STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation of Proposed Rules Regarding: Accounting Practices and Procedures, Unclaimed Life Insurance Benefits, Short-Term Care Insurance, Petroleum Tank Release Compensation Fund	))))))	**REGULATORY ANALYSIS, SMALL ENTITY ECONOMIC IMPACT STATEMENT AND SMALL ENTITY REGULATORY ANALYSIS** **FILE NO. RU-13-429**

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.*

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 Chapter 45-06-15 – Short-Term Care Insurance. The classes of persons who may be affected by the proposed new rules are private persons and consumers, should they choose to purchase short-term care insurance. This group will potentially bear the burden as well as the benefit of the proposed rules.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. The classes of persons who may be affected by the proposed rules are new owners and operators of petroleum tanks and current owners and operators of petroleum tanks which must comply with petroleum tank and infrastructure requirements in order to sell fuels with greater than 10% ethanol content. The classes of persons who will potentially bear the burden of the proposed rules are petroleum tank owners and operators. The classes of persons that will benefit from the proposed rules are petroleum tank owners and operators, as well as private persons and consumers.

N.D. Admin. Code Chapter 45-03-15 – Accounting Practices and Procedures. 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 45-03-24 – Unclaimed Life Insurance Benefits. The classes of persons who will probably be affected by the proposed rules are insurance companies or vendors hired by insurance companies to bring insurance companies into compliance with N.D.C.C. ch. 26.1-55. This group will potentially bear 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 45-06-15 – Short-Term Care Insurance. The proposed rules' potential economic impact will be to provide an additional insurance product in the North Dakota marketplace.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. The proposed rules' potential economic impact will be to require petroleum tank owners and operators to comply with petroleum tank and infrastructure requirements in order to sell fuels with greater than 10% ethanol content.

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 2011 version to the 2013 version. This rule is expected to have only a minimal financial impact on insurers.

N.D. Admin. Code Chapter 45-03-24 – Unclaimed Life Insurance Benefits. The proposed rules provide an option for insurance companies to request a temporary waiver from the requirements of N.D.C.C. ch. 26.1-55 to allow them a transition period to come into compliance with the requirements of N.D.C.C. ch. 26.1-55. Therefore, the proposed rules have the potential to allow insurance companies to delay the costs associated with meeting the requirements of N.D.C.C. ch. 26.1-55.

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 45-06-15 – Short-Term Care Insurance. The probable cost to the agency of implementation and enforcement is expected to be small. The Department will be required to review any new short-term care products filed with the Department. There will be little, if any, effect on state revenues from the proposed rules.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. The probable cost to the agency of implementation and enforcement is expected to have little to no impact on the Department's operations or expenditures. There is a small foreseeable effect on state revenues from the proposed rules due to removal of the

ability of petroleum tank owners and operators to prorate their yearly petroleum tank fees.

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 45-03-24 – Unclaimed Life Insurance Benefits. 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 Chapter 45-06-15 – Short-Term Care 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 rules are necessary in order to provide regulatory framework for use by individuals and entities wishing to market and sell short-term care insurance products in North Dakota, and to provide guidelines for use by state insurance department personnel in reviewing short-term care insurance product filings. In light of the foregoing, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. 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 petroleum tank infrastructure requirements that are already required at the federal level. The proposed rules also ease the administrative burden of managing the Petroleum Tank Release Compensation Fund because it removes the ability of petroleum tank owners and operators from prorating their yearly registration fees.

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 45-03-24 – Unclaimed Life Insurance Benefits. The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. As previously noted, the proposed rules provide an option for insurance companies to request a temporary

waiver from the requirements of N.D.C.C. ch. 26.1-55 to allow them a transition period to come into compliance with the requirements of N.D.C.C. ch. 26.1-55, meaning the proposed rules have the potential to allow insurance companies to delay the costs associated with meeting the requirements of N.D.C.C. ch. 26.1-55. Therefore, the Department did not identify any alternative methods of achieving the purpose of the proposed rules that would have been equally effective, and no less intrusive or less costly alternative methods were identified.

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 45-06-15 – Short-Term Care Insurance. The small entities that may possibly be subject to these proposed rules are individuals and insurance agencies who wish to begin marketing and selling short-term care insurance in North Dakota.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. The small entities that may possibly be subject to these proposed rules are individuals and small entities which own and operate or utilize petroleum tanks in North Dakota.

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, if any, that meet the statutory definition of "small entity".

N.D. Admin. Code Chapter 45-03-24 – Unclaimed Life Insurance Benefits. The small entities that may possibly be subject to these proposed rules are insurance companies, if any, 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 45-06-15 – Short-Term Care Insurance. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The proposed rules adopt regulatory framework for use by individuals and

insurance agencies wishing to sell short-term care insurance products in North Dakota, and provide guidelines for use by state insurance department personnel in reviewing short-term care insurance product filings.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The proposed rules will assist in easing the administrative burden of administering the Petroleum Tank Release Compensation Fund by preventing petroleum tank owners and operators from registering with the Fund late and requiring the Fund to prorate their registration fees. Proration of registration fees will no longer be permitted under the revisions to these proposed administrative rules because tank owners and operators have not been consistent in reporting to the Fund when tanks are installed and begin operating in North Dakota.

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 the most current version.

N.D. Admin. Code Chapter 45-03-24 – Unclaimed Life Insurance Benefits. The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules provide for an option for insurance companies to request a temporary waiver from the requirements of N.D.C.C. ch. 26.1-55 to allow them a transition period to come into compliance with the requirements of N.D.C.C. ch. 26.1-55.

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

N.D. Admin. Code Chapter 45-06-15 – Short-Term Care Insurance. It is probable that there will be no cost to private persons and consumers who are affected by the proposed rules, other than if they should choose to purchase short-term care insurance. The probable benefits to private persons and consumers include making available an insurance product to consumers which was not previously available to them.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. It is probable that there will be no cost to private persons and consumers who are affected by the proposed rules. The proposed rules provide greater protection to private persons and consumers by seeking to ensure that petroleum tank owners and operators timely pay their registration fees to the Petroleum Tank Release Compensation Fund. Regularly and timely paying registration fees assures that petroleum tank owners and operators are eligible for coverage by the Fund in the event of a petroleum tank leak or spill. These proposed rules also seek to protect private persons and consumers by requiring owners and operators of petroleum tanks to possess petroleum tanks with infrastructures that are compatible with fuels containing an ethanol content greater than

10%. Federal laws currently require petroleum tanks to be compatible with these types of fuels. As a result, changes were made to the proposed rules to bring them into parity with current federal regulations.

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 45-03-24 – Unclaimed Life Insurance Benefits. It is probable that there will be no costs to private persons and consumers who are affected by the proposed rules. The proposed rules provide greater protection to private persons and consumers by seeking to ensure that insurance companies are able to manage the costs associated with the implementation of N.D.C.C. ch. 26.1-55.

4. Probable effect of the proposed rule on state revenues

N.D. Admin. Code Chapter 45-06-15 – Short-Term Care Insurance. The rules are not reasonably expected to have an effect on state revenues.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. The rules are not reasonably expected to have a significant effect on state revenues.

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 45-03-24 – Unclaimed Life Insurance Benefits. The probable effect on state revenues is expected to be nonexistent or minimal.

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

N.D. Admin. Code Chapter 45-06-15 – Short-Term Care Insurance. The Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. As previously noted, the proposed rules are necessary in order to provide regulatory framework for use by individuals and entities wishing to market and sell short-term care insurance products in North Dakota, and to provide guidelines for use by state insurance department personnel in reviewing short-term care insurance product filings. In light of the foregoing, no less intrusive or less costly alternative methods were identified.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. The Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. As previously

noted, it is probable that the proposed rules will contain no cost to private persons and consumers who are affected by the proposed rules and administrative and other costs for compliance with the proposed rule will be minimal. As previously mentioned, the proposed rules will assist in easing the administrative burden of administering the Petroleum Tank Release Compensation Fund by preventing petroleum tank owners and operators from registering with the Fund late and requiring the Fund to prorate their registration fees. The proposed rules also bring North Dakota rules into parity with current federal regulations requiring tank owners and operators to possess petroleum tanks with infrastructures compatible with fuels containing greater than 10% ethanol if the owner/operator wishes to sell fuels of this type. In light of the foregoing, 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 45-03-24 – Unclaimed Life Insurance Benefits. The Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. As previously noted, the proposed rules are necessary in order to provide an option for insurance companies to request a temporary waiver from the requirements of N.D.C.C. ch. 26.1-55 to allow them a transition period to come into compliance with the requirements of N.D.C.C. ch. 26.1-55. In light of the foregoing, 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 45-06-15 – Short-Term Care Insurance. Less stringent reporting requirements for small entities were considered and found not appropriate. There are no reporting requirements in the proposed rules.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. Less stringent reporting and compliance requirements for small entities were considered and found not appropriate. The registration (reporting) requirements will assist in easing the administrative burden of administering the Petroleum Tank Release Compensation Fund by preventing petroleum tank owners and operators from registering with the Fund late and requiring the Fund to prorate their registration fees. Proration of registration fees will no longer be permitted under the revisions to these proposed administrative rules because tank owners and operators have not been consistent in reporting to the Fund when tanks are installed and begin operating in

North Dakota. The compliance requirements related to fuels with greater than 10% ethanol in the proposed rules bring North Dakota regulations into parity with current federal regulations and serve to protect private persons and consumers.

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 45-03-24 – Unclaimed Life Insurance Benefits. Less stringent reporting requirements for small entities were considered and found not appropriate as no reporting requirements were proposed in the rules.

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

N.D. Admin. Code Chapter 45-06-15 – Short-Term Care 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 directly or indirectly, making an alternate schedule or deadline for small entities inappropriate.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. The Commissioner considered less stringent schedules or deadlines where possible. As regularly and timely paying registration fees assures that petroleum tank owners and operators are eligible for coverage by the Fund in the event of a petroleum tank leak or spill, less stringent schedules or deadlines were found to be inappropriate. The compliance requirements related to fuels with greater than 10% ethanol in the proposed rules bring North Dakota regulations into parity with current federal regulations and serve to protect private persons and consumers, therefore, less stringent schedules or deadlines were found to be inappropriate.

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 45-03-24 – Unclaimed Life Insurance Benefits. The Commissioner considered less stringent schedules or deadlines where possible. As previously noted, the proposed rules are necessary in order to provide an option for insurance companies to request a temporary waiver from the requirements of N.D.C.C. ch. 26.1-55 to allow them a transition period to come into compliance with the requirements of N.D.C.C. ch. 26.1-55. The purpose of these proposed rules is to allow insurance companies an opportunity to establish a less stringent deadline for implementation of the requirements of N.D.C.C. ch. 26.1-55.

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

N.D. Admin. Code Chapter 45-06-15 – Short-Term Care 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 45-10-02 – Petroleum Tank Release Compensation Fund. 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 45-03-24 – Unclaimed Life Insurance Benefits. As previously noted, the proposed rules are necessary in order to provide an option for insurance companies to request a temporary waiver from the requirements of N.D.C.C. ch. 26.1-55 to allow them a transition period to come into compliance with the requirements of N.D.C.C. ch. 26.1-55. The purpose of these proposed rules is to allow insurance companies an opportunity to establish a less stringent deadline for implementation of the requirements of N.D.C.C. ch. 26.1-55.

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

N.D. Admin. Code Chapter 45-06-15 – Short-Term Care 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 45-10-02 – Petroleum Tank Release Compensation Fund. 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 45-03-24 – Unclaimed Life Insurance Benefits. 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 45-06-15 – Short-Term Care Insurance. Small entities were not given different standards to comply with than large entities.

N.D. Admin. Code Chapter 45-10-02 – Petroleum Tank Release Compensation Fund. 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 45-03-24 – Unclaimed Life Insurance Benefits. Small entities were not given different standards to comply with than large entities.

DATED this 29th day of October, 2013.

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