

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**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:

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Rule Set Information:

ARD assigned rule set number:

2020-132 IF

Title of proposed rule set:

Credit for Reinsurance

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?

Yes. Certain existing rules are mandated under Section 1103(6) of the Insurance Code, MCL 500.1103(6), and Senate Bill 1015, 2020 PA 328, requires that the Director promulgate additional rules under Section 1103.

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.

These rules do not exceed any 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.

The proposed rules are based entirely on a model law (#785) and model regulation (#786) promulgated by the National Association of Insurance Commissioners (NAIC). The model law and regulation were amended in 2019 to implement reinsurance collateral provisions within "Covered Agreements" entered into under the Dodd-Frank Act, 31 USC 313-314, by the United States federal government and the European Union and United Kingdom, which require states to modify collateral requirements or be subject to federal preemption. Parts of the model law and model regulation have already been incorporated into the Insurance Code, specifically MCL 500.1103, MCL 500.1105, and MCL 500.1106, as amended by 2020 PA 328. Many states have adopted the model law, and a few states have, or are in the process of, adopting the model regulation. See State Legislative Brief, NAIC, September 2020, available at: <https://content.naic.org/sites/default/files/inline-files/Credit%20for%20Reinsurance%20Model%20Brief%20-%20September%202020.pdf>.

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

The rules do not exceed standards in states that have adopted the model law and model regulation.

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

These rule amendments do not duplicate, overlap, or conflict with any laws, rules, or other legal requirements.

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.

There are no other federal, state, or local laws applicable to the same activity or subject matter. As explained above, these rules are consistent with the “Covered Agreements” entered into under the Dodd-Frank Act, 31 USC 313-314.

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.

Not applicable; there is not a federally mandated standard less stringent than these rules.

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.

Not applicable; there is not a federally mandated standard less stringent than these rules.

Purpose and Objectives of the Rule(s)

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

The proposed rules are designed to modernize reinsurance regulation in Michigan, and to make Michigan’s reinsurance regulation consistent with that in other states. The rules are intended to protect the interests of insured persons and entities, claimants, ceding insurers (i.e., insurers that cede part of their risk to reinsurers), assuming insurers (i.e., insurers that assume the ceded risk), and the public by strengthening state regulation, protecting policyholders, and reducing insurer uncertainty in planning for collateral liability. Incorporating the NAIC model promotes consistency and predictability for reinsurers. As adopted in MCL 500.1103(7) to (18), the Insurance Code allows credit for reinsurance ceded to a reinsurer in a “reciprocal jurisdiction,” defined under MCL 500.1103(27), if certain requirements are met. The rules implement this new category of cessions for which credit is allowed, and generally a specific amount of security is not required.

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

Upon promulgation, reinsurers may be recognized as a reinsurer in a “reciprocal jurisdiction,” and generally the elimination of the security requirements would apply.

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

As explained above, without enacting the latest amendment to the model law and regulation, credit may not be permitted for a “reciprocal jurisdiction” reinsurer. These rules would further the legislative intent under 2020 PA 328 to allow credit for such a cession and would ensure consistency with the model law and regulation.

C. What is the desired outcome?

The desired outcome is that the reinsurance market in Michigan is regulated consistently with other states, eliminating the possibility that reinsurers will choose another domicile.

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.

Michigan law—specifically, Chapter 11 of the Insurance Code, MCL 500.1101 et seq., would be preempted by federal law if the rules are not promulgated. Michigan’s ability to retain regulatory authority over reinsurance agreements depends on the promulgation of these rules.

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

Adopting the NAIC model law and model regulation ensures that Michigan law will not be preempted by federal law applicable to reinsurance agreements.

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 rules protect Michigan citizens by requiring that reinsurance agreements be subject to the same standards as in other states, thereby ensuring consistency, stability, and predictability in the reinsurance market.

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

The Department has not identified any obsolete or unnecessary rule in this rule set that 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).

These proposed rules will have, if any, a negligible fiscal impact on the Department, due primarily to the likely imposition of a fee on reinsurers and the number of requests the Department anticipates receiving. The revenue created by the fee will likely be used to help offset the cost of additional staff time needed to process the requests.

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

Not applicable; as described in #10, above, the proposed rules will have a negligible fiscal impact, if any, on the Department.

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 rules are necessary and suitable to accomplish the purpose of avoiding preemption of Michigan law regarding reinsurance; for the purpose of modernizing reinsurance regulation; and for the purpose of enacting consistent reinsurance regulatory schemes across states. The proposed rules do not place any burden on individuals.

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

Not applicable: the proposed rules do not place any burden on individuals.

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 is no revenue impact to other state or local governmental units.

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

There are no such programs, services, duties, or responsibilities imposed upon any of the above-listed entities by this 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 such actions that governmental units must take.

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.

There are no additional expenditures, so no appropriations have been made.

Rural Impact

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

The rules will not have an impact on rural areas.

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

The rules 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 rules will have no impact on the environment.

Small Business Impact Statement

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

The Department did not consider exempting small businesses from the rules because the ceding insurers and assuming reinsurers to which the proposed rules will apply are not small businesses.

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.

As described in #18 above, the affected entities are not small businesses, so the Department did not attempt to reduce the economic impact of the rules.

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

There are no small businesses that would be affected by the rules.

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.

Because no small businesses will be affected by the rule, the Department did not establish differing compliance or reporting requirements or timetables for small businesses.

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.

Because no small businesses will be affected by the rule, the Department did not consolidate or simplify the 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 rules do not require design or operation standards, so the Department did not establish performance standards to replace them.

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

The rules will not have an impact on small businesses at all, and therefore will not 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 rules do not impose a reporting requirement, so there is no cost to small businesses associated with preparing such 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.

Small businesses will not be affected by the rules, so there will be no costs of compliance.

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.

Small businesses will not be affected by the rules, so there is no cost of any legal, consulting, or accounting services incurred as a result of compliance.

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

Because there are no costs to small businesses for complying with the rules, there is no need for them to absorb any costs.

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.

Because small businesses are not affected by the rules, there is no basis for estimating the cost of exempting or setting lesser standards for small businesses. In addition, the primary purpose of the rules is to adopt uniform accreditation and collateral standards across states, so imposing lesser requirements on any type of entity would undermine the purpose of the rules.

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

The primary purpose of the rules is to adopt uniform accreditation and collateral standards across states, so the public interest would be adversely affected by exempting or setting lesser standards for any entity, including small businesses (in the unlikely event an insurer that qualified as a “small business” would be affected by the rules).

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

The agency has not involved small businesses in the development of the proposed rules because small businesses will not be adversely affected by these proposed rules.

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

No small businesses were involved in the development of the rules.

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

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

Compliance costs will be negligible for businesses and groups: all affected businesses will likely have already implemented processes for complying with the rules in other jurisdictions.

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

Reinsurers and ceding insurers will be the businesses that will most directly be affected by, and benefit from, the rules.

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.

Reinsurers affected by this rule will already be complying with identical rules in other states; therefore, there will be no, or very little, additional costs imposed as a result of these proposed rules.

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.

Michigan-domiciled reinsurers likely will not rely on whether they can meet the requirements of a “reciprocal jurisdiction” reinsurer because these reinsurers can already provide reinsurance to Michigan insurers without collateral; therefore, there will be no statewide compliance costs associated with the proposed rules. The proposed likely fee imposed by the Department on reinsurers seeking recognition as a “reciprocal jurisdiction” reinsurer is negligible in relation to the large companies that will be applying, and it is highly unlikely that this fee will be passed through to the ceding insurers.

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

Individuals will not be directly affected by the rules.

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

The rules will have no 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.

Cost reductions to Michigan businesses are possible. Indirect cost reductions could result when Michigan-domiciled insurers cede business to “reciprocal jurisdiction” reinsurers under the rules because the lacking collateral requirement could result in lower costs (e.g., fees for establishing collateral) being passed on to the Michigan-domiciled insurer. Quantifiable cost reductions to individuals and governmental units are unlikely.

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 benefits of the rules are that Michigan’s laws will not be preempted by federal law and will be consistent with the law in other states, leading to predictability and stability in the reinsurance market. In addition, indirect benefits might result from the lacking collateral requirement, which may free up capital and therefore allow for greater capacity in the insurance market.

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

The Department does not anticipate a significant impact on business growth or job creation/elimination in Michigan as a result of the rules.

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.

The proposed rules will apply equally to all individuals and businesses regardless of their industrial sector, segment of the public, business size, or geographic location.

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.

The following sources were used in compiling the regulatory impact statement: (1) NAIC Credit for Reinsurance Model Law #785 (<https://content.naic.org/sites/default/files/inline-files/MO785%20redlined%206-25-19.pdf>); (2) NAIC Credit for Reinsurance Model Regulation #786 (<https://content.naic.org/sites/default/files/inline-files/MO786%20redlined%206-25-19.pdf>); and (3) NAIC State Legislative Brief for the NAIC Credit for Reinsurance Model Law (link provided in Question 2).

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.

Information regarding reinsurance was obtained from the NAIC (available here: https://content.naic.org/cipr_topics/topic_reinsurance.htm).

Alternative to Regulation

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

The Department believes there is no reasonable alternative to the proposed rules. The rules are based on a model that has been, or will be, adopted in other states via the administrative rule promulgation process. MCL 500.1106 and 500.1103 specifically authorizes the Director of the Department to promulgate these rules, so no statutory amendments would be appropriate as an alternative.

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

Not applicable; the rulemaking is specifically authorized by statute, so no statutory amendments were necessary or contemplated.

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.

Insurance regulation is almost exclusively left to state governments; the Department is not aware of any private market-based mechanisms in other states and believes that private regulation of reinsurers would likely be found to be unconstitutional.

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.

The Department did not consider significant alternatives to these rules because one of the goals in promulgating these rules is consistency across states and utilizing the NAIC models is the only way to achieve that goal.

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.

The Department regularly provides instructions to regulated persons and entities on compliance with the Insurance Code and applicable administrative rules. In addition, after the rules have been promulgated and if the need arises, the Department may issue forms with instructions for reinsurers that will be required to comply with the rules. Reinsurers are generally highly sophisticated business entities that will be familiar with the process and requirements.