



North Dakota
Insurance Department
Adam Hamm, Commissioner

MEMORANDUM

TO: Legislative Council's Administrative Rules Committee

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

DATE: June 14, 2012

SUBJECT: Adoption of Administrative Rules (July 2012 Supplement)

- Licensing of Administrators (45-02-03)
- Insurance Continuing Education (45-02-04)

Chairman Koppelman and members of the Administrative Rules Committee, I am Mary N. Hoberg, Legal 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 listed above 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 are not related to any federal statute or regulation.

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

Answer: Notice of the rulemaking and the public hearing was published in all county newspapers as required by law. The Department of Insurance also uses a basic mailing list to provide notice of each of its rulemaking projects. Additionally, the Department constructs relevant mailing lists for specific rulemaking. A public hearing was held on 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 Summary of Comments attached to Melissa Hauer's testimony.

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 45-02-03 – Licensing of Administrators. 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. No comments were received regarding this chapter.

N.D. Admin. Code Chapter 45-02-04 – Insurance Continuing Education. 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.

Comments were received from one commentor. The commentor supported the repeal of Section 45-02-04-03(15).

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. No change was made because the action suggested in the comment would be contrary to national uniformity standards.

The rest of the comments made by the commentor did not pertain to the subject of this rulemaking project and thus they did not require any change.

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 to Melissa Hauer's testimony.

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 to Melissa Hauer's testimony.

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 to Melissa Hauer's testimony.

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 to Melissa Hauer's testimony.

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.

MNH/njb

cc: Adam Hamm, Commissioner