



North Dakota
Insurance Department
Jon Godfread, Commissioner

M E M O R A N D U M

TO: Administrative Rules Committee

FROM: Jeff Ubben, Deputy Commissioner and General Counsel *J.U.*

DATE: March 9, 2017

SUBJECT: Adoption of Proposed Administrative Rules (April 2017 Supplement)

- Credit for Reinsurance (45-03-07.1)
- Annual Financial Reporting (45-03-20)
- Multiple Employer Welfare Arrangements (45-06-14)
- Boilers (45-12-01)
- Insurance Fraud (45-15-01)

Good morning Chairman Devlin and members of the Administrative Rules Committee. I am Jeff Ubben, Deputy Commissioner and General Counsel for the North Dakota Insurance Department.

As requested, the following addresses the Administrative Rules Committee's questions regarding recent proposed amendments to Title 45 of the North Dakota Administrative Code put forward 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 did not result from statutory changes made by the Legislative Assembly.

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

Answer: Only the Multiple Employer Welfare Arrangement ("MEWA") rule is related to a federal statute or regulation. The federal Employee Retirement Income Security Act ("ERISA") contains an exception to preemption for MEWAs in 29 USC Section 1144(6)(A) giving the states the authority to regulate MEWAs. Where a MEWA constitutes an employee welfare

benefit plan, it must comply with Title I of ERISA as well as state laws which are not inconsistent. There is dual regulation of MEWAs by the state and the federal government.

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 Insurance Department 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 November 8, 2016, at the State Capitol, Bismarck, North Dakota. Oral and written comments received were summarized and are contained in the attached Summary of Comments. The Department's responses to the comments are also included in the attached Summary of Comments, along with the amendments to the rules 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 \$2,017.75 for 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 525 notices were sent by post office mail and the postage charge for this mailing was approximately \$257. The Attorney General's review was \$621.54.

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

Answer: N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. This chapter is being amended to correct the amount of security required for Secure – 2; to make a correction to an incorrectly listed rating; and to provide for the use of an updated version of the international chamber of commerce publication.

N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting. This chapter is being amended to add internal audit function requirements for large insurance companies.

N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. This chapter is being amended to update and clarify provisions of the chapter and to specify the commissioner's regulatory authority over Multiple Employer Welfare Arrangements.

N.D. Admin. Code ch. 45-12-01 – Boilers. This chapter is being amended to update sections of the boiler and pressure vessel construction code of the American Society of Mechanical Engineers from the 2013 version to the 2017 version.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. This chapter is being amended to modify the definition of "reasonable belief" as it relates to the requirements for a person engaged in the business of insurance to report knowledge of a fraudulent insurance act to the Insurance Commissioner.

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

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

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

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

9. **Whether 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 will be happy to answer any questions that you might have.

JU/njb

Attachments

cc: Jon Godfread, Commissioner



Wayne Stenehjem
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OPINION

January 31, 2017

Mr. Jeff Ubben
Deputy Commissioner/General Counsel
Insurance Department
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Ubben:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. title 45 concerning insurance, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

eee

cc: Vonette Richter, Legislative Council

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation)	
of Proposed Rules Regarding:	)	SUMMARY OF COMMENTS
Credit for Reinsurance, Annual)	
Financial Reporting, Multiple	)	FILE NO. RU-16-668
Employer Welfare Arrangements,)	
Boilers, Insurance Fraud)	

A hearing to receive comments regarding the proposed rules was held on November 8, 2016, in Bismarck. General Counsel Jeff Ubben 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 amendments to the following chapters of the North Dakota Administrative Code:

- 45-03-07.1 Credit for Reinsurance
- 45-03-20 Annual Financial Reporting
- 45-06-14 Multiple Employer Welfare Arrangements
- 45-12-01 Boilers
- 45-15-01 Insurance Fraud

Written comments were scheduled to be accepted through November 18, 2016.

Oral comments were received during the public hearing for the rules. Written comments were also 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 45-03-07.1
CREDIT FOR REINSURANCE**

1. This chapter is being amended to correct the amount of security required for Secure – 2, to make a correction to an incorrectly listed rating, and to provide for the use of an updated version of the international chamber of commerce publication.

2. The Department received a brief letter in support of this rule as the amendments to the rule make North Dakota's rule consistent with the NAIC model.

**N.D. ADMIN. CODE CHAPTER 45-03-20
ANNUAL FINANCIAL REPORTING**

3. This chapter is being amended to add internal audit function requirements for large insurance companies.

4. No comments were received regarding this chapter.

**N.D. ADMIN. CODE CHAPTER 45-06-14
MULTIPLE EMPLOYER WELFARE ARRANGEMENTS**

5. This chapter is being amended to update and clarify provisions of the chapter and to specify the Commissioner's regulatory authority over Multiple Employer Welfare Arrangements.

6. Oral comments were received from two parties at the public hearing. Two written comments were also received by the Department on November 18, 2016. The Department requested clarification from one commenter and that clarification was received on December 9, 2016.

7. One commenter stated that it does not believe the Department has the authority under N.D.C.C. § 26.1-01-07.4 to regulate multiple employer welfare arrangements. Based on the 2005 legislative history for the statute, the Department believes that the authority granted to the Department is broad enough to encompass multiple employer welfare arrangements. Additionally, the Department believes that authority is provided by N.D.C.C. ch. 26.1-07.1 which has been added to the proposed rules.

8. One commenter indicated that the rules overall impose administrative burdens on associations which did not previously apply to them. The Department

believes that the new administrative requirements are necessary to protect consumers to ensure the multiple employer welfare arrangement has adequate money to pay claims.

9. One commenter had concerns with Section 45-06-14-08(1) regarding service companies. The commenter proposed that a multiple employer welfare arrangement which has the staff and expertise to perform administrative functions should not be required to contract with a service company. The Department agreed with this proposal and included this exception.

10. One commenter had concerns with Section 45-06-14-08(2) regarding financial administrators. However, after discussions between the Department and the commenter, the Department believes that the commenter's concerns were alleviated with no amendment necessary.

11. One commenter had concerns with Section 45-06-14-08(3) regarding recordkeeping and examination authority. The commenter was concerned about how this section would relate to examinations of the service company. The Department clarified with the commenter that the section was only regarding the examination of a multiple employer welfare arrangement and, while the service company may hold some of the multiple employer welfare arrangement's records, it would not be an examination of the service company. The Department believes that the commenter's concerns were alleviated by this discussion.

12. One commenter had concerns with Section 45-06-14-05 regarding the board and how it would affect the sponsor associations. The Department had originally taken "sponsoring associations" out of the rules. However, after discussions with the commenter, the Department agreed to changes proposed by the commenter which

would include language regarding sponsoring associations and what individuals are allowed to serve on the board of the trust. The Department also made a change to the definition of “sponsoring association” to clarify that a multiple employer welfare arrangement may have more than one sponsoring association.

13. One commenter had concerns over the application fee required by Section 45-06-14-06. After clarifying that this will not be a burdensome fee, the Department believes the commenter’s concerns were alleviated.

14. One commenter had concerns regarding the disclosure requirement in Section 45-06-14-18. The commenter was concerned about this disclosure being confusing to consumers. However, the Department believes that the disclosure is necessary so that consumers know what they are receiving and what protections may not be afforded under the law. This is a consumer protection provision which numerous states also require.

**N.D. ADMIN. CODE CHAPTER 45-12-01
BOILERS**

15. This chapter is being amended to update sections of the boiler and pressure vessel construction code of the American Society of Mechanical Engineers from the 2013 version to the 2017 version.

16. No comments were received regarding this chapter.

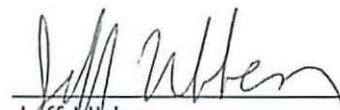
**N.D. ADMIN. CODE CHAPTER 45-15-01
INSURANCE FRAUD**

17. This chapter is being amended to modify the requirements for a person engaged in the business of insurance to report knowledge of a fraudulent insurance act to the insurance commissioner.

18. The Department received one oral comment at the public hearing and 18 written comments.

19. The original proposed amendments to the fraud reporting rule reduced the time allowed to report insurance fraud to the Insurance Commissioner from 60 days to 7 days. The original proposed amendment to the rule also changed the standard for having a reasonable belief that fraud has been, is being, or will be committed to having "a specific and articulate reason to believe a fraudulent insurance act has been, is being, or will be committed." Most of the commenters were concerned about both of these changes. In fact, all of the commenters were either concerned about one or both of these changes. In response, the Department changed the reporting period back to 60 days from 7 days and compromised with the commenters to address their concerns with the "reasonable belief" definition. The proposed rule with these revisions received broad support from the insurance industry and from the commenters. Indeed, the Department did not receive any negative feedback on the modified proposed rule that is now being presented to the Attorney General and the Administrative Rules Committee for review.

DATED this 9th day of January, 2017.



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STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation)	REGULATORY ANALYSIS, SMALL
of Proposed Rules Regarding:	)	ENTITY ECONOMIC IMPACT
Credit for Reinsurance, Annual Financial	)	STATEMENT AND SMALL ENTITY
Reporting, Multiple Employer Welfare	)	REGULATORY ANALYSIS
Arrangements, Boilers, and Insurance)	
Fraud.	)	FILE NO. RU-16-668

I. REGULATORY ANALYSIS

The North Dakota Insurance Department ("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.*

Each of the proposed rules may 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 ch. 45-03-07.1 – Credit for Reinsurance. The classes of persons who will probably be affected by the proposed rules are alien and foreign assuming reinsurance companies. This group will potentially bear the burden as well as the benefit of the proposed rules. Insurance consumers will also benefit from the proposed rules.

N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting. The classes of persons who will probably be affected by the proposed rules are insurance companies with total premiums over \$500 million or insurance company groups with total premiums over \$1 billion. This group will potentially bear the burden as well as the benefit of the proposed rules. Insurance consumers will also benefit from the proposed rules.

N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. The classes of persons who will probably be affected by the proposed rules are employers seeking to self-insure their employees. 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 by the proposed rules are individuals who operate boilers and the individuals who inspect boilers.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. The classes of persons who will probably be affected by the proposed rules are insurance producers and insurance companies. This group will potentially bear the burden as well as the benefit of the proposed rules. Insurance consumers will also receive the benefit of the proposed rules.

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

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. The proposed rules merely make minor corrections to the credit for insurance rule to make it consistent with the language desired by the Department's Company Licensing Division. These rules are expected to have only a minimal financial impact, if any, on assuming reinsurance companies.

N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting. The proposed rule adds internal audit function requirements to a large insurance company's requirement to annually file audited financial reports. This rule is expected to have only a minimal financial impact on large insurance companies.

N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. The proposed rules regulate the operation of multiple employer welfare arrangements. This rule is expected to have only a minimal financial impact on employers self-insuring their employees.

N.D. Admin. Code Article 45-12 – Boilers. The proposed rule merely updates sections of the boiler and pressure vessel construction code of the American Society of Mechanical Engineers from the 2013 version to the 2017 version. This rule is not expected to have any financial impact on insurers.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. The proposed rule requires a person engaged in the business of insurance to report knowledge of a fraudulent insurance act to the Commissioner within seven days if the person has a specific and articulate reason to believe a fraudulent insurance act has been, is being, or will be committed. This rule is expected to have only a minimal financial impact, if any, on persons engaged in the business of insurance.

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

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. The probable cost to the agency of implementation and enforcement is expected to have no impact on the Department's operations or expenditures. There will be no effect on state revenues from the proposed rules.

N.D. Admin. Code Chapter 45-03-20 – Annual Financial Reporting. The probable cost to the agency of implementation and enforcement is expected to have no impact on the Department's operations or expenditures. There will be no effect on state revenues from the proposed rules.

N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. 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 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 little, if any, effect on state revenues from the proposed rules.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. 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.

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 ch. 45-03-07.1 – Credit for Reinsurance. 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 amendments to this rule brings the Department into compliance with national standards. 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 45-03-20 – Annual Financial Reporting. 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 amendments to this rule bring the Department into compliance with national standards. 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 ch. 45-06-14 – Multiple Employer Welfare Arrangements. 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 update and clarify provisions of the chapter. 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 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 rules simply update sections of the boiler and pressure vessel construction code of the American Society of Mechanical Engineers from the 2013 version to the 2017 version. 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 ch. 45-15-01 – Insurance Fraud. 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 are necessary to better define insurance fraud reporting standards for individuals engaged in the business of insurance. 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 ch. 45-03-07.1 – Credit for Reinsurance. The proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1.

N.D. Admin. Code Chapter 45-03-20 – Annual Financial Reporting. The proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1.

N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. The small entities that may possibly be subject to these proposed rules are employers or employer groups that self-insure and meet the 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”.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. The small entities that may possibly be subject to these proposed rules are insurance agencies and insurance companies, if any, which meet the statutory definition of “small entity.”

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

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, there will be no administrative or other costs required for compliance with the proposed rule.

N.D. Admin. Code Chapter 45-03-20 – Annual Financial Reporting. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, there will be no administrative or other costs required for compliance with the proposed rule.

N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules update and clarify provisions of the chapter and specify the regulatory authority of the Insurance Commissioner.

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 as the proposed rules simply update sections of the boiler and pressure vessel construction code of the American Society of Mechanical Engineers from the 2013 version to the 2017 version.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rule simply defines insurance fraud reporting standards for individuals engaged in the business of insurance to follow.

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

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. Any cost to private persons and consumers would be indirect and not measureable. The probable benefits to private persons and consumers include the possible reduction of insurance costs because of increased competition.

N.D. Admin. Code Chapter 45-03-20 – Annual Financial Reporting. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to large insurance companies and large insurance company groups.

N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. It is possible but unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to employers or groups of employers choosing to self-insure. Any cost to private persons and consumers would be indirect and not measureable. The probable benefits to private persons and consumers include furthering consumer protection by improved oversight of self-funded insurance for consumers.

N.D. Admin. Code Article 45-12 – Boilers. It is extremely unlikely that there would be any cost to private persons and consumers from the proposed rules. Any cost to private persons and consumers would be indirect and not measureable. The benefit to consumers and private persons would be that the proposed rules would allow the most current sections of the boiler and pressure vessel construction code of the American Society of Mechanical Engineers to be in effect for the inspection of boilers.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. It is extremely unlikely that there would be some cost to private persons and consumers since the proposed rules are directed to individuals engaged in the business of insurance. Any cost to private persons and consumers would be indirect and not measureable. The probable benefits to private persons and consumers include furthering consumer protection by improved oversight and active monitoring of the crime of insurance fraud.

4. Probable effect of the proposed rule on state revenues

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. The probable effect on state revenues is expected to be nonexistent.

N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting. The probable effect on state revenues is expected to be nonexistent.

N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. The probable effect on state revenues is expected to be nonexistent or minimal.

N.D. Admin. Code Article 45-12 – Boilers. The probable effect on state revenues is expected to be nonexistent.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. The probable effect on state revenues is expected to be nonexistent.

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

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. 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 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 ch. 45-03-20 – Annual Financial Reporting. 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 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 ch. 45-06-14 – Multiple Employer Welfare Arrangements. The Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. The proposed rules merely update and clarify provisions of the chapter to better define the requirements for multiple employer welfare arrangements and to more clearly define the Insurance Department's regulatory authority. 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. The proposed rules merely update provisions of the boiler and pressure vessel construction code of the American Society of Mechanical Engineers from the 2013 version to the 2017 version. In view of these circumstances, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. The Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. The proposed rules define requirements for reporting the crime of insurance fraud. 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 ch. 45-03-07.1 – Credit for Reinsurance. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no less stringent compliance or reporting requirements for small entities were considered.

N.D. Admin. Code ch. 45-03-15 – Annual Financial Reporting. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no less stringent compliance or reporting requirements for small entities were considered.

N.D. Admin. Code ch. 45-04-14 – Multiple Employer Welfare Arrangements. Less stringent compliance reporting requirements for small entities were considered and found not appropriate. Compliance and reporting requirements in the proposed rules are a clarification of current requirements.

N.D. Admin. Code Article 45-12 – Boilers. The proposed amendments to the rules for this article do not contain compliance or reporting requirements.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. Less stringent compliance or reporting requirements for small entities were considered and found not appropriate. North Dakota law requires all individuals engaged in the business of insurance to report insurance fraud to the Insurance Commissioner, regardless of their size or affiliation.

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

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no less stringent schedules or deadlines for compliance or reporting requirements for small entities were considered

N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no less stringent schedules or deadlines for compliance or reporting requirements for small entities were considered.

N.D. Admin. Code ch. 45-04-14 – Multiple Employer Welfare Arrangements. Less stringent schedules or deadlines for compliance or reporting requirements for small entities were considered and found not appropriate. Compliance and reporting requirements in the proposed rules are a codification of current practice familiar to the regulated community.

N.D. Admin. Code Article 45-12 – Boilers. The proposed amendments to the rules for this article do not contain compliance or reporting requirements.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. Less stringent schedules or deadlines for compliance or reporting requirements for small entities were considered and found not appropriate. North Dakota law requires all individuals engaged in the business of insurance to report insurance fraud to the Insurance Commissioner, regardless of their size or affiliation.

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

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no consolidation or simplification of compliance or reporting requirements for small entities were considered.

N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no consolidation or simplification of compliance or reporting requirements for small entities were considered.

N.D. Admin. Code ch. 45-04-14 – Multiple Employer Welfare Arrangements. Consolidation or simplification of complaint or reporting requirements for small entities were considered and found not appropriate. Compliance and reporting requirements in the proposed rules are a codification of current practice familiar to the regulated community.

N.D. Admin. Code Article 45-12 – Boilers. The proposed amendments to the rules for this article do not contain compliance or reporting requirements.

N.D. Admin. Code ch. 45-17-01 - Bail Bondsmen. Consolidation or simplification of complaint or reporting requirements for small entities were considered and found not appropriate. North Dakota law requires all individuals engaged in the business of insurance to report insurance fraud to the Insurance Commissioner, regardless of their size or affiliation.

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

N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no establishment of performance standards for small entities to replace design or operational standards required for small entities were considered.

N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no establishment of performance standards for small entities to replace design or operational standards required for small entities were considered.

N.D. Admin. Code ch. 45-04-14– Multiple Employer Welfare Arrangements. 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.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. 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 ch. 45-03-07.1 – Credit for Reinsurance. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no exemption of small entities from all or any part of the requirements was considered.


N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting. Since the proposed rules will not affect small entities or small businesses as those terms are defined by N.D.C.C. § 28-32-08.1, no exemption of small entities from all or any part of the requirements was considered.

N.D. Admin. Code ch. 45-04-14 – Multiple Employer Welfare Arrangements. 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.

N.D. Admin. Code ch. 45-15-01 – Insurance Fraud. Small entities were not given different standards to comply with than large entities.

DATED this 3rd day of October, 2016.



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STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation)	
of Proposed Rules Regarding:	)	FISCAL NOTE REGARDING
Credit for Reinsurance, Annual	)	PROPOSED RULES
Financial Reporting, Multiple)	
Employer Welfare Arrangements,	)	FILE NO. RU-16-668
Boilers, and Insurance Fraud)	

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

The undersigned has determined that the proposed rules concerning N.D. Admin. Code ch. 45-03-07.1 – Credit for Reinsurance, ch. 45-03-20 – Annual Financial Reporting, ch. 45-12-01 – Boilers, and ch. 45-15-01 – Insurance Fraud are not expected to have a fiscal effect on state revenues and expenditures during the 2015-2017 biennium.

As indicated below, the following proposed rule may have little or no effect on state revenues and expenditures during the time period of the 2015-2017 biennium. The estimated effect on state revenues and expenditures is explained below:

- N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements. The probable effect on state revenues and expenditures is expected to be nonexistent or minimal.

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. 45-03-07.1 – Credit for Reinsurance - N/A (the rules are not expected to have a fiscal effect on state revenues and expenditures).

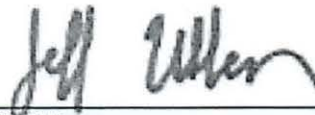
- N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting – N/A (the rules are not expected to have a fiscal effect on state revenues and expenditures).
- N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements - N/A (the rules are expected to have a nonexistent or minimal fiscal effect).
- N.D. Admin. Code ch. 45-12-01 – Boilers – N/A (the rules are not expected to have a fiscal effect on state revenues and expenditures).
- N.D. Admin. Code ch. 45-15-01 - Bail Bondsman - N/A (the rules are not expected to have a fiscal effect on state revenues and expenditures).

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. 45-03-07.1 – Credit for Reinsurance – The rules are not expected to have a fiscal impact on the Department's budget.
- N.D. Admin. Code ch. 45-03-20 – Annual Financial Reporting – The rules are not expected to have a fiscal impact on the Department's budget.
- N.D. Admin. Code ch. 45-06-14 – Multiple Employer Welfare Arrangements - The rules are not expected to have a fiscal impact on the Department's budget.
- N.D. Admin. Code ch. 45-12-01 - Boilers - The rules are not expected to have a fiscal impact on the Department's budget.
- N.D. Admin. Code ch. 45-15-01 - Insurance Fraud - The rules are not expected to have a fiscal impact on the Department's budget.

DATED this 3rd day of October, 2016.



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STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation)	TAKINGS ASSESSMENT
of Proposed Rules Regarding:	)	CONCERNING
Credit for Reinsurance, Annual Financial	)	PROPOSED RULES
Reporting, Multiple Employer Welfare)	
Arrangements, Boilers, and Insurance Fraud	)	FILE NO. RU-16-668

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 incorporated by reference into this assessment.

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

4. The potential cost to the government if a court determines that any portion of 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 any portion 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 3rd day of October, 2016.



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