

State Budget Office
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RISCBA)**

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) at orr@michigan.gov no less than 28 days before the public hearing.

1. Agency Information

Agency name:	Department of Insurance and Financial Services		
Division/Bureau/Office:	Office of General Counsel		
Name, title, phone number, and e-mail of person completing this form:	Sarah Wohlford Deputy General Counsel 517-284-8743 wohlfor@s@michigan.gov		
Name of Departmental Regulatory Affairs Officer reviewing this form:	Sarah Wohlford		

2. Rule Set Information

ORR assigned rule set number:	2018-056 IF
Title of proposed rule set:	Credit for Reinsurance

PART 2: KEY SECTIONS OF THE APA

24.207a “Small business” defined.

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
 - (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
 - (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
 - (d) Establish performance standards to replace design or operational standards required in the proposed rule.
- (2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
- (3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

- (a) 0-9 full-time employees.
- (b) 10-49 full-time employees.
- (c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5].

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) 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 rule(s) required by state law or federal mandate?

No.

- B. If these rule(s) exceed a federal standard, identify the federal standard or citation, describe why it is necessary that the proposed rule(s) 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 rule(s) 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 and model regulation promulgated by the National Association of Insurance Commissioners (NAIC). 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. The model law and model regulation have been incorporated into 37 other states' statutes and/or administrative rules. Of these 37 states, similarly situated states that have incorporated

the model provisions that these rules will also incorporate include: Indiana, Iowa, Minnesota, Missouri, Ohio, Oklahoma, and Pennsylvania.

A. If the rule(s) exceed standards in those states, 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 rule(s).

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

A. Explain how the rule has 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.

Purpose and Objectives of the Rule(s):

4. Identify the behavior and frequency of behavior that the proposed rule(s) 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 in determining acceptable risks and identifying standards applicable to letters of credit. The model allows foreign reinsurers to post less than 100% collateral for U.S.-situated risk, so long as the foreign reinsurer is in good financial health and regulated effectively. The rules also allow “certified” reinsurers—those that have been recognized by the Director of the Department of Insurance and Financial Services—to “passport” and be recognized in other jurisdictions, thereby decreasing the frequency of duplicative applications in jurisdictions that have the same requirements for certification.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

Upon promulgation, foreign reinsurers can apply for certification and passporting; and the lower collateral rates will apply on a prospective basis to reinsurance contracts.

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

Currently, ceding insurers domiciled in Michigan could be subject to higher reinsurance costs than ceding insurers domiciled in a jurisdiction that has adopted the models, leading to a competitive disadvantage. The proposed rules will ensure consistency between Michigan and other states.

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.

5. Identify the harm resulting from the behavior that the proposed rule(s) 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, PA 218 of 1956, 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 rule(s) 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.

6. Describe how the proposed rule(s) 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.

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

The draft rules would rescind R 500.1121 because there are no longer any requirements specifically applicable to multiple beneficiary trust funds.

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 reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).

These proposed rules will have, if any, a negligible fiscal impact on the Department of Insurance and Financial Services, due to the imposition of an annual fee on reinsurers applying for certification. The revenue created by the fee will likely be offset by cost of additional staff time needed to process the applications.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

Not applicable; as described in #8, above, the proposed rules will have a negligible fiscal impact, if any, on the Department of Insurance and Financial Services.

10. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places 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 rule(s) 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:

11. 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 such other state or local governmental units 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.

- A. 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 cost increases or reductions for other state or local governmental units.

12. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s).

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 rule(s). 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.

13. 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 rule(s).

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

Rural Impact:

14. In general, what impact will the rule(s) 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 rule(s).

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

Environmental Impact:

15. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The rules will have no impact on the environment.

Small Business Impact Statement:

16. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

The Department of Insurance and Financial Services 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.

17. If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) 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 rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

As described in #16 above, the affected entities are not small businesses, so the Department of Insurance and Financial Services did not attempt to reduce the economic impact of the rules.

A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

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 rule after projecting the required reporting, record-keeping, and other administrative costs.

Because no small businesses will be affected by the rule, the Department of Insurance and Financial Services 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 of Insurance and Financial Services 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 rule(s).

The rules do not require design or operation standards, so the Department of Insurance and Financial Services did not establish performance standards to replace them.

18. Identify any disproportionate impact the proposed rule(s) 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.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

The rules do not impose a reporting requirement, so there is no cost to small businesses associated with preparing such a report.

20. Analyze the costs of compliance for all small businesses affected by the proposed rule(s), 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.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

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.

22. 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.

23. 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.

24. 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).

25. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

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 rule(s), 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):

26. 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 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 rule(s).

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)? 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.

27. Estimate the actual statewide compliance costs of the proposed rule(s) 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 apply for certification 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 \$500 application fee proposed to be imposed by the Department of Insurance and Financial Services on certified reinsurer applicants (through forms to be issued after the rules are promulgated) 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 does the proposed change in rule(s) have on these individuals?

The rules will have no qualitative or quantitative impact on individuals.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a

result of the proposed rule(s).

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

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). 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 lower collateral requirements, which will free up capital and therefore allow for greater capacity in the insurance market.

30. Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

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

31. 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.

32. 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 a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

The following sources were used in compiling the regulatory impact statement: NAIC Credit for Reinsurance Model Law #785 (available here: <https://www.naic.org/store/free/MDL-785.pdf>); NAIC Credit for Reinsurance Model Regulation #786 (available here: <https://www.naic.org/store/free/MDL-786.pdf>); and the NAIC State Legislative Liaison Brief for Credit for Reinsurance Model Law (available here: https://www.naic.org/documents/cmte_legislative_liaison_brief_credit_for_reinsurance.pdf).

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

Information regarding passporting and the number of certified reinsurers in other states was obtained from the NAIC (available here: https://www.naic.org/cmte_e_reinsurance_certified_reinsurers.htm).

Alternatives to Regulation:

33. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

The Department of Insurance and Financial Services 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 specifically authorizes the Director of the Department of Insurance and Financial Services to promulgate these rules, so no statutory amendments would be appropriate as an alternative.

A. In enumerating your alternatives, 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.
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34. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

Insurance regulation is almost exclusively left to state governments; the Department of Insurance and Financial Services 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.
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35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The Department of Insurance and Financial Services 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.
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Additional Information:

36. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

The Department of Insurance and Financial Services 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, the Director of the Department of Insurance and Financial Services will 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 application process and requirements.

 ↓ **To be completed by the ORR** ↓

PART 4: REVIEW BY THE ORR

Date RISCBA received:	9-18-2018
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Date RISCBA approved:	9/27/18
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Date of disapproval:	
Explanation:	