

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-02-02
LICENSING OF INSURANCE PRODUCERS, SURPLUS LINES INSURANCE
PRODUCERS, AND CONSULTANTS

Sections 45-02-02-02, 45-02-02-04 and 45-02-02-12 are amended as follows:

45-02-02-02. Applications for licenses.

1. Resident insurance producers' applications.

- a. An application must be completed in accordance with the instruction sheet and submitted either electronically or with a paper filing on a commissioner-approved application form.
- b. An applicant licensed in another state within the preceding ninety days who moves to this state must provide, with the application, proof of clearance from the state in which the insurance producer is currently or was most recently licensed as a resident insurance producer.
- c. An application form is required to add an additional line of insurance.
- d. Every application submitted to the department through either a paper or electronic filing must be accompanied by the appropriate fee made payable to either the commissioner or the commissioner's designee.

2. Nonresident insurance producers' applications.

- a. An application for a nonresident insurance producer's license must comply with subdivisions a, c, and d of subsection 1 and must contain a written designation of the commissioner and the commissioner's successors in office as that insurance producer's true and lawful attorney for purposes of service of process.
- b. An applicant for a nonresident insurance producer's license must have the state, which issued the agent's resident license, supply to the department a certificate showing the lines for which the agent is

licensed and eligible to write in that state. This certification may be submitted by the national association of insurance commissioners' producer data base.

3. **Surplus lines insurance producers' applications.** A surplus lines insurance producer's application must be submitted in accordance with chapter 45-09-01.
4. **Consultants' applications.**
 - a. An application for a consultant's license must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.
 - b. No person holding a license as an insurance producer or surplus lines insurance producer may obtain and simultaneously hold a license as a consultant. If the applicant holds such licenses at the time of application, the licenses must be terminated canceled prior to obtaining a consultant's license.
5. **Temporary license applications.**
 - a. An application for a temporary insurance producer's license must be submitted in accordance with section 45-02-02-02.
 - b. The application must be accompanied by a written statement of the reasons for requesting the issuance of a temporary license.
 - c. A temporary license will not be granted for the sole reason that the applicant has failed to pass the insurance producers' examinations and desires to be licensed until such time as a passing examination score is obtained.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987; April 1, 1996; January 1, 2000; December 1, 2001; January 1, 2008; January 1, 2016.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-12, 26.1-26-13

45-02-02-04. Specific examination requirements.

1. An applicant applying to conduct insurance in the following lines must pass the following examinations:
 - a. Life and annuity Life and annuity

- b. Accident and health Accident and health
 - c. Property Property
 - d. Casualty Casualty
 - e. Variable life and annuity Life and annuity
2. An applicant applying for a license for title insurance is exempt from any examination requirement but must meet the following qualifications:
 - a. The applicant must be a licensed abstracter or attorney; or
 - b. The applicant must have a minimum of eighty hours of training provided by an insurer licensed in the line of title insurance. A certification by the insurer that the training has been completed must accompany the application.
 3. An applicant for a license to write travel and baggage insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier is exempt from examination requirements.
 4. An applicant for a license with the line of authority of surety shall take a pass the casualty examination. Surety coverage is insurance or a bond that covers obligations to pay the debts of or answer for the default of another, including faithlessness in a position of public or private trust, but not including bail bonds.
 5. An applicant for a license to write the following products need only take the reduced examination required for that specific product:
 - a. Bail bonds.
 - b. Credit including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of credit insurance.
 - c. Crop or crop hail. Crop or crop hail insurance is insurance providing protection against damage to crops from unfavorable weather

conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions, or perils provided by the private insurance market, or that is subsidized by the federal crop insurance corporation, including multiperil crop insurance.

- d. Legal expense, including prepaid legal service.
 - e. Personal lines. Personal lines is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.
6. An applicant for a consultant's license shall take and pass the insurance producer's examination for the lines in which the applicant seeks to consult. If an applicant for a consultant's license holds a North Dakota insurance producer's license, the applicant is exempt from the testing requirements for the lines held on the insurance producer's license within twelve months preceding the date on which the consultant application is filed with the commissioner. However, the applicant must ~~terminate~~ cancel the insurance producer's license prior to obtaining a consultant's license.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000; December 1, 2001; January 1, 2008; April 1, 2010; January 1, 2016.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-25

45-02-02-12. Administrative ~~terminations~~ cancellations.

- 1. An insurance producer may ~~terminate~~ cancel one's North Dakota insurance license voluntarily and have a letter of clearance issued by filing a written request with the department.
- 2. The insurance producer must return the licenses to the department.
- 3. The insurance producer is responsible for notifying the appointing companies of the ~~termination~~ cancellation.
- 4. A surplus lines insurance producer or consultant may ~~terminate~~ cancel one's license voluntarily and have a letter of clearance issued by the department upon receipt of a written request from the licenseholder.

History: Effective September 1, 1983; amended effective January 1, 2000; December 1, 2001; January 1, 2016.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31

PROPOSED RULES

CHAPTER 45-03-05 INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION WITH REPORTING FORMS AND INSTRUCTIONS

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45-03-05-01. Authority. This chapter is promulgated pursuant to the authority granted by North Dakota Century Code chapter 26.1-10.

History: Effective January 1, 1982.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10

45-03-05-02. Purpose. The purpose of this chapter is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of the North Dakota Insurance Holding Company System Regulatory Act (North Dakota Century Code chapter 26.1-10). The information called for by this chapter is declared to be necessary and appropriate in the public interest and for the protection of policyholders and shareholders in this state.

History: Effective January 1, 1982.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10

45-03-05-03. Severability clause. If any provision of this chapter, or the application of this chapter to any person or circumstance, is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

History: Effective January 1, 1982.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10

45-03-05-04. Forms - General requirements.

1. Forms A, B, C, and D, E, and F are intended to be guides in the preparation of the statements required by North Dakota Century Code sections 26.1-10-03 and , 26.1-10-03.1, 26.1-10-04, and 26.1-10-05. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted; provided, the answers are prepared so in such a manner as to indicate to the reader clearly the scope and coverage of the items without the necessity of the reader referring to the text of the items or the instructions thereto. All instructions, whether appearing under the items of the form or elsewhere in the form, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.
2. Two complete copies of each statement including exhibits and all other papers and documents filed as a part of the statement shall be filed with the commissioner by personal delivery or mail addressed to:
Commissioner of Insurance, Fifth Floor, State Capitol, Bismarck, North Dakota 58505, Attention: Legal Department. A copy of Form C must be filed in each state in which an insurer is authorized to do business, if the commissioner of that state has notified the insurer of its request in writing,

~~in which case the insurer has ten days from the receipt of the notice to file such form. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such the power of attorney or other authority shall also be filed with the statement.~~

3. If an applicant requests a hearing on a consolidated basis under subdivision c of subsection 4 of section 26.1-10-03 of the North Dakota Century Code, in addition to filing the form A with the commissioner, the applicant shall file a copy of Form A with the national association of insurance commissioners in electronic form.

4. ~~Statements should be prepared on paper eight and one-half inches by eleven inches or eight and one-half inches by thirteen inches [21.59 centimeters by 27.94 centimeters or 21.59 centimeters by 33.02 centimeters] in size and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, electronically. Statements must be easily readable, and suitable for photocopying review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.~~

History: Effective January 1, 1982; amended effective January 1, 1992; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-03, 26.1-10-04

45-03-05-05. Forms - Incorporation by reference, summaries, and omissions.

1. Information required by any item of Form A, Form B, ~~or Form D,~~ Form E, or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, ~~or Form D,~~ Form E, or Form F provided such the document ~~or paper~~ is filed as an exhibit to the

statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents already currently on file with the commissioner which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such the material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such the incorporation would render the statement incomplete, unclear, or confusing.

2. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the most important pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which were filed within three years and may be qualified in its entirety by the reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

History: Effective January 1, 1982; amended effective January 1, 1992; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-03, 26.1-10-04

45-03-05-06. Forms - Information unknown or unavailable and extension of time to furnish.

1. ~~Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to all of the following conditions:~~
 - a. ~~The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.~~
 - b. ~~The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the~~

~~absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.~~

2. If it is impractical to furnish any required information, document, or report at the time it is required to be filed, there ~~may~~ must be filed with the commissioner as a separate document an ~~application (a)~~ identifying :
 1. Identifying the information, document, or report in question; ~~(b)~~ stating
 2. Stating why the filing thereof at the time required is impractical; and ~~(c)~~ requesting
 3. Requesting an extension of time for filing the information, document, or report to a specified date. The ~~application shall~~ request for extension must be deemed granted unless the commissioner, within forty-five days after receipt thereof, enters an order denying the ~~application request~~.

History: Effective January 1, 1982; amended effective January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-03, 26.1-10-04

45-03-05-07. Forms - Additional information and exhibits. In addition to the information expressly required to be included in Form A, Form B, Form C, ~~and~~ Form D, ~~there shall be added such Form E, and Form F, the commissioner may request further~~ material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file ~~such~~ the exhibits as it may desire in addition to those expressly required by the statement. ~~Such~~ The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, ~~or~~ D, E, or F must include on the top of the cover page the phrase: "Change No. (insert number) to" and must indicate the date of the change and not the date of the original filing.

History: Effective January 1, 1982; amended effective January 1, 1992; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-03, 26.1-10-04

45-03-05-08. Forms - Amendments. Any amendment for Form A, Form B, Form C, and Form D shall include on the top of the cover page the phrase: "Amendment No. (insert number) to" and shall indicate the date of the amendment and not the date of the original filing.

History: Effective January 1, 1982; amended effective January 1, 1992.

General Authority: NDCC 26.1-10-12
Law Implemented: NDCC 26.1-10-03, 26.1-10-04

45-03-05-09. Definitions.

1. "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
2. ~~"Foreign insurer" includes an alien insurer except where clearly noted otherwise.~~
3. ~~"Ultimate controlling person" means that person which is not controlled by any other person.~~
4. Unless the context otherwise requires, other terms found in this chapter and in North Dakota Century Code section 26.1-10-01 are used as defined in that section. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined in the code.

History: Effective January 1, 1982; amended effective January 1, 1992; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-01

45-03-05-10. Subsidiaries of domestic insurers.

4. The authority to invest in subsidiaries under subsection 2 of North Dakota Century Code section 26.1-10-02 is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.
2. ~~An investment by a subsidiary under subdivision c of subsection 2 of North Dakota Century Code section 26.1-10-02 may cause the total investment of the insurer to exceed any of the limitations contained in any of the individual sections referred to in that subdivision; provided, that it does not exceed the aggregate amount which could be invested under all of those sections with respect to the type of asset involved.~~

History: Effective January 1, 1982; amended effective January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-02, 26.1-10-03

45-03-05-11. Acquisition of control - Statement filing. A person required to file a statement pursuant to North Dakota Century Code section 26.1-10-03 shall furnish the required information on Form A, hereby made a part of this chapter. The person shall also furnish the required information on Form E, hereby made a part of this chapter and described in section 45-03-05-12.2.

History: Effective January 1, 1982; amended effective January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-03

45-03-05-12. Amendments to Form A. The applicant shall promptly advise the commissioner of any changes in the information so furnished on Form A arising subsequent to the date upon which ~~such~~ the information was furnished but prior to the commissioner's disposition of the application.

History: Effective January 1, 1982; amended effective January 1, 1992; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-03, 26.1-10-04

45-03-05-12.1. Acquisition of subdivision d of subsection 1 of North Dakota Century Code section 26.1-10-03 insurers.

1. If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of subdivision d of subsection 1 of North Dakota Century Code section 26.1-10-03, the name of the domestic insurer on the cover page must be indicated as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company".

2. ~~Where~~ If a subdivision d of subsection 1 of North Dakota Century Code section 26.1-10-03 insurer is being acquired, references to "the insured insurer" contained in Form A must refer to both the domestic subsidiary insurer and the person being acquired.

History: Effective January 1, 1992; amended effective January 1, 2016.

General Authority: NDCC 28-32

Law Implemented: NDCC 26.1-02-02, 26.1-06.1-01, 26.1-10-05

45-03-05-12.2. Preacquisition notification. If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to subdivision a of subsection 1 of North Dakota Century Code section 26.1-10-03, that

person shall file a preacquisition notification Form E, which was developed pursuant to subdivision a of subsection 3 of North Dakota Century Code section 26.1-10-03.1.

Additionally, if a nondomiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to North Dakota Century Code section 26.1-10-03.1, that person shall file a preacquisition notification Form E. No preacquisition notification form need be filed if the acquisition is beyond the scope of North Dakota Century Code section 26.1-10-03.1 as set forth in subdivision b of subsection 2 of North Dakota Century Code section 26.1-10-03.1.

In addition to the information required by Form E, the commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

History: Effective January 1, 2016.

General Authority: NDCC 28-32

Law Implemented: NDCC 26.1-10

45-03-05-13. Registration Annual registration of insurers – Registration Statement filing. An insurer required to file a an annual registration statement pursuant to North Dakota Century Code section 26.1-10-04 shall furnish the required information on Form B, hereby made a part of this chapter.

History: Effective January 1, 1982; amended effective January 1, 1992; February 28, 1992; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-04

45-03-05-13.1. Summary of changes to registration - Statement filing. An insurer required to file a an annual registration statement pursuant to North Dakota Century Code section 26.1-10-04 is also required to furnish information required on Form C, hereby made a part of this chapter. ~~An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state.~~

History: Effective January 1, 1992; amended effective February 28, 1992; January 1, 2016.

General Authority: NDCC 28-32

Law Implemented: NDCC 26.1-10-04

45-03-05-14. Amendments to Form B.

1. An amendment to Form B shall must be filed within fifteen days after the end of the month in which there is a material change to the information provided in the annual registration statement.
2. Amendments must be filed in the Form B format with only those items which are being amended reported. Each ~~such~~ amendment must include at the top of the cover page: "Amendment No. (insert number) to Form B for (insert year)" and must indicate the date of the change and not the date of the original filings.

History: Effective January 1, 1982; amended effective January 1, 1992; February 28, 1992; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-04

45-03-05-15. Alternative and consolidated registrations.

1. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under North Dakota Century Code section 26.1-10-04. A registration statement may include information not required by North Dakota Century Code chapter 26.1-10 regarding any insurer in the insurance holding company system even if ~~such~~ the insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:
 - a. The statement or report contains substantially similar information required to be furnished on Form B; and
 - b. The filing insurer is the principal insurance company in the insurance holding company system.
2. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a simple brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.
3. With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under subsection 1.

4. Any insurer may take advantage of the provisions of subsection 6 or 7 of North Dakota Century Code section 26.1-10-04 without obtaining the prior approval of the commissioner. The commissioner, however, reserves the right to require individual filings if the commissioner deems such the filings necessary in the interest of clarity, ease of administration, or the public good.

History: Effective January 1, 1982; amended effective January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-04

45-03-05-16. Exemptions. Repealed effective January 1, 1992.

45-03-05-17. Disclaimers and termination of registration.

1. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the subject) shall contain the following information:
 - a. The number of authorized, issued and outstanding voting securities of the subject.
 - b. With respect to the person whose control is denied and all affiliates of that person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such the shares concerning which there is a right to acquire, directly or indirectly.
 - c. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of that person.
 - d. A statement explaining why that person should not be considered to control the subject.
2. A request for termination of registration shall be deemed to have been granted unless the commissioner, within ~~ten~~ thirty days after the commissioner receives the request, notifies the registrant otherwise.

History: Effective January 1, 1982; amended effective January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-04

45-03-05-17.1. Transactions subject to prior notice - Notice filing.

1. An insurer required to give notice of a proposed transaction pursuant to North Dakota Century Code section 26.1-10-05 shall furnish the required information on Form D, hereby made a part of ~~these rules~~ this chapter.
2. Agreements for cost-sharing services and management services must at a minimum and as applicable:
 - a. Identify the person providing services and the nature of the services;
 - b. Set forth the methods to allocate costs;
 - c. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the national association of insurance commissioners accounting practices and procedures manual;
 - d. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
 - e. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
 - f. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;
 - g. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;
 - h. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;
 - i. Include standards for termination of the agreement with and without cause;
 - j. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

- k. Specify that, if the insurer is placed in receivership or seized by the commissioner under North Dakota Century Code chapter 26.1-06.1:
 - (1) All of the rights of the insurer under the agreement extend to the receiver or commissioner; and
 - (2) All books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver's or the commissioner's request;
- l. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to North Dakota Century Code chapter 26.1-06.1; and
- m. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under North Dakota Century Code chapter 26.1-06.1, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

History: Effective January 1, 1992; amended effective January 1, 2016.

General Authority: NDCC 28-32

Law Implemented: NDCC 26.1-10-05

45-03-05-17.2. Enterprise risk report. The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to subsection 12 of North Dakota Century Code section 26.1-10-04 shall furnish the required information on Form F, hereby made a part of this chapter.

History: Effective January 1, 2016.

General Authority: NDCC 28-32

Law Implemented: NDCC 26.1-10

45-03-05-18. Extraordinary dividends and other distributions.

- 1. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:
 - a. The amount of the proposed dividend;
 - b. The date established for payment of the dividend; ;

- ~~b.~~ c. A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property, its cost, and its fair market value together with an explanation of the basis for valuation. ;
- ~~e.~~ ~~The amount of the proposed dividend.~~
- d. A copy of the calculations determining that the proposed dividend is extraordinary. The workpaper must include the following information:
 - (1) The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of twelve consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
 - (2) Surplus as regards policyholders (total capital and surplus) as of the next preceding December thirty-first;
 - (3) If the insurer is a life insurer, the net gain from operations for the twelve-month period ending the next preceding December thirty-first;
 - (4) If the insurer is not a life insurer, the net income less realized capital gains for the twelve-month period ending the next preceding December thirty-first and the two preceding twelve-month periods; and
 - (5) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years. ;
- e. A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted. ; and
- f. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

2. Subject to ~~subsections 3, 4, and 5~~ subsection 2 of North Dakota Century Code section 26.1-10-05, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within ~~ten~~ fifteen business days following the declaration thereof, including the same information required by ~~paragraphs 1 through 4~~ of subdivision d of subsection 1.

History: Effective January 1, 1982; amended effective January 1, 1992; February 28, 1992; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-04

45-03-05-19. Adequacy of surplus. The factors set forth in subsection 6 of North Dakota Century Code section 26.1-10-05 are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus, no single factor shall be is controlling. The commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

History: Effective January 1, 1982; amended effective January 1, 1992; October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-10-12

Law Implemented: NDCC 26.1-10-05

**FORM A
STATEMENT REGARDING THE
ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER**

Name of Domestic Insurer

BY

Name of Acquiring Person (Applicant)

Filed with the Insurance Department of _____
(State of domicile of insurer being acquired)

Dated: _____, 20 ____

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

ITEM 1. INSURER AND METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

1. State the name and address of the applicant seeking to acquire control over the insurer.
2. If the applicant is not an individual, state the nature of its business operations for the past five years or for such a lesser period as such the person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
3. Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. ~~No affiliate need be identified if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person affiliated with the applicant.~~ Indicate in such the chart or listing the percentage of voting securities of each such the person which is owned or controlled by the applicant or by any other such person. If control of any

person is maintained other than by the ownership or control of voting securities, indicate the basis of such the control. As to each person specified in such the chart or listing indicate the type of organization, e.g., corporation, trust, partnership, and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

State On the biographical affidavit, include a third-party background check, and state the following with respect to (1) the applicant if the applicant is an individual or (2) all persons who are directors, executive officers, or owners of ten percent or more of the voting securities of the applicant if the applicant is not an individual:

1. Name and business address.
2. Present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such the employment is carried on.
3. Material occupations, positions, offices, or employment during the last five years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on; if any such occupation, position, office, or employment required licensing by or registration, with any federal, state, or municipal governmental agency, indicate such the fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.
4. Whether or not such the person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION

1. Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of

acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.

2. Explain the criteria used in determining the nature and amount of ~~such~~ the consideration.
3. If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, the applicant must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate ~~such~~ the insurer, to sell its assets to or merge it with any person or persons, or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates, and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. ~~Such~~ The description shall identify the persons with whom ~~such~~ the contracts, arrangements, or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates, or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement. Include in such the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any such shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

1. Financial statements and exhibits shall, and three-year financial projections of the insurers must be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
2. The financial statements shall must include the annual financial statements of the persons identified in Item 2(c) for the preceding five fiscal years (or for such a lesser period as such an applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such the person's last fiscal year, if such the information is available. Such The statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such the consolidated statements are prepared in the usual course of business. The annual financial statements of the applicant shall must be accompanied by the certificate of an independent public accountant to the effect that such the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of such the

person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such the state.

3. File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory, or management contracts concerning the insurer, annual reports to the stockholders of the insurer, and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or sections 45-03-05-04 and 45-03-05-06.

ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen days after the end of the month in which the acquisition of control occurs.

ITEM 13 14. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code ~~section~~ Section 26.1-10-03, _____ has caused this application to be duly
Name of Applicant

signed on its behalf in the City of _____ and State of _____, on the _____ day of _____, 20__.

(SEAL)

Name of Applicant

BY: _____
(Name) (Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the applicant has duly executed the attached application dated _____, 20 ____, for and on behalf of _____; that the applicant is the

(Name of Applicant)

_____ of such the company and that the applicant is
(Title of officer)

authorized to execute and file such the instrument. Deponent further says that deponent is familiar with such the instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

FORM B
INSURANCE HOLDING COMPANY SYSTEM REGISTRATION STATEMENT

Filed with the Insurance Department of the State of _____

By

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

Name	Address

Date: _____, 20 ____

Name, title, address and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the methods by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. ~~No affiliate need be shown if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding (insert amount).~~ The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such the control. As to each person specified in such the chart or listing

indicate the type of organization, e.g., corporation, trust, partnership, and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

1. Name.
2. Home office address.
3. Principal executive office address.
4. The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.
5. The principal business of the person.
6. The name and address of any person who holds or owns ten percent or more of any class of voting security, the class of such ~~such~~ the security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.
7. If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

Furnish If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person; the individual's name and address, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years. If the ultimate controlling person is an individual, furnish the individual's name and address, principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

1. Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;
2. Purchases, sales, or exchanges of assets;
3. Transactions not in the ordinary course of business;
4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;
5. All management agreements, service contracts, and all cost-sharing arrangements;
6. Reinsurance agreements;
7. Dividends and other distributions to shareholders;
8. Consolidated tax allocation agreements; and
9. Any pledge of the registrant's stock or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such the information is not material for purposes of North Dakota Century Code Section 26.1-10-04 of the ~~North Dakota Century Code~~.

Sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of the registrant's admitted assets as of next preceding December thirty-first shall not be deemed material.

The description shall must be in a manner as to permit the proper evaluation thereof by the commissioner, and shall must include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to such the transaction, and relationship of the affiliated parties to the Registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the

parties and the court or agency in which such the litigation or proceeding is or was pending:

1. Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
2. Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership, or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

1. Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
2. The If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall must include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such the information is available. ~~Such~~ The financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if such the consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, the financial statement must be filed in a standard form and format adopted by the national association of insurance commissioners, unless an alternative form is accepted by the commissioner. Documentation and financial statements filed with the securities and exchange commission or audited generally accepted

accounting principles financial statements shall be deemed to be an appropriate form and format.

Unless the commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that ~~such~~ the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of ~~such insurer filed with the insurance department of the insurer's domiciliary state and are in~~ accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of ~~such~~ the state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the personal financial statements guide by the American institute of certified public accountants. Personal financial statements shall be accompanied by the independent public accountant's standard review report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

3. Exhibits ~~shall~~ must include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or North Dakota Administrative Code sections 45-03-05-04 and 45-03-05-06.

ITEM 9. FORM C REQUIRED

A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code Section 26.1-10-04 of the ~~North Dakota Century Code~~, the registrant has caused this annual registration statement to be duly signed on its behalf in the City of _____, and State of _____ on the _____ day of _____, 20 ____.

(SEAL)

(Name of registrant)

By: _____
(Name) (Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the undersigned has duly executed the attached annual registration statement dated _____, 20 ____, for and on behalf of _____; that the

(Name of company)

undersigned is the _____ of such the company, and that

(Title of officer)

the undersigned has authority to execute and file such the instrument. The deponent further says that deponent is familiar with such the instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

FORM C
SUMMARY OF CHANGES TO REGISTRATION STATEMENT

Filed with the Insurance Department of the State of _____

BY

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

Name	Address

Date: _____, 20____

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include specific references to item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such the changes are ones which result in ownership or holdings of ten percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's registration statement has been changed, the nature of such the change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code Section 26.1-10-04 of the ~~North Dakota Century Code~~, the registrant has caused this ~~summary of~~ annual registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 20 ____.

(SEAL)

(Name of Applicant)

By: _____
(Name) (Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the deponent has duly executed the attached ~~summary of~~ annual registration statement dated _____, 20____, for and on behalf of _____; that the deponent is the
(Name of company)

_____ of such the company;
(Title of officer)

and that the deponent is authorized to execute and file such the instrument. Deponent further says that deponent is familiar with such the instrument and the contents thereof,

and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

**FORM D
PRIOR NOTICE OF A TRANSACTION**

Filed with the Insurance Department of the State of _____

BY

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

Name	Address

Date: _____, 20____

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

1. Name.
2. Home office address.
3. Principal executive office address.
4. The organizational structure, i.e., corporation, partnership, individual, trust, etc.
5. A description of the nature of the parties' business operations.
6. Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties.

7. Where the transaction is with a nonaffiliate, the names of the affiliates which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

1. A statement as to whether notice is being given under subdivision a, b, c, d, or e of North Dakota Century Code Section 26.1-10-05(2);
2. A statement of the nature of the transaction; 1
3. A statement of how the transaction meets the fair and reasonable standards of North Dakota Century Code Section 26.1-10-05(1)(a); and
- ~~2.~~ 4. The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES, OR INVESTMENTS

Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements, and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost, and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit, or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such the loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee, or other arrangement, state the time period during which the investment, guarantee, or other arrangement will remain in effect, together with any provisions for extensions or renewals of such the investments, guarantees, or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit, or guarantee is less than: (a) in the case of nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders, or (b) in the case of life insurers, three percent of the insurer's admitted assets, each as of the next preceding December thirty-first.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NONAFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such the loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of ~~duns~~ funds, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost, and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders or, with respect to life insurers, three percent of the insurer's admitted assets, each as of the next preceding December thirty-first.

ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described by North Dakota Century Code Section 26.1-10-04(2)(6) of the North Dakota Century Code 26.1-10-05(2)(c)(2), or a reinsurance pooling agreement or modification thereto as described by North Dakota Century Code Section 26.1-10-05(2)(c)(1), furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than five percent of the insurer's surplus as regards policyholders, as of the next preceding

December thirty-first. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS, AND COST-SHARING ARRANGEMENTS

For management and service agreements, furnish:

1. A brief description of the managerial responsibilities or services to be performed.
2. A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

1. A brief description of the purpose of the agreement.
2. A description of the period of time during which the agreement is to be in effect.
3. A brief description of each party's expenses or costs covered by the agreement.
4. A brief description of the accounting basis to be used in calculating each party's costs under the agreement.
5. A brief statement as to the effect of the transaction upon the insurer's policyholder surplus.
6. A statement regarding the cost allocation methods that specifies whether proposed charges are based on cost or market. If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable.
7. A statement regarding compliance with the National Association of Insurance Commissioners Accounting Practices and Procedure Manual regarding expense allocation.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Sections ~~26.1-10-04~~ and North Dakota Century Code Section 26.1-10-05 of the North Dakota Century Code, _____ has caused this ~~notice~~ application to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 20 ____.

(SEAL)

(Name of Applicant)

By: _____
(Name) (Title)

Attest:

(Signature of officer)

(Title)

CERTIFICATION

The undersigned deposes and says that the deponent has duly executed the attached ~~notice~~ application dated _____, 20 ____, for and on behalf of _____; that the deponent is the _____ of such the
(Name of Applicant) (Title of officer)

company and that the deponent is authorized to execute and file such the instrument. Deponent further says that deponent is familiar with such the instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

FORM E
PRE-ACQUISITION NOTIFICATION FORM
REGARDING THE POTENTIAL COMPETITIVE IMPACT
OF A PROPOSED MERGER OR ACQUISITION BY A
NON-DOMICILIARY INSURER DOING BUSINESS IN THIS
STATE OR BY A DOMESTIC INSURER

Name of Applicant

Name of Other Person
Involved in Merger or
Acquisition

Filed with the Insurance Department of

Dated: _____, 20 _____

Name, title, address and telephone number of person completing this statement:

ITEM 1. NAME AND ADDRESS

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

State the nature and purpose of the proposed merger or acquisition.

ITEM 4. NATURE OF BUSINESS

State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

ITEM 5. MARKET AND MARKET SHARE

State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of the data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in North Dakota Century Code Section 26.1-10-03.1(4). If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

FORM F
ENTERPRISE RISK REPORT

Filed with the Insurance Department of the State of _____

By

Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

Name

Address

<u>Name</u>	<u>Address</u>

Date: _____, 20____

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. ENTERPRISE RISK

The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in North Dakota Century Code Section 26.1-10-01(3), provided the information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

- Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;
- Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;
- Any changes of shareholders of the insurance holding company system exceeding 10 percent or more of voting securities;
- Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system;

- Business plan of the insurance holding company system and summarized strategies for next 12 months;
- Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;
- Identification of insurance holding company system capital resources and material distribution patterns;
- Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);
- Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should the guarantees be called upon; and
- Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.

ITEM 2. OBLIGATION TO REPORT

If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.

PROPOSED RULES

CHAPTER 45-03-07.1 CREDIT FOR REINSURANCE MODEL REGULATION

Section	
45-03-07.1-01	Credit for Reinsurance - Reinsurer Licensed in This State
45-03-07.1-02	Credit for Reinsurance - Accredited Reinsurers
45-03-07.1-03	Credit for Reinsurance - Reinsurer Domiciled in Another State
45-03-07.1-04	Credit for Reinsurance - Reinsurers Maintaining Trust Funds
<u>45-03-07.1-04.1</u>	<u>Credit for Reinsurance – Certified Reinsurers</u>
45-03-07.1-05	Credit for Reinsurance Required by Law
45-03-07.1-06	Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer Not Meeting the Requirements of Sections 45-03-07.1-01 Through 45-03-07.1-05
45-03-07.1-07	Trust Agreements Qualified Under Section 45-03-07.1-06
45-03-07.1-08	Letters of Credit Qualified Under Section 45-03-07.1-06
45-03-07.1-09	Other Security
45-03-07.1-10	Reinsurance Contract
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45-03-07.1-01. Credit for reinsurance - Reinsurer licensed in this state.
Pursuant to subsection 1 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-02. Credit for reinsurance - Accredited reinsurers.

1. Pursuant to subsection 2 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of ~~any~~ the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer ~~is one which~~ must:

- a. ~~Files~~ File a properly executed form AR-1 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
 - b. ~~Files~~ File with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
 - c. ~~Files~~ File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
 - (4) ~~d.~~ d. ~~Maintains~~ Maintain a surplus as regards policyholders in an amount not less than twenty million dollars and ~~whose accreditation has not been denied by the commissioner within ninety days of its submission; or~~
 - (2) ~~Maintains a surplus as regards policyholders of less than twenty million dollars, and whose accreditation has been approved by the commissioner , or obtain the affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.~~
2. If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit may not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-03. Credit for reinsurance - Reinsurer domiciled in another state.

1. Pursuant to subsection 3 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of ~~the~~ any date of the ~~ceding insurer's on which~~ statutory financial statement credit for reinsurance is claimed:
 - a. Is domiciled ~~and licensed~~ in, or, in the case of a United States branch of an alien assuming insurer, is entered through ~~and licensed in~~, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under North Dakota Century Code chapter 26.1-31.2 and this chapter;
 - b. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
 - c. Files a properly executed form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.
2. The provisions of this section relating to surplus as regards policyholders do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of North Dakota Century Code chapter 26.1-31.2 and this chapter.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-04. Credit for reinsurance - Reinsurers maintaining trust funds.

1. Pursuant to subsection 4 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed in this section in a qualified United States financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03, for the payment of the valid claims of its United States ~~policyholders and~~ domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to

the commissioner substantially the same information as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

2. The following requirements apply to the following categories of assuming insurer:
 - a. The trust fund for a single assuming insurer must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trusted surplus of not less than twenty million dollars, except as provided in subdivision b.
 - b. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusted surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusted surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.
 - c. (1) The trust fund for a group, including incorporated and individual unincorporated underwriters, must consist of :
 - (a) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the group's aggregate respective underwriters' several liabilities attributable to business written in ceded by the United States and, in domiciled ceding insurers to any underwriter of the group;

(b) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(c) In addition to these trusts, the group shall maintain a trustee surplus of which one hundred million dollars must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(2) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of regulation solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(a) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(b) If a certification is unavailable, a financial statement prepared by independent public accountants, of each underwriter member of the group.

e. d. (1) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and accounting practices and procedures manual of the national association of insurance commissioners, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, must:

(a) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding

insurers to any members of the group pursuant to reinsurance contracts issued in the name of ~~such~~ the group; ~~and~~

(b) Maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(c) File a properly executed form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any ~~such~~ examination.

(2) Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the members' domiciliary regulators and financial statements, prepared by independent public accountants, of each underwriter member of the group.

3. a. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that:

(1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States;

(2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ~~policyholders and~~ ceding insurers, their assigns and successors in interest;

(3) The trust shall be subject to examination as determined by the commissioner;

- (4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
 - (5) No later than February twenty-eighth of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding yearend, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December thirty-first.
- b. ~~Credit for reinsurance will not be granted unless the assuming insurer agrees in the trust agreement to the following conditions:~~
- (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
 - (2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
 - (3) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
 - (4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

4. For purposes of this ~~rule~~ section, the term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are ~~not~~ otherwise secured by acceptable means, and, includes:
 - a. For business ceded by domestic insurers authorized to write accident and health and property and casualty insurance:
 - (1) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
 - (2) Reserves for losses reported and outstanding;
 - (3) Reserves for losses incurred but not reported;
 - (4) Reserves for allocated loss expenses; and
 - (5) Unearned premiums.
 - b. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:
 - (1) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
 - (2) Aggregate reserves for accident and health policies;
 - (3) Deposit funds and other liabilities without life or disability contingencies; and
 - (4) Liabilities for policy and contract claims.
5. Assets deposited in trusts established pursuant to North Dakota Century Code section 26.1-31.2-01 and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust shall not exceed five percent of total investments. No more than twenty percent of the total of the investments in the trust may be foreign

investments authorized under paragraph 5 of subdivision a, subdivision c, paragraph 2 of subdivision f, and subdivision g, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of North Dakota Century Code section 26.1-31.2-01 shall be invested only as follows:

- a. Government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by:
 - (1) The United States or by any agency or instrumentality of the United States;
 - (2) A state of the United States;
 - (3) A territory, possession, or other governmental unit of the United States;
 - (4) An agency or instrumentality of a governmental unit referred to in paragraphs 2 and 3 if the obligations shall be by law, statutory or otherwise, payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or
 - (5) The government of any other country that is a member of the organization for economic cooperation and development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- b. Obligations that are issued in the United States, or that are dollar-denominated and issued in a non-United States market, by a solvent United States institution other than an insurance company or that are assumed or guaranteed by a solvent United States institution other than an insurance company and that are not in default as to principal or interest if the obligations:

- (1) Are rated A or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
 - (2) Are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners; or
 - (3) Have been designated as class one or class two by the securities valuation office of the national association of insurance commissioners.
- c. Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the organization for economic cooperation and development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- d. An investment made pursuant to the provisions of subdivisions a, b, or c shall be subject to the following additional limitations:
- (1) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;
 - (2) An investment in any one mortgage-related security shall not exceed five percent of the assets of the trust;
 - (3) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent of the assets of the trust; and
 - (4) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments

under paragraphs 1 and 3 of subdivision b, but shall not exceed two percent of the assets of the trust.

e. As used in this section:

(1) "Mortgage-related security" means an obligation that is rated AA or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners and that either:

(a) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation, that:

[1] Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

[2] Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to 12 U.S.C.A. sections 1709 and 1715-b, or, when the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the secretary of housing and urban development pursuant to 12 U.S.C.A. section 1703; or

(b) Is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes,

and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subparagraph a.

- (2) "Promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

f. Equity interests.

- (1) Investments in common shares or partnership interests of a solvent United States institution are permissible if:
 - (a) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and
 - (b) The equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. § 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the national association of securities dealers, incorporated financial industry regulatory authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.
- (2) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the organization for economic cooperation and development, if:
 - (a) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners; and
 - (b) The equity interests of the institution are registered on a securities exchange regulated by the government of

a country that is a member of the organization for economic cooperation and development.

- (3) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.
- g. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- h. Investment companies.
 - (1) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § ~~802~~ 80a, are permissible investments if the investment company:
 - (a) Invests at least ninety percent of its assets in the types of securities that qualify as an investment under subdivision a, b, or c or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in subdivision a, b, or c; or
 - (b) Invests at least ninety percent of its assets in the types of equity interests that qualify as an investment under paragraph 1 of subdivision f.
 - (2) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:
 - (a) An investment in an investment company qualifying under subparagraph a of paragraph 1 shall not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent of the assets in the trust; and
 - (b) Investments in an investment company qualifying under subparagraph b of paragraph 1 shall not

exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph 1 of subdivision f.

i. Letters of credit.

- (1) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
- (2) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which ~~such a~~ draw would be required shall be deemed to be negligence or willful misconduct.

6. A specific security provided to a ceding insurer by an assuming insurer pursuant to section 45-03-07.1-06 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-04.1. Credit for reinsurance – Certified reinsurers.

1. Pursuant to subsection 5 of North Dakota Century Code Section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the

commissioner. The security shall be in a form consistent with the provisions of subsection 5 of North Dakota Century Code section 26.1-31.2-01 and section 26.1-31.2-02 and section 45-03-07.1-07, 45-03-07.1-08, or 45-03-07.1-09. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

a. Ratings Security Required

<u>Secure – 1</u>	<u>0%</u>
<u>Secure – 2</u>	<u>10%</u>
<u>Secure – 3</u>	<u>20%</u>
<u>Secure – 4</u>	<u>50%</u>
<u>Secure – 5</u>	<u>75%</u>
<u>Vulnerable – 6</u>	<u>100%</u>

b. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

c. The commissioner shall require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

d. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the national association of insurance commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (1) Line 1: Fire
- (2) Line 2: Allied lines
- (3) Line 3: Farmowners multiple peril
- (4) Line 4: Homeowners multiple peril
- (5) Line 5: Commercial multiple peril

(6) Line 9: Inland marine

(7) Line 12: Earthquake

(8) Line 21: Auto physical damage

- e. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
- f. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

2. Certification procedure.

- a. The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty days after posting the notice required by this subdivision.
- b. The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer in accordance with subsection 1. The commissioner shall publish a list of all certified reinsurers and their ratings.
- c. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
- (1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection 3.

- (2) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated in accordance with paragraph 8 of subdivision d. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.
 - (3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
 - (a) Standard & poor's;
 - (b) Moody's investors service;
 - (c) Fitch ratings;
 - (d) A.M. best company; or
 - (e) Any other nationally recognized statistical rating organization.
 - (4) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.
- d. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited, to the following:
- (1) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The

commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

<u>Ratings</u>	<u>Best</u>	<u>S&P</u>	<u>Moody's</u>	<u>Fitch</u>
<u>Secure-1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure-2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
<u>Secure-3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>
<u>Secure-4</u>	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
<u>Secure-5</u>	<u>B++, B+</u>	<u>BBB+, BBB, BBB-</u>	<u>Baa1, Baa2, Baa3</u>	<u>BBB+, BBB, BBB-</u>
<u>Vulnerable-6</u>	<u>B, B-, C++, C+, C, C-, D, E, F</u>	<u>BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R</u>	<u>Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C</u>	<u>BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD</u>

- (2) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- (3) For certified reinsurers domiciled in the United States, a review of the most recent applicable national association of insurance commissioners annual statement blank, either schedule F for property and casualty reinsurers, or schedule S for life and health reinsurers;
- (4) For certified reinsurers not domiciled in the United States, a review annually of form CR-F for property and casualty reinsurers, or form CR-S for life and health reinsurers, attached as exhibits to this chapter;
- (5) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of

obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

- (6) Regulatory actions against the certified reinsurer;
- (7) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 8;
- (8) For certified reinsurers not domiciled in the United States, audited financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor. Acceptable audited financial statements are those performed using:
 - (a) United States generally accepted accounting principles;
 - (b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or
 - (c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.

Upon the initial application for certification, the commissioner will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

- (9) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
- (10) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

- (11) Any other information deemed relevant by the commissioner.
- e. Based on the analysis conducted under paragraph 5 of subdivision d of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under paragraph 1 of subdivision d if the commissioner finds that:
- (1) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or
- (2) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.
- f. The assuming insurer must submit a properly executed form CR-1, attached as an exhibit to this chapter, as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.
- g. The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under North Dakota Century Code section 44-04-18 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
- (1) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an

approved rating agency, including a statement describing the changes and the reasons therefor;

- (2) Annually, form CR-F or CR-S, as applicable;
- (3) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 4;
- (4) Annually, audited financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer's supervisor. Acceptable audited financial statements are those performed using:
 - (a) United States generally accepted accounting principles;
 - (b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or
 - (c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.

Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

- (5) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;
- (6) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
- (7) Any other information that the commissioner may reasonably require.

h. Change in rating or revocation of certification.

- (1) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph 1 of subdivision d.
- (2) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- (3) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- (4) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with section 45-03-07.1-06 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 45-03-07.1-04, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

3. Qualified jurisdictions.

- a. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- b. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:
- (1) The framework under which the assuming insurer is regulated.
 - (2) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - (3) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - (4) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
 - (5) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.

- (6) The history of performance by assuming insurers in the domiciliary jurisdiction.
 - (7) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
 - (8) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the international association of insurance supervisors or successor organization.
 - (9) Any other matters deemed relevant by the commissioner.
 - c. A list of qualified jurisdictions shall be published through the national association of insurance commissioners committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under paragraphs 1 through 9 of subdivision b.
 - d. United States jurisdictions that meet the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.
- 4. Recognition of certification issued by a national association of insurance commissioners accredited jurisdiction.
 - a. If an applicant for certification has been certified as a reinsurer in a national association of insurance commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed form CR-1 and the additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.
 - b. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall

notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.

- c. The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with paragraph 1 of subdivision g of subsection 2.
 - d. The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with paragraph 2 of subdivision g of subsection 2, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.
5. Mandatory funding clause. In addition to the clauses required under section 45-03-07.1-10, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.
6. The commissioner shall comply with all reporting and notification requirements that may be established by the national association of insurance commissioners with respect to certified reinsurers and qualified jurisdictions.

History: Effective January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-05. Credit for reinsurance required by law. Pursuant to subsection 6 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsections 1, 2, 3, ~~and 4,~~ and 5 of North Dakota Century Code section 26.1-31.2-01, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district, or territory of the United States and any lawful national government.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-06. Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of sections 45-03-07.1-01 through 45-03-07.1-05.

1. Pursuant to North Dakota Century Code section 26.1-31.2-02, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of North Dakota Century Code section 26.1-31.2-01 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with ~~such~~ the assuming insurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03. This security may be in the form of any of the following:
 - a. ~~Cash;~~ ;
 - b. Securities listed by the securities valuation office of the national association of insurance commissioners, including those deemed exempt from filing as defined by the purposes and procedures manual of the securities valuation office, and qualifying as admitted assets; ;
 - c. Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03, effective no later than December thirty-first of the year for which filing is being made, and in the possession of, or in trust for, the ceding ~~company~~ insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first; or
 - d. Any other form of security acceptable to the commissioner.

2. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of section 45-03-07.1-10 and the applicable portions of sections 45-03-07.1-07, 45-03-07.1-08, and or 45-03-07.1-09 have been satisfied.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-07. Trust agreements qualified under section 45-03-07.1-06.

1. As used in this section:
 - a. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, ~~including~~ conservator, rehabilitator, or liquidator.
 - b. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
 - c. "Obligations", as used in subdivision k of subsection 2 means:
 - (1) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
 - (2) Reserves for reinsured losses reported and outstanding;
 - (3) Reserves for reinsured losses incurred but not reported; and
 - (4) Reserves for allocated reinsured loss expenses and unearned premiums.
2. Required conditions:
 - a. The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States

financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03.

- b. The trust agreement must create a trust account into which assets must be deposited.
- c. All assets in the trust account must be held by the trustee at the trustee's office in the United States.
- d. The trust agreement must provide that:
 - (1) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
 - (2) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
 - (3) It is not subject to any conditions or qualifications outside of the trust agreement; and
 - (4) It shall not contain references to any other agreements or documents except as provided for ~~under subdivision in~~ subdivisions k and l.
- e. The trust agreement must be established for the sole benefit of the beneficiary.
- f. The trust agreement must require the trustee to:
 - (1) Receive assets and hold all assets in a safe place;
 - (2) Determine that all assets are in ~~such a~~ a form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any ~~such~~ assets, without consent or signature from the grantor or any other person or entity;
 - (3) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
 - (4) Notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;

- (5) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
 - (6) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw ~~such~~ the asset upon condition that the proceeds are paid into the trust account.
- g. The trust agreement must provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.
 - h. The trust agreement must be made subject to and governed by the laws of the state in which the trust is domiciled.
 - i. The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
 - j. The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which ~~such~~ the draw would be required shall be deemed to be negligence or willful misconduct.
 - k. Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, when it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the

insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

- (1) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
- (2) To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
- (3) If the ceding insurer has received notification of termination of the trust account and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03 apart from its general assets, in trust for ~~such~~ the uses and purposes specified in paragraphs 1 and 2 as may remain executory after ~~such~~ the withdrawal and for any period after the termination date.

- I. Notwithstanding other provisions of this chapter, when a trust agreement is established to meet the requirements of section 45-03-07.1-06 in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, if it is customary practice to provide a trust agreement for a specific purpose, ~~such~~ the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

- (1) To pay or reimburse the ceding insurer for:
 - (a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance

agreement on account of cancellations of the policies;
and

- (b) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;
- (2) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or
 - (3) If the ceding insurer has received notification of termination of the trust and the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in paragraphs 1 and 2 as may remain executory after withdrawal and for any period after the termination date.
- m. ~~Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the United States beneficiaries of the trust, the assets or any part of them shall be returned to the trustee for distribution in accordance with the trust agreement.~~

n. ~~The reinsurance agreement may, but need not, contain the provisions required by paragraph 2 of subdivision a of subsection 4, so long as these required conditions are included in the trust agreement. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the insurance code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this subdivision must be included in the reinsurance agreement.~~

3. Permitted conditions:

- a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.
- b. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
- c. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution may be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the

assets withdrawn and that are consistent with the restrictions in paragraph 2 of subdivision a of subsection 4.

- d. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. ~~Such~~ The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
- e. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary, with written approval by the beneficiary, must be delivered over to the grantor.

4. Additional conditions applicable to reinsurance agreements:

a. A reinsurance agreement may contain provisions that:

- (1) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;
- (2) ~~Stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of cash, United States legal tender, certificates of deposit issued by a United States bank and payable in United States legal tender, and investments permitted by North Dakota Century Code title 26.1 or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The reinsurance agreement may further specify the types of investments to be deposited. If a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;~~
- (3) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary

negotiate these assets without consent or a signature from the assuming insurer or any other entity;

(4) (3) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(5) (4) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of ~~such~~ the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(a) To pay or reimburse the ceding insurer for:

[1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of ~~such~~ the policies;

[2] The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

[3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(b) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

b. The reinsurance agreement may also contain provisions that:

- (1) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:
 - (a) At the time of withdrawal, the assuming insurer shall replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or
 - (b) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two percent of the required amount.
 - (2) Provide for the return of any amount withdrawn in excess of the actual amounts required for paragraph 5 of subdivision a and interest payments, at a rate not in excess of the prime rate of interest, on ~~the those~~ amounts held pursuant to ~~paragraph 5 of subdivision a~~.
 - (3) Permit the award by any arbitration panel or court of competent jurisdiction of:
 - (a) Interest at a rate different from that provided in paragraph 2;
 - (b) Court or arbitration costs;
 - (c) Attorney's fees; and
 - (d) Any other reasonable expenses.
- c. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department in compliance with this chapter when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such the reduction must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

- d. Existing agreements. Any trust agreement or underlying reinsurance agreement in existence prior to October 1, 1995, will continue to be acceptable until January 1, 1996, at which time the agreements will have to fully comply with this chapter for the trust agreement to be acceptable.
- e. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection 1 may not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-08. Letters of credit qualified under section 45-03-07.1-06.

1. The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03. The letter of credit must contain an issue date and expiration date and stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself may not contain reference to any other agreements, documents, or entities, except as provided in subdivision a of subsection 9. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.
2. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that such the information is for internal identification purposes only.
3. The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

4. The term of the letter of credit must be for at least one year and must contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than thirty days' notice prior to the expiration date or nonrenewal.
5. The letter of credit must state whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce, publication ~~500~~ 600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.
6. If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce, publication 500, then the letter of credit must specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in article 17 of publication 500 occur.
7. ~~The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to North Dakota Century Code section 26.1-31.2-03.~~
8. If the letter of credit is issued by a ~~qualified United States~~ financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection ~~7~~ 1, then the following additional requirements must be met:
 - a. The issuing ~~qualified United States~~ financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
 - b. The "evergreen clause" must provide for thirty days' notice prior to the expiration date for nonrenewal.
9. 8. Reinsurance agreement provisions.
 - a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - (1) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

- (2) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
- (a) To pay or reimburse the ceding insurer for:
- [1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of ~~such~~ the policies;
 - [2] The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
 - [3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
- (b) If the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for ~~such~~ the uses and purposes specified in paragraph 2 of subdivision a as may remain after withdrawal and for any period after the termination date.

- (3) All of the provisions of this subdivision must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- b. Nothing contained in subdivision a precludes the ceding insurer and assuming insurer from providing for:
- (1) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph 2 of subdivision a; or
 - (2) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-09. Other security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

History: Effective October 1, 1995.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-10. Reinsurance contract. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of ~~sections~~ section 45-03-07.1-01, 45-03-07.1-02, 45-03-07.1-03, 45-03-07.1-04, and ~~45-03-07.1-06~~ 45-03-07.1-04.1, or 45-03-07.1-05 or otherwise in compliance with North Dakota Century Code section 26.1-31.2-01 after October 1, 1995, unless the reinsurance agreement:

1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to North Dakota Century Code section 26.1-06.1-31; and
2. Includes a provision pursuant to North Dakota Century Code section 26.1-31.2-01 whereby the assuming insurer, if an unauthorized assuming

insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give ~~such~~ the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of ~~such~~ the court or panel; and

3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-11. Contracts affected. All new and renewal reinsurance transactions entered into after October 1, 1995, must conform to the requirements of the Act and this chapter if credit is to be given to the ceding insurer for such reinsurance.

History: Effective October 1, 1995.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

**FORM AR-1
CERTIFICATE OF ASSUMING INSURER**

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement(s) with one or more insurers domiciled in
_____, hereby
(name of state)

certify that _____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in

(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of _____
_____ to examine its books and records and
(ceding insurer's state of domicile)

agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in
_____ reinsured by Assuming Insurer and

(ceding insurer's state of domicile)

undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____

(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

FORM CR-1
CERTIFICATE OF CERTIFIED REINSURER

I, _____,
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in _____,
(name of state) in order to be considered for

approval in this state, hereby certify that _____ (“Assuming
Insurer”): (name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____
(ceding insurer’s state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer’s rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____
(ceding insurer’s state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in

its rating by an approved rating agency, including a statement describing such changes and the reasons therefor.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with N.D. Admin. Code Section 45-03-07.1-04.1(2)(g)(2).
6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.
7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with N.D. Admin. Code Section 45-03-07.1-04.1(2)(g)(4).
8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.
9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: _____

(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

Form CR-F - PART 2
Ceded Reinsurance as of December 31, Current Year (000 Omitted)

1 Company Code or ID Number	2	3 Name of Reinsurer	4 Domesticity Jurisdiction	5 Reinsurance Contract Ceding 75% or More of Direct Premiums Written	6 Reinsurance Premiums Ceded	7 Paid Losses	8 Paid L/AE	9 Known Case Loss Reserves	10 Known Case L/AE Reserves	11 IBNR Loss Reserves	12 IBNR L/AE Reserves	13 Unearned Premiums	14 Contingent Commissions	15 Cols 7 through 14 Totals	Reinsurance Payable		18 Net Amount Recoverable From Reinsurers Cols 15 - 17	19 Funds Held by Company Under Reinsurance Treaties
															16 Ceded Balances Payable	17 Other Amounts Due to Reinsurers		
Company Totals																		

PROPOSED RULES

NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-03-15
ACCOUNTING PRACTICES AND PROCEDURES

Sections 45-03-15-01 and 45-03-15-02 are amended as follows:

45-03-15-01. Accounting practices and procedures. Every insurance company doing business in this state shall file with the commissioner, pursuant to North Dakota Century Code section 26.1-03-07, the appropriate national association of insurance commissioners annual statement blank, prepared in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March 2013 2015 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance.

History: Effective January 1, 1992; amended effective January 1, 2000; December 1, 2001; March 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; April 1, 2014; January 1, 2016.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-15-02. Reporting of financial information. Every insurance company licensed to do business in this state shall transmit to the commissioner and to the national association of insurance commissioners its most recent financial statements compiled on a quarterly basis, within forty-five days following the calendar quarters ending March thirty-first, June thirtieth, and September thirtieth. The financial statements must be prepared and filed in the form prescribed by the commissioner and in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March 2013 2015 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance. The commissioner may exempt any company or category or class of companies from the filing requirement.

History: Effective January 1, 1992; amended effective January 1, 2000; December 1, 2001; March 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; April 1, 2014; January 1, 2016.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-03, 26.1-03-07, 26.1-03-11.1

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-04-10
ADVERTISING RULES

Sections 45-04-10-02 and 45-04-10-03 are amended as follows:

45-04-10-02. Applicability.

1. This chapter applies to any advertisement of life insurance or an annuity product intended for dissemination in this state and which advertisement is disseminated in any manner by or on behalf of an insurance company, agency, agent, or broker.

2. ~~Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, are the responsibility of the insurer. However, this does not in any way prohibit enforcement of this chapter against individual agents, brokers, and agencies. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer, as well as the agent or agency who created, requested or presented the advertisement. Insurers shall establish and at all times maintain a system of control over the content, form and methods of dissemination of all advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to agents, brokers and others authorized by the insurer to disseminate advertisements, of the requirement and procedures for insurance company approval prior to the use of any advertisements that are not furnished by the insurer and that clearly set forth within the notice the most serious consequences of not obtaining the required prior approval.~~

History: Effective March 1, 1988; amended effective January 1, 2016.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-04-10-03. Disclosure requirements.

1. The information required to be disclosed by this chapter may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
2. No advertisement may omit material information or use words, phrases, statements, reference, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements. Whether an advertisement has the capacity or tendency to mislead or deceive must be determined by the insurance commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.
3. In the event an advertisement uses “Non-Medical”, “No Medical Examination Required”, or similar terms where issue is not guarantee, such terms must be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.
4. An advertisement may not use as the name or title of a life insurance policy any phrase which does not include the words “life insurance” unless accompanied by other language clearly indicating it is life insurance.
5. An advertisement must prominently describe the type of policy advertised.
6. An advertisement of an insurance policy marketed by direct response techniques may not state or imply that because there is no agent or commission involved there will be a cost-savings to prospective purchasers unless such is the fact. No such cost-savings may be stated or implied without justification satisfactory to the insurance commissioner prior to use.
7. An advertisement for a policy containing graded or modified benefits must prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such facts must be prominently disclosed.

8. An advertisement for a policy with nonlevel premiums must prominently describe the premium changes.
9. Dividends.
 - a. An advertisement may not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead.
 - b. An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future.
 - c. An advertisement may not state or imply that illustrated dividends under a participating policy or pure endowments, or both, will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains (1) what benefits or coverage would be provided at such time and (2) under what conditions this would occur.
10. An advertisement may not state that a purchaser of a policy will share or receive a stated percentage or portion of the earning on the general account assets of the company.
11. Testimonials or endorsements by third parties.
 - a. Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial the insurer makes as its own all of the statements contained therein, and such statements are subject to all the provisions of these rules.
 - b. If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact must be disclosed in the advertisement.
 - c. An advertisement may not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association, or other organization unless such is the fact and unless any proprietary relationship between an organization and the

insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the insurer or receives any payment or other consideration from the insurer for making such an endorsement or testimonial, such fact must be disclosed in the advertisement.

12. An advertisement may not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement must be identified therein.
13. Introductory, initial, or special offers and enrollment periods.
 - a. An advertisement of an individual policy or combination of such policies may not state or imply that such policy or combination of such policies is an introductory, initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement may not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.
 - b. An advertisement may not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuation of the sale of the particular policy advertised because of special advantages available in the policy.
 - c. An advertisement may not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium must be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.
 - d. An enrollment period during which a particular insurance policy may be purchased on an individual basis may not be offered within this state unless there has been a lapse of not less than twelve months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement must specify the date by which the applicant must mail the application, which must be not less than ten days and not more than forty days from the date on which such enrollment

period is advertised for the first time. This rule applies to all advertising media – i.e., mail, newspapers, radio, television, magazines, and periodicals – by any one insurer. The phrase “any one insurer” includes all the affiliated companies of a group of insurance companies under common management or control. This rule does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to the applicant’s request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group, blanket, or franchise insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this section must be applied separately to each sponsoring organization.

14. An advertisement of a particular policy may not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges, unless such is the fact.
15. An advertisement may not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement may not falsely or unfairly describe other insurers, their policies, services, or methods of marketing.
16. For individual deferred annuity products or deposit funds, the following shall apply:
 - a. Any illustrations or statements containing or based upon interest rates higher than the guaranteed accumulation interest rates shall likewise set forth with equal prominence comparable illustrations or statement containing or based upon the guaranteed accumulation interest rates. Such higher interest rates may not be greater than those currently being credited by the company unless such higher rates have been publicly declared by the company with an effective date for new issues not more than three months subsequent to the date of declaration.
 - b. If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it must also disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and net premiums.

- c. If any contract does not provide a cash surrender benefit prior to commencement of payment of any annuity benefits, any illustrations or statements concerning such contract must prominently state that cash surrender benefits are not provided.

History: Effective March 1, 1988; amended effective January 1, 2016.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

PROPOSED RULES

**BOILER RULES
ARTICLE 45-12**

Section 45-12-02-01 is amended as follows:

45-12-02-01. Inspection reports to be submitted.

1. **Power boilers.** Each authorized inspection agency or owner/user inspection organization, to which a special inspector commission has been issued, shall submit to the chief boiler inspector complete data of each high pressure boiler insured or inspected by it or covered by a written inspection agreement ~~in North Dakota on form SFN 10706. Each certificate inspection must be reported to the chief boiler inspector within fifteen days after inspection on form SFN 10706. A complete report of each boiler inspection must be filed electronically with the chief boiler inspector on form SFN 10706 within fifteen days of inspection.~~
2. **Low pressure, hot water heating, and hot water supply boilers.** Within one year from effective date of this article, each authorized inspection agency or owner/user inspection organization shall submit to the chief boiler inspector complete data of each boiler insured or inspected by it or covered by a written inspection agreement ~~in North Dakota on form SFN 10706. All required inspections must be reported on form SFN 10706. A complete report of each boiler inspection must be filed electronically with the chief boiler inspector on form SFN 10706 within fifteen days of inspection.~~

History: Effective June 1, 1994; amended effective January 1, 2006; April 1, 2010; January 1, 2016.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-02-04 is amended as follows:

45-12-02-04. Owner/user inspection organizations making own inspections.

The chief inspector will not be required to inspect boilers in any establishment owned and operated by an owner/user inspection organization provided an annual boiler inspection program is established and maintained by such organization and all boilers and appurtenances are constructed, installed, operated, and repaired in accordance with the provisions of this article. When boilers are inspected by an employee of an

owner/user inspection organization, such inspector must hold a certificate of competency or a commission issued by North Dakota or a state that has adopted the American Society of Mechanical Engineers Code. A complete report of each boiler inspection must be filed electronically with the chief inspector on form SFN 10706 within fifteen days of inspection.

History: Effective June 1, 1994; amended effective January 1, 2006; January 1, 2016.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-02-08 is amended as follows:

45-12-02-08. Validity of inspection certificate for boilers. A certificate of inspection, issued in accordance with this article, is valid until expiration unless some defect or condition affecting the safety of the boiler is disclosed and if all inspection fees have been paid. A certificate of inspection is valid for the following time periods:

1. Thirty-six months for power boilers over one hundred thousand pounds [45359.24 kilograms] of steam per hour as allowed by North Dakota Century Code section 26.1-22.1-07.
2. Twelve months for steam traction engines.
3. Twelve months for all other power boilers.
4. Thirty-six months for hot water heating and hot water supply boilers ~~located in apartments and condominiums.~~
5. Twenty-four months for ~~all other hot water heating, hot water supply, and~~ low pressure steam boilers.

A certificate issued for a boiler inspected by a special inspector is valid only if the boiler for which it was issued continues to be insured by a duly authorized insurance company, covered by a written inspection agreement with an authorized inspection agency, or inspected by an accredited owner/user inspection organization. A two-month grace period must be extended for any certificate.

History: Effective June 1, 1994; amended effective January 1, 2000; January 1, 2006; January 1, 2016.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-03-26 is amended as follows:

45-12-03-26. Inspection of boilers.

1. Each boiler used or proposed to be used within this state, except boilers exempt in North Dakota Century Code section 26.1-22.1-06, must be thoroughly inspected as to their construction, installation, condition, and operation as follows:
 - a. Power boilers must be inspected annually both internally while not under pressure and externally while under pressure. However, any power boiler or steam generator, the operation of which is an integral part of or a necessary adjunct to other continuous processing operations, must be inspected internally at such intervals as are permitted by the shutting down of the processing operation. The chief boiler inspector may provide for extension of time between internal inspections, but an external inspection must be made, and report submitted, for purposes of issuing a certificate. In all other instances the certificate inspection must be an internal inspection when construction permits.
 - b. Power boilers of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, which comply with subsection 2 of North Dakota Century Code section 26.1-22.1-07, must be inspected at least once every thirty-six months internally while not under pressure and at least once every twelve months externally while under pressure.
 - c. Steam traction engines must be inspected at least once every twelve months. Inspections must alternate between internal inspections, external inspections, and hydrostatic tests.
 - d. Low pressure steam boilers must be inspected annually. Low pressure steam boilers of steel construction must be inspected alternately internally and externally. The issuance of a certificate must normally be based on the internal inspection.
 - e. Hot water heating and hot water supply boilers must be inspected ~~biennially~~ triennially unless they are located in a nursing home, school, hospital, nursery school, or kindergarten, in which case they must be inspected annually. ~~Hot water heating and hot water supply boilers located in apartments and condominiums must be inspected triennially.~~ Internal inspections will be required when deemed necessary by the inspector.

- f. A grace period of two months beyond the period specified in the above subdivisions may elapse between inspections.
2. Certificate inspections must be made during the period of thirty days prior to and thirty days after the expiration date of the certificate. Noncertificate inspections, when required by the provisions of this section, must be made between certificate inspections. The chief boiler inspector encourages reports to be made at any time adverse conditions are found, or when difficulty is encountered getting cooperation from the owner or user.
3. The inspections required under this section must be made by the chief boiler inspector, or by a deputy inspector, or by a special inspector provided for in this article.
4. If at any time a hydrostatic test is deemed necessary by the inspector, it must be made by the owner or user in the presence of, and under the supervision of the inspector, and must be approved by the inspector.
5. Cast iron boilers must be considered as boilers that do not lend themselves to internal inspections. Internal inspections of electric boilers must be made when deemed necessary by the inspector.

History: Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; January 1, 2006; April 1, 2010; January 1, 2016.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-05-20 is amended as follows:

45-12-05-20. Water columns, gauge glasses, and gauge cocks.

1. Outlet connections (except for damper regulator, feedwater regulator, low water fuel cutoff, drains, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water therefrom) may not be placed on the piping that connects the water column to the boiler. The water column must be placed on the piping that connects the water column to the boiler. The water column must be provided with a valved drain of at least three-fourths-inch [19.05-millimeter] pipe size, the drain to be piped to a safe location.
2. Each boiler constructed prior to 1999 must have three or more gauge cocks located within the visible length of the water glass, except when the boiler has two water glasses located on the same horizontal lines. Boilers not over thirty-six inches [.914 meters] in diameter, in which the heating

surface does not exceed one hundred square feet [9.29 square meters] need have but two gauge cocks.

3. For all installations where the water gauge glass or glasses are more than thirty feet [9.14 meters] from the boiler operating floor, it is recommended that water level indicating or recording gauges be installed at eye height from the operating floor.

History: Effective June 1, 1994; amended effective January 1, 2016.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-09-15 is amended as follows:

45-12-09-15. Provisions for thermal expansion in hot water systems.

1. All hot water heating systems incorporating hot water tanks or fluid relief columns must be so installed as to prevent freezing under normal operating conditions.
2. Systems with open expansion tank. If the system is equipped with an open expansion tank, an indoor overflow from the upper portion of the expansion tank must be provided in addition to an open vent, the indoor overflow to be carried within the building to a suitable plumbing fixture or to the basement.
3. Closed-type systems. If the system is of the closed type, an airtight tank or other suitable air cushion must be installed that will be consistent with the volume and capacity of the system, and must be suitably designed for a hydrostatic test pressure of two and one-half times the allowable working pressure of the system. Expansion tanks for systems designed to operate above thirty pounds per square inch [206.85 kilopascals] must be constructed in accordance with the American Society of Mechanical Engineers Code, section VIII, division 1. Except for prepressurized tanks, provisions must be made for draining the tank without emptying the system. Provisions must also be made for changing of all tanks without emptying the system.
4. Expansion tank capacities for gravity hot water systems. Based on two-pipe system with average operating water temperature one hundred seventy degrees Fahrenheit [76.7 degrees Celsius], using cast iron column radiation with heat emission rate one hundred fifty British thermal units per hour per square foot [158.25 x 10 to the 3rd power joules per .0929 square meter] equivalent direct radiation.

Square Feet of Installed Equivalent Direct Radiation	Tank Capacity, Gallons
Up to 350	18
Up to 450	21
Up to 650	24
Up to 900	30
Up to 1,100	35
Up to 1,400	40
Up to 1,600	2-30
Up to 1,800	2-30
Up to 2,000	2-35
Up to 2,400	2-40

5. Expansion tank capacities for forced hot water systems. Based on average operating water temperature one hundred ninety-five degrees Fahrenheit [90 degrees Celsius], a fill pressure twelve pounds per square inch gauge [82.74 kilopascals] and a maximum operating pressure thirty pounds per square inch gauge [206.84 kilopascals].

System Volume, Gallons	Nonpressurized Tank Capacity Gallons	Prepressurized Tank Capacity Gallons
100	15	9
200	30	17
300	45	25
400	60	33
500	75	42
1,000	150	83
2,000	300	165

Note: System volume includes volume of water in boiler, radiation, and piping, not including the expansion tank.

6. Expansion tanks for hot water supply systems must be constructed in accordance with the American society of mechanical engineers code, section VIII, division 1 if over five gallons in size of water and air.

History: Effective June 1, 1994; amended effective January 1, 2016.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-10-01 is amended as follows:

45-12-10-01. Construction and installation standards - Exceptions. Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1, 2, or 3, ~~2013 edition,~~ and bear the "U" stamp American society of mechanical engineers stamping as proof of such construction.

Manufacturers shall register unfired pressure vessels with the national board of boiler and pressure vessel inspectors. Unfired pressure vessels must bear the required stamping of the national board.

The requirements of this section apply to all pressure vessels within the scope of the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1, 2, or 3, ~~2013 edition,~~ with these exceptions:

1. Pressure vessels under federal control.
2. Pressure vessels that do not exceed four cubic feet [30 United States gallons] in volume and two hundred fifty pounds per square inch gauge [1723.70 kilopascals] in pressure.
3. Pressure vessels that do not exceed one and one-half cubic feet [11.22 United States gallons] in volume and six hundred pounds per square inch gauge [4136.88 kilopascals] in pressure.
4. Unfired pressure vessels installed or ordered prior to November 1, 1987. However, these unfired pressure vessels must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines. Unfired pressure vessels referenced by this section must be protected with the American society of mechanical engineers stamped pressure relief devices as defined in section VIII of the American society of mechanical engineers boiler and pressure vessel code, ~~2013 edition.~~ Existing pressure relief devices installed on unfired pressure vessels referenced by this section will be considered acceptable if the pressure relief device is set for the correct pressure, if the usage is correct, and if the device is in a satisfactory operating condition.

History: Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006; April 1, 2010; July 1, 2012; January 1, 2014; January 1, 2016.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-10-04 is created as follows:

45-12-10-04. Change of service from anhydrous ammonia to propane.

Unfired pressure vessels that have been previously used in anhydrous ammonia service may be converted to liquid petroleum service only with all of the following conditions being met:

1. The pressure vessel is American society of mechanical engineers code constructed and national board registered.
2. The pressure vessel has a manhole opening for access or a manhole opening is provided as an alteration.
3. The pressure vessel is in satisfactory condition internally and externally using the national board inspection code to determine acceptable condition.
4. The pressure vessel has passed a wet fluorescent magnetic particle test made by an individual possessing a valid American society for nondestructive testing level II or III certificate issued in accordance with the requirements of the American society for nondestructive testing, inc.

History: Effective January 1, 2016.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

PROPOSED RULES

Article 45-17 of the North Dakota Administrative Code is created as follows:

NORTH DAKOTA ADMINISTRATIVE CODE
ARTICLE 45-17
BAIL BONDSMEN

Chapter
45-17-01 Duty of Bail Bondsmen

CHAPTER 45-17-01
DUTY OF BAIL BONDSMEN

Section
45-17-01-01 Definitions
45-17-01-02 Duty to Monitor Status of Bail Bonds Written

45-17-01-01. Definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26.1-26.6.

History: Effective January 1, 2016.
General Authority: NDCC 26.1-26.6-10
Law Implemented: NDCC 26.1-26.6-01

45-17-01-02. Duty to monitor status of bail bonds written. In order to comply with subsection 2 of North Dakota Century Code section 26.1-26.6-05 a bail bond agent shall check the status of all issued bail bonds at least once every seven days.

History: Effective January 1, 2016.
General Authority: NDCC 26.1-26.6-10
Law Implemented: NDCC 26.1-26.6-05