



North Dakota
Insurance Department
Adam Hamm, Commissioner

MEMORANDUM

TO: Legislative Council's Administrative Rules Committee

FROM: Melissa Hauer, General Counsel *MH*

DATE: June 14, 2012

SUBJECT: Adoption of Administrative Rules (July 2012 Supplement)

- Accounting Practices and Procedures (45-03-15)
- Custodial Agreements and the Use of Clearing Corporations (45-03-23)
- Boilers (45-12-01, 45-12-03, 45-12-04, 45-12-05, 45-12-09, 45-12-10)

Chairman Koppelman and members of the Administrative Rules Committee, I am Melissa Hauer, General Counsel for 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 rules related to boilers listed above were the result of changes made in 2011 Senate Bill No. 2064. The rules related to accounting practices and procedures and custodial agreements and the use of clearing corporations did not result from statutory changes made by the Legislative Assembly.

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

Answer: The rules listed above were 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 January 10, 2012, 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 Summary of Comments.

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 \$1,814 for all of the rules which are before the committee today. 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 45-03-15 – Accounting Practices and Procedures. The existing 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 (2011) version of the Accounting Practices and Procedures Manual to be used. No comments were received in response to these rules.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreements and the Use of Clearing Corporations. A provision is being added to Section 45-03-23-02 to allow insurers having direct written and assumed premiums of less than \$3 million in any calendar year to request an exemption from the requirements for a written agreement with the custodian of the insurer's securities that complies with subsection 2 of that section. The added language requires the insurer to provide a written statement explaining the reasons why the insurer should be exempt from the provisions and requires the Commissioner to find that compliance would constitute a financial or organizational hardship upon the insurer before granting the exemption. No comments were received in response to these rules.

N.D. Admin. Code Chapters 45-12-01, 45-12-03, 45-12-04, 45-12-05, 45-12-09, and 45-12-10 – North Dakota Boilers. The rules in Article 45-12 are being amended, in part, as a result of changes made during the 2011 legislative session. The definition of A.S.M.E. Code was updated to mean the 2010 edition, the National Board Inspection Code was updated to the 2011 edition, and the American Petroleum Institute Code was updated to the 2006 edition. The term "heating" is being eliminated in the definition of boiler because vessels used for heating liquids other than water when these vessels are separate from processing systems are now classified as pressure vessels and not as boilers by A.S.M.E. and by almost all manufacturers. The removal is an attempt to have the rules brought up to date with what is happening in industry today. Also, this is required by a recent change to the North Dakota

Century Code. The fees charged for boiler inspections were updated, some fees were increased and some were eliminated. The rule governing boiler logs was amended to state that logs for hobby boilers must include operating hours, operators, fusible plug installation dates, tests, and apprentice training data. A provision was added to provide that the standard stamping of a Province of Canada may be accepted by the Chief Boiler Inspector and that all superheaters must be constructed to Section I of the A.S.M.E. code. A typographical error was corrected in chapter 45-12-05. A provision was added to allow a holder of a valid national board "VR" certificate to be among those that may adjust a valve when the operating conditions of a valve are changed so as to require a new spring for a different pressure. A reference to the State Plumbing Code removed the reference to the 2000 edition.

A comment was received on this article. The commentor stated that it believed the rules being proposed would change how alterations are viewed when steaming capacity has changed for power plant boilers operating in North Dakota. The commentor apparently believed that this change would result from the proposed adoption of the 2011 edition of the National Board Inspection Code (NBIC). The commentor felt that the recent change to NBIC would reclassify an "alteration" of a boiler as an increase in the heating surface or steaming capacity as described on the original manufacturer's data report. Adopting this language would, the commentor felt, negate the 30 years of actual operating experience of its boilers over the steaming capacity without any deleterious effects to the boiler operations and integrity.

The concern of the commentor would not be caused by the proposed rules. The already adopted 2009 version of the NBIC contained the change the commentor references. The following change, however, was made to the definition of "alteration" in the rules to address the substance of the commentor's concern:

45-12-01-01. Definitions. As used in this article:

1. "Alteration" means a structural modification of or a departure from an original or existing construction change in an item described on an original Manufacturer's Data Report which affects the pressure retaining capability of the pressure retaining item. An alteration includes nonphysical changes such as an increase in the

maximum allowable internal or external working pressure, an increase in design temperature, or a reduction in minimum temperature. For boilers used in the power generation industry exceeding 100,000 pounds of steam per hour output, increases in steaming capacity shall not be considered an alteration if a new baseline steaming capacity is established based on either an engineering evaluation or a review of the operating history and a conditional assessment of the boiler and its components. An engineering evaluation or conditional assessment must be made by the boiler owner with review and comment by the authorized inspection agency responsible for the in-service inspection of the boiler. Engineering evaluations and conditional assessments are subject to the review and approval of the Chief Boiler Inspector.

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 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 were prepared and a copy is attached.

9. **Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.**

Answer: A Fiscal Note Regarding Proposed Rules was prepared and a copy is attached.

10. **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.

11. **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.

MH/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 Administrators, Insurance)
Continuing Education, Accounting)
Practices and Procedures, Custodial)
Agreement Requirements, Surplus)
Lines Insurance, Life and Health)
Insurance Guaranty Association,)
Boilers.)

SUMMARY OF COMMENTS

FILE NO. RU-11-320

A hearing to receive comments regarding the proposed rules was held on January 10, 2012, in Bismarck. General Counsel Melissa Hauer presided at the hearing. The public hearing was called for the purpose of allowing all interested individuals an opportunity to submit information concerning the proposed creation of and amendments to the following chapters of the North Dakota Administrative Code:

45-02-03	Licensing of Administrators
45-02-04	Insurance Continuing Education
45-03-15	Accounting Practices and Procedures
45-03-23	Custodial Agreements and the Use of Clearing Corporations
45-09-01	Surplus Lines Insurance
45-11-01	Life and Health Insurance Guaranty Association
45-12-01	Boilers - Definitions
45-12-03	Boilers – General Requirements
45-12-04	Power Boilers – New Installations
45-12-05	Power Boilers – Existing Installations
45-12-09	Heating, Low Pressure, and Hot Water Supply Boilers – Existing Installations
45-12-10	Unfired Pressure Vessels

Written comments were scheduled to be accepted through January 20, 2012. Based on a request for an extension of that deadline, the Commissioner extended the written comment period to February 3, 2012.

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 45-02-03
LICENSING OF ADMINISTRATORS**

1. This chapter is being amended to align the requirements for licensing third-party administrators with best practices. The amendments do not require licensees or applicants to do anything new or different in the application or renewal process. There would be no change in fees. Section 45-02-03-04 requiring the submission of Articles of Incorporation or association with the entity's application is repealed. The applicant must file these documents with the North Dakota Secretary of State so they are public records through that office. Similarly, the Department dropped its requirement of filing Articles of Incorporation for producers in 2008. New language is added to Section 45-02-03-06 to spell out that April 30 is the anniversary date for all third-party administrator licensees, and that Certificates of Authority issued after January 1 will not be required to renew until April 30 of the following calendar year.

2. No comments were received regarding this chapter.

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

3. The amendments to this rule repeal an outdated provision on continuing education course approval and restore the continuing education exemption for limited lines producers. Repealed subsection 15 of Section 45-02-04-03 is a carryover from the days when continuing education courses were offered in a classroom setting. It requires continuing education providers to notify the Department if they plan to offer a course again after the initial approval. In the current era when much coursework is done online,

the Department does not need to track every time the course is offered after initial approval. New Section 45-02-04-09.3 restores language that was inadvertently removed in 2010. It continues the longstanding exemption so that holders of a limited lines license are not required to do continuing education. The “limited lines” for purposes of continuing education are credit, bail bonds, legal expense, surety, title, and travel/baggage.

4. Five written comments were received from one commentor:
 - a. The commentor stated he is in favor of striking the need to notify the Department of an additional offering of a continuing education class. This comment supports the repeal of Section 45-02-04-03(15).
 - b. The commentator questioned why certain categories of insurance agents are exempt or enjoy reduced requirements for continuing education, and whether other categories could be created such as major medical, auto, or cancer for those who specialize in only one type of insurance. N.D.C.C. § 26.1-26-31.1(1) authorizes a reduced continuing education requirement or total waiver of the continuing education requirement for producers whose license is limited to a specified product type. Insurance Department rules have provided for reduced or totally waived continuing education requirements since 1986 for the “core” limited lines: credit, bail bonds, legal expense, surety, title, and travel/baggage. This provision aligns with uniformity standards for producer licensing of the National Association of Insurance Commissioners. No change

was made because the action suggested in the comment would be contrary to national uniformity standards.

- c. The commentor inquired whether North Dakota has considered recognizing continuing education credit for being a member of a Professional Insurance Agents Association and participating in the activities of the association. Current Department rules address course content that does not qualify for continuing education credit at N.D. Admin. Code § 45-02-04-03(2). Participation in association activities covers a wide range of endeavors, including items on the nonqualifying topics list and other endeavors that the Commissioner may conclude do not meet standards for course approval. No change was made because the comment does not pertain to the subject of this rulemaking project.
- d. The commentor stated, "We have specific requirements for long term care and annuity CE. Would it be reasonable to create similar requirements for other categories of insurance?" There is no continuing education requirement for long-term care or annuities. The commentor most likely refers to training requirements regarding long-term care policies issued under the qualified state long-term care insurance partnership, addressed in Bulletin 2007-03, and to annuity suitability training requirements set out in N.D.C.C. § 26.1-34.2-03.1, effective August 1, 2011. Training that satisfies these requirements may qualify for continuing education credit under certain circumstances, but these training requirements

are not imposed by the Department and are not regulated by the Department. No change was made because the comment does not pertain to the subject of this rulemaking project.

- e. The commentor voiced concern over “unlicensed individuals who function as insurance agents. The most notable are people who set up shop in a Senior Citizen Center during open enrollment. Another is the HR person who recommends health, life, and other insurance to employees. How and when does the department oversee these individuals?” The comment refers to volunteers who assist senior citizens with Medicare Part D enrollment at annual open enrollment events. These volunteers do not act as insurance producers. As explained on the Department website, “SHIC counselors have no connection with any insurance company or product.” As to HR [human resource] professionals, persons in these capacities are exempted by law from the requirement to have a producer license. N.D.C.C. § 26.1-26-09(2)(c). No change was made because the comment does not pertain to the subject of this rulemaking project.

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

- 5. Two sections in this chapter are being amended to update the required Accounting Procedures and Practices Handbook from the 2009 version to the 2011 version.
- 6. No comments were received regarding this chapter.

**N.D. ADMIN. CODE CHAPTER 45-03-23
CUSTODIAL AGREEMENTS AND THE USE OF CLEARING CORPORATIONS**

7. A provision is being added to Section 45-03-23-02 to allow insurers having direct written and assumed premiums of less than \$3 million in any calendar year to request an exemption from the requirements for a written agreement with the custodian of the insurer's securities that complies with subsection 2 of that section. The added language requires the insurer to provide a written statement explaining the reasons why the insurer should be exempt from the provisions and requires the Commissioner to find that compliance would constitute a financial or organizational hardship upon the insurer before granting the exemption.

8. No comments were received regarding this chapter.

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

9. This rule, including Appendix 1, is being amended as a result of changes made during the North Dakota 2011 legislative session to align with the federal Nonadmitted and Reinsurance Reform Act of 2010. Rule language was updated to clarify that state regulation of surplus lines insurance is regulated solely by the home state of the insured. An applicant for a North Dakota nonresident surplus lines license must hold a resident license in the home state of the applicant. The language addressing the diligent search of admitted insurance companies was clarified to specify a licensed surplus lines producer must conduct the search, unless the licensed surplus lines producer deems a search conducted by a licensed producer or the insured was sufficient. The diligent search affidavit and report of placement must be submitted to the Insurance Commissioner within 60 days of placement of the surplus lines policy.

Language was added specifying April 1 as the date the annual report and premium tax are due.

10. No comments were received regarding this chapter.

**N.D. ADMIN. CODE CHAPTER 45-11-01
LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

11. The rule is being amended to update the notice that insurers must give to policy owners regarding the limits of the North Dakota Life and Health Guaranty Association. Changes to the limits were made by 2011 Senate Bill No. 2111 which increased the benefit limits from \$100,000 to \$300,000 for long-term care and disability insurance; from \$100,000 to \$500,000 for basic hospital, medical, surgical, and major medical policies; and from \$100,000 to \$250,000 for annuities, government retirement benefit plans and structured settlement annuities. The Guaranty Association limits for life insurance were not changed. Also, the bill specified that Medicare Part C and Part D policies are not covered by the Guaranty Association; it removes the annual \$150 per member cap and the pro rata option for the Association's assessment of its administrative expenses and legal costs under the Class A assessment authority; requires the Guaranty Association to pay interest on a refund due to a member insurer at the rate earned by the Association; and requires the Guaranty Association's plan of operation to add policies and procedures for the removal of directors for cause and to address conflicts of interest.

12. Two comments were received on this chapter. One commentor requested that the following language from the Notice Concerning Coverage not be deleted as proposed and be inserted under the heading "Exclusions From Coverage" as the first bullet point:

A policy or portion of a policy which is not guaranteed by the insurer or for which the individual has assumed the risk, such as a variable contract sold by prospectus.

The commentor stated that it had worked with the Department on the language of the notice prior to the hearing and did suggest that the language referring to variable products contained in the old notice be removed. The commenter's subsequent review suggested that the language should be put back in in order to provide proper notice to policyholders that there are additional limits to what will be covered for variable products. Language containing substantially similar content is contained in the Notice Concerning Coverage which was adopted as more fully described below.

One commentor suggested the Notice Concerning Coverage be replaced with the Notice template as approved by the National Association of Insurance Commissioners (NAIC). The commentor stated that the NAIC approved template is a clear and conspicuous disclaimer which provides information to consumers regarding the protection provided by the Life and Health Insurance Guaranty Associations. Using this template ensures consistency and uniformity among all states for both consumers and for the insurers providing the Guaranty Association notice.

The Notice Concerning Coverage is contained in an exhibit to this chapter of rules. The language of the exhibit was modified to replace the Notice Concerning Coverage with the language of the NAIC Guideline for Notice of Protection Provided by State Life and Health Insurance Guaranty Associations. The NAIC guideline language was supplemented to include the benefit limits provided by N.D.C.C. § 26.1-38.1-16. The NAIC guideline language was also amended to include the statutory notice requirements of N.D.C.C. § 26.1-38.1-16. The exhibit containing the notice was modified to replace the Notice Concerning Coverage with the Notice template in the

NAIC Guideline. Both commentors expressed their support of the use of the NAIC guideline language.

N.D. ADMIN. CODE ARTICLE 45-12 BOILERS

13. The rules in Article 45-12 are being amended, in part, as a result of changes made during the 2011 legislative session. The definition of A.S.M.E. Code was updated to mean the 2010 edition, the National Board Inspection Code was updated to the 2011 edition, and the American Petroleum Institute Code was updated to the 2006 edition. The term "heating" is being eliminated in the definition of boiler because vessels used for heating liquids other than water when these vessels are separate from processing systems are now classified as pressure vessels and not as boilers by A.S.M.E. and by almost all manufacturers. The removal is an attempt to have the rules brought up to date with what is happening in industry today. Also, this is required by a recent change to the North Dakota Century Code. The fees charged for boiler inspections were updated, some fees were increased and some were eliminated. The rule governing boiler logs was amended to state that logs for hobby boilers must include operating hours, operators, fusible plug installation dates, tests, and apprentice training data. A provision was added to provide that the standard stamping of a Province of Canada may be accepted by the Chief Boiler Inspector and that all superheaters must be constructed to Section I of the A.S.M.E. code. A typographical error was corrected in chapter 45-12-05. A provision was added to allow a holder of a valid national board "VR" certificate to be among those that may adjust a valve when the operating conditions of a valve are changed so as to require a new spring for a different

pressure. A reference to the State Plumbing Code removed the reference to the 2000 edition.

14. A comment was received on this article. The commenter stated that it believed the rules being proposed would change how alterations are viewed when steaming capacity has changed for power plant boilers operating in North Dakota. The commenter apparently believed that this change would result from the proposed adoption of the 2011 edition of the National Board Inspection Code (NBIC). The commenter felt that the recent change to NBIC would reclassify an "alteration" of a boiler as an increase in the heating surface or steaming capacity as described on the original manufacturer's data report. Adopting this language would, the commenter felt, negate the 30 years of actual operating experience of its boilers over the steaming capacity without any deleterious effects to the boiler operations and integrity.

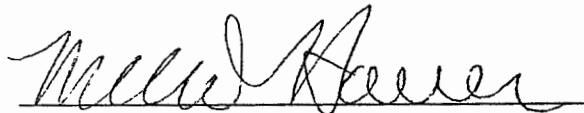
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45-12-01-01. Definitions. As used in this article:

1. "Alteration" means a ~~structural modification of or a departure from an original or existing construction~~ change in an item described on an original Manufacturer's Data Report which affects the pressure retaining capability of the pressure retaining item. An alteration includes nonphysical changes such as an increase in the maximum allowable internal or external working pressure, an increase in design temperature, or a reduction in minimum temperature. For boilers used in the power generation industry exceeding 100,000 pounds of steam per hour output, increases in

steaming capacity shall not be considered an alteration if a new baseline steaming capacity is established based on either an engineering evaluation or a review of the operating history and a conditional assessment of the boiler and its components. An engineering evaluation or conditional assessment must be made by the boiler owner with review and comment by the authorized inspection agency responsible for the in-service inspection of the boiler. Engineering evaluations and conditional assessments are subject to the review and approval of the Chief Boiler Inspector.

DATED this 15 day of February, 2012.

A handwritten signature in cursive script, appearing to read 'Melissa Hauer', written over a horizontal line.

Melissa Hauer
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N.D. Insurance Department
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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 Administrators, Insurance)	
Continuing Education, Accounting)	SUMMARY OF COMMENTS
Practices and Procedures, Custodial)	
Agreement Requirements, Surplus)	FILE NO. RU-11-320
Lines Insurance, Life and Health)	
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Boilers.)	

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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 45-02-03
LICENSING OF ADMINISTRATORS**

1. This chapter is being amended to align the requirements for licensing third-party administrators with best practices. The amendments do not require licensees or applicants to do anything new or different in the application or renewal process. There would be no change in fees. Section 45-02-03-04 requiring the submission of Articles of Incorporation or association with the entity's application is repealed. The applicant must file these documents with the North Dakota Secretary of State so they are public records through that office. Similarly, the Department dropped its requirement of filing Articles of Incorporation for producers in 2008. New language is added to Section 45-02-03-06 to spell out that April 30 is the anniversary date for all third-party administrator licensees, and that Certificates of Authority issued after January 1 will not be required to renew until April 30 of the following calendar year.

2. No comments were received regarding this chapter.

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

3. The amendments to this rule repeal an outdated provision on continuing education course approval and restore the continuing education exemption for limited lines producers. Repealed subsection 15 of Section 45-02-04-03 is a carryover from the days when continuing education courses were offered in a classroom setting. It requires continuing education providers to notify the Department if they plan to offer a course again after the initial approval. In the current era when much coursework is done online,

the Department does not need to track every time the course is offered after initial approval. New Section 45-02-04-09.3 restores language that was inadvertently removed in 2010. It continues the longstanding exemption so that holders of a limited lines license are not required to do continuing education. The "limited lines" for purposes of continuing education are credit, bail bonds, legal expense, surety, title, and travel/baggage.

4. Five written comments were received from one commentor:
 - a. The commentor stated he is in favor of striking the need to notify the Department of an additional offering of a continuing education class. This comment supports the repeal of Section 45-02-04-03(15).
 - b. The commentator questioned why certain categories of insurance agents are exempt or enjoy reduced requirements for continuing education, and whether other categories could be created such as major medical, auto, or cancer for those who specialize in only one type of insurance. N.D.C.C. § 26.1-26-31.1(1) authorizes a reduced continuing education requirement or total waiver of the continuing education requirement for producers whose license is limited to a specified product type. Insurance Department rules have provided for reduced or totally waived continuing education requirements since 1986 for the "core" limited lines: credit, bail bonds, legal expense, surety, title, and travel/baggage. This provision aligns with uniformity standards for producer licensing of the National Association of Insurance Commissioners. No change

was made because the action suggested in the comment would be contrary to national uniformity standards.

- c. The commentor inquired whether North Dakota has considered recognizing continuing education credit for being a member of a Professional Insurance Agents Association and participating in the activities of the association. Current Department rules address course content that does not qualify for continuing education credit at N.D. Admin. Code § 45-02-04-03(2). Participation in association activities covers a wide range of endeavors, including items on the nonqualifying topics list and other endeavors that the Commissioner may conclude do not meet standards for course approval. No change was made because the comment does not pertain to the subject of this rulemaking project.
- d. The commentor stated, "We have specific requirements for long term care and annuity CE. Would it be reasonable to create similar requirements for other categories of insurance?" There is no continuing education requirement for long-term care or annuities. The commentor most likely refers to training requirements regarding long-term care policies issued under the qualified state long-term care insurance partnership, addressed in Bulletin 2007-03, and to annuity suitability training requirements set out in N.D.C.C. § 26.1-34.2-03.1, effective August 1, 2011. Training that satisfies these requirements may qualify for continuing education credit under certain circumstances, but these training requirements

are not imposed by the Department and are not regulated by the Department. No change was made because the comment does not pertain to the subject of this rulemaking project.

- e. The commentor voiced concern over “unlicensed individuals who function as insurance agents. The most notable are people who set up shop in a Senior Citizen Center during open enrollment. Another is the HR person who recommends health, life, and other insurance to employees. How and when does the department oversee these individuals?” The comment refers to volunteers who assist senior citizens with Medicare Part D enrollment at annual open enrollment events. These volunteers do not act as insurance producers. As explained on the Department website, “SHIC counselors have no connection with any insurance company or product.” As to HR [human resource] professionals, persons in these capacities are exempted by law from the requirement to have a producer license. N.D.C.C. § 26.1-26-09(2)(c). No change was made because the comment does not pertain to the subject of this rulemaking project.

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

- 5. Two sections in this chapter are being amended to update the required Accounting Procedures and Practices Handbook from the 2009 version to the 2011 version.
- 6. No comments were received regarding this chapter.

**N.D. ADMIN. CODE CHAPTER 45-03-23
CUSTODIAL AGREEMENTS AND THE USE OF CLEARING CORPORATIONS**

7. A provision is being added to Section 45-03-23-02 to allow insurers having direct written and assumed premiums of less than \$3 million in any calendar year to request an exemption from the requirements for a written agreement with the custodian of the insurer's securities that complies with subsection 2 of that section. The added language requires the insurer to provide a written statement explaining the reasons why the insurer should be exempt from the provisions and requires the Commissioner to find that compliance would constitute a financial or organizational hardship upon the insurer before granting the exemption.

8. No comments were received regarding this chapter.

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

9. This rule, including Appendix 1, is being amended as a result of changes made during the North Dakota 2011 legislative session to align with the federal Nonadmitted and Reinsurance Reform Act of 2010. Rule language was updated to clarify that state regulation of surplus lines insurance is regulated solely by the home state of the insured. An applicant for a North Dakota nonresident surplus lines license must hold a resident license in the home state of the applicant. The language addressing the diligent search of admitted insurance companies was clarified to specify a licensed surplus lines producer must conduct the search, unless the licensed surplus lines producer deems a search conducted by a licensed producer or the insured was sufficient. The diligent search affidavit and report of placement must be submitted to the Insurance Commissioner within 60 days of placement of the surplus lines policy.

Language was added specifying April 1 as the date the annual report and premium tax are due.

10. No comments were received regarding this chapter.

**N.D. ADMIN. CODE CHAPTER 45-11-01
LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

11. The rule is being amended to update the notice that insurers must give to policy owners regarding the limits of the North Dakota Life and Health Guaranty Association. Changes to the limits were made by 2011 Senate Bill No. 2111 which increased the benefit limits from \$100,000 to \$300,000 for long-term care and disability insurance; from \$100,000 to \$500,000 for basic hospital, medical, surgical, and major medical policies; and from \$100,000 to \$250,000 for annuities, government retirement benefit plans and structured settlement annuities. The Guaranty Association limits for life insurance were not changed. Also, the bill specified that Medicare Part C and Part D policies are not covered by the Guaranty Association; it removes the annual \$150 per member cap and the pro rata option for the Association's assessment of its administrative expenses and legal costs under the Class A assessment authority; requires the Guaranty Association to pay interest on a refund due to a member insurer at the rate earned by the Association; and requires the Guaranty Association's plan of operation to add policies and procedures for the removal of directors for cause and to address conflicts of interest.

12. Two comments were received on this chapter. One commentor requested that the following language from the Notice Concerning Coverage not be deleted as proposed and be inserted under the heading "Exclusions From Coverage" as the first bullet point:

A policy or portion of a policy which is not guaranteed by the insurer or for which the individual has assumed the risk, such as a variable contract sold by prospectus.

The commentor stated that it had worked with the Department on the language of the notice prior to the hearing and did suggest that the language referring to variable products contained in the old notice be removed. The commentor's subsequent review suggested that the language should be put back in in order to provide proper notice to policyholders that there are additional limits to what will be covered for variable products. Language containing substantially similar content is contained in the Notice Concerning Coverage which was adopted as more fully described below.

One commentor suggested the Notice Concerning Coverage be replaced with the Notice template as approved by the National Association of Insurance Commissioners (NAIC). The commentor stated that the NAIC approved template is a clear and conspicuous disclaimer which provides information to consumers regarding the protection provided by the Life and Health Insurance Guaranty Associations. Using this template ensures consistency and uniformity among all states for both consumers and for the insurers providing the Guaranty Association notice.

The Notice Concerning Coverage is contained in an exhibit to this chapter of rules. The language of the exhibit was modified to replace the Notice Concerning Coverage with the language of the NAIC Guideline for Notice of Protection Provided by State Life and Health Insurance Guaranty Associations. The NAIC guideline language was supplemented to include the benefit limits provided by N.D.C.C. § 26.1-38.1-16. The NAIC guideline language was also amended to include the statutory notice requirements of N.D.C.C. § 26.1-38.1-16. The exhibit containing the notice was modified to replace the Notice Concerning Coverage with the Notice template in the

NAIC Guideline. Both commentors expressed their support of the use of the NAIC guideline language.

N.D. ADMIN. CODE ARTICLE 45-12 BOILERS

13. The rules in Article 45-12 are being amended, in part, as a result of changes made during the 2011 legislative session. The definition of A.S.M.E. Code was updated to mean the 2010 edition, the National Board Inspection Code was updated to the 2011 edition, and the American Petroleum Institute Code was updated to the 2006 edition. The term “heating” is being eliminated in the definition of boiler because vessels used for heating liquids other than water when these vessels are separate from processing systems are now classified as pressure vessels and not as boilers by A.S.M.E. and by almost all manufacturers. The removal is an attempt to have the rules brought up to date with what is happening in industry today. Also, this is required by a recent change to the North Dakota Century Code. The fees charged for boiler inspections were updated, some fees were increased and some were eliminated. The rule governing boiler logs was amended to state that logs for hobby boilers must include operating hours, operators, fusible plug installation dates, tests, and apprentice training data. A provision was added to provide that the standard stamping of a Province of Canada may be accepted by the Chief Boiler Inspector and that all superheaters must be constructed to Section I of the A.S.M.E. code. A typographical error was corrected in chapter 45-12-05. A provision was added to allow a holder of a valid national board “VR” certificate to be among those that may adjust a valve when the operating conditions of a valve are changed so as to require a new spring for a different

pressure. A reference to the State Plumbing Code removed the reference to the 2000 edition.

14. A comment was received on this article. The commenter stated that it believed the rules being proposed would change how alterations are viewed when steaming capacity has changed for power plant boilers operating in North Dakota. The commenter apparently believed that this change would result from the proposed adoption of the 2011 edition of the National Board Inspection Code (NBIC). The commenter felt that the recent change to NBIC would reclassify an "alteration" of a boiler as an increase in the heating surface or steaming capacity as described on the original manufacturer's data report. Adopting this language would, the commenter felt, negate the 30 years of actual operating experience of its boilers over the steaming capacity without any deleterious effects to the boiler operations and integrity.

The concern of the commenter would not be caused by the proposed rules. The already adopted 2009 version of the NBIC contained the change the commentor references. The following change, however, is being made to the definition of "alteration" in the rules to address the substance of the commenter's concern:

45-12-01-01. Definitions. As used in this article:

1. "Alteration" means a ~~structural modification of or a departure from an original or existing construction~~ change in an item described on an original Manufacturer's Data Report which affects the pressure retaining capability of the pressure retaining item. An alteration includes nonphysical changes such as an increase in the maximum allowable internal or external working pressure, an increase in design temperature, or a reduction in minimum temperature. For boilers used in the power generation industry exceeding 100,000 pounds of steam per hour output, increases in

steaming capacity shall not be considered an alteration if a new baseline steaming capacity is established based on either an engineering evaluation or a review of the operating history and a conditional assessment of the boiler and its components. An engineering evaluation or conditional assessment must be made by the boiler owner with review and comment by the authorized inspection agency responsible for the in-service inspection of the boiler. Engineering evaluations and conditional assessments are subject to the review and approval of the Chief Boiler Inspector.

DATED this 15 day of February, 2012.

A handwritten signature in cursive script, appearing to read "Melissa Hauer", written over a horizontal line.

Melissa Hauer
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General Counsel
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STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation)	
of Proposed Rules Regarding:	)	REGULATORY ANALYSIS, SMALL
Licensing of Administrators, Insurance	)	ENTITY ECONOMIC IMPACT
Continuing Education, Accounting	)	STATEMENT, AND SMALL ENTITY
Practices and Procedures, Custodial	)	REGULATORY ANALYSIS
Agreement Requirements, Surplus)	
Lines Insurance, Life and Health	)	FILE NO. RU-11-320
Insurance Guaranty Association,)	
Boilers)	

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 62nd Legislative Assembly during the 2011 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. Classes of Persons Who Probably Will Be Affected by the Proposed Rules

N.D. Admin. Code Chapters 45-02-03 - Licensing of Administrators, and 45-02-04 – Insurance Continuing Education. The classes of persons who will probably be affected by the proposed rules are third-party administrators, insurance producers, consultants, insurance continuing education course providers, and insurance companies. Each of these classes potentially bears the burden and the benefit of the proposed rules.

N.D. Admin. Code Chapters 45-03-15 – Accounting Practices and Procedures, and 45-03-23 – Custodial Agreement Requirements. 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.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The classes of persons who will probably be affected are surplus lines insurance producers and surplus lines entities. Each of these classes potentially bears the burden and the benefit of the proposed rules.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The classes of persons who will probably be affected are insurance companies selling life or health insurance. This group will potentially bear the burden as well as the benefit of the proposed rules.

N.D. Admin. Code Article 45-12 – Boilers. The classes of persons who will probably be affected are individuals who operate boilers and the individuals who inspect boilers. Each of these classes potentially bears the burden as well as the benefit of the proposed rules.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The proposed rules' economic impact on the regulated community is expected to be minimal to none. Any other expected impact would be a benefit to the regulated community due to lessened requirements for submitting documentation or deferral of license renewal fees in certain circumstances.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The proposed rules' economic impact on the regulated community is expected to be minimal to none. Any other expected impact would be a benefit to the regulated community due to lessened reporting requirements.

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 2009 version to the 2011 version. This rule is expected to have only a minimal impact on insurers.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The proposed rules' impact on the regulated community will be to lessen a potential burden for small insurers by providing an exemption from the requirements of the rule when they would cause financial hardship.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The proposed rules' impact on the regulated community is expected to be none. The proposed amendments are being made to align with changes due to the passage of 2011 House Bill No. 1123. The proposed amendments merely clarify and make language consistent with the corresponding North Dakota statutes.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The proposed rules' impact on the regulated community is expected to be none because the changes are being made to conform to the requirements of 2011 Senate Bill No. 2111.

N.D. Admin. Code Article 45-12 – Boilers. The proposed rules are expected to have an impact on the regulated community because they update the fees necessary to operate the Boiler Inspection Program and to update the applicable editions of the State Plumbing Code, the American Society of Mechanical Engineers Code, and the National Board Inspection Code. These changes are being made to implement the requirements of 2011 Senate Bill No. 2064.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The probable cost to the agency of implementation and enforcement is expected to be none to minimal impact on the Department's operations or expenditures. There is no foreseeable effect on state revenues from the proposed rules.

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 none to minimal impact on the Department's operations or expenditures. There is no foreseeable effect on state revenues from the proposed rules.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. 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.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. 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.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines 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. Any effect on state revenues comes from the requirements of 2011 House Bill No. 1123 and not from the rules. There is, therefore, no foreseeable effect on state revenues from the proposed rules.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. 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 is expected to be no effect on state revenues from the proposed rules.

N.D. Admin. Code Article 45-12 – Boilers. 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 an effect on state revenues from the proposed rules due to the increase in boiler inspection fees authorized by 2011 Senate Bill No. 2064.

D. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. 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 current best practices 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.

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, the proposed rule repeals obsolete content or codifies current practice. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. 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 updates obsolete content. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. 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 an exemption from the requirements of the rule for small insurers to ease the financial burden that may have occurred with enforcing the requirements 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.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines 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 proposed rule implements statutory changes that were made during the 2011 legislative session. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been possible and equally effective.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. 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 rules implement statutory changes made during the 2011 legislative session. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been possible and equally effective.

N.D. Admin. Code Article 45-12 – Boilers. 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 new statutory requirements passed during the 2011 legislative session. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The small entities that may possibly be subject to these proposed rules are third-party administrators, insurance producers, and insurance companies that meet the statutory definition of "small entity".

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The small entities that may possibly be subject to these proposed rules are insurance producers, continuing education providers, and insurance companies that meet the statutory definition of "small entity".

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. The small entities that may possibly be subject to these proposed rules are insurance companies that meet the statutory definition of "small entity".

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The small entities that may possibly be subject to these proposed rules are insurance companies that meet the statutory definition of “small entity”.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The small entities that may possibly be subject to these proposed rules are surplus lines insurance producers that meet the statutory definition of “small entity”.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The small entities that may possibly be subject to these proposed rules are insurance companies that sell life or health insurance and that meet the statutory definition of “small entity”.

N.D. Admin. Code Article 45-12 – Boilers. The small entities that may possibly be subject to these proposed rules are individuals who operate boilers and the individuals who inspect boilers that meet the statutory definition of “small entity”.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules codify current practices or remove obsolete references so there is no new administrative cost.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules codify current practices or remove obsolete references so there is no new administrative cost.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules update the version of the Accounting Practices and Procedures Manual—which is already used by the regulated industry—to be the most current version.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules provide an exemption that small insurers may request to allow them more flexibility in the custodial agreements they secure.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. In some areas, the rules remove obsolete references so there is no new administrative cost. In other areas, the rules implement statutory changes made by 2011 House Bill No. 1123.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules implement the changes required by the passage of 2011 Senate Bill No. 2111.

N.D. Admin. Code Article 45-12 – Boilers. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules implement the changes required by the passage of 2011 Senate Bill No. 2064.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to third-party administrators, insurance producers, and insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The probable benefits to private persons and consumers include furthering consumer protection by improved licensing procedures for insurance producers.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. 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 continuing education course providers, and insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The probable benefits to private persons and consumers include furthering consumer protection by improved licensing procedures for insurance producers.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The probable benefits to private persons and consumers include furthering consumer protection by improved financial oversight of insurance companies.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The probable benefits to private persons and consumers include furthering flexibility for small insurers while maintaining improved financial oversight of insurance companies generally.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. It is possible but unlikely that there would be some cost and some benefit to private persons and consumers since the proposed rules are directed to surplus lines insurance producers

and insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The proposed rules implement statutory changes outside the discretion of the Department to consider cost and benefit.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association.

It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to insurance companies that sell life or health insurance. Any cost to private persons and consumers would be indirect and not susceptible of measurement. 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 guarantee amounts available for consumers when an insurer becomes unable to pay claims.

N.D. Admin. Code Article 45-12 – Boilers. It is possible that there would be some cost to private persons and consumers since the proposed rules implement boiler inspection fee increases. The likely cost to private persons and consumers would be indirect and difficult to measure in that the increased boiler inspection fees could be passed on by the boiler owner, in whole or in part, to those private persons or consumers. The probable benefits to private persons and consumers include furthering consumer protection by improved boiler inspections resources and updated codes.

4. Probable effect of the proposed rule on state revenues

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The anticipated effect of the rule on state revenues is estimated to be nonexistent or minimal. Any effect on state revenue will be due to the statutory change implemented by 2011 House Bill No. 1123.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The probable effect on state revenues is expected to be nonexistent or minimal. Any effect on state revenue will be due to the statutory change implemented by 2011 Senate Bill No. 2111.

N.D. Admin. Code Article 45-12 – Boilers. The rules are expected to increase state revenues pursuant to the requirements of 2011 Senate Bill No. 2064.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The Insurance Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. No less intrusive or less costly alternative methods were identified. Requirements in the proposed rules are a codification of current practice familiar to the regulated community. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The Insurance Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. No less intrusive or less costly alternative methods were identified. Requirements in the proposed rules are a codification of current practice familiar to the regulated community. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. 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 mandated by statute and are a codification of current practice familiar to the regulated community. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The proposed rules add an exemption that will allow small insurers the flexibility to choose from various options regarding custodial agreement arrangements. No less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The proposed rules repeal obsolete requirements and update language and requirements to be consistent with statutory requirements. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. 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 mandated by statute and also codify a practice familiar to the regulated community. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Article 45-12 – Boilers. 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, in part, mandated by statute and, in part, are an updating of various codes that are already used in the industry and which serve to modernize a current practice already familiar to the regulated community. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are either mandated by statute, carried over from the current version of the rule, or a codification of current practice familiar to the regulated community. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. Less stringent reporting requirements for small entities were considered and found not appropriate. No reporting requirement exists in the proposed rule. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are a codification of current practice familiar to the regulated community. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. Less stringent reporting requirements for small entities were considered and found not appropriate. No reporting requirements were proposed in the rules. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are mandated by statute, carried over from the current version of the rule, and are a codification of current practice familiar to the regulated community. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are either mandated by

statute, carried over from the current version of the rule, a codification of current practice familiar to the regulated community, or no reporting requirement exists. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Article 45-12 – Boilers. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are either mandated by statute, carried over from the current version of the rule, or are a codification of current practice familiar to the regulated community. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. 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 for small entities inappropriate.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The Commissioner considered less stringent schedules or deadlines where possible. No schedule or deadline for compliance or reporting is present in the proposed rule for insurance continuing education.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. The Commissioner considered less stringent schedules or deadlines where possible. No schedules or deadlines for compliance or reporting requirements appear in the proposed rules.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The Commissioner considered less stringent schedules or deadlines where possible. No schedules or deadlines for compliance or reporting requirements appear in the proposed rules.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. 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, making an alternate schedule or deadline inappropriate. Where no statutory schedule or deadline has been set, any schedule or deadline in the rule has been set to be minimally stringent for all licensees regardless of size.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. 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, making an alternate schedule or deadline inappropriate. Where no statutory schedule or deadline has been set, any schedule or deadline set in the rule has been set to be minimally stringent for all licensees regardless of size.

N.D. Admin. Code Article 45-12 – Boilers. 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, making an alternate schedule or deadline inappropriate. Where no statutory schedule or deadline has been set, any schedule or deadline set in the rule 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Article 45-12 – Boilers. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Article 45-12 – Boilers. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. Small entities were not given different standards to comply with than large entities.

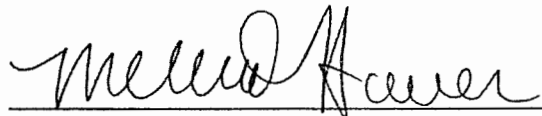
N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The rules provide for an exemption from part of the custodial agreement requirements for insurers having direct written and assumed premiums of less than three million dollars in any calendar year, some of which may meet the definition of a "small entity".

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Article 45-12 – Boilers. Small entities were not given different standards to comply with than large entities.

DATED this 3 day of November, 2011.

A handwritten signature in black ink, appearing to read "Melissa Hauer", written over a horizontal line.

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 Administrators, Insurance	)	REGULATORY ANALYSIS, SMALL
Continuing Education, Accounting	)	ENTITY ECONOMIC IMPACT
Practices and Procedures, Custodial	)	STATEMENT, AND SMALL ENTITY
Agreement Requirements, Surplus	)	REGULATORY ANALYSIS
Lines Insurance, Life and Health)	
Insurance Guaranty Association,	)	FILE NO. RU-11-320
Boilers)	

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 62nd Legislative Assembly during the 2011 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. Classes of Persons Who Probably Will Be Affected by the Proposed Rules

N.D. Admin. Code Chapters 45-02-03 - Licensing of Administrators, and 45-02-04 – Insurance Continuing Education. The classes of persons who will probably be affected by the proposed rules are third-party administrators, insurance producers, consultants, insurance continuing education course providers, and insurance companies. Each of these classes potentially bears the burden and the benefit of the proposed rules.

N.D. Admin. Code Chapters 45-03-15 – Accounting Practices and Procedures, and 45-03-23 – Custodial Agreement Requirements. 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.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The classes of persons who will probably be affected are surplus lines insurance producers and surplus lines entities. Each of these classes potentially bears the burden and the benefit of the proposed rules.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The classes of persons who will probably be affected are insurance companies selling life or health insurance. This group will potentially bear the burden as well as the benefit of the proposed rules.

N.D. Admin. Code Article 45-12 – Boilers. The classes of persons who will probably be affected are individuals who operate boilers and the individuals who inspect boilers. Each of these classes potentially bears the burden as well as the benefit of the proposed rules.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The proposed rules' economic impact on the regulated community is expected to be minimal to none. Any other expected impact would be a benefit to the regulated community due to lessened requirements for submitting documentation or deferral of license renewal fees in certain circumstances.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The proposed rules' economic impact on the regulated community is expected to be minimal to none. Any other expected impact would be a benefit to the regulated community due to lessened reporting requirements.

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 2009 version to the 2011 version. This rule is expected to have only a minimal impact on insurers.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The proposed rules' impact on the regulated community will be to lessen a potential burden for small insurers by providing an exemption from the requirements of the rule when they would cause financial hardship.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The proposed rules' impact on the regulated community is expected to be none. The proposed amendments are being made to align with changes due to the passage of 2011 House Bill No. 1123. The proposed amendments merely clarify and make language consistent with the corresponding North Dakota statutes.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The proposed rules' impact on the regulated community is expected to be none because the changes are being made to conform to the requirements of 2011 Senate Bill No. 2111.

N.D. Admin. Code Article 45-12 – Boilers. The proposed rules are expected to have an impact on the regulated community because they update the fees necessary to operate the Boiler Inspection Program and to update the applicable editions of the State Plumbing Code, the American Society of Mechanical Engineers Code, and the National Board Inspection Code. These changes are being made to implement the requirements of 2011 Senate Bill No. 2064.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The probable cost to the agency of implementation and enforcement is expected to be none to minimal impact on the Department's operations or expenditures. There is no foreseeable effect on state revenues from the proposed rules.

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 none to minimal impact on the Department's operations or expenditures. There is no foreseeable effect on state revenues from the proposed rules.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. 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.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. 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.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines 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. Any effect on state revenues comes from the requirements of 2011 House Bill No. 1123 and not from the rules. There is, therefore, no foreseeable effect on state revenues from the proposed rules.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. 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 is expected to be no effect on state revenues from the proposed rules.

N.D. Admin. Code Article 45-12 – Boilers. 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 an effect on state revenues from the proposed rules due to the increase in boiler inspection fees authorized by 2011 Senate Bill No. 2064.

D. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. 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 current best practices 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.

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, the proposed rule repeals obsolete content or codifies current practice. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. 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 updates obsolete content. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. 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 an exemption from the requirements of the rule for small insurers to ease the financial burden that may have occurred with enforcing the requirements 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.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines 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 proposed rule implements statutory changes that were made during the 2011 legislative session. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been possible and equally effective.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. 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 rules implement statutory changes made during the 2011 legislative session. The Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been possible and equally effective.

N.D. Admin. Code Article 45-12 – Boilers. 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 new statutory requirements passed during the 2011 legislative session. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The small entities that may possibly be subject to these proposed rules are third-party administrators, insurance producers, and insurance companies that meet the statutory definition of "small entity".

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The small entities that may possibly be subject to these proposed rules are insurance producers, continuing education providers, and insurance companies that meet the statutory definition of "small entity".

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. The small entities that may possibly be subject to these proposed rules are insurance companies that meet the statutory definition of "small entity".

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The small entities that may possibly be subject to these proposed rules are insurance companies that meet the statutory definition of “small entity”.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The small entities that may possibly be subject to these proposed rules are surplus lines insurance producers that meet the statutory definition of “small entity”.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The small entities that may possibly be subject to these proposed rules are insurance companies that sell life or health insurance and that meet the statutory definition of “small entity”.

N.D. Admin. Code Article 45-12 – Boilers. The small entities that may possibly be subject to these proposed rules are individuals who operate boilers and the individuals who inspect boilers that meet the statutory definition of “small entity”.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules codify current practices or remove obsolete references so there is no new administrative cost.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules codify current practices or remove obsolete references so there is no new administrative cost.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules update the version of the Accounting Practices and Procedures Manual—which is already used by the regulated industry—to be the most current version.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules provide an exemption that small insurers may request to allow them more flexibility in the custodial agreements they secure.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. In some areas, the rules remove obsolete references so there is no new administrative cost. In other areas, the rules implement statutory changes made by 2011 House Bill No. 1123.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules implement the changes required by the passage of 2011 Senate Bill No. 2111.

N.D. Admin. Code Article 45-12 – Boilers. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules implement the changes required by the passage of 2011 Senate Bill No. 2064.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to third-party administrators, insurance producers, and insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The probable benefits to private persons and consumers include furthering consumer protection by improved licensing procedures for insurance producers.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. 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 continuing education course providers, and insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The probable benefits to private persons and consumers include furthering consumer protection by improved licensing procedures for insurance producers.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The probable benefits to private persons and consumers include furthering consumer protection by improved financial oversight of insurance companies.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The probable benefits to private persons and consumers include furthering flexibility for small insurers while maintaining improved financial oversight of insurance companies generally.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. It is possible but unlikely that there would be some cost and some benefit to private persons and consumers since the proposed rules are directed to surplus lines insurance producers

and insurance companies. Any cost to private persons and consumers would be indirect and not susceptible of measurement. The proposed rules implement statutory changes outside the discretion of the Department to consider cost and benefit.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to insurance companies that sell life or health insurance. Any cost to private persons and consumers would be indirect and not susceptible of measurement. 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 guarantee amounts available for consumers when an insurer becomes unable to pay claims.

N.D. Admin. Code Article 45-12 – Boilers. It is possible that there would be some cost to private persons and consumers since the proposed rules implement boiler inspection fee increases. The likely cost to private persons and consumers would be indirect and difficult to measure in that the increased boiler inspection fees could be passed on by the boiler owner, in whole or in part, to those private persons or consumers. The probable benefits to private persons and consumers include furthering consumer protection by improved boiler inspections resources and updated codes.

4. Probable effect of the proposed rule on state revenues

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The anticipated effect of the rule on state revenues is estimated to be nonexistent or minimal. Any effect on state revenue will be due to the statutory change implemented by 2011 House Bill No. 1123.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The probable effect on state revenues is expected to be nonexistent or minimal. Any effect on state revenue will be due to the statutory change implemented by 2011 Senate Bill No. 2111.

N.D. Admin. Code Article 45-12 – Boilers. The rules are expected to increase state revenues pursuant to the requirements of 2011 Senate Bill No. 2064.

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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. The Insurance Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. No less intrusive or less costly alternative methods were identified. Requirements in the proposed rules are a codification of current practice familiar to the regulated community. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The Insurance Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. No less intrusive or less costly alternative methods were identified. Requirements in the proposed rules are a codification of current practice familiar to the regulated community. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. 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 mandated by statute and are a codification of current practice familiar to the regulated community. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The proposed rules add an exemption that will allow small insurers the flexibility to choose from various options regarding custodial agreement arrangements. No less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. The proposed rules repeal obsolete requirements and update language and requirements to be consistent with statutory requirements. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. 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 mandated by statute and also codify a practice familiar to the regulated community. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Article 45-12 – Boilers. 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, in part, mandated by statute and, in part, are an updating of various codes that are already used in the industry and which serve to modernize a current practice already familiar to the regulated community. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are either mandated by statute, carried over from the current version of the rule, or a codification of current practice familiar to the regulated community. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. Less stringent reporting requirements for small entities were considered and found not appropriate. No reporting requirement exists in the proposed rule. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are a codification of current practice familiar to the regulated community. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. Less stringent reporting requirements for small entities were considered and found not appropriate. No reporting requirements were proposed in the rules. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are mandated by statute, carried over from the current version of the rule, and are a codification of current practice familiar to the regulated community. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are either mandated by

statute, carried over from the current version of the rule, a codification of current practice familiar to the regulated community, or no reporting requirement exists. Less stringent compliance requirements were also considered but they were not appropriate under these circumstances.

N.D. Admin. Code Article 45-12 – Boilers. Less stringent reporting requirements for small entities were considered and found not appropriate. Reporting requirements in the proposed rules are either mandated by statute, carried over from the current version of the rule, or are a codification of current practice familiar to the regulated community. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. 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 for small entities inappropriate.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. The Commissioner considered less stringent schedules or deadlines where possible. No schedule or deadline for compliance or reporting is present in the proposed rule for insurance continuing education.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. The Commissioner considered less stringent schedules or deadlines where possible. No schedules or deadlines for compliance or reporting requirements appear in the proposed rules.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The Commissioner considered less stringent schedules or deadlines where possible. No schedules or deadlines for compliance or reporting requirements appear in the proposed rules.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. 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, making an alternate schedule or deadline inappropriate. Where no statutory schedule or deadline has been set, any schedule or deadline in the rule has been set to be minimally stringent for all licensees regardless of size.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. 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, making an alternate schedule or deadline inappropriate. Where no statutory schedule or deadline has been set, any schedule or deadline set in the rule has been set to be minimally stringent for all licensees regardless of size.

N.D. Admin. Code Article 45-12 – Boilers. 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, making an alternate schedule or deadline inappropriate. Where no statutory schedule or deadline has been set, any schedule or deadline set in the rule 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible.

N.D. Admin. Code Article 45-12 – Boilers. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

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N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. Small entities were not given different operational standards to comply with than large entities. No design standards are presented in the proposed rules.

N.D. Admin. Code Article 45-12 – Boilers. 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

N.D. Admin. Code Chapter 45-02-03 – Licensing of Administrators. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. Small entities were not given different standards to comply with than large entities.

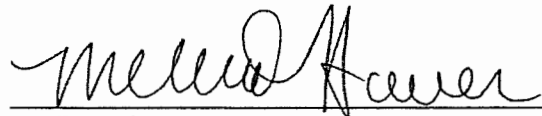
N.D. Admin. Code Chapter 45-03-23 – Custodial Agreement Requirements. The rules provide for an exemption from part of the custodial agreement requirements for insurers having direct written and assumed premiums of less than three million dollars in any calendar year, some of which may meet the definition of a “small entity”.

N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Article 45-12 – Boilers. Small entities were not given different standards to comply with than large entities.

DATED this 3 day of November, 2011.

A handwritten signature in black ink, appearing to read "Melissa Hauer", is written over a horizontal line.

Melissa Hauer
Special Assistant Attorney General
General Counsel
N.D. Insurance Department
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(701) 328-2440

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation)	
of Proposed Rules Regarding:)	
Licensing of Administrators, Insurance	)	FISCAL NOTE REGARDING
Continuing Education, Accounting	)	PROPOSED RULES
Practices and Procedures, Custodial)	
Agreement Requirements, Surplus Lines	)	FILE NO. RU-11-320
Insurance, Life and Health Insurance)	
Guaranty Association, Boilers)	

The purpose of this fiscal note is to fulfill the requirements of N.D.C.C. § 28-32 -08.2 which provide that when an agency presents rules for Administrative Rules Committee consideration, the agency shall provide a fiscal note or a statement in its testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rule changes on state revenues and expenditures, including any effect on funds controlled by the agency. This fiscal note pertains to proposed amendments to N.D. Admin. Code Title 45.

1. Statement of Estimated Effect on State Revenues and Expenditures

As indicated below, the following proposed rules are expected to affect state revenues and expenditures during the time period of the 2011-2013 biennium. The estimated effect on state revenues and expenditures is explained below:

- N.D. Admin. Code ch. 45-02-03, Licensing of Administrators – The rules are not expected to affect state revenues or expenditures.
- N.D. Admin. Code ch. 45-02-04, Insurance Continuing Education – The rules are not expected to affect state revenues or expenditures.
- N.D. Admin. Code ch. 45-03-15, Accounting Practices and Procedures – The rules are not expected to affect state revenues or expenditures.
- N.D. Admin. Code ch. 45-03-23, Custodial Agreement Requirements – The rules are not expected to affect state revenues or expenditures.
- N.D. Admin. Code ch. 45-09-01, Surplus Lines Insurance – The rules are not expected to affect state revenues or expenditures. The state law on which the rules are based, however, will likely have an effect on state revenues.
- N.D. Admin. Code ch. 45-11-01, Life and Health Insurance Guaranty Association – The rules are not expected to affect state revenues or expenditures.
- N.D. Admin. Code title 45-12, Boilers – The rules are expected to have a fiscal effect. As provided in 2011 Senate Bill No. 2064, the rules increase the fee caps for boiler inspections and special inspections and eliminate the fee caps for steam traction engines or hobby boiler as a separate type of inspection. There are also increases in the fees for annual inspector commission cards, welder qualification cards, hobby boiler exams and hobby boiler licenses. The law allowed increases in fee caps per boiler inspection from \$150 to \$200, and fees for special inspections requested by the owner/user and for shop reviews and surveys made by the Boiler Inspection Program from \$350 per day and \$200 per half-day to a maximum of \$500 per day and \$300 per

half-day. The increase in revenue for the higher inspection fee caps is estimated at \$21,000 per year. The increase in the Certificate of Inspection fee from \$20 per certificate to \$20 per year of certificate is expected to generate an additional \$80,540 per year. Revenue from the change in fees for annual inspector commission cards, welder qualification cards, hobby boiler exams and hobby boiler licenses is expected to be nominal. The change is expected to have a minimal impact on revenue. The state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law is estimated to be \$203,080. Revenues from the Boiler Inspection Program are deposited in the State Fire and Tornado Fund.

2. Whether It Is a One-Time or Ongoing Effect

The estimated duration of the effect of the proposed rules is:

- N.D. Admin. Code ch. 45-02-03, Licensing of Administrators – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-02-04, Insurance Continuing Education - N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-03-15, Accounting Practices and Procedures – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-03-23, Custodial Agreement Requirements – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-09-01, Surplus Lines Insurance – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-11-01, Life and Health Insurance Guaranty Association – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code title 45-12, Boilers – The rules are expected to have an ongoing fiscal effect because 2011 Senate Bill No. 2064 amended the fee schedule that the Insurance Commissioner must use to determine the fees imposed for the internal inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

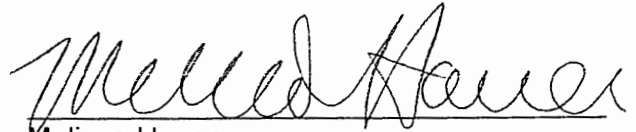
3. Identification of Impact to the Department's Budget

The likely impact of the proposed rules to the Department's budget is expected to be:

- N.D. Admin. Code ch. 45-02-03, Licensing of Administrators – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-02-04, Insurance Continuing Education – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-03-15, Accounting Practices and Procedures – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-03-23, Custodial Agreement Requirements – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-09-01, Surplus Lines Insurance – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-11-01, Life and Health Insurance Guaranty Association – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code title 45-12, Boilers – The rules will not affect the Department's appropriation. As more fully explained above, the rules are expected to increase

revenue due to the collection of increased boiler inspection fees as provided by the provisions of 2011 Senate Bill No. 2064.

DATED this 3 day of November, 2011.

A handwritten signature in cursive script, appearing to read "Melissa Hauer", written over a horizontal line.

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 Administrators, Insurance	)	FISCAL NOTE REGARDING
Continuing Education, Accounting	)	PROPOSED RULES
Practices and Procedures, Custodial)	
Agreement Requirements, Surplus Lines	)	FILE NO. RU-11-320
Insurance, Life and Health Insurance)	
Guaranty Association, Boilers)	

The purpose of this fiscal note is to fulfill the requirements of N.D.C.C. § 28-32 -08.2 which provide that when an agency presents rules for Administrative Rules Committee consideration, the agency shall provide a fiscal note or a statement in its testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rule changes on state revenues and expenditures, including any effect on funds controlled by the agency. This fiscal note pertains to proposed amendments to N.D. Admin. Code Title 45.

1. Statement of Estimated Effect on State Revenues and Expenditures

As indicated below, the following proposed rules are expected to affect state revenues and expenditures during the time period of the 2011-2013 biennium. The estimated effect on state revenues and expenditures is explained below:

- N.D. Admin. Code ch. 45-02-03, Licensing of Administrators – The rules are not expected to affect state revenues or expenditures.
- N.D. Admin. Code ch. 45-02-04, Insurance Continuing Education – The rules are not expected to affect state revenues or expenditures.
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2. Whether It Is a One-Time or Ongoing Effect

The estimated duration of the effect of the proposed rules is:

- N.D. Admin. Code ch. 45-02-03, Licensing of Administrators – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-02-04, Insurance Continuing Education - N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-03-15, Accounting Practices and Procedures – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-03-23, Custodial Agreement Requirements – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-09-01, Surplus Lines Insurance – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code ch. 45-11-01, Life and Health Insurance Guaranty Association – N/A (the rules are not expected to have a fiscal effect).
- N.D. Admin. Code title 45-12, Boilers – The rules are expected to have an ongoing fiscal effect because 2011 Senate Bill No. 2064 amended the fee schedule that the Insurance Commissioner must use to determine the fees imposed for the internal inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

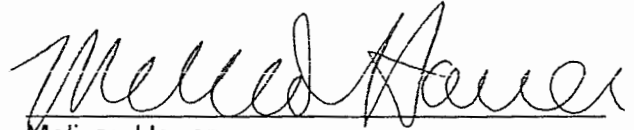
3. Identification of Impact to the Department's Budget

The likely impact of the proposed rules to the Department's budget is expected to be:

- N.D. Admin. Code ch. 45-02-03, Licensing of Administrators – N/A (the rules are not expected to have a fiscal effect).
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revenue due to the collection of increased boiler inspection fees as provided by the provisions of 2011 Senate Bill No. 2064.

DATED this 3 day of November, 2011.

A handwritten signature in black ink, appearing to read "Melissa Hauer", written over a horizontal line.

Melissa Hauer
Special Assistant Attorney General
General Counsel
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(701) 328-2440

STATE OF NORTH DAKOTA

BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Promulgation)	
of Proposed Rules Regarding:)	
Licensing of Administrators, Insurance	)	TAKINGS ASSESSMENT
Continuing Education, Accounting	)	CONCERNING
Practices and Procedures, Custodial	)	PROPOSED RULES
Agreements Requirements, Surplus)	
Lines Insurance, Life and Health	)	FILE NO. RU-11-320
Insurance Guaranty Association,)	
Boilers.)	

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 3 day of November, 2011.

A handwritten signature in black ink, appearing to read "Melissa Hauer", written over a horizontal line.

Melissa Hauer
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