutuals, which do not have the resources to comply with the requirement for an annual audited financial statement. As these companies are limited to writing coverage only in North Dakota, the national reciprocity purpose of the regulation does not apply to them. The change suggested was made to the proposed rule and the language noted above will remain in the rule.

**N.D. ADMIN. CODE CHAPTER 45-03-23
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13. The rules provide guidelines for the custody of securities owned by an insurer and for the custodial agreement between the insurer and the custodian, to establish requirements for deposits with affiliated insurers and to provide forms for a custodian affidavit in three scenarios.

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**N.D. ADMIN. CODE CHAPTER 45-04-04
VARIABLE LIFE INSURANCE**

15. The rule would provide that every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in the state must contain certain provisions for policy loans after the policy has been in force for three full years. It would also provide any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to state law and 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.

16. No comments were received.

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

17. The rule repeals this chapter, although the content of Section 45-04-13-03, relating to disclosure requirements, is substantially retained in new N.D. Admin. Code ch. 45-16-02, relating to life settlement advertising.

18. No comments were received.

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

19. The rule amends Section 45-05-05-06, relating to risk retention group representatives and purchasing group representatives, to align terminology referring to insurance producers with current statutes, remove an obsolete distinction between resident and nonresident insurance producers who act as representatives, and remove references to a bond that no longer exists.

20. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-06-09
GROUP HEALTH INSURANCE PURCHASING COOPERATIVES**

21. The rule would be repealed to reflect that group health insurance purchasing cooperatives may now self-insure.

22. No comments were received.

**N.D. ADMIN. CODE ARTICLE 45-12
(CHAPTERS 45-12-01, 45-12-02, 45-12-03, AND 45-12-10)
NORTH DAKOTA BOILER RULES**

23. Chapter 45-12-01 is amended to update the National Board of Boiler and Pressure Vessel Inspectors Inspection Code from the 2004 edition to the 2007 edition.

Chapter 45-12-02 is amended to provide that all boiler inspections must be reported to the Chief Boiler Inspector on Form SFN 10706.

Chapter 45-12-03 is amended to provide that steam traction engine inspections must alternate between internal inspections, external inspections, and hydrostatic tests. It also provides that noncertificate inspections must be made between certificate inspections.

Chapter 45-12-10 is amended to update the American Society of Mechanical Engineers Boiler and Pressure Vessel Code from the 2004 edition to the 2007 edition for Section VIII, Division 1 or 3 of the code and the 2004 edition for Section VIII, Division 2 of the code.

24. No comments were received.

**N.D. ADMIN. CODE CHAPTERS 45-16-01 AND 45-16-02
LIFE SETTLEMENT LICENSING AND ADVERTISING**

25. Chapter 45-16-01 implements licensing aspects of the new life settlement chapter at N.D.C.C. ch. 26.1-33.4. The rule incorporates definitions, establishes provider license fees and renewal schedule, establishes broker license fees and renewal schedule, sets the schedule for required training for brokers and penalty for failure to submit proof of training, and establishes a consumer guide. A life insurance producer deemed to meet the licensing requirements of N.D.C.C. § 26.1-33.4-02 must pay an initial broker license fee of \$100. Required broker training related to life settlements and life settlement transactions must be reported every two years on the anniversary date of the license. The penalty for failure to submit proof of training is that the license will not be renewed. The two-year

reporting cycle and the penalty are comparable to what will exist for insurance producers generally.

Chapter 45-16-02 contains a definitions section that incorporates statutory definitions for consistency. The rule establishes the disclosure requirements as applicable to any advertisement for life settlement used in North Dakota, prompts provider and broker compliance by means of a statement of compliance regarding advertising, and clarifies that providers and brokers are not required to file their advertising materials with the Commissioner except upon the Commissioner's request or order. The specific requirements for advertisements currently set out in Section 45-04-13-03, relating to disclosure requirements, are substantially retained.

26. No comments were received.

DATED this 4th day of January, 2010.



Melissa Hauer
Special Assistant Attorney General
General Counsel
N.D. Insurance Department
600 East Boulevard Avenue, Dept. 401
Bismarck, ND 58505
(701) 328-2440

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 be 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.

DATED this 5th day of October, 2009.



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STATE OF NORTH DAKOTA

BEFORE THE COMMISSIONER OF INSURANCE

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)

TAKINGS ASSESSMENT
CONCERNING
PROPOSED RULES

FILE NO. RU-09-251

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 clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.

3. The reasons these proposed rules are necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.

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 5th day of October, 2009.



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