

**Michigan Office of Administrative Hearings and Rules**

**Administrative Rules Division (ARD)**

MOAHR-Rules@michigan.gov

**REGULATORY IMPACT STATEMENT  
and COST-BENEFIT ANALYSIS (RIS)**

**Agency Information:**

**Department name:**

Insurance and Financial Services

**Bureau name:**

Insurance

**Name of person filling out RIS:**

Catherine Hart

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**Rule Set Information:**

**ARD assigned rule set number:**

2023-62 IF

**Title of proposed rule set:**

Surplus Lines Insurance Fees

**Comparison of Rule(s) to Federal/State/Association Standard**

**1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.**

There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association.

**A. Are these rules required by state law or federal mandate?**

This rule is not required by state law or federal mandate. The Department of Insurance and Financial Services (DIFS) is authorized to promulgate this rule under section 210 of the Insurance Code (Code), MCL 500.210. In addition, Section 1955 of the Code, MCL 500.1955, allows DIFS' Director to promulgate rules to implement Chapter 19 of the Code.

**B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.**

This rule does not exceed any federal standard or law as there is no applicable federal standard or law.

**2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.**

Other states have statutes that regulate surplus lines insurers, but no state that is similarly situated to Michigan has a standard or rule similar to Michigan's.

**A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.**

This rule does not exceed standards in similarly situated states because no state that is similarly situated to Michigan has a standard or rule similar to Michigan's.

**3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.**

There are no laws, rules, or other legal requirements that conflict with the proposed rule.

**A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.**

The proposed rule implements Chapter 19 of the Code. There are no other federal, state, or local laws applicable to the same activity or subject matter.

**4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.**

MCL 24.232(8), as enacted by 2018 PA 602, does not apply to the proposed rule.

**5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.**

MCL 24.232(9), as enacted by 2018 PA 602, does not apply to the proposed rule.

## **Purpose and Objectives of the Rule(s)**

**6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.**

Chapter 19 of the Code, known as the “surplus lines insurance act,” regulates surplus insurers, i.e., licensees, in the state of Michigan. Chapter 19 contains certain conditions and requirements for licensees to charge policy fees to insureds, see MCL 500.1915. MCL 500.1915 was amended by 2020 PA 62 to establish new fee standards for permissible fees. The proposed rule will provide consistency with Chapter 19 by striking obsolete language from the existing rule and defining those expenses that are “unique to surplus lines.”

**A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.**

Upon promulgation, the proposed rule will align with Chapter 19 of the Code, specifically MCL 500.1915. Licensees will benefit from the consistency. It is expected that licensees will, if they have not already, have to change how they charge fees to comply with the proposed rule as well as the amended Section 1915.

**B. Describe the difference between current behavior/practice and desired behavior/practice.**

Upon promulgation, the proposed rule will align with Chapter 19 of the Code. Licensees will have clarity on fee standards and requirements so that compliance can be better achieved.

**C. What is the desired outcome?**

The desired outcome of the proposed rule is to achieve consistency with Chapter 19 of the Code as well as to provide clarity with respect to permissible surplus lines insurance policy fees.

**7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.**

If the proposed rule is not adopted, there would be less clarity and consistency between the rule and MCL 500.1915.

**A. What is the rationale for changing the rules instead of leaving them as currently written?**

Modernizing the rule will ensure alignment with MCL 500.1915.

**8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.**

The proposed rule protects consumers by protecting them from excessive fees. There is no additional burden to licensees as they must already comply with Chapter 19 of the Code.

**9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.**

The proposed rule amends the existing R 500.1251. There are no rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

## **Fiscal Impact on the Agency**

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

**10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).**

There will be no fiscal impact on DIFS resulting from the proposed rule.

**11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.**

No specific appropriation or funding source has been made or provided; there are no expenditures associated with the proposed rule.

**12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.**

The proposed rule does not require duplicative acts of any individuals. The proposed rule does not impose requirements or burdens in addition to those statutorily mandated; the proposed rule is necessary to implement the amended Section 1915 of Chapter 19 of the Code and to align the existing rule with the Code. The proposed rule is suitable to accomplish its purpose because it provides clear standards and requirements for licensees to charge surplus lines policy fees.

**A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.**

There is no expected burden. Chapter 19 of the Code permits the DIFS Director to promulgate rules to effectuate the statute, see MCL 500.1955. The proposed rule is necessary and reasonable to assist licensees in determining the standards and requirements necessary to comply with the fee provisions of Chapter 19, see MCL 500.1915.

## **Impact on Other State or Local Governmental Units**

**13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.**

There are no estimated increases or decreases in revenues to other state or local governmental units as a result of the proposed rule. There are no estimated cost increases or reductions for other state or local governmental units as a result of the proposed rule.

**14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.**

There are not any programs, services, duties, or responsibilities imposed upon a city, county, town, village, or school district as a result of the proposed rule.

**A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.**

There are no actions that governmental units must take to be in compliance with the proposed rule.

**15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.**

No appropriation or funding source has been provided to state or local governmental units because there are no additional expenditures associated with the proposed rule.

## **Rural Impact**

**16. In general, what impact will the rules have on rural areas?**

The rule will not have an impact on public or private interests in rural areas.

**A. Describe the types of public or private interests in rural areas that will be affected by the rules.**

The rule will not have an impact on public or private interests in rural areas.

## **Environmental Impact**

**17. Do the proposed rules have any impact on the environment? If yes, please explain.**

The proposed rule will not have an impact on the environment.

**Small Business Impact Statement**

**18. Describe whether and how the agency considered exempting small businesses from the proposed rules.**

DIFS did not consider exempting “small businesses” from the proposed rule because the proposed rule implements Chapter 19 of the Code, which does not provide statutory authority to exempt “small businesses.” In addition, all licensees must comply with Chapter 19 regardless of size. Therefore, exempting small businesses from the rule is not necessary or appropriate.

**19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.**

To the extent a licensee regulated by DIFS constitutes a “small business,” it is not expected that the proposed rule will have a disproportionate impact on small businesses because of their size. Establishing an exemption would not be lawful or feasible because the proposed rule implements Chapter 19 of the Code, which does not authorize a small-business exemption. DIFS believes that the proposed rule, consistent with the scope of Chapter 19, more effectively achieves its purpose if applied uniformly to all licensees.

**A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.**

DIFS does not collect data on which insurers are "small businesses." In addition, the proposed rule is not expected to have a disproportionate impact on small businesses.

**B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.**

The proposed rule does not establish differing compliance or reporting requirements or timetables for “small businesses” because the licensees must be regulated uniformly.

**C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.**

The proposed rule does not consolidate or simplify compliance and reporting requirements for “small businesses.”

**D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.**

The proposed rule does not establish any performance standards applicable to “small businesses.”

**20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.**

The proposed rule is not expected to have a disproportionate impact on small businesses because of their size or geographic location.

**21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.**

The proposed rule does not require a report.

**22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.**

DIFS does not collect data on which insurers are "small businesses." To date, there are 3,851 surplus lines licensees in Michigan. However, the proposed rule will not affect the cost of compliance for any "small business" because it implements the requirements of Chapter 19 of the Code, which are statutorily required and already applicable to any "small business" licensee under Chapter 19.

**23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.**

DIFS does not collect data on which insurers are "small businesses." To date, there are 3,851 surplus lines licensees in Michigan. However, the proposed rule will not affect the cost of legal, consulting, or accounting services for any "small business" because it implements the requirements of Chapter 19 of the Code, which are statutorily required and already applicable to any "small business" licensee under Chapter 19.

**24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.**

DIFS does not expect any "small businesses" will have to absorb any additional costs as a result of the proposed rule. The proposed rule implements the requirements of Chapter 19 of the Code, which are statutorily required and already applicable to any "small business" licensee under Chapter 19.

**25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.**

The proposed rule implements the fee provisions of Chapter 19 of the Code that are generally applicable to all licensees under Chapter 19. The cost to DIFS of exempting any "small businesses" from the proposed rule would be \$0.00 because DIFS would not exempt any "small businesses" as doing so would be inconsistent with the scope and purpose of Chapter 19.

**26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.**

The requirements of Chapter 19 of the Code provide for the regulation and oversight of surplus lines insurers. The proposed rule, along with portions of Chapter 19, provides oversight and standards related to charging surplus lines policy fees to insureds. Any exemption from the proposed rule for "small businesses" would adversely affect the public interest because not all licensees would be regulated consistently, potentially resulting in increased instances of noncompliance.

**27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.**

DIFS did not involve "small businesses" in the development of the proposed rule.

**A. If small businesses were involved in the development of the rules, please identify the business(es).**

DIFS did not involve small businesses in the development of the proposed rule.

**Cost-Benefit Analysis of Rules (independent of statutory impact)**

**28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.**

Additional estimated statewide compliance costs related to the proposed rule is \$0.00 because the proposed rule implements the requirements of Chapter 19 of the Code, which are statutorily required and with which licensees are required to comply regardless of the proposed rule.

**A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.**

Licensees subject to Chapter 19 of the Code will be directly affected by the proposed rule.

**B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.**

The proposed rule is not expected to impose additional costs on businesses or other groups. The proposed rule implements the requirements of Chapter 19 of the Code, which are statutorily required and already applicable to any licensee under Chapter 19.

**29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.**

The proposed rule is not expected to result in compliance costs on individuals or the public. The proposed rule implements the requirements of Chapter 19 of the Code, which are statutorily required and already applicable to any licensee under Chapter 19.

**A. How many and what category of individuals will be affected by the rules?**

The proposed rule is not expected to result in compliance costs on individuals.

**B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?**

The proposed rule is not expected to have a qualitative or quantitative impact on individuals.

**30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.**

The proposed rule is not expected to result in cost reductions to businesses, individuals, groups of individuals, or governmental units.

**31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.**

The primary and direct benefit of the proposed rule is consistency between the rule and Chapter 19 of the Code. In addition, licensees will have a modernized regulation that will allow for consistency and clarity as it relates to surplus lines fees.

**32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.**

The proposed rule is not expected to impact business growth or job creation (or elimination) in Michigan.

**33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.**

No individuals or businesses will be disproportionately affected by the proposed rule other than surplus lines licensees solely as result of their industrial sector because the licensees are the entities subject to the proposed rule.

**34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.**

DIFS reviewed other states' statutes related to surplus lines. No other sources were consulted.

**A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.**

It was assumed that surplus lines licensees are unlikely to be considered "small businesses." No other assumptions or estimates were made.

## **Alternative to Regulation**

**35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.**

DIFS has not identified reasonable alternatives to the proposed rule that would achieve the same or similar goals. The proposed rule includes revisions based on the amendment of Chapter 19 of the Code, specifically MCL 500.1915.

**A. Please include any statutory amendments that may be necessary to achieve such alternatives.**

There are no statutory amendments that would be necessary to achieve such alternatives.

**36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.**

It is not feasible to establish a regulatory program similar to that in the proposed rule that would operate through private market-based mechanisms. United States domiciled surplus lines insurers are subject to regulatory requirements and are overseen by state insurance regulators. DIFS is unaware of private market-based systems utilized by other states as an alternative to adopting state laws and regulations like those contained in Chapter 19 of the Code.

**37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.**

DIFS did not consider any significant alternatives to the proposed rule as the proposed rule is necessary due to the amendment of Chapter 19 of the Code, specifically MCL 500.1915.

## **Additional Information**

**38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.**

DIFS regularly provides instructions to regulated persons and entities regarding compliance with the Code and applicable administrative rules. In addition, after the proposed rule has been promulgated, the Director of DIFS will provide information to the licensee population that will inform them of the amended rule.