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for the  
Administrative Rules Committee**



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**TITLE 4**  
**OFFICE OF MANAGEMENT AND BUDGET**



**AUGUST 2004**

**CHAPTER 4-01-01**

**4-01-01-01. Organization and functions of the office of management and budget.**

**1. Organization of office.**

- a. History. The 1941 legislative assembly appointed a governmental survey commission to study the field of governmental reorganization; and make recommendations; ~~in 1957 the study was again ordered. The committee recommended creating one department to handle the state's fiscal affairs and to give the governor management tools to properly administer state government. The 1959 legislative assembly adopted this recommendation and the department of accounts and purchases was established. The 1981 legislative assembly changed the name of the department of accounts and purchases to the office of management and budget. Among the recommendations was a single agency to handle the state's fiscal affairs. That study was reviewed by directive of the 1957 legislative assembly. The 1959 legislative assembly established the department of accounts and purchases to become operative in 1961. In 1981 the agency became the office of management and budget. The director is appointed by and serves at the will of the governor. As agency head, the director is vested with control and supervision of the fiscal administration of the executive branch of state government.~~  
Among the recommendations was a single agency to handle the state's fiscal affairs. That study was reviewed by directive of the 1957 legislative assembly. The 1959 legislative assembly established the department of accounts and purchases to become operative in 1961. In 1981 the agency became the office of management and budget. The director is appointed by and serves at the will of the governor. As agency head, the director is vested with control and supervision of the fiscal administration of the executive branch of state government.
- b. Divisions. ~~The office has seven divisions, which are~~ Within the office of management and budget are seven divisions:
  - (1) ~~Management and fiscal administration~~ Administration.
  - (2) ~~Purchasing~~ Fiscal management.
  - (3) ~~Information services~~ Human resource management services.

- (4) Office of intergovernmental assistance Central services.
- (5) Central personnel Facility management.
- (6) Facility management Risk management.
- (7) Administration State radio communications.
- (8) Radio communications.

## 2. Functions of office divisions.

### a. Management and fiscal administration.

- (1) ~~Budget section. The office of the budget is responsible for budget preparation and checking spending after legislative appropriations are made. The process involves determination of the state's needs and the potential means of meeting them, the evaluation of these needs and distribution of financial support among them, and supervising expenditures in accordance with executive and legislative intent. The office serves as a conduit between the governor and executive agencies of government, and between the executive and legislative branches of government. The office examines each appropriation request and holds hearings with administrators to determine exact needs of each agency, and makes a recommendation to the governor, who submits the budget to the legislative assembly.~~

~~The office must explain to the legislative assembly the basis upon which the budget is built, provide any additional information, and keep the budget current with legislative changes. It is responsible for the execution of the budget, and ensuring the governor's policy and legislative mandates are carried out.~~

- (2) ~~Accounting section. All state financial transactions are indicated on written documents called vouchers, all processed by the accounting section. Vouchers call for payments from the state treasury, which are made by warrant checks prepared by the accounting section. All items processed are posted to the proper cash appropriation account to ensure availability of funds for payment.~~

~~The accounting section provides technical assistance to the office of the budget in checking vouchers for legal requirements before they are reviewed by the office. The division processes all agency payrolls except colleges and universities, Bank of North Dakota, mill and elevator, and job~~

~~service North Dakota. All deductions and matching amounts are handled centrally. Centralized handling of funds provides a large base of statistical data which can be used in planning and projecting the state's revenue sources and requirements.~~

~~b: Purchasing:~~

- ~~(1) Purchasing division. The purchasing division operates a central purchasing service, which includes purchase, lease, or rental of all equipment, printing, furniture, materials, supplies, insurance, and other commodities for all state departments, institutions, offices, and agencies.~~

~~The division maintains a central supply section, and also supervises operation of the printing division. It has established annual contracts covering seventy-five percent of all commodities purchased, the remainder being bought by special bids and quotations.~~

~~The division serves as a clearinghouse of surplus property for state agencies, and operates a separate warehouse for state and federal surplus property.~~

- ~~(2) Printing division. Most duplicating services are centralized in central duplicating services and are available to all state departments. It has duplicating, collating, stapling, and drilling equipment and has standardized production for printing for immediate needs of state departments.~~

~~c: Information services:~~

- ~~(1) Communications. The office of central data processing was established to provide a data processing service center for all state agencies. The 1989 legislative assembly changed the name of the central data processing division to the information services division. All agencies of state government excluding job service North Dakota, adjutant general, and institutions of higher learning receive data processing services by the information services division. Information services also provides a telecommunications service to all state agencies. This service was the responsibility of the director of institutions office and has been transferred to information services effective July 1, 1987. The division operates on a separate appropriation composed of fees charged other state agencies for its services.~~

- ~~(2) Records management. Responsibility for the administration of an executive branch and county level records management program was placed in the information services division in~~

March 1990. The goal is to ensure efficiency and economy in the creation, utilization, retention, and final disposition of all state records.

Information services division operates a central microfilm unit in order to provide state agencies and county offices with micrographics services as an integral part of state records management. Information services division is also responsible for the formation, implementation, and administration of a statewide forms management program. The goals of this program are to reduce the paperwork burden which state government places upon governmental entities, businesses, individuals, and others; and to provide a savings to the state of North Dakota through a significant reduction in form processing costs.

- d: Office of intergovernmental assistance. This office administers federal grant programs in the areas of community development, energy conservation, housing and homeless shelters, and low income assistance. It also provides technical assistance to the office of management and budget and executive branch through research and analysis services, and grant writing services. This office also coordinates energy policy, federal funding, and related activities as they pertain to energy conservation and the efficient use of energy resources.

The division also provides technical assistance and training for the implementation of the Americans with Disabilities Act. Along with this, the office responds to inquiries pertaining to the uniform federal accessibility standards, the Americans with Disabilities Act accessibility guidelines, and the state building code, and is responsible for developing implementing regulations for the state building code. The office is also responsible for the development, coordination, and management of the state's comprehensive housing affordability strategy mandated by the National Affordable House Act.

- e: Central personnel. The central personnel division was created by executive order in 1974 and by the 1975 legislative assembly to encompass classified positions within state agencies, and to conduct certain merit system functions. It provides certain personnel administration services to employees in merit system agencies and to the classified employees in other state agencies.

The division establishes rules subject to approval of the state personnel board including the establishing and maintaining of classification and compensation plans. It establishes and maintains a roster of all employees in the state classified service, including class title of each position, salary, changes in class title,

~~and any personnel data deemed necessary by the division. The division selects for appointment those employees necessary to carry out the provisions of the law; and it prepares and administers appropriate selection procedures. It assists employee appointing authorities in the development of personnel administration within various state agencies; and cooperates with these authorities in the conduct of employee training programs.~~

~~The director of the division is appointed by the director of the office of management and budget from among persons certified by the state personnel board as eligible for appointment in accordance with rules the board promulgates.~~

- ~~f. Facility management. Facility management became a division of office of management and budget July 1, 1991. Prior to that time, the facility management functions were performed by the director of institutions. However, the 1991 legislative assembly officially abolished the office of the director of institutions and transferred its functions to other state agencies.~~

~~Facility management is responsible for the preservation and maintenance of the state capitol grounds and facilities. In addition, the division is responsible for providing space management services for most state agencies.~~

- ~~g. Administration. The administrative division provides support staff services to the other office of management and budget divisions. These services include internal accounting and budgeting, reception, word processing and publications, and other central office management.~~

~~The division is also responsible for preparing and monitoring general and special fund revenue forecasts for the state of North Dakota.~~

- ~~h. State radio is North Dakota's public safety communications nerve center. The agency was created by an emergency act of the legislative assembly in 1951 to provide coordination, direction, control, development, and implementation of public safety communication systems, as well as the operation and maintenance of those systems through modern state-of-the-art technology. State radio is dedicated to providing efficient voice and data communication systems that are operated twenty-four hours a day, three hundred sixty-five days a year, in the interest of public safety. The mission of state radio is to provide professional law enforcement, emergency medical, and fire communication services on a statewide basis, and dispatch of the necessary resources. State radio is the control terminal agency for the federal bureau of investigation national crime information center~~

~~and the national law enforcement teletype system operation in North Dakota and 911 services, frequency coordination, and spectrum management are also provided on a statewide basis. The standard of operation is to provide the highest quality of services within available resources, as well as training for law enforcement officers and radio dispatchers in the proper use and operation of these systems. A statewide toll-free emergency telephone number and a rural 911 system allows citizens to access state radio's emergency services.~~

- a. The administration division provides management and support to the divisions within the office of management and budget. Other duties include review of state agency management and organizational structure, and frequent comparison of projected and actual state revenues and expenditures. The director of each division is appointed by and serves at the pleasure of the director of the office of management and budget.
  
- b. The fiscal management division is responsible for budget preparation and the monitoring of spending after legislative appropriations are made, preparation of the revenue forecasts, processing state financial transactions, including agency payrolls, and preparing the statewide comprehensive annual financial report (CAFR). The fiscal management director and budget analysts prepare the governor's executive recommendation for submission to the legislative assembly. As the sole financial plan for providing state services, the executive budget recommendation is presented to the legislative assembly prior to the convening of each session. Part of the budget process involves fiscal management staff appearing at hearings for each agency budget request, onsite visits, and comparative analyses. Once the executive budget recommendation has been submitted, the office works closely with the legislative assembly and its committees by explaining the budget or by providing information on other fiscal concerns. During both the legislative session and the legislative council's interim study period, the office of management and budget assists legislators and other key policymakers in resolving budget-related issues. Telephone: (701) 328-2680; web site: <http://www.state.nd.us/fiscal>.
  
- c. The human resource management services division provides services relating to establishing and maintaining a unified system of human resource management for the classified service. The division and the state personnel board were created by executive order in 1974 and by the legislative assembly in 1975. The 2003 legislative assembly changed the name of the central personnel division to human resource management services. The division establishes and maintains classification and compensation plans as well as general policies and rules which are binding on the

agencies with employees in the classified service. In 1995 the administration of the merit system function was decentralized to those agencies required to have a merit system of personnel administration. The human resource management services division maintains the merit system auditing function and provides consultative services to agencies on a multitude of issues including recruitment, screening, and selection of applicants; performance management; classification; salary administration; discipline; grievances; investigations; appeals; and federal and state employment requirements. In addition, the division develops, coordinates, and conducts training programs; provides mediation services; and administers a cooperative education and internship program. Telephone: (701) 328-3290; TDD: 800-366-6888; web site: <http://www.state.nd.us/hrms>.

- d. The central services division operates a central purchasing service, maintains a central supply section, serves as the state's distribution point for federal surplus property and clearinghouse for state-owned surplus property, and operates a central printing service. The central services division works with state agencies and vendors to provide the state with the best possible prices for goods and services. Telephone: (701) 328-2780; web site: <http://www.state.nd.us/csd>.
- e. The facility management division was created July 1, 1991, with the elimination of the director of institutions office. The division manages the physical plant operations, provides capitol tours, operates the central mail bureau, and coordinates event scheduling for all of the buildings located on the one hundred thirty-two-acre capitol complex. It also is responsible for providing space management services for the state agencies located on the capitol complex through its state planner. Telephone: (701) 328-2471; web site: <http://www.state.nd.us/fac>.
- f. The risk management division was established in 1995 in response to a North Dakota supreme court decision that eliminated the state's sovereign immunity for tort claims. The division's objectives are to implement proactive loss control practices to address the state's exposures to loss, and to appropriately administer claims and lawsuits. The 2001 legislature established the risk management workers' compensation program and assigned the division the duty of administering the single workers' compensation account that consolidated one hundred forty-three state agency accounts, and authorized a one hundred thousand dollar deductible per claim and a cross agency return-to-work program. Telephone: (701) 328-7584; web site: <http://www.state.nd.us/risk>.
- g. State radio was created by an emergency act of the legislative assembly in 1951 to provide coordination, direction, control,

development, and implementation of public safety communications systems, as well as the operation and maintenance of those systems through modern state-of-the-art technology. State radio is dedicated to providing efficient voice and data communication systems that are operated twenty-four hours a day, three hundred sixty-five days a year, in the interest of public safety. Telephone: (701) 328-8154; web site: <http://www.state.nd.us/radio>.

3. **Inquiries.** General inquiries regarding the office of management and budget may be addressed to the director of the office. Specific inquiries regarding the functions of each division may be addressed to the director of that division.
4. **Personnel roster.** All correspondence to the below-listed persons should be addressed as follows:

~~Rod Backman, Director  
Office of Management and Budget  
600 East Boulevard Avenue, Dept. 110  
Bismarck, North Dakota 58505-0400  
(701) 328-4909 (701) 328-4606~~

~~Pam Sharp, Deputy Director  
Office of Management and Budget  
600 East Boulevard Avenue, Dept. 110  
Bismarck, North Dakota 58505-0400  
(701) 328-4606~~

~~Sheila Peterson, Director  
Fiscal Management Division  
600 East Boulevard Avenue, Dept. 110  
Bismarck, North Dakota 58505-0400  
(701) 328-4905~~

Director  
Human Resource Management Services Division  
600 East Boulevard Avenue, Dept. 113  
Bismarck, North Dakota 58505-0120  
(701) 328-4735

~~Linda Engmann, Acting Director  
Central Services Division  
600 East Boulevard Avenue, Dept. 118  
Bismarck, North Dakota 58505-0420  
(701) 328-3494~~

~~James Heck, Director  
Information Services Division  
600 East Boulevard Avenue, Dept. 112~~

~~Bismarck, North Dakota 58505-0100  
(701) 328-3193~~

~~Dina Butcher, Director  
Office of Intergovernmental Assistance  
600 East Boulevard Avenue, Dept. 105  
Bismarck, North Dakota 58505-0170  
(701) 328-4499~~

~~Dan LeRoy, Director  
Central Personnel Division  
600 East Boulevard Avenue, Dept. 113  
Bismarck, North Dakota 58505-0120  
(701) 328-4735~~

~~Curt Zimmerman, Director  
Facility Management Division  
600 East Boulevard Avenue, Dept. 130  
Bismarck, North Dakota 58505-0130  
(701) 328-4002~~

~~Lyle Gallagher, Director  
State Radio Communications  
P.O. Box 5511  
Bismarck, North Dakota 58502-5511  
(701) 328-2808~~

~~Jo Zschomler, Director  
Risk Management Division  
600 East Boulevard Avenue, Dept. 1104 1600 East Century Avenue,  
Suite 4  
Bismarck, North Dakota ~~58505-0310~~ 58503-0649  
(701) ~~328-4904~~ (701) 328-7580~~

~~Director  
State Radio Communications  
P.O. Box 5511  
Bismarck, North Dakota 58502-5511  
(701) 328-8154~~

**History:** Amended effective March 1, 1982; October 1, 1983; November 1, 1985; October 1, 1987; September 1, 1989; May 1, 1992; February 1, 1993; April 1, 1994; December 1, 1998; August 1, 2004.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 28-32-02.1

## ARTICLE 4-12

### STATE PROCUREMENT PRACTICES

#### Chapter

<u>4-12-01</u>	<u>General Rules</u>
<u>4-12-02</u>	<u>Procurement Organization and Leadership</u>
<u>4-12-03</u>	<u>Delegation of Purchasing Authority</u>
<u>4-12-04</u>	<u>Ethics in Public Procurement</u>
<u>4-12-05</u>	<u>Bidders List</u>
<u>4-12-06</u>	<u>Specifications for Commodities and Services</u>
<u>4-12-07</u>	<u>Managing Contractual Risk</u>
<u>4-12-08</u>	<u>Competitive Solicitation Methods</u>
<u>4-12-09</u>	<u>Limited Competition, Noncompetitive, and Emergency Procurements</u>
<u>4-12-10</u>	<u>Mistakes in Bids or Proposals</u>
<u>4-12-11</u>	<u>Evaluation of Bids or Proposals</u>
<u>4-12-12</u>	<u>Contract Negotiations</u>
<u>4-12-13</u>	<u>Contract Administration</u>
<u>4-12-14</u>	<u>Resolution of Protested Solicitations and Awards</u>
<u>4-12-15</u>	<u>Intergovernmental Relations</u>
<u>4-12-16</u>	<u>Printing</u>

#### CHAPTER 4-12-01 GENERAL RULES

#### Section

<u>4-12-01-01</u>	<u>Authority</u>
<u>4-12-01-02</u>	<u>Definitions</u>
<u>4-12-01-03</u>	<u>Determinations</u>
<u>4-12-01-04</u>	<u>Applicability</u>
<u>4-12-01-05</u>	<u>Compliance With Federal Requirements and Other Funding Sources</u>
<u>4-12-01-06</u>	<u>Procurement Violations</u>

**4-12-01-01. Authority.** Rules set forth in this article are promulgated by the office of management and budget, in accordance with North Dakota Century Code sections 44-08-01, 46-01-01, 46-01-02, 46-02-01, 54-44-04, and 54-44.4-04 and other laws as contained in the North Dakota Century Code.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 46-01-01, 46-01-02, 46-02-01, 54-44-04, 54-44.4-04

**4-12-01-02. Definitions.** The terms throughout this article have the same meaning as in North Dakota Century Code chapter 54-44.4, except:

1. "Approved vendor" means a person or business entity that has completed the registration requirements of North Dakota Century Code section 54-44.4-09 and been placed on the North Dakota state bidders list.
2. "Award" means the selection of a successful bidder or offeror for presentation of a purchase agreement or contract.
3. "Bidder" means a person or business entity that submits a response to an informal or formal bidding process.
4. "Bidders list" is the list of approved vendors that have completed the registration requirements of North Dakota Century Code section 54-44.4-09.
5. "Contractor" means a person or business entity having a contract with the state to furnish commodities or services for a certain price.
6. "Cooperative purchasing" means procurement conducted on behalf of two or more public procurement entities.
7. "Determination" means a document prepared by a procurement officer justifying the decision to take a certain action, including the reason or findings of fact and a conclusion.
8. "Director" means the director of the office of management and budget.
9. "Formal competition" means a solicitation process that requires bids or proposals to be submitted in a prescribed format in a sealed envelope, sealed package, or electronic means to be opened at a specified time.
10. "Informal competition" means a solicitation process that requests unsealed bids or proposals that may be conveyed by letter, telephone, or other means under conditions different from those required for formal competition.
11. "Negotiation" means to attempt resolution of an issue through conference, discussion, and agreement or compromise.
12. "Notice of intent to award" means notification that a bidder or offeror has been selected for award of a contract.
13. "Offeror" means a person or business entity that submits a response to an informal or formal request for proposal process.
14. "Procurement" means the process of purchasing, renting, leasing, or otherwise acquiring any commodities or services. This includes the process of acquisition, including description of requirements, solicitation

of bids or proposals, evaluation and selection of sources, preparation and award of a contract, and all phases of contract administration.

15. "Procurement file" means a written record maintained by the purchasing agency that contains documents related to the origination, solicitation, award, contract, and contract administration, including written determinations and approvals.
16. "Protest" means a written objection by an interested party to a solicitation, intent to award a contract, or award of a contract with the intent of receiving a remedial result.
17. "Responsive bidder or offeror" means a vendor who has submitted a bid or proposal that conforms in material respects to the requirements stated in the solicitation.
18. "Sole source" means a noncompetitive procurement in which a particular person or business entity is identified as the only qualified source capable of supplying the commodity and service.
19. "Solicitation" means a request for bids or proposals to provide commodities or services.
20. "Statement of work" means a detailed description of work the purchasing agency wants the contractor to perform.
21. "Vendor" means a person or business entity that offers to sell commodities or services.
22. "Written directives" means directives, policies, procedures, guidelines, and standards issued by the director of the office of management and budget or designee under North Dakota Century Code chapter 54-44.4.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-06, 54-44.4-09, 54-44.4-10

#### **4-12-01-03. Determinations.**

1. In a determination made by a state employee or official, the state employee or official making the determination shall independently examine the material facts of the procurement and independently determine whether the procurement is eligible for the procurement method requested.
2. A state employee or official must not knowingly make a false statement in a determination required by law or these rules.

3. Determinations required by law or these rules must be in writing and retained in the procurement file.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-06, 54-44.4-09, 54-44.4-10, 54-44.4-12

**4-12-01-04. Applicability.**

1. These rules apply to all procurements of commodities and services, regardless of the funding source, by each state agency and institution in the executive branch of government, except this chapter does not apply to:
  - a. Those agencies or institutions governed by the state board of higher education, which are exempt under subsection 5 of North Dakota Century Code section 15-10-17 and North Dakota Century Code section 54-44.4-02;
  - b. Those commodities and services not subject to state procurement laws under North Dakota Century Code section 54-44.4-02;
  - c. Those procurements costing less than a specified amount and those specific commodities or services as determined by the director's written directive, pursuant to North Dakota Century Code section 54-44.4-02;
  - d. Contracts for services of legal counsel with attorneys who are not employed by the state, pursuant to North Dakota Century Code section 54-12-08;
  - e. Contracts for public buildings and public improvement contract bids, pursuant to North Dakota Century Code title 48;
  - f. Contracts for architect, engineer, and land surveying services, pursuant to North Dakota Century Code chapter 54-44.7;
  - g. Contracts for concessions, pursuant to North Dakota Century Code chapter 48-09;
  - h. Grant programs, not including procurements using grant dollars; or
  - i. Professional memberships.
2. The office of management and budget may procure exempted commodities or services upon request by an agency or institution.

3. The office of management and budget may require state agencies or institutions to provide an annual report of commodities and services exempted by the director's written directive.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-02.1, 54-44.4-04

**4-12-01-05. Compliance with federal requirements and other funding sources.**

1. When a procurement involves the expenditure of federal assistance or contract funds, the office of management and budget or purchasing agency will comply with all federal laws and regulations that are mandatory and that are not presently reflected in these rules.
2. Nothing in these rules or the written directives of the office of management and budget prevents any state agency or institution from complying with the terms and conditions of federal funds, federal assistance, grants, gifts, bequests, or cooperative agreements.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 54-44-04, 54-44.4-01, 54-44.4-04

**4-12-01-06. Procurement violations.** Violations of state laws, rules, and office of management and budget written directives relating to procurement will be reported to the employing agency for appropriate disciplinary action. A violation of state laws, rules, and office of management and budget written directives related to procurement may constitute action outside the employee's scope of employment.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 32-12.2-03, 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-02, 54-44.4-02.1, 54-44.4-04

**CHAPTER 4-12-02**  
**PROCUREMENT ORGANIZATION AND LEADERSHIP**

Section

4-12-02-01

State Procurement Office

4-12-02-02

Duties and Functions of the State Procurement Office

4-12-02-03

Procurement Advisory Council

**4-12-02-01. State procurement office.**

1. The state procurement office within the office of management and budget is responsible for carrying out the duties, powers, and responsibilities involved with the operation of a centralized purchasing service.
2. The state procurement office is headed by the state procurement manager who serves as the central procurement officer of the state and is responsible for the state procurement office as it exercises its duties and functions.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-03, 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 54-44-04, 54-44.4-02, 54-44.4-04

**4-12-02-02. Duties and functions of the state procurement office. The state procurement manager or designee shall:**

1. Adopt policies, procedures, guidelines, and standards consistent with the laws and rules governing the procurement of commodities and services.
2. Procure or supervise the procurement of all commodities and services needed by the state, except those exempted by state law or the director's written directive.
3. Manage the delegation of procurement authority.
4. Conduct periodic reviews of procurements made by state agencies and institutions with delegated authority to ensure compliance with state laws and rules and office of management and budget written directives related to procurement.
5. Make written determinations regarding procurement issues, including exemptions, emergency purchases, restriction of competition, use of federal contracts, cooperative purchasing agreements, vendor responsibility, suspension or debarment of vendors from the state bidders list, and appeals of protest decisions.

6. Collect statistical data from each state agency and institution concerning the procurement of commodities and services.
7. Establish procurement education and training programs for state employees.
8. Develop standard forms, terms and conditions for solicitations, purchase orders, amendments, and contract administration tasks in consultation with the attorney general.
9. Work with state agencies and institutions and vendors to establish effective and economical state contracts for the procurement of commodities and services of common use, which may be made mandatory for use by state agencies and institutions.
10. Coordinate with agencies and institutions governed by the state board of higher education to identify commodities or services of high common usage suitable for joint purchase.
11. Coordinate with political subdivisions to cooperatively purchase commodities or services when determined to be beneficial to the state and political subdivisions.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44-03, 54-44-04, 54-44.4-02, 54-44.4-02.1, 54-44.4-04, 54-44.4-05, 54-44.4-09, 54-44.4-10, 54-44.4-12

**4-12-02-03. Procurement advisory council.** A procurement advisory council, appointed by the director and headed by the state procurement manager, shall meet at least twice per year for the discussion of procurement practices and recommendations for improvement of the state procurement process. The committee advises the state procurement manager regarding statewide procurement policies, standards, and guidelines.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 54-44-04, 54-44.4-01, 54-44.4-02, 54-44.4-02.1, 54-44.4-04

**CHAPTER 4-12-03**  
**DELEGATION OF PURCHASING AUTHORITY**

Section

<u>4-12-03-01</u>	<u>Delegation of Purchasing Authority</u>
<u>4-12-03-02</u>	<u>Request for Additional Delegation</u>
<u>4-12-03-03</u>	<u>Decision to Delegate</u>
<u>4-12-03-04</u>	<u>Compliance With State Procurement Policies</u>
<u>4-12-03-05</u>	<u>Procurement Officer Training Program</u>

**4-12-03-01. Delegation of purchasing authority.** The director or director's designee may delegate purchasing authority, in writing, to the head of a state agency or institution. The head of the state agency or institution may delegate that person's authority to specific individuals. The delegation will specify dollar limits for making required determinations, approving limited and noncompetitive procurements, conducting procurements, and amending contracts. The delegation may specifically include or exclude certain commodities or services. The authority remains in effect for the time specified in the written delegation unless revoked in writing by the director, director's designee, or the head of the state agency or institution.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-03, 54-44.4-04

**4-12-03-02. Request for additional delegation.** The head of a state agency or institution may request a special delegation of purchase authority for a specific requirement. The request must be made in writing to the state procurement office and approval obtained before the agency or institution issues a solicitation or awards a contract.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-03, 54-44.4-04

**4-12-03-03. Decision to delegate.**

- 1. Factors to consider in making the decision to delegate include:**
  - a. The procurement expertise or other specialized knowledge of the potential delegate:**
  - b. The past experience of the potential delegate in exercising similar authority:**
  - c. The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated:**

- d. The available resources of the office of management and budget to exercise the authority if it is not delegated; and
  - e. The consistency of delegation under similar circumstances.
2. Provisional or partial delegation may be made to employees and officials who have limited training or experience.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-03, 54-44.4-04

**4-12-03-04. Compliance with state procurement policies.**

- 1. Any person with delegated purchasing authority will exercise this authority in accordance with the terms of the delegation, the state laws, rules, and office of management and budget procurement written directives.
- 2. State agencies and institutions may adopt internal procurement policies and procedures that are consistent with state laws, these rules, and office of management and budget procurement written directives.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-03, 54-44.4-04

**4-12-03-05. Procurement officer training program.** The state procurement office conducts a procurement training and development program. The state procurement office may charge fees for training on a cost-recovery basis.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-03, 54-44.4-04

**CHAPTER 4-12-04**  
**ETHICS IN PUBLIC PROCUREMENT**

Section

<u>4-12-04-01</u>	<u>Requirement for Good-Faith Actions</u>
<u>4-12-04-02</u>	<u>Emphasis on Competition</u>
<u>4-12-04-03</u>	<u>Handling of Information</u>
<u>4-12-04-04</u>	<u>Conflict of Interest</u>
<u>4-12-04-05</u>	<u>Attempt to Influence Award</u>
<u>4-12-04-06</u>	<u>Collusion of Bidders or Offerors</u>
<u>4-12-04-07</u>	<u>Nondiscrimination in Source Selection</u>
<u>4-12-04-08</u>	<u>Artificial Fragmentation Prohibited</u>

**4-12-04-01. Requirement for good-faith actions.** All parties involved in the solicitation, negotiation, performance, and administration of contracts for the state shall act in good faith.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-04-02. Emphasis on competition.** Solicitations for bids or proposals will be issued in sufficient time and in a form that will permit the highest practicable degree of full and free competition.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-01, 54-44.4-04

**4-12-04-03. Handling of information.**

1. No state employee or official will furnish information to a prospective bidder or offeror if, alone or together with other information, it might give the prospective bidder or offeror an unfair advantage.
2. Each state employee or official will handle confidential or proprietary information belonging to the state, a vendor, or a contractor with due care and compliance with state procurement laws and open records laws.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-04-04. Conflict of interest.**

1. Each state employee or official directly or indirectly involved in procurement activities for the state will exercise caution in professional

and personal activities to prevent a conflict of interest, or the appearance of conflict, regarding any vendor or contractor.

2. An employee or official shall not participate directly or indirectly in a procurement when the employee or official knows that:
  - a. The employee or any member of the employee's immediate family, including a parent, spouse, child, sibling, grandparent, step-(parent, child, siblings), or in-laws (parent, child, and sibling), has a financial interest pertaining to the procurement;
  - b. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - c. Any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement.
3. Upon discovery of an actual or potential conflict of interest, an employee or official shall promptly file a written statement of disqualification and withdraw from further participation in the transaction involved. The head of the state agency or institution, in consultation with the attorney general, shall make a written determination as to what further participation, if any, the employee may have in the procurement.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 12.1-13-02, 12.1-13-03, 48-02-12, 54-44.4-01, 54-44.4-04

**4-12-04-05. Attempt to influence award.**

1. Any vendor or contractor is prohibited from giving or offering to give, and any employee and official of the office of management and budget or a purchasing agency involved in any aspect of the procurement process is prohibited from soliciting, accepting, or agreeing to accept money, loans, credits, or prejudicial discounts, subscriptions, offer of employment, gifts, entertainment, favors, or services that might influence, or appear to influence, procurement decisions.
2. Items of nominal value may be offered by a vendor or contractor as a gesture of good will or for public relations purposes and may be accepted.
3. A vendor, contractor, agent, consultant, subcontractor, employee, lobbyist, or any state employee or official may not attempt to influence a procurement decision.

4. A state employee or official involved in any aspect of the procurement process shall report to the state procurement manager any person or business entity that attempts to influence an award or makes or offers to make a gift prohibited by this section. All bids or proposals submitted by the person or business entity will be rejected and the person or business entity will be barred from further bidding for a period of time determined by the state procurement manager. The state procurement manager will notify the attorney general of any violation of this section for any action as the attorney general may deem appropriate.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 12.1-12, 54-44.4-04

**Law Implemented:** NDCC 12.1-12-01, 12.1-12-03, 54-44.4-01, 54-44.4-04, 54-44.4-10

**4-12-04-06. Collusion of bidders or offerors.** A state employee or official involved in any aspect of the procurement process must promptly report to the state procurement manager any case of suspected collusion or suspicious bidding pattern indicating anticompetitive trade practices between actual or prospective bidders or offerors. The procurement action must be suspended. The state procurement manager will notify the attorney general of any violation of this section for any action as the attorney general may deem appropriate.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-04-07. Nondiscrimination in source selection.** Source selection may not be based upon discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-04-08. Artificial fragmentation prohibited.** Requirements may not be artificially divided to avoid requirements for obtaining competition. Fragmentation of current requirements for commodities and services must be based upon actual need by the purchasing agency.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-11

**CHAPTER 4-12-05**  
**BIDDERS LIST**

Section

<u>4-12-05-01</u>	<u>Bidders List</u>
<u>4-12-05-02</u>	<u>Suspension or Debarment From Bidders List</u>
<u>4-12-05-03</u>	<u>Explanation by Vendor</u>
<u>4-12-05-04</u>	<u>Cause for Suspension or Debarment</u>

**4-12-05-01. Bidders list.**

1. A vendor that wants to receive notice of solicitations for bids or proposals must apply to have its name placed on the bidders list for the type of commodities or services that the vendor sells.
2. Placement on the bidders list does not guarantee a vendor will receive notice of every solicitation over the amount established for small purchases.
3. If notice of a solicitation sent to an approved vendor is returned as undeliverable, that vendor may be removed from the state bidders list.
4. The office of management and budget shall develop policies for maintaining the bidders list to include periodically removing from the bidders list vendors that have not responded to solicitations for a particular commodity or service.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04, 54-44.4-09

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-09

**4-12-05-02. Suspension or debarment from bidders list.**

1. The state procurement manager may, after consultation with the attorney general, suspend or debar any vendor from a bidders list for cause. The suspension period must be less than six months; the debarment period must be less than three years.
2. The vendor will be given written notice that describes the term of the suspension or debarment, the vendor's right to make a written appeal within seven calendar days, and the reinstatement process.
3. After seven calendar days of notice to the vendor and reasonable opportunity for that person to be heard, the state procurement manager,

after consultation with the attorney general, shall have authority to suspend or debar the vendor for cause.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-09

**4-12-05-03. Explanation by vendor.**

1. At any time after the vendor receives notice of suspension or debarment, the vendor may submit a written explanation of the circumstances that were the cause of the suspension or debarment order, or may show that the circumstances have been corrected.
2. On the basis of the explanation or showing, the state procurement manager will respond within seven working days and may modify or rescind the removal or suspension.
3. Any modification or rescission will not waive or otherwise affect any other remedies the state might have concerning the vendor.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-09

**4-12-05-04. Cause for suspension or debarment. Sufficient grounds for suspension or debarment include:**

1. Failing to maintain active, good-standing status with the secretary of state;
2. Delivering items that do not comply with the specifications of the vendor's contract with the state;
3. Failing to make delivery within the time specified in the contract or purchase order;
4. Failing to keep an offer firm for the length of time specified by the vendor in the solicitation or the vendor's bid or proposal;
5. Failing to provide a performance bond when required by a solicitation;
6. Colluding with other vendors to restrain competitive bidding;
7. Engaging in unauthorized communications or seeking to obtain information about an open solicitation with any state employee or official other than the responsible procurement officer or designee;

8. Giving information in an application for inclusion on a bidders list that is later found to be false or materially misleading;
9. Substituting of an article, even if it is the same quality, without first securing the written consent of the purchasing agency;
10. Declaring bankruptcy or other evidence of insolvency of the vendor;
11. Any other facts causing substantial doubt as to whether the vendor will continue to be a responsible bidder or offeror that can be relied upon to fulfill its obligations under this article and under any contract awarded to the vendor;
12. Violating the laws of the state that would make it inadvisable for the state to deal with the vendor; or
13. Violating any other provisions of this article.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-09

**CHAPTER 4-12-06**  
**SPECIFICATIONS FOR COMMODITIES AND SERVICES**

Section

<u>4-12-06-01</u>	<u>Purpose of Specifications</u>
<u>4-12-06-02</u>	<u>Restrictive Specifications to Be Avoided</u>
<u>4-12-06-03</u>	<u>Use of Brand Name in Specifications</u>
<u>4-12-06-04</u>	<u>Qualified Products List</u>
<u>4-12-06-05</u>	<u>Equipment Leases and Lease-Purchases</u>
<u>4-12-06-06</u>	<u>Specifications Prepared by Non-State Personnel</u>
<u>4-12-06-07</u>	<u>Request for Information</u>
<u>4-12-06-08</u>	<u>Specification Meeting</u>

**4-12-06-01. Purpose of specifications.**

1. The purpose of a specification is to serve as a basis for obtaining a commodity or service suitable for the state's needs in a cost-effective manner.
2. Commodities and services will be specified at the proper level of utility and quality for the purpose intended in order to promote overall economy for the purpose intended.
3. All required functional, performance, physical, design, and other characteristics of a commodity or service and any other requirements such as certification, licensing, insurance, delivery, installation, inspection, testing, training, maintenance, and service support must be included in the specification.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

**4-12-06-02. Restrictive specifications to be avoided.**

1. Specifications should encourage competition in meeting the state's needs and may not be restrictive. Restrictive specifications are contrary to the policy of the state and should be avoided.
2. Standard commercial commodities will be specified whenever possible.
3. A specification is restrictive when the specifications, requirements, restrictions, or conditions have the effect of limiting responses to only one brand, make, source of supply, or service provider and have no reasonable relation to the actual needs of the purchasing agency.
4. When only one brand, make, source of supply, or service provider can meet the specifications in a competitive solicitation, the procurement

officer must make a determination regarding whether the specification was restrictive.

5. Award is subject to the approval requirements for limited and noncompetitive procurements in chapter 4-12-09.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-01, 54-44.4-04, 54-44.4-06

#### **4-12-06-03. Use of brand name in specifications.**

1. Specification may include brand name, make, or source of supply, but in those cases it will be clearly indicated that equivalent products may be acceptable.
2. If a commodity or service put forth as equivalent is rejected by an agency or institution as not being equivalent, the procurement officer must make a written determination and notify the bidder or offeror of the rejection.
3. Whenever an agency specifies products or services exclusive to a particular individual, company, manufacturer, or brand name to the exclusion of competitive products or services, the proprietary product or service will be procured competitively, unless it is available only from one source of supply or emergency circumstances exist. When competition is limited or restricted by the use of a brand name or proprietary specification, a written determination for a limited competitive or noncompetitive procurement must be made in accordance with North Dakota Century Code section 44-08-01 and North Dakota Administrative Code chapter 4-12-09.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-01, 54-44.4-04, 54-44.4-06

#### **4-12-06-04. Qualified products list.**

1. If testing or examination of the commodities or services is desirable or necessary to best satisfy state requirements, a qualified products list may be developed with approval of the state procurement office.
2. When developing a qualified products list, a representative group of vendors must be solicited, in writing, to submit products for testing and examination to determine acceptability for inclusion on the qualified products list.
3. Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with state requirements and the product specification.

4. The existence of prequalified products on a qualified products list does not constitute prequalification of any prospective vendor.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

**4-12-06-05. Equipment leases and lease-purchases.**

1. Specifications for equipment leases and lease-purchases will include the total term of the lease, including all provisions for extensions or renewals of the lease agreement. If the purchasing agency will purchase insurance for the equipment being leased from the lessor, those requirements will be stated in the specifications.
2. The purchasing agency will prepare a written analysis documenting the decision to lease or lease-purchase, in accordance with North Dakota Century Code section 54-27-21.1.
3. The state agency or institution will notify the office of the insurance commissioner, fire and tornado fund division, if the equipment being leased or lease-purchased will be insured under that fund.
4. The purchasing agency must comply with the requirements of North Dakota Century Code section 54-27-21 related to fixed asset reporting when the equipment lease or lease-purchase is determined to be a fixed asset acquisition.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-27-21.1, 54-44.4-02, 54-44.4-06

**4-12-06-06. Specifications prepared by non-state personnel.**

1. The requirements of these rules regarding the purpose and nonrestrictiveness of specifications applies to all specifications prepared by someone other than a state employee or official.
2. When a purchasing agency has specifications prepared by someone other than a state employee or official on behalf of the state, that person or business entity must be excluded from submitting bids or proposals.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

**4-12-06-07. Request for information.** A noncompetitive solicitation may be issued to obtain information, data, comments, or reactions from possible vendors preceding the issuance of solicitation for bids or proposals or a multistep bidding

procedure. Information obtained as a result of a request for information is subject to the state open records law.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04, 54-44.4-06

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

**4-12-06-08. Specification meeting.** Prior to issuing a solicitation, the procurement officer may hold a specification meeting to seek information necessary to prepare a suitable specification and competitive solicitation. The procurement officer will provide adequate notice to potential bidders or offerors. The meeting is open to the public. Attendance at such meeting may not be made mandatory as a condition for submitting a bid or proposal.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

**CHAPTER 4-12-07**  
**MANAGING CONTRACTUAL RISK**

Section

<u>4-12-07-01</u>	<u>Risk Management Analysis</u>
<u>4-12-07-02</u>	<u>Insurance Requirements</u>
<u>4-12-07-03</u>	<u>Bid Security</u>
<u>4-12-07-04</u>	<u>Performance Bonds</u>
<u>4-12-07-05</u>	<u>Payment Bonds</u>

**4-12-07-01. Risk management analysis.** In preparing a solicitation or contract, the procurement officer will consider the potential risks involved in the contract for procurement of commodities or services to determine reasonable measures that can be taken to mitigate those risks, including the use of insurance, bonding, or other types of security.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-07-02. Insurance requirements.** As a result of a risk management analysis, it may be determined that the contractor will be required to acquire and maintain insurance. The insurance requirements must be stated in the solicitation.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**4-12-07-03. Bid security.**

1. As a result of a risk management analysis prior to the solicitation being issued, security may be required to protect the interests of the state and ensure that a vendor will not withdraw a bid or proposal prior to contract award. In this circumstance, a bid bond, certified check, or cashier's check drawn on the Bank of North Dakota or a federally insured bank, or other form of bid security acceptable to the purchasing agency, may be required to accompany the bid or proposal.
2. When a bid bond is required, the bid or proposal must specify the form and amount of the bond, up to five percent of the full amount of the bid or proposal, unless it is in the best interest of the state to specify another amount.
3. The bidder or offeror must sign any bid bond as principal, and the bond must be signed by a surety company licensed by the insurance commissioner to do business in the state. If the surety on a bond has its authority to do business in this state revoked or if for any reason it ceases to do business in the state, the bidder or offeror must promptly obtain another surety on the bond. The bond must be noncancelable.

regardless as to whether the bonding company remains licensed in the state, and must remain in effect until a replacement bond is filed.

4. The bond must be conditioned on full performance of all obligations imposed on the bidder or offeror, including the obligation to keep the price firm for the period specified in the solicitation and the obligation to file a performance bond when required. The bond must provide that upon failure to perform any obligations the state will recover from the bidder and the surety, or either, any damages suffered because of failure to perform.
5. The purchasing agency may allow a vendor to file a continuing bond good for all bids or proposals made during a certain period of time up to a stated amount.
6. Bid bonds or other form of bid security submitted by unsuccessful bidders or offerors will be returned as soon as possible after the award is made. The purchasing agency may retain the bid bonds of those unsuccessful bidders or offerors determined to be reasonably susceptible for award for use in the event of default by the successful bidder or offeror. The bid bond or other form of security submitted by the successful bidder or offeror will be returned as soon as possible after the contract is awarded or as soon as the successful bidder or offeror has filed a performance bond if one is required.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

#### **4-12-07-04. Performance bonds.**

1. As a result of a risk management analysis prior to the solicitation being issued, the successful bidder or offeror may be required to file a performance bond, certified check, or cashier's check drawn on the Bank of North Dakota or a federally insured bank, or other form of surety deposit acceptable to the purchasing agency.
2. The state may require that the bond, certified check, or cashier's check be filed within a specified number of days after the award is made or the contract may be canceled and the vendor will be liable for any damages caused by failure to file the bond, certified check, or cashier's check.
3. When a performance bond is required, the solicitation must specify the form and amount of the bond. The amount of the performance bond must be adequate to cover the risk assumed by the state, depending on the nature and circumstances of the contract, up to one hundred percent of the contract amount.

4. The successful bidder or offeror must sign any bid bond as principal, and the bond must be signed by a surety company licensed by the insurance commissioner to do business in the state. If the surety on a bond has its authority to do business in this state revoked or if for any reason it ceases to do business in the state, the bidder or offeror must promptly obtain another surety on the bond. The bond must be noncancelable, regardless as to whether the bonding company remains licensed in the state, and must remain in effect until a replacement bond is filed.
5. The bond must be conditioned on full performance of all obligations imposed on the vendor by the contract with the state. The bond must provide that if the vendor fails to perform any obligations, the state may recover from the vendor and the surety, or either of them, any damages suffered because of failure to perform.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

#### **4-12-07-05. Payment bonds.**

1. A payment bond may be required by the purchasing agency for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of work provided for in the contract.
2. When a payment bond is required, the bid or proposal must specify the form and amount of the bond, up to one hundred percent of the contract amount.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

**CHAPTER 4-12-08**  
**COMPETITIVE SOLICITATION METHODS**

<u>Section</u>	
<u>4-12-08-01</u>	<u>Competitive Solicitation Methods</u>
<u>4-12-08-02</u>	<u>Small Purchases</u>
<u>4-12-08-03</u>	<u>Competitive Sealed Bidding</u>
<u>4-12-08-04</u>	<u>Competitive Sealed Proposals</u>
<u>4-12-08-05</u>	<u>Multistep Solicitations</u>
<u>4-12-08-06</u>	<u>Notice of Competitive Sealed Solicitations</u>
<u>4-12-08-07</u>	<u>Approved Vendor Registration Requirements</u>
<u>4-12-08-08</u>	<u>Questions and Clarification</u>
<u>4-12-08-09</u>	<u>Solicitation Amendment - Extension of Solicitation Opening Time - Cancellation of Solicitations</u>
<u>4-12-08-10</u>	<u>Presolicitation, Prebid, or Preproposal Conferences and Site Inspections</u>
<u>4-12-08-11</u>	<u>Samples</u>
<u>4-12-08-12</u>	<u>Receiving Sealed Bids or Proposals</u>
<u>4-12-08-13</u>	<u>Late Bids or Proposals</u>

**4-12-08-01. Competitive solicitation methods.**

1. Commodities and services will be procured through a competitive solicitation method unless competitive solicitation is not required by state law or circumstances exist under which competition can be limited or waived in accordance with North Dakota Century Code section 54-44.4-05 and these rules.
2. The state procurement office will establish policies, procedures, guidelines, and standards for the purchase of commodities and services, based upon dollar value thresholds established by the director pursuant to North Dakota Century Code sections 54-44.4-02 and 54-44.4-11.
3. Depending upon the value and complexity of commodities or services to be purchased, the state procurement office and each purchasing agency, in accordance with guidelines issued by the state procurement office, may issue solicitations by one of the following methods:
  - a. Small purchase procedures, including an informal competitive process;
  - b. Competitive sealed bids;
  - c. Competitive sealed proposals; or

d. Multistep competitive process.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04, 54-44.4-11

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-02.1, 54-44.4-04, 54-44.4-05, 54-44.4-06, 54-44.4-10, 54-44.4-11

**4-12-08-02. Small purchases.**

1. Extremely low-value purchases, including purchases made using a purchasing card, will be made using adequate procedures to ensure commodities and services are obtained at a fair and reasonable price, which may include the solicitation of only one bid or proposal. The procurement officer will rotate vendors solicited on an equitable basis.
2. For small purchases between the threshold for extremely low-value purchases and formal sealed competition, informal competition should be obtained and no less than three vendors should be solicited, insofar as practical, to submit oral or written bids or proposals.
3. Vendors that are not approved under North Dakota Century Code section 54-44.4-09 may be solicited.
4. All responses will be recorded and placed in the procurement file.
5. After application of North Dakota Century Code section 44-08-01, an award shall be made to the responsible vendor offering the lowest responsive bid or most advantageous proposal.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-09, 54-44.4-11

**4-12-08-03. Competitive sealed bidding.**

1. Invitation for bids will be issued and will include a purchase specification or statement of work and all contractual terms and conditions applicable to the procurement.
2. Notice of the solicitation will be made in accordance with section 4-12-08-06.
3. At the specified date and time, a public bid opening will be held and each bid received will be opened and read.
4. A listing of the bidders' names and their responses must be prepared, including any responses declining to submit a bid and those bids

received late. The record of bidders' names, all the bids, and tabulation sheets form part of the procurement file.

5. The procurement file becomes public upon the bid opening.
6. No discussions or negotiations with bidders are permitted after the opening of bids. Award is to be made to the responsible vendor with the lowest responsive bid, based strictly on the criteria set forth in the invitation for bids.
7. The procurement officer may reject all bids or negotiate for a lower price with the successful bidder as provided in North Dakota Century Code section 54-44.4-05.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-09

#### **4-12-08-04. Competitive sealed proposals.**

1. The following types of commodities and services, for which the use of competitive sealed bidding is either not practicable or advantageous to the state, may be procured by competitive sealed proposals without a written determination by the procurement officer:
  - a. Services;
  - b. Information technology as defined in North Dakota Century Code section 54-59-01; and
  - c. Equipment.
2. Request for proposals will be issued and must include a purchase specification or statement of work, all contractual terms and conditions applicable to the procurement, and the relative importance of price and other factors or subfactors, if any.
3. Notice of the solicitation will be made in accordance with section 4-12-08-06.
4. At the specified date and time, each proposal will be opened in a manner to avoid disclosure of the contents to competing offerors. The openings may be made public at the discretion of the purchasing agency, as indicated in the request for proposal. If a public opening is held, only the names of offerors that submitted proposals can be revealed at the opening.
5. A listing of the offerors' names must be prepared, including any responses declining to submit a proposal and those proposals received

late. The record of offerors' names, all the proposals, and tabulation sheets form part of the procurement file.

6. The procurement file becomes public when a notice of intent to award is issued.
7. After the initial evaluation of proposals, the procurement officer or proposal evaluation committee may meet to discuss or evaluate proposals or hold discussions with those offerors determined to be reasonably susceptible of being selected for award. A motion may be made to close the open meeting to prevent disclosure of any information derived from proposals submitted by competing offerors. Written records of these meetings will become open records after an award of a contract has been made.
8. During the evaluation period, only the procurement officer and others specifically authorized by the procurement officer may transmit technical or other information and conduct discussions with prospective contractors. Discussions and negotiations must be conducted in accordance with chapter 4-12-12. These discussions are for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. In conducting discussions, any information derived from proposals submitted by competing offerors shall not be disclosed.
9. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. There must be a cutoff for the submission of revised proposals and final offers.
10. After proposals have been evaluated and the successful vendor selected, notice of intent to award must be promptly issued to all offerors that submitted proposals. Notice can be made by mail, facsimile, or electronic means. Upon issuance of this notice, the procurement file becomes an open record.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 44-04-19.2, 54-44.4-04, 54-44.4-10

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-10

#### **4-12-08-05. Multistep solicitations.**

1. Solicitations for commodities or services may be a multistep process, in which an initial solicitation for unpriced technical bids or proposals may be used to develop a shortlist of qualified vendors and a subsequent solicitation may be limited only to those vendors that qualified for the shortlist.

2. The multistep sealed solicitation method may be used when it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award.
3. During the first phase of a multistep sealed solicitation while evaluating unpriced technical bids or proposals, the procurement officer may have discussions with vendors or hold a conference of all potential bidders or offerors.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04, 54-44.4-06

**4-12-08-06. Notice of competitive sealed solicitations.**

1. When making purchases over the amount established for small purchases, state agencies and institutions will send notice of the solicitation to vendors on the bidders list of approved vendors for the commodity or service being purchased, unless a written determination is made to limit competition.
2. Notice of the solicitation may be made by mail, facsimile, or electronic means. The notice must include the purchasing agency, a brief description of the commodity or service being procured, instructions for obtaining the solicitation, and the deadline for receipt of bids or proposals.
3. The purchasing agency may also elect to use a means of public notice, electronic posting, or send notice to vendors that are not on the bidders list.
4. A record of the notice will be made, including a list of the vendors who were sent notice and any vendors that requested the solicitation or notice provided by other means.
5. Notice shall be given in sufficient time for potential bidders or offerors to prepare bids or proposals.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-09

**4-12-08-07. Approved vendor registration requirements.** All solicitations over the amount established for small purchases must state the requirements for registration as an approved vendor under North Dakota Century Code section 54-44.4-09. The procurement officer may:

1. Require all bidders or offerors to be registered as approved vendors by the deadline established for receipt of bids and proposals;

2. Make a determination to accept bids or proposals from vendors that are not approved and require the successful bidder or offeror to become registered before contract award; and
3. Make a determination that registration with the secretary of state and appointment of an agent for service of process in this state are not required and waive the registration requirement.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-09

#### **4-12-08-08. Questions and clarification.**

1. Any questions or requests for clarification during the solicitation period shall be submitted only to the procurement officer identified on the solicitation document.
2. The procurement officer may establish a deadline for submission of questions or requests for clarification in the solicitation.
3. When the response to the question or request for clarification contains information that is material to the solicitation process that cannot be answered by directing the potential bidder or offeror to a specific section within the solicitation document, the procurement officer will prepare a written response that must be distributed to all potential bidders or offerors.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-05, 54-44.4-10

#### **4-12-08-09. Solicitation amendment - Extension of solicitation opening time - Cancellation of solicitations.**

1. Before the opening of bids or proposals, a solicitation may be amended, or time for opening may be extended, upon the procurement officer's determination that the extension or amendment is in the state's best interest. All potential bidders or offerors known to have copies of the solicitation shall be notified of the amendment or extension.
2. Bidders or offerors may be required to acknowledge receipt of the solicitation amendment in writing.
3. Before the opening of bids or proposals, a solicitation may be canceled in whole or in part if the procurement officer determines that cancellation is in the best interest of the state. All potential bidders or offerors known to have copies of the solicitation shall be notified

of the cancellation. Bids or proposals may be returned upon request. Reasons for cancellation include:

- a. The state no longer requires the commodities or services;
- b. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable; or
- c. Sufficient funds are not available to pay for the procurement.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-08-10. Presolicitation, prebid, or preproposal conferences and site inspections.**

1. A presolicitation conference may be held prior to issuing a competitive sealed solicitation to obtain comments and suggestions about the draft solicitation. The purchasing agency may invite specific selected potential bidders or offerors or provide public notice of the presolicitation conference. Attendance at such conference may not be made mandatory as a condition for submitting a bid or proposal.
2. A prebid or preproposal conference or site inspection may be scheduled in a solicitation to be conducted prior to the submission of sealed bids, sealed proposals, or unpriced technical offers in response to a multistep process. Adequate notice of the conference must be given to all potential bidders or offerors.
  - a. The prebid or preproposal conference or site inspection may be made mandatory as a prerequisite for submitting a bid or proposal if the information provided at the conference is necessary to adequately prepare a bid or proposal and cannot be otherwise provided to prospective bidders or offerors.
  - b. If attendance is made mandatory in the solicitation, only those bidders or offerors in attendance are eligible to submit bids or proposals.
  - c. After the prebid or preproposal conference or site inspection, questions raised and answers along with any changes made to the solicitation must be disseminated to potential bidders or offerors through a solicitation amendment. If attendance at the conference

or site inspection was made mandatory, notice of the amendment may be limited to eligible bidders or offerors.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

#### **4-12-08-11. Samples.**

1. The purchasing agency may require in the solicitation that bidders or offerors submit representative samples of the commodity being offered, at no cost to the state, to ensure compliance with the specifications. Such samples may be subject to examination and testing by the purchasing agency.
2. Samples of the successful bidder or offeror may be retained for comparison to commodities delivered under contract.
3. Upon request of the bidder or offeror, samples not destroyed by examination or testing will be returned at the expense of the bidder or offeror. If the bidder or offeror does not request return of the sample, the sample will become property of the state.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04, 54-44.4-06

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-06

#### **4-12-08-12. Receiving sealed bids or proposals.**

1. All sealed bids and sealed proposals received at the place designated in the solicitation will be secured and held unopened until the date and time specified in the solicitation for opening of bids or proposals.
2. As bids and proposals are received, the outer envelope will be annotated with the date and time of receipt.
3. If the person delivering a sealed bid or proposal requests a receipt, the purchasing agency will provide a written receipt confirming the identification of the bid or proposal and the time of receipt.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

#### **4-12-08-13. Late bids or proposals.**

1. Sealed bids and proposals that are delivered late will not be accepted for consideration, unless the delay is due to the error of the purchasing

agency and discovered before selection of the successful bidder or offeror.

2. The vendor will be promptly sent written notice of rejection.
3. The procurement officer may retain the late bid or proposal in the procurement file, return the late bid or proposal, or notify the vendor to make arrangements for pickup of the late bid or proposal by a specified date.
4. If the late bid or proposal was returned, a record of the return must be made and placed in the procurement file.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**CHAPTER 4-12-09**  
**LIMITED COMPETITION, NONCOMPETITIVE, AND EMERGENCY**  
**PROCUREMENTS**

<u>Section</u>	
<u>4-12-09-01</u>	<u>Competition May Be Waived or Limited</u>
<u>4-12-09-02</u>	<u>Limited Competitive Procurements</u>
<u>4-12-09-03</u>	<u>Noncompetitive Procurements</u>
<u>4-12-09-04</u>	<u>Emergency Procurements</u>

**4-12-09-01. Competition may be waived or limited.**

1. A purchasing agency may request to limit or waive competitive solicitation requirements pursuant to North Dakota Century Code section 54-44.4-05.
2. Competition may not be limited or waived to satisfy preferences or for the convenience of the purchasing agency.
3. Circumstances under which a deviation from procurement procedures to limit or waive competition and procure through negotiations is appropriate pursuant to subsection 2 of North Dakota Century Code section 54-44.4-05, without a written determination, include:
  - a. Contracts for legal services, subject to the requirements of North Dakota Century Code section 54-12-08;
  - b. Contracts for professional witnesses to provide for professional services or testimony related to existing or probable lawsuits in which the state may become a party;
  - c. Contracts for temporary administrative law judges pursuant to North Dakota Century Code section 54-57-02;
  - d. Contracts for medical doctors, dentists, psychologists, and other medical specialists;
  - e. Purchases of books, newspapers, magazine subscriptions, and periodicals;
  - f. Prerecorded audiovisual materials, including records, tapes, cassettes, compact disks, slides, transparencies, films, and videotapes;
  - g. Purchases of materials required for manufacturing and production by a purchasing agency engaged in manufacturing and production operations;

- h. When immediate expenditures are necessary to ensure the integrity of state records;
  - i. Purchases of livestock, fish, insects, and other animals;
  - j. Commodities for resale at state-operated concessions;
  - k. Purchases of items with cultural, historical, or archaeological significance for museums or archival purposes;
  - l. Purchases of works of art;
  - m. Contracts for residential and treatment services to ensure continuity of client care and vocational rehabilitation commodities for clients of the department of human services;
  - n. Contracts for performers, entertainers, and guest speakers, excluding contracts for education, instruction, or training; and
  - o. Medications, pharmaceuticals, metabolic foods, food supplements, food replacements, vitamins, and therapeutics, as prescribed by health care professionals for patients of a state facility or clients of a state program.
4. A prior written determination is required for all other requests for limited competitive and noncompetitive purchases subject to the provisions of this chapter and the terms of the purchasing agency's delegated purchasing authority.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02.1, 54-44.4-04, 54-44.4-05

#### **4-12-09-02. Limited competitive procurements.**

- 1. Competition may be limited pursuant to North Dakota Century Code section 54-44.4-05 under circumstances in which the deviation from the procurement procedures to limit competition is determined to be appropriate, including:
  - a. When products or services exclusive to particular individuals or business entities are required and competition for the proprietary product or service exists;
  - b. When circumstances require that commodities or services be provided by bidders or offerors within a specific geographic area, such as equipment requiring local service, onsite service within a specific time, or delivery of readymix concrete; or

- c. When it is determined that a competitive sealed bid or competitive sealed process is impracticable or not in the best interest of the state.
2. Whenever limited competitive procurements are to be made, a written determination will be attached to the procurement file. The determination must be accompanied by a written explanation as to why the competition should be limited and why a fully competitive procurement method is impracticable or not in the best interest of the state. The purchasing agency must provide evidence necessary for an independent examination and determination of the material facts of the procurement.
3. The purchasing agency will approve noncompetitive procurements within its delegated authority.
4. When the procurement is outside the scope of the agency's delegated authority, prior written approval of the state procurement manager or designee must be obtained.
5. The purchasing agency may issue a notice of intent to make a limited competitive purchase to determine if other sources are available.
6. The purchasing agency shall obtain the level of competition practicable.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05

#### **4-12-09-03. Noncompetitive procurements.**

1. Competition may be waived pursuant to North Dakota Century Code section 54-44.4-05 under circumstances in which the requirements are a sole source or can only be met by a specific commodity or service exclusive to a particular individual or business entity to the exclusion of competing vendors, commodities, or services.
2. A noncompetitive procurement is not justified on the basis of any of the following circumstances:
  - a. The lack of adequate advance planning for the procurement of the required commodities or services;
  - b. Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
  - c. Pending expiration of budget authority.

3. Whenever noncompetitive procurements are to be made, a written determination will be attached to the procurement file. The determination must be accompanied by a written explanation as to why it is not practicable to award a contract by a competitive procurement method and why a noncompetitive procurement is in the best interest of the state. The purchasing agency must provide evidence necessary for an independent examination and determination of the material facts of the procurement.
4. The purchasing agency will approve noncompetitive procurements within its delegated authority.
5. When the procurement is outside the scope of the agency's delegated authority, prior written approval of the state procurement manager or designee must be obtained.
6. The purchasing agency may issue a notice of intent to make a noncompetitive award to determine if such an award is appropriate.
7. The procurement officer shall conduct negotiations, as appropriate, regarding price, delivery, and terms. Such negotiations must be conducted in accordance with chapter 4-12-12.
8. The procurement officer responsible for the noncompetitive procurement shall prepare and retain in the procurement file a record of the noncompetitive procurement that includes the written determination, contractor's name, description of the commodities or services procured, and contract amount.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05

#### **4-12-09-04. Emergency procurements.**

1. Procurements may be made under emergency conditions in a circumstance when there is insufficient time for usual competitive procurement methods and which involve public health, public safety, or when immediate expenditures are necessary pursuant to North Dakota Century Code section 54-44.4-02. If the circumstance does not meet the provisions of North Dakota Century Code section 54-44.4-02, a limited competitive determination must be made.
2. An emergency procurement need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with competition that is practicable under the circumstances.

3. The purchasing agency shall limit the quantity of commodities or services being purchased to that necessary to meet the emergency circumstance.
4. The purchasing agency must prepare a written determination for the use of emergency procurement procedures, including an explanation as to why emergency conditions exist, a description of the required commodities or services, and evidence necessary for the independent examination and determination of the material facts of the procurement.
5. The responsible agency official must promptly forward the emergency determination to the state procurement office after the procurement.
6. The procurement officer shall conduct negotiations, as appropriate, regarding price, delivery, and terms. Such negotiations must be conducted in accordance with chapter 4-12-12.
7. The procurement officer responsible for the emergency procurement shall prepare and retain in the procurement file a record of the emergency procurement that includes the emergency determination, description of the commodities or services procured, and basis for the selection of the vendor.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-02, 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04

**CHAPTER 4-12-10**  
**MISTAKES IN BIDS OR PROPOSALS**

Section

<u>4-12-10-01</u>	<u>Minor Informalities</u>
<u>4-12-10-02</u>	<u>Unit Price Governs</u>
<u>4-12-10-03</u>	<u>Mistakes Discovered Before Opening</u>
<u>4-12-10-04</u>	<u>Confirmation of Bid or Proposal</u>
<u>4-12-10-05</u>	<u>Mistakes Discovered After Opening but Before Award</u>
<u>4-12-10-06</u>	<u>Mistakes Discovered After Award</u>
<u>4-12-10-07</u>	<u>Determinations Required</u>

**4-12-10-01. Minor informalities.**

1. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid or proposal document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions, that can be waived or corrected without prejudice to other bidders or offerors.
2. If the mistake is attributable to an error in judgment by the bidder or offeror, the bid or proposal may not be waived or corrected. An example of an error in judgment would be failure to consider all the requirements of the solicitation and submitting an inaccurate price.
3. Correction or withdrawal of a bid or proposal because of an inadvertent, minor informality requires careful consideration to protect the integrity of the competitive solicitation process and to ensure fairness.
4. Bid or proposal correction or withdrawal by reason of a minor informality is permissible but only to the extent it is not contrary to the interest of the state or the fair treatment of other bidders or offerors.
5. Examples of minor informalities include failure of a bidder or offeror to:
  - a. Return the number of signed bid or proposal documents required by the solicitation;
  - b. Sign the response, but only if the unsigned response is accompanied by other material indicating the bidder's intent to be bound, such as a cover letter, or a signed bid or proposal is provided within the time limit set by the procurement officer;
  - c. Sign or initial a material correction to the bid or proposal, including a typeover, writeover, correction tape, or white-out, but the bidder or offeror may be required to confirm the correction within the time limit set by the procurement officer;

- d. Submit product literature or other documents required in the solicitation, but only if the bidder or offeror complies within the time limit set by the procurement officer; and
- e. Acknowledge receipt of an amendment to the solicitation, but only if:
  - (1) It is clear from the bid or proposal that the bidder or offeror received the amendment and intended to be bound by its terms;
  - (2) The amendment involved had a negligible effect on price, quantity, quality, or delivery; or
  - (3) The bidder or offeror provides an acknowledgment of receipt within the time limit set by the procurement officer.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-02. Unit price governs.** In case of a mistake in the calculation of total price, the unit price will govern.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-03. Mistakes discovered before opening.** A bidder or offeror may correct a mistake discovered before the time and date set for opening of bids or proposals by withdrawing or correcting the bid or proposal.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-04. Confirmation of bid or proposal.**

1. When the procurement officer knows or has reason to conclude that a mistake has been made, the procurement officer may request the bidder or offeror to confirm the bid or proposal. Examples of situations in which confirmation is appropriate include obvious, apparent errors on the face of the bid or proposal, or a bid or proposal unreasonably priced in relation to the others submitted.

2. If the bidder or offeror confirms the mistake, the bid or proposal may be corrected or withdrawn in accordance with these rules.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-05. Mistakes discovered after opening but before award.**

1. The procurement officer may waive minor informalities or allow the bidder or offeror to correct them depending on which is in the best interest of the state.
2. If the mistake and the intended correct bid or proposal are clearly evident on the face of the bid or proposal document, the bid or proposal must be corrected to the intended correct bid or proposal and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid or proposal document are typographical errors, errors in extending unit prices, transposition errors, and mathematical errors.
3. A bidder may be permitted to withdraw a low bid or proposal if a mistake is clearly evident on the face of the solicitation response but the intended correction is not similarly evident or the bidder or offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-06. Mistakes discovered after award.** A mistake in a bid or proposal discovered after award does not relieve the contractor from performance in accordance with the contract award. The bidder or offeror must submit evidentiary proof of value that clearly and convincingly demonstrates a mistake has been made. If the terms of the contract permit modification of the contract price, no correction may be permitted that would cause the contract price to exceed the next low bid or result in another proposal being determined to be most advantageous.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-07. Determinations required.** When a bid or proposal is corrected or withdrawn, or a correction or withdrawal is denied, the procurement officer will

prepare a written determination showing that the relief was granted or denied in accordance with these rules.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04

**CHAPTER 4-12-11**  
**EVALUATION OF BIDS OR PROPOSALS**

Section

<u>4-12-11-01</u>	<u>Standards for Awarding Contracts</u>
<u>4-12-11-02</u>	<u>Application of Preference for North Dakota Vendors</u>
<u>4-12-11-03</u>	<u>Responsiveness of the Bid or Proposal</u>
<u>4-12-11-04</u>	<u>Responsibility of the Bidder or Offeror</u>
<u>4-12-11-05</u>	<u>Tie Bids or Proposals</u>
<u>4-12-11-06</u>	<u>Conditioned Bids or Proposals</u>
<u>4-12-11-07</u>	<u>Multiple Awards</u>
<u>4-12-11-08</u>	<u>Only One Responsive Bid or Proposal Received</u>
<u>4-12-11-09</u>	<u>Rejection of All Bids or Proposals</u>

**4-12-11-01. Standards for awarding contracts.** Unless circumstances exist under which competition can be limited or waived, contracts must be awarded through a competitive solicitation process to the responsible vendor with the lowest responsive bid or the most advantageous proposal. An award will be made according to the evaluation criteria specified in the solicitation. A contract award will be made as soon as practicable after the opening and evaluation of bids or proposals.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-11-02. Application of preference for North Dakota vendors.** When considering bids or proposals from nonresident vendors, the procurement officer must determine whether the vendor's state of residence has a preference law. The state procurement office shall make publicly available a listing of state preference laws. The preference given to North Dakota bidders must be equal to the preference given or required by the state of the nonresident bidder, in accordance with North Dakota Century Code section 44-08-01.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-04

**4-12-11-03. Responsiveness of the bid or proposal.** Any bid or proposal that does not meet the requirements of the solicitation, other than mistakes determined to be minor informalities, will be rejected.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-11-04. Responsibility of the bidder or offeror.**

1. The procurement officer, at any time, may make a supplementary investigation as to the responsibility of any bidder or offeror, even though the bidder or offeror may be on the bidders list for the commodity or service being purchased.
2. This may include investigation of financial responsibility, insurability, effective equal employment opportunity, capacity to produce, sources of supply, performance record in the business or industry, and other matters relating to the bidder's or offeror's probable ability to deliver in the quantity and at the time required under the contract if it is awarded to the bidder or offeror.
3. The procurement officer may require the submission of written statements from the bidder or offeror or other persons concerning any related matter. If it is concluded on the basis of all available information that a particular bidder or offeror appears not to be sufficiently responsible to assure adequate performance if the contract were awarded to the bidder or offeror, the bid or proposal will be rejected even if it is the lowest bid or the best offer.
4. If a vendor is determined to be not responsible, that vendor may be debarred or suspended from the bidders list.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-11-05. Tie bids or proposals.** In the event of a tie bid or proposal, the procurement officer will ensure that any applicable preference has been applied to price in accordance with North Dakota Century Code section 44-08-01. If a tie remains, award shall be determined as follows:

1. If the tie is between an approved vendor and vendor that is not approved, preference will be given to the approved vendor in accordance with North Dakota Century Code section 54-44.4-09.
2. If the solicitation specified delivery as soon as possible, the bid or proposal with the earliest delivery time will be accepted. In all other cases, delivery time will not be considered in making award, provided the bid or proposal states that delivery can be made within the required time.

3. If a tie remains, a split award may be made or award will be made through a random drawing.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-04, 54-44.4-05, 54-44.4-09, 54-44.4-10

#### **4-12-11-06. Conditioned bids or proposals.**

1. No alterations or variations of the terms and conditions of the solicitation by the bidder or offeror will be valid and binding upon the state, unless made in writing and accepted by the purchasing agency.
2. Bids or proposals subject to conditions imposed by the bidder or offeror may be rejected as being nonresponsive, as determined by the purchasing agency.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02.1, 54-44.4-04, 54-44.4-05, 54-44.4-10

#### **4-12-11-07. Multiple awards.**

1. A multiple award can be made when it is determined to be in the best interest of the state to award multiple contracts to two or more bidders or offerors of similar products or services.
2. The intent to make a multiple award must be stated in the solicitation.
3. A multiple award may be appropriate under circumstances in which more than one contractor is required to ensure adequate delivery, service, or product compatibility.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02.1, 54-44.4-04, 54-44.4-05, 54-44.4-10

#### **4-12-11-08. Only one responsive bid or proposal received.**

1. If only one responsive bid or proposal is received in response to a solicitation, the procurement officer may:
  - a. Make an award to the vendor upon determination that the specifications were not restrictive in accordance with section 4-12-06-02, other prospective bidders and offerors had a reasonable opportunity to respond, the bidder is responsible, and the price submitted is fair and reasonable;

- b. Reject the bid or proposal and solicit new bids or proposals; or
  - c. Cancel the procurement.
2. If the price submitted is not fair and reasonable and there is no time for resolicitation, or it is unlikely that resolicitation will increase the number of bids or proposals, the procurement may be conducted as a limited competitive or noncompetitive purchase, as appropriate, pursuant to subsection 2 of North Dakota Century Code section 54-44.4-05.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-11-09. Rejection of all bids or proposals.**

- 1. If it appears to be in the best interest of the state, all bids or proposals may be rejected and invitations for bid or requests for proposal containing the same or rewritten specifications, terms, and conditions may be reissued.
- 2. The procurement officer will send written notice to the bidders or offerors, including the reason all bids or proposals were rejected.
- 3. The rejected bids or proposals will be retained in the procurement file.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**CHAPTER 4-12-12**  
**CONTRACT NEGOTIATIONS**

Section

4-12-12-01                    General Provisions for Negotiations

4-12-12-02                    Ethical Standards for Negotiations

**4-12-12-01. General provisions for negotiations.**

1. Discussions may be conducted in connection with competitive sealed proposals, noncompetitive, or emergency procurements. This means an exchange of information or other manner of negotiation during which the offeror and the procurement officer may alter or otherwise change the conditions, terms, and price of the proposed contract.
2. Negotiation of proposals, noncompetitive, and emergency purchases provides the procurement officer an opportunity to make certain that the bidder or offeror fully understands the solicitation requirements and provides an opportunity to make clarifications, when necessary, to ensure responsiveness to the solicitation. Price discussions can best be conducted when there is a mutual understanding of the contractual requirements.
3. Clarifications are intended to promote exchanges between the procurement officer and an offeror that may occur when an award is contemplated without discussions, for example, to resolve minor or clerical errors or ambiguities in proposals.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-12-02. Ethical standards for negotiations.**

1. When discussions or negotiations are contemplated after the receipt of proposals that are expected to lead to the revision of proposals or to best and final offers, fair and equitable treatment of competitors dictates that negotiations be conducted in accordance with ethical business standards.
2. Auction techniques are prohibited in discussions with offerors under the competitive sealed proposal method.
3. Prices; technical solutions; unique technologies; innovative use of commercial items, design, construction, or operating techniques; or other aspects of proposals submitted by one offeror must not be disclosed to competing offerors pursuant to North Dakota Century Code section 54-44.4-10.

4. Safeguards against abuse in the conduct of negotiations must be strictly observed to maintain the essential integrity of the process.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**CHAPTER 4-12-13**  
**CONTRACT ADMINISTRATION**

Section

4-12-13-01

Contract Amendment

4-12-13-02

Assignment of Contract

**4-12-13-01. Contract amendment.**

1. A contract cannot be amended after the expiration date of the contract.
2. A state contract may include a clause that provides for adjustment of contract price, adjustment of time of performance, and other terms the procurement officer deems appropriate.
3. Unanticipated contract amendments must be within the scope of the original contract, authorized by the terms of the contract, and due to legitimate, unforeseen circumstances.
4. Prior to amending a contract, the procurement officer must prepare a written determination for the amendment.
5. The amending of contracts cannot be utilized to avoid any requirements to obtain competition or to make purchases that exceed the procurement officer's delegated purchase authority.
6. Amendments that require the state to pay any amount over the stated contract price must be funded prior to approval.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-13-02. Assignment of contract.** A successful bidder or offeror shall not assign the bidder's or offeror's interest in the contract without the written consent of the procurement officer.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-05, 54-44.4-10

**CHAPTER 4-12-14**  
**RESOLUTION OF PROTESTED SOLICITATIONS AND AWARDS**

Section

4-12-14-01

Resolution of Protested Solicitations

4-12-14-02

Resolution of Protested Award or Intent to Award

4-12-14-03

Appeals of Protest Decisions

**4-12-14-01. Resolution of protested solicitations.** The following provisions must be followed by any actual or prospective bidder or offeror that is aggrieved in connection with a solicitation:

1. The aggrieved party shall submit a protest to the procurement officer in written form, clearly identifying the solicitation and the details of the nature of the protest.
2. When the solicitation contains a deadline for submission of questions and requests for clarifications, protests of the solicitation will not be allowed if these faults have not been brought to the attention of the procurement officer before the specified deadline. If no deadline for questions is specified, protests based on defects in the solicitation must be made at least seven calendar days before the deadline for receipt of bids or proposals.
3. The procurement officer has seven calendar days to review the protest and to render a written decision. The procurement officer may extend the protest review period by no more than seven days and will send written notice to the aggrieved party of the extension.
4. The procurement officer has the authority to cancel or amend a solicitation prior to the opening date and to delay the subsequent opening date.
5. During the time the protest and appeals are being considered, the solicitation period will be extended if not resolved before the opening date.
6. The aggrieved party has seven calendar days to appeal the decision of the procurement officer.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-12

**4-12-14-02. Resolution of protested award or intent to award.** A bidder or offeror that has submitted a response to a solicitation and is aggrieved may protest an award or notice of intent to award in accordance with the following provisions:

1. The aggrieved party shall submit a written protest to the procurement officer that clearly identifies the solicitation, award or proposed award, and the details of the nature of the protest.
2. The protest must be received within seven calendar days after the aggrieved party knew or should have known of the facts giving rise to the protest. Seven days after award or issuance of a notice of intent to award, it will be assumed that all interested parties knew or should have known all the facts surrounding the solicitation.
3. During the time the protest is being considered, the award will be stayed, unless a written determination is made that award without delay is necessary to protect the interests of the state. Written notice of the protest and stay of award will be sent to the successful bidder or offeror.
4. The procurement officer has seven calendar days to review the protest and render a written decision. The procurement officer may extend the protest review period by no more than seven calendar days and will send written notice to the aggrieved party of the extension.
5. The aggrieved party has seven calendar days to appeal the decision of the procurement officer.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-12

#### **4-12-14-03. Appeals of protest decisions.**

1. The aggrieved party may appeal the decision of the procurement officer to the director or designee within seven calendar days after receiving notice of the decision.
  - a. The director or designee has seven calendar days to review the protest and render a decision in writing. If the appeal is submitted on a weekend or state holiday, the seven-day period will commence on the first working day after the appeal was submitted.
  - b. During the time the appeal is being considered, the award will be stayed, unless a written determination is made that award without delay is necessary to protect the interests of the state.
  - c. If the protest is not resolved by mutual agreement, the director or designee will promptly issue a decision in writing stating the reasons for the action taken and informing the protestant of its right to judicial or administrative review, if any, as provided by the laws of North Dakota.

- d. A decision under this subsection is final and conclusive.
- 2. If the protest is sustained, the director or designee has the authority to resolve the protest in the best interests of the state.
  - a. Remedies may include cancellation and reissue of a solicitation, amendment of a solicitation and evaluation criteria, and cancellation of a contract award.
  - b. When a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, a bidder or offeror may not recover profits that it anticipates would have been made if that party had been awarded the contract. Any other settlement of relief must be referred to the office of the attorney general.
- 3. Frivolous protests may be cause for suspension or debarment from consideration of contract award for a period of up to three years. A written determination by the state procurement manager is required for this action.
- 4. Nothing in this section is intended to affect the power of the attorney general to settle actions pending before the courts.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-12

**CHAPTER 4-12-15**  
**INTERGOVERNMENTAL RELATIONS**

Section

4-12-15-01

Procurement From State Agencies and Other Governmental Entities

**4-12-15-01. Procurement from state agencies and other governmental entities.**

1. If a needed commodity or service can be obtained from a state agency or institution or other governmental entity within the state, that commodity or service may be purchased without obtaining competition. State agencies and institutions that provide commodities and services include printing services by the central duplicating service of the office of management and budget pursuant to North Dakota Century Code section 46-02-09, department of corrections and rehabilitation roughrider industries, information technology department, and agencies or institutions governed by the state board of higher education.
2. When conducting a competitive solicitation for a commodity or service otherwise available from a state agency or institution or other governmental entity within the state, the purchasing agency may elect to solicit bids or proposals from the state source of supply. The bid or proposal will be awarded according to the evaluation criteria set forth in the solicitation.
3. State agencies or institutions and other governmental entities may apply to be placed on the state bidders list established pursuant to North Dakota Century Code section 54-44.4-09.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 12-48-03.1, 54-44-04, 54-44.4-02, 54-44.4-04, 54-44.4-09, 54-59-05

**CHAPTER 4-12-16**  
**PRINTING**

Section  
4-12-16-01

Resident North Dakota Printers

**4-12-16-01. Resident North Dakota printers.**

1. Resident North Dakota printers must do any printing not done by the central duplicating service of the office of management and budget, unless circumstances exist under which it is determined to be not practicable. These circumstances include:
  - a. When North Dakota printers are not capable of providing the required printing services at a reasonable price or meet the required delivery schedule; or
  - b. When specialized printing services are required and there is a lack of qualified North Dakota printers that provide those services.
2. Bids for printing services may be rejected if the printing will be done by a nonresident printer, unless otherwise specified in the solicitation.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 46-02-09, 46-02-15, 54-44.4-02, 54-44.4-04, 54-44.4-05



**TITLE 28**

**STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND  
LAND SURVEYORS**



OCTOBER 2004

CHAPTER 28-01-02.1

**28-01-02.1-07. Gender and definitions.**

1. **Gender.** This title is to be read and interpreted in a nongender context without regard to race, creed, or sex.
2. **Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-19.1, except:
  - a. "Accreditation board for engineering and technology accredited curriculum" means those academic programs offered by institutions of higher learning which the accreditation board for engineering and technology (ABET) certify to have met the criteria and qualifications required to receive the designations as accredited programs in the education, training, and preparation of the graduates from such programs; engineering curriculum must have the accreditation of the engineering accreditation commission (EAC) within the accreditation board for engineering and technology and land surveying curriculum must have either engineering accreditation commission or technology accreditation commission (TAC) of the accreditation board for engineering and technology to be acceptable to the board.
  - b. "Application" means the act of furnishing data, documents, and such information under oath as may be required by the board and on forms prescribed by the board.
  - c. "Code of ethics" means that set of rules prescribed by the board and adopted herein which govern the professional conduct of all registrants.
  - d. "Direct supervision" means the activities of that person who is in responsible charge of technical, engineering, or land surveying work in progress, whose professional skill and judgment are embodied in the plans, specifications, reports, plats, or

other documents required to be certified pursuant to section 28-02.1-08-01. A person in direct supervision of work directs the work of other registrants, interns, draftspersons, technicians, or clerical persons assigned to that work.

- e. "Engineering intern" and "land surveyor (surveying) intern" are recognized by the board as synonymous with engineer-in-training and land surveyor-in-training provided the intern designations are conferred under the same requirements as the "in-training" designations pursuant to these rules.
- e: f. "Examination" means that series of tests prescribed by the board which are developed to ascertain the level of proficiency in the fundamentals and in the practices of the professions regulated by the board.
- g. "Gross negligence" means a substantial deviation in professional practice from the standard of professional care exercised by members of the registrant's profession, or a substantial deviation from any technical standards issued by a nationally recognized or state-recognized professional organization, or both, comprised of members of the registrant's profession, or a substantial deviation from requirements contained in state laws, board regulations, local ordinances, or regulations related to the registrant's professional practice.
- h. "Incompetence" means to lack the professional qualifications, experience, education, or combination thereof to undertake a professional engagement or assignment. The following acts or omissions, among others, may be deemed to be "incompetence" and to be cause for denial, suspension, or revocation of a certificate of registration to practice engineering or land surveying and the imposition of any other lawful discipline. Incompetence includes:
  - (1) Recklessness or excessive errors, omissions, or failures in the registrant's record of professional practice.
  - (2) Mental or physical disability or addiction to alcohol or drugs which leads to the impairment of the registrant's ability to exercise due skill and care in providing professional services so as to endanger the health, safety, and welfare of the public.
- i. "Misconduct" means:
  - (1) Conviction of any crime reasonably related to the practice of the registrant's profession;
  - (2) An adverse civil adjudication involving dishonesty, gross negligence, or incompetence;

- (3) Suspension or revocation or voluntary surrender of a professional license or registration by this state or by any other jurisdiction;
  - (4) Any act or practice in violation of the rules of professional conduct as set forth in sections 28-03.1-01-01 through 28-03.1-01-17;
  - (5) Violation of any of the administrative rules set forth in this title;  
or
  - (6) Knowingly fail to comply with continuing professional competency requirements set forth in article 28-04.
- j. "Registrant" means any person holding a current certificate of registration as a professional engineer, a registered land surveyor, or any combination thereof, or a certificate of authorization, which has been duly issued by the board.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08

## CHAPTER 28-02.1-01

### 28-02.1-01-04. Applications from applicants with degrees from foreign schools.

1. All foreign language documentation submitted with the completed application must be accompanied with translations certified to be accurate by a competent authority.
2. All applicants shall furnish evidence of experience which can be verified.
3. All applicants seeking registration must be prepared to write examinations which are administered in the English language.
4. The board may require foreign curricula to be evaluated by university faculty administering accreditation board for engineering and technology accredited engineering programs, or national council of examiners for engineering and surveying recommendations on foreign engineering curricula may serve as the board's guide for evaluation.
5. Those applicants who for political or other valid reasons are unable to obtain their college transcripts ~~shall~~ may be required to complete a supplementary application form as approved by the board ~~or the national council of examiners for engineering and surveying.~~

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-13

**28-02.1-01-05. Disposition of applications.** Applications may be approved; deferred for further information, more experience, acceptable references, or other reasons as determined by the board; or may be denied.

1. **Approved applications.** When an application is approved by the board showing that the applicant has met all the requirements for registration or certification required by the statutes of this state, the applicant must be granted registration or certification with notification by the executive secretary of the board.
2. **Deferred applications.** Applications deferred for any reason require proper remedy as requested before further consideration by the board.
3. **Denied applications.** Applications may be denied when in the board's judgment:
  - a. Reinstatement is requested after revocation and there is insufficient rehabilitation;

- b. An application has been denied for cause in other jurisdictions; or
- c. The applicant has failed to establish the applicant is of good character and reputation.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-25

## CHAPTER 28-02.1-02

### 28-02.1-02-01. Processing of applications.

1. Application forms for registration as a professional engineer or land surveyor may be obtained from the office of the board of registration for professional engineers and land surveyors.
2. Applications for registration by examination must be filed with the board office prior to January first for the spring examinations and July first for the fall examinations.
3. All information received from references named by the applicant must be received at the board office. No member of the board or relative of the applicant may be named as a reference.
4. An applicant may not be admitted to the examination until the applicant's application has been received, processed, and approved by the board.
5. An applicant may not confer with any member of the board regarding an applicant's case while it is pending before the board. Any applicant may appear before the board at a scheduled meeting.
6. Applicants whose applications have been approved, but who fail to appear for examination four consecutive times, must be deemed to have withdrawn their applications. Further consideration must be based on reapplication.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08, 43-19.1-12

## CHAPTER 28-02.1-03

**28-02.1-03-01. Types of registration.** Engineers and land surveyors may become registered professional practitioners by examination, endorsement, or by temporary permit.

1. **Registration by examination.** Registration by examination is generally a two-step process for those applicants who have met the general qualification requirements; who have met certain education requirements or who have the experience deemed to be satisfactory and acceptable to the board, or both; and who have successfully passed the examinations prescribed by the board.
  - a. The board has the written examination prepared by the national council of examiners for engineers and surveyors as its standard of examinations and qualifications.
  - b. The board may require one or more questions in examinations measuring familiarity with the code of ethics. Similarly, in furtherance of the board's determination of rehabilitation, an examination on the code of ethics may be required.
2. **Registration by endorsement.** Registration by endorsement is for engineers or land surveyors who hold a current registration in another jurisdiction who substantially meet or have met, in the opinion of the board, the following requirements and qualifications required by North Dakota statutes governing registration:
  - a. Qualifications and requirements - Professional engineer.
    - (1) Graduates from a four-year or more engineering program accredited by the accreditation board for engineering and technology must satisfy the following requirements:
      - (a) Pass an eight-hour examination in engineering fundamentals.
      - (b) Have a minimum of four years of acceptable engineering experience.
      - (c) Pass an eight-hour examination in the principles and practice of engineering.
    - (2) Graduates from a four-year or more engineering program not accredited by the accreditation board for engineering and technology that, in the opinion of the board, is substantially equivalent to engineering must satisfy the following requirements:

- (a) Pass an eight-hour examination in engineering fundamentals.
  - (b) Have a minimum of eight years of acceptable engineering experience.
  - (c) Pass an eight-hour examination in the principles and practice of engineering.
- (3) Graduates from a four-year or more engineering-related curriculum, that, in the opinion of the board, is substantially equivalent to engineering must satisfy the following requirements:
- (a) Pass an eight-hour examination in engineering fundamentals.
  - (b) Have a minimum of twelve years of acceptable engineering experience, the last six years of which demonstrates progressive experience in applying the principles and methods of engineering analysis and design.
  - (c) Pass an eight-hour examination in the principles and practice of engineering.
- (4) Teacher of engineering. A teacher of engineering must satisfy the following requirements:
- (a) Pass an eight-hour examination in engineering fundamentals.
  - (b) The individual must have taught engineering, for a minimum of four years, in a college or university offering an engineering curriculum approved by the board and must have a minimum of two years of practical engineering experience satisfactory to the board.
  - (c) Pass an eight-hour examination in the principles and practice of engineering.

b. Qualifications and requirements - Registered land surveyor.

- (1) A graduate of a four-year or more land surveying or engineering program accredited by the accreditation board for engineering and technology must satisfy the following requirements:

- (a) Pass an eight-hour examination in fundamentals of land surveying.
  - (b) Have a minimum of four years of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying.
  - (c) Pass an examination in the principles and practices of land surveying.
  - (d) Pass an examination pertaining to land surveying laws, procedures, and practices in North Dakota.
- (2) A graduate from a land surveying or engineering program not accredited by the accreditation board for engineering and technology and approved by the board must satisfy the following requirements:
- (a) Pass an eight-hour examination in fundamentals of land surveying.
  - (b) Have a minimum of six years of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying.
  - (c) Pass an examination in the principles and practices of land surveying.
  - (d) Pass an examination pertaining to land surveying laws, procedures, and practices in North Dakota.
- (3) All other land surveying applicants not qualifying under paragraphs 1 and 2 must satisfy the following requirements:
- (a) Pass an eight-hour examination in fundamentals of land surveying.
  - (b) Have a minimum of eight years of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying. Up to two years of credit toward experience requirements may be granted upon completion of equivalent time in a board-approved land surveying or engineering curriculum.
  - (c) Pass an examination in the principles and practices of land surveying.

(d) Pass an examination pertaining to land surveying laws, procedures, and practices in North Dakota.

3. **Temporary permit - Temporary registration.** Educational and experience requirements must comply with North Dakota law. A one-time temporary permit may be issued on the basis of one project and may not exceed one year. The applicant must be legally qualified to practice in the state or country of residence and must have current registration. A temporary permit must be approved prior to submission of plans and specifications for the execution of a project. Temporary permits for land surveyors are not authorized by North Dakota law.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08, 43-19.1-12.1, 43-19.1-13, 43-19.1-14, 43-19.1-16, 43-19.1-29

## CHAPTER 28-02.1-04

**28-02.1-04-01. General requirements.** All applicants must:

1. Complete their applications on forms furnished by the board.
2. Complete the application under oath (an affidavit is required).
3. Furnish references as required but may not include board members or relatives of the applicant as references.
4. In the case of student applicants for the fundamentals of engineering (FE) and for the fundamentals of land surveying (FLS) examinations, certification by the dean of the college or the dean's appropriate designee agreed upon by the board may be used in lieu of references.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-12

## CHAPTER 28-02.1-05

### 28-02.1-05-01. Qualifications and requirements - Engineers-in-training.

Engineer-in-training applicants must satisfy the following requirements:

1. A graduate of a four-year or more engineering program accredited by the accreditation board for engineering and technology ~~accredited engineering program~~ may be approved to write the fundamentals of engineering (FE) examination. Senior year students within one year of graduation may be approved to write the fundamentals of engineering examination.
2. A graduate of a four-year ~~nonaccreditation~~ or more engineering program not accredited by the accreditation board for engineering and technology ~~accredited engineering program~~ and four additional years of acceptable experience may be approved to write the fundamentals of engineering (FE) examination.
3. ~~All other applicants not qualifying under subsections 1 and 2~~ A graduate of a four-year or more engineering-related curriculum that, in the opinion of the board, is substantially equivalent to engineering must acquire ~~ten~~ six years of acceptable engineering experience before they may be approved to write the fundamentals of engineering (FE) examination.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-14, 43-19.1-15

**28-02.1-05-02. Qualifications and requirements - Professional engineer.** These requirements must be acquired as listed in the following categories:

1. Graduates from a four-year or more engineering program accredited by the accreditation board for engineering and technology ~~accredited engineering program~~ must satisfy the following requirements:
  - a. ~~An~~ Pass an eight-hour examination in engineering fundamentals. ~~(Engineer-in-training certificate)~~
  - b. ~~A~~ Have a minimum of four years of acceptable engineering experience subsequent to graduation and prior to writing the principles and practice of engineering (PE) examination.
  - c. ~~An~~ Pass an eight-hour examination in the principles and practice of engineering (PE).
2. Graduates from a four-year or more ~~nonaccreditation board for engineering and technology engineering programs or related program~~

~~that, in the opinion of the board, is substantially equivalent to engineering, engineering program not accredited by the accreditation board for engineering and technology must satisfy the following requirements:~~

- a. ~~An~~ Pass an eight-hour examination in engineering fundamentals. (~~Engineer-in-training certificate~~)
  - b. ~~A~~ Have a minimum of eight ~~years'~~ years of acceptable engineering experience subsequent to graduation and prior to writing the principles and practice (PE) examination.
  - c. ~~An~~ Pass an eight-hour examination in the principles and practice of engineering (PE).
3. ~~All other applicants not qualifying under subsections 1 and 2~~ Graduates from a four-year or more engineering-related curriculum that, in the opinion of the board, is substantially equivalent to engineering must satisfy the following requirements:
- a. ~~An~~ Pass an eight-hour examination in engineering fundamentals. (~~Engineer-in-training certificate~~)
  - b. ~~A~~ Have a minimum of ~~twenty~~ twelve years of acceptable engineering experience, the last ~~ten~~ six years of which demonstrates progressive experience in applying the principles and methods of engineering analysis and design prior to writing the principles and practice of engineering (PE) examination.
  - c. ~~An~~ Pass an eight-hour examination in the principles and practice of engineering (PE).
4. ~~Teacher~~ A teacher of engineering: must satisfy the following requirements:
- a. ~~An~~ Pass an eight-hour examination in engineering fundamentals is required. (~~Engineer-in-training certificate~~)
  - b. ~~The individual must have~~ Have taught, ~~in an engineering school of recognized standing, engineering in a college or university offering an engineering curriculum approved by the board for a minimum of four years and must~~ have a minimum of two years of practical engineering experience satisfactory to the board.

- c. ~~An~~ Pass an eight-hour examination in the principles and practice of engineering (~~PE~~) ~~is required~~.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-14

## CHAPTER 28-02.1-06

**28-02.1-06-01. Qualifications and requirements - Land surveyors-in-training.** Land surveyors-in-training applicants must meet the following requirements:

1. A graduate of a four-year or more land surveying or engineering program accredited by the accreditation board for engineering and technology ~~accredited land surveying or engineering curriculum approved by the board~~ may be approved to write the fundamentals of land surveying (FLS) examination. Senior year students within one year of graduation may be approved to write the fundamentals of land surveying (FLS) examination.
2. A graduate of a ~~nonaccreditation board for engineering and technology accredited curriculum in~~ land surveying or engineering program not accredited by the accreditation board for engineering and technology and approved by the board and with two or more years of acceptable land surveying experience may be approved to write the fundamentals of land surveying (FLS) examination.
3. a. All other applicants not qualifying under subsections 1 and 2 must have at least four years of acceptable land surveying experience before they may be approved to write the fundamentals of land surveying (FLS) examination.  
b. Up to two years of credit ~~towards~~ toward experience requirements may be granted upon completion of equivalent time in a board-approved land surveying or engineering curriculum.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-16.1

**28-02.1-06-02. Qualifications and requirements - Registered land surveyor.** These requirements must be acquired as listed in the following categories:

1. A graduate of a four-year or more land surveying or engineering program accredited by the accreditation board for engineering and technology ~~accredited land surveying or engineering curriculum approved by the board~~ must:
  - a. Pass an eight-hour examination in fundamentals of land surveying (~~LSIT certificate~~).

- b. ~~A~~ Have a minimum of four years of experience in land surveying work of a character satisfactory to the board; and indicating that the applicant is competent to practice land surveying.
  - c. ~~An~~ Pass an examination in the principles and practice of land surveying (PLS).
  - d. ~~An~~ Pass an examination pertaining to land surveying laws, procedures, and practices in North Dakota.
2. A graduate from a ~~nonaccreditation board for engineering and technology accredited curriculum in~~ land surveying or engineering program not accredited by the accreditation board for engineering and technology and approved by the board must:
- a. ~~An~~ Pass an eight-hour examination in fundamentals of land surveying (~~LSIT certificate~~).
  - b. ~~A~~ Have a minimum of six ~~years'~~ years of experience in land surveying work of a character satisfactory to the board; and indicating that the applicant is competent to practice land surveying.
  - c. ~~An~~ Pass an examination in the principles and practice of land surveying (PLS).
  - d. ~~An~~ Pass an examination pertaining to land surveying laws, procedures, and practices in North Dakota.
3. All other applicants not qualifying under subsections 1 and 2 must:
- a. ~~An~~ Pass an eight-hour examination in the fundamentals of land surveying (~~LSIT certificate~~).
  - b. ~~A~~ Have a minimum of eight years of experience in land surveying of a character satisfactory to the board indicating that the applicant is competent to practice land surveying. Up to two years of credit ~~towards~~ toward experience requirements may be granted upon completion of equivalent time in a board-approved land surveying or engineering curriculum.
  - c. ~~A four-hour~~ Pass an examination in the principles and practice of land surveying (PLS).

d. An Pass an examination pertaining to land surveying laws, procedures, and practices in North Dakota.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-16, 43-19.1-16.1

## CHAPTER 28-02.1-08 CERTIFICATES AND SEALS

Section	
28-02.1-08-01	Certificates
28-02.1-08-02	Seals
28-02.1-08-03	Use of Seals

### **28-02.1-08-02. Seals.**

1. The board has adopted standard seals or stamps similar to those illustrated in ~~the appendix to this chapter~~ this section for use by registered professional engineers and land surveyors as prescribed by law. The seal authorized by the state board of registration for professional engineers and land surveyors for registrants is of the crimp type or rubber stamp, or electronic. Seals prepared after July 1, 2005, shall be of a design so the seal consists of two concentric circles with the diameter of the outer circle being one and three-fourth inches [44.45 millimeters] and the diameter of the inner circle being one and one-fourth inches [31.75 millimeters]. The upper portion between the two circles shall bear whichever of the following phrases is applicable to the registrant: "Registered Professional Engineer", "Registered Land Surveyor", or "Registered Professional Engineer & Registered Land Surveyor". At the bottom of the annular space between the two circles shall appear the inscription "North Dakota"; the inner circle shall contain the name of the registrant, registration number, and the word "Date". The registration number assigned should be centered in the inner area of the seal in the space occupied by the word "NUMBER" and the size of the numbers should not be larger than the word "NAME". The words and parentheses "(NUMBER)" and "(NAME)" should not appear on the seal.
2. Seals may be of rubber stamp, metal impression type, or electronic. ~~Rubber stamp and metal impression seals may be ordered through the board.~~ Electronic seals may be used but an electronic seal may not be used in any document that is being transmitted in an editable digital format.
3. ~~All seals and stamps must be validated by the signature of the holder of the seal.~~ A registrant shall superimpose the registrant's personal original signature (not a rubber signature stamp or facsimile signature) and date of signature across the face and beyond the circumference of the seal. No further certification need accompany the seal and signature.

4. Final original plans and documents require personal original signatures of the professional in responsible charge of their preparation.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-21



1. PROFESSIONAL ENGINEER STAMP



2. LAND SURVEYOR STAMP



3. COMBINED PROFESSIONAL ENGINEER AND LAND SURVEYOR STAMP

### **28-02.1-08-03. Use of seals.**

1. The original copies of all drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product other than earthwork cross sections must receive a seal and original signature.
  - a. Studies, reports, and project specifications need the seal and original signature only on a single introductory sheet.
  - b. Every sheet or drawing in an original set of engineering plans must receive a seal and original signature.
2. Registrants may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering and land surveying documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers or land surveyors who prepared the segment.
3. Registrants shall not affix their signatures or seals to any engineering or land surveying plan or document dealing with subject matter for which

the registrant lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the registrant's direct supervisory control.

4. A registrant shall not contract with a nonlicensed individual to provide these professional services.
5. A registrant may affix the seal and signature to drawings and documents depicting the work of two or more professionals, either from the same or different disciplines, provided it is designated by a note under the seal the specific subject matter for which each is responsible.
6. Any changes made to the final plans, specifications, drawings, reports, or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant. In the event the original registrant is not able to authorize any changes, the registrant's employer may authorize another duly registered individual to make changes to final sealed documents.
  - a. Such changes to final sealed documents may be made only by a duly registered individual.
  - b. A duly registered individual making changes to final sealed documents must assume responsible charge and reseal the directly related final documents.
  - c. If construction phase revisions are made to the plans, they must be made by a duly registered individual, providing the change does not affect functional design requirements.
7. Mere review of work prepared by another person, even if that person is the registrant's employee, does not constitute responsible charge.
8. A registrant may not affix the registrant's seal or signature to documents having titles or identities excluding the registrant's name unless:
  - a. Such documents were developed by the registrant or under the registrant's responsible charge and the registrant has exercised full authority to determine their development.
  - b. A registrant who is required to use the standard drawings of a sponsoring agency need not affix the registrant's seal and signature to said standard drawings.
  - c. The registrant is providing the registrant's opinion as to the compliance of the document with specific identified rules or statutes and it is clearly identified that the registrant only reviewed the document and had no technical control over the contents of the document.

9. Electronic reproductions of drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product that are distributed to reviewing agencies, owners, clients, contractors, suppliers, and others shall be accompanied by the following statement: "This document(s) was originally issued and sealed by (name), Registration Number (number) on (date) and the original documents are stored at (location)". Sets of plans or drawings must have this statement attached to every sheet of the set. For specifications, reports, and studies, only the cover or introductory sheet need include this statement.
  
10. Paper or hard copy reproductions of drawings, plan sheets, specifications, studies, reports, plats, maps, and other engineering and surveying work product that are distributed to reviewing agencies, owners, clients, contractors, suppliers, and others shall contain a reproduction of the seal and signature. A new seal and original signature will not be required with such paper distribution.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-21

## CHAPTER 28-02.1-09

### 28-02.1-09-03. Reinstatements.

1. A registrant or a holder of a certificate of authorization who has allowed the registrant's or holder's registration to lapse for more than two years, but less than five years, may become reinstated by paying the renewal fee for the current registration period plus two years' back renewal fee. A holder of a certificate of authorization who has allowed the authorization to lapse for more than one year, but less than five years, may become reinstated by paying the current year renewal fee plus one year back renewal fee.
2. Registrations and certificates which have lapsed five years or more require reapplication updating all the required information of the applicant as if an original application. The board may require reexamination of registrants for all or a portion of the examination qualification requirements.
3. A retired registrant, upon written request to the board and payment of the current renewal fee, may resume active engineering or land surveying practice provided the retired registrant meets all other requirements. At that time, the retired registrant shall be removed from retired status and placed on valid or active status in the records of the board. All rights and responsibilities of a valid or active registration will be in effect, including compliance with continuing professional competency requirements. At the date of expiration of the reinstated certificate of registration, the registrant may elect to either continue active registration or may again apply for retired registration in accordance with the provisions of this chapter.
4. A registrant whose license has been lapsed or retired for one year or more and who meets all other requirements may reinstate a lapsed or retired license as allowed by this chapter. A registrant under this subsection who has reinstated a license is required to file an interim continuing professional competency report within one year of the date of reinstatement verifying that a minimum of fifteen professional development hours have been accomplished.
5. A registrant whose license has been lapsed or retired for less than one year and who meets all other requirements may reinstate a lapsed or retired license as allowed by this chapter. A registrant under this subsection who has reinstated a license must show compliance within

the previous two years with the continuing professional competency requirements set forth in article 28-04.

**History:** Effective January 1, 1988; amended effective November 1, 1998; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-22

## CHAPTER 28-02.1-10

**28-02.1-10-02. Fees.** Effective January 1, 1999, the following fees may not exceed:

### Registration Fees

Professional engineer	\$50.00
Land surveyor	\$50.00
Partnership or corporation	\$100.00
Temporary permit	\$50.00

Examination fee (in addition to the registration and renewal fees) at board cost, including scoring and proctoring and ten dollars for postage and handling ~~and proctoring~~.

Cost of administration of continuing education or professional competency programs ~~will~~ may be assessed and billed annually to the registrant ~~requesting these services~~. Billings will be separately identified apart from the renewal fees.

### Renewal Fees

Effective August 1, 2003, the following biennial renewal fees may not exceed the following:

Professional engineer	<del>\$100.00</del> <u>\$200.00</u>
Land surveyor	<del>\$100.00</del> <u>\$200.00</u>
Professional engineer and land surveyor	<del>\$190.00</del> <u>\$400.00</u>
<u>Retiree</u>	<u>\$20.00</u>

Effective August 1, 2003, the following annual renewal fees may not exceed the following:

Partnership or corporation	\$100.00
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**History:** Effective January 1, 1988; amended effective August 1, 1994; November 1, 1998; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-18, 43-19.1-27

**CHAPTER 28-02.1-12**  
**RETIRED STATUS**

<u>Section</u>	
<u>28-02.1-12-01</u>	<u>Eligibility for Retired Status</u>
<u>28-02.1-12-02</u>	<u>Affidavit</u>
<u>28-02.1-12-03</u>	<u>Continuing Professional Competency Exemption</u>
<u>28-02.1-12-04</u>	<u>Privileges</u>
<u>28-02.1-12-05</u>	<u>Restrictions</u>
<u>28-02.1-12-06</u>	<u>Ineligibility for Retired Status</u>
<u>28-02.1-12-07</u>	<u>Penalties for Noncompliance</u>

**28-02.1-12-01. Eligibility for retired status.** Any individual who has been issued a certificate of registration, as a professional engineer or professional land surveyor, having discontinued active practice as an engineer or land surveyor, or both, may be eligible to apply for a retired status of registration. For the purpose of this provision, "active practice" is defined as exercising direct supervision and control over the development and production of an engineering or land surveying document or any related activities pertaining to the offer of or the providing of professional engineering or land surveying services.

**History:** Effective October 1, 2004.  
**General Authority:** NDCC 43-19.1-08  
**Law Implemented:** NDCC 43-19.1-27

**28-02.1-12-02. Affidavit.** Those persons wishing to obtain the status of a retired registration shall complete an affidavit on a form as provided by the board. Affidavits shall be sent to the board office. Upon receipt of said affidavit and, if deemed eligible by the board, the retired status would become effective on the date of approval by the board. It shall not be necessary that an expired certificate of registration be renewed to be eligible for this status. The board will not provide refund of renewal fees if the application for retired status is made and granted before the date of expiration of the certificate of registration.

**History:** Effective October 1, 2004.  
**General Authority:** NDCC 43-19.1-08  
**Law Implemented:** NDCC 43-19.1-27

**28-02.1-12-03. Continuing professional competency exemption.** Retired registrants are exempt from continuing professional competency requirements.

**History:** Effective October 1, 2004.  
**General Authority:** NDCC 43-19.1-08  
**Law Implemented:** NDCC 43-19.1-27

**28-02.1-12-04. Privileges.** A retired registrant is permitted to:

1. Retain the board-issued wall certificate of registration:

2. Use the title professional engineer or registered land surveyor, provided that it is supplemented by the term "retired", or the abbreviation "ret";
3. Work as an engineer or land surveyor in a volunteer capacity, provided that the retired registrant does not create an engineering or land surveying document, and does not use the individual's seal, except as provided for in subsection 4;
4. Provide experience verifications and references for persons seeking registration. When completing reference or experience verification forms and if using the person's professional seal, the retired registrant shall place the word "retired" in the space designated for the date of expiration;
5. Serve in an instructional capacity on engineering and land surveying topics;
6. Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to engineering or land surveying work performed by the registrant before the person was granted a retired registration; and
7. Serve in a function that supports the principles of registration and promotes the professions of engineering and land surveying, such as members of commissions, boards, or committees.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-27

**28-02.1-12-05. Restrictions.** A retired registrant is not permitted to:

1. Perform any engineering or land surveying activity unless said activity is under the direct supervision of a North Dakota registered professional engineer or registered land surveyor who has a valid or active registration in the records of the board;
2. Act as the designated engineer or the engineer in responsible charge for a North Dakota engineering corporation or act as the designated land surveyor or land surveyor in responsible charge for a North Dakota land surveying corporation; or
3. Apply the person's professional engineer's or land surveyor's seal to any plan, specification, plat, or report, except as provided for in subsection 4 of section 28-02.1-12-04.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-27

**28-02.1-12-06. Ineligibility for retired status.** Under no circumstances shall a registrant be eligible for a retired registration if the person's certificate of registration has been revoked, surrendered, or in any way permanently terminated by the board. Registrants who are suspended from practice or who are subject to terms of a board order, or both, at the time they request retirement status shall not be eligible for a retired registration until such time that the board has removed the restricting conditions.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-27

**28-02.1-12-07. Penalties for noncompliance.** Any violations of this chapter shall be considered misconduct or malpractice, or both. Such violations are subject to disciplinary action.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-08

**CHAPTER 28-02.1-13**  
**DOCUMENTS USED TO CONVEY REAL PROPERTY OR ANY INTEREST**  
**THEREIN**

Section

28-02.1-13-01

Survey Requirements for Preparation of Legal Descriptions and Conveyance of Property

**28-02.1-13-01. Survey requirements for preparation of legal descriptions and conveyance of property.** Any registrant preparing a description, including without limitation a legal, property, or boundary description for, or assisting in the filing of, a document that will, or may, be used to convey real property or any interest therein, including without limitation an auditor's plat, outlot, deed, or conveyance of easements or right of ways, must conduct a survey of the property being conveyed and comply with all the requirements related thereto contained in North Dakota Century Code sections 40-50.1-01 and 40-50.1-02 provided that descriptions used in the conveyance of right of ways or easements may be prepared if the right of ways or easements are temporary. In addition, descriptions used in conveyances of right of ways and easements may also be prepared without the setting of all exterior monuments if:

1. The right of ways or easements are traceable by using established monuments;
2. Exterior monuments are set wherever there is a change of width to the right of ways or easements;
3. Exterior monuments are set wherever there is a change in direction of the right of ways or easements other than changes of direction at section corners; and
4. Monuments are set at intersections of right of ways or easements with section lines.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-01, 43-19.1-08

## CHAPTER 28-03.1-01

**28-03.1-01-02. Action by another jurisdiction.** ~~Conviction of a felony without restoration of civil rights, or the revocation or suspension of a professional engineer's or land surveyor's license by another jurisdiction if~~ A registrant who acts, either as an individual or through a business entity, may be deemed by the board to be guilty of misconduct in professional practice for a cause which an action that in this state would constitute a violation of North Dakota Century Code chapter 43-19.1, or of this title, is grounds for a charge of violation of this chapter. and:

1. The registrant has received a reprimand or civil penalty as a result of a disciplinary action in another jurisdiction.
2. The registrant's license has been suspended, revoked, denied, or voluntarily surrendered as a result of disciplinary action in another jurisdiction.
3. The registrant is convicted in a court of competent jurisdiction of a felony without restoration of civil rights.

**History:** Effective January 1, 1988; amended effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-25

**28-03.1-01-03. Standards of integrity.** ~~The engineer or land surveyor will~~ Registrants shall be guided in all ~~one's~~ their professional relations by the highest standards of integrity. ~~The engineer or land surveyor~~ registrant will act in professional matters as a faithful agent or trustee for each client or employer. ~~The engineer or land surveyor:~~

1. Will give accurate estimates, reports, statements, and testimony. Registrants shall admit and accept their own errors when proven wrong and refrain from distorting or altering the facts in an attempt to justify their decisions.
2. Will Registrants shall advise one's client their clients or employer employers when the engineer or land surveyor believes they believe a project will not be successful.
3. Will not accept compensation for services relating or pertaining to the same project from more than one party unless there is a unity of interest between or among the parties to the project and unless the engineer or land surveyor makes full disclosure and obtains the express consent of all parties from whom compensation will be received. Registrants shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering or land surveying employment, registrants shall notify their employer.

4. Registrants shall not employ or attempt to employ an individual by false or misleading pretenses.
5. Registrants shall avoid any act tending to promote their own interests at the expense of the profession.
6. Registrants shall be truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.
7. Registrants shall avoid all conduct or practice which is likely to deceive the public.
8. Registrants shall not use statements containing a material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading or statements intended or likely to create an unjustified expectation.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-04. Protection of public.** ~~The engineer or land surveyor shall steadfastly protect the safety, health, and welfare of the public in the performance of professional duties. If the engineer's or land surveyor's judgment is overruled by nontechnical authority, the engineer or land surveyor will clearly point out the consequences, and the engineer or land surveyor will notify the proper authority of any observed conditions which endanger public safety and health. The engineer or land surveyor~~ Registrants shall be cognizant that their first and foremost responsibility is to the public welfare in the performance of services to clients and employers. The registrant:

1. Will regard one's duty to the public welfare as paramount.
2. ~~Shall~~ is encouraged to seek opportunities to be of constructive service in civic affairs and work for the advancement of the safety, health, and well-being of the ~~engineer's or land surveyor's~~ registrant's community.
3. Will not complete, sign, or seal plans or specifications that are not of a design safe to the public health and welfare and in conformity with accepted standards. ~~If the client or employer insists on such unprofessional conduct, the engineer or land surveyor shall notify the proper authorities and withdraw from further service on the project. In the course of work on a project, if a registrant becomes aware of an action taken by the client or employer against the registrant's advice, which violates applicable state or municipal laws and regulations and~~

which, in the registrant's judgment, will adversely affect the public life, health, or safety, the registrant shall take the following actions:

- a. Advise the client or employer in writing of the registrant's refusal to consent to the decision and give reasons for that refusal;
- b. If the registrant's advice is ignored despite the objection, terminate the registrant's services to the project; and
- c. Provide a copy of the registrant's objection and reasoning to the public official charged with the enforcement of the applicable state or municipal laws and regulations.

**History:** Effective January 1, 1988; amended effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-05. Advertising.** ~~The engineer or land surveyor, or both, may not make, publish, or cause to be made or published, any representation or statement concerning the person's professional qualifications or those of the person's partners, associates, firm, or organization which is in any way misleading, tends to mislead the recipient thereof, or the public, concerning the person's engineering or land surveying, or both, education, experience, specializations, or other qualifications. Registrants shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the advertisement shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing their qualifications and their work.~~

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-06. Aid public understanding.** ~~The engineer or land surveyor~~ Registrants will endeavor to extend public knowledge and appreciation of engineering or land surveying and its achievements and to protect the profession from misrepresentation and misunderstanding.

1. Registrants are encouraged to maintain interest in the public welfare and be ready to apply their special knowledge, skill, and training for the use and benefit of the public.

2. Registrants are encouraged to seek opportunities to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.

**History:** Effective January 1, 1988; amended effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-07. ~~Opinion on engineering subject~~ Issuance of public statements related to engineering or surveying.** ~~The engineer or land surveyor will express an opinion on an engineering or land surveying subject only when founded on adequate knowledge. The engineer or land surveyor will insist on the use of facts in reference to an engineering or land surveying project on a group discussion, public forum, or publication of articles. Registrants shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.~~

1. Registrants shall avoid all conduct or practice that deceives the public.
2. Registrants shall not use statements containing a material misrepresentation of fact or omitting a material fact.
3. Registrants shall express an opinion only when it is founded upon honest conviction of the accuracy and propriety of the statement.
4. The registrant shall be completely objective and truthful in all professional reports, statements, or testimony. Registrants shall include all relevant and pertinent information in such reports, statements, or testimony.
5. The registrant, when serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the testimony.
6. The registrant will issue no statements, criticisms, or arguments on professional matters connected with public policy which are inspired or paid for by an interested party or parties, unless such statement is prefaced with a comment explicitly identifying the registrant, by disclosing the identity of the party or parties on whose behalf the statement is being made, and by revealing the existence of any pecuniary interest the registrant may have in the instant matter.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-08. Qualification for work projects.** The engineer or land surveyor registrant will undertake assignments for which the engineer or land surveyor registrant will be responsible only when qualified by training or experience. The engineer or land surveyor registrant will engage, or advise engaging, experts and specialists whenever the client's or employer's interests are best served by such service.

1. The registrant may accept an assignment requiring education, training, or experience outside of the registrant's own field of competence, but only to the extent that such services are restricted to those phases of the project in which the registrant is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
2. The registrant shall not affix the registrant's signature or seal, or both, to any plan or document dealing with subject matter in which the registrant lacks competence acquired through education or experience, nor to any plan or document not prepared by the registrant or under the registrant's responsibility. In the event a question as to the competence of a registrant to perform a professional assignment in a specific technical field arises and cannot be otherwise resolved to the satisfaction of the board, the board, upon request of the registrant or by its own volition, may require the registrant to submit to whatever examination it deems appropriate.
3. In providing services, the registrant shall take into account all applicable federal, state, and local laws and regulations. The registrant shall not knowingly provide services resulting in violation of such laws and regulations.

**History:** Effective January 1, 1988; amended effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-09. Disclosure of confidential information.** ~~The engineer or land surveyor will~~ Registrants shall not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without the client's or employer's consent. ~~While in the employ of others, the engineer or land surveyor will not enter promotional efforts or negotiations for work or make arrangements for other employment as a principal or to practice in connection with a specific project for which the engineer or land surveyor has gained particular and specialized knowledge without the consent of all interested parties.~~

1. Registrants in the employ of others, without the consent of all interested parties, shall not enter promotional efforts or negotiations for work or make arrangements for other employment as a principal or to practice in connection with a specific project for which the registrant has gained particular and specialized knowledge.

2. Without the consent of all interested parties, registrants shall not participate in or represent an adversary interest in connection with a specific project or proceeding in which the registrant has gained particular specialized knowledge on behalf of a former client or employer.

**History:** Effective January 1, 1988; amended effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-10. Disclosure of conflict of interest.** ~~The engineer or land surveyor will endeavor to avoid a conflict of interest with one's employer or client, but when unavoidable, the engineer or land surveyor shall fully disclose the circumstances to the employer or client. The engineer or land surveyor will inform the client or employer of any business connections, interest, or circumstances which may be deemed as influencing one's judgment or the quality of one's services to the client or employer. When in public service as a member, advisor, or employee of a governmental body or department, an engineer or land surveyor may not participate in considerations or actions with respect to services provided by the engineer or land surveyor or the engineer's or land surveyor's organization. An engineer or land surveyor may not solicit or accept an engineering or land surveying contract from a governmental body on which a principal or officer of the engineer's or land surveyor's organization serves as a member. Registrants shall make full prior disclosures to their employers or clients of all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.~~

1. If the employer or client objects to such an association or financial interest, the registrant shall either terminate the association or interest or offer to give up the employment.
2. Registrants serving as members, advisors, or employees of a governmental body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by said concern to the governmental body which they serve.
3. Registrants shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member.
4. A registrant shall not accept employment when duty to the client or the public would conflict with the personal interest of the registrant or the

interest of another client and would influence the registrant's judgment or the quality of the registrant's services.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-11. Compensation from other parties.** ~~The engineer or land surveyor~~ registrant will not accept compensation, financial or otherwise, from more than one interested party for the same service. ~~The engineer or land surveyor~~ registrant:

1. Will not accept financial or other considerations, including free engineering designs or land surveying plans, from material or equipment suppliers for specifying their product.
2. Will not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with the ~~engineer's or land surveyor's~~ registrant's clients or employer in connection with work for which the engineer or land surveyor is responsible.
3. Shall not solicit or accept gratuities, gifts, travel, lodging, loans, entertainment, or other favors, directly or indirectly, from contractors, their agents, or other third parties dealing with a client or employer in connection with work for which the registrant is responsible, which can be determined to be an effort to improperly influence the registrant's professional judgment. Minor expenditures such as advertising trinkets, novelties, and meals are excluded. Neither shall a registrant make any such improper offer.

**History:** Effective January 1, 1988; amended effective August 1, 1994; April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-12. Solicitation of work.** ~~The engineer and land surveyor shall solicit or accept only work on the basis of the engineer's or land surveyor's qualifications.~~ A registrant shall seek and engage in only the professional work or employment the professional is competent and qualified to perform by reason of education, training, or experience.

1. ~~The engineer and land surveyor may not offer to pay, either directly or indirectly, any commissions, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried position through employment agencies.~~ A registrant shall not falsify or misrepresent the extent of the registrant's education, training, experience, or qualifications to any person or to the public or

misrepresent the extent of the registrant's responsibility in connection with any prior employment or projects.

2. The engineer and land surveyor shall compete for professional employment on the basis of qualification and competence for proper accomplishment of the work. The engineer and land surveyor may not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive, or unfair statement or claim regarding the cost, quality, or extent of services to be rendered. A registrant shall not transmit, distribute, or publish or allow to be transmitted, distributed, or published, any false or misleading information regarding the registrant's own qualifications, training, or experience or that of the registrant's employer, employees, associates, or joint venturers.
3. The engineer and land surveyor may not falsify or permit misrepresentation of either the person's, or the person's associates', academic or professional qualifications. The engineer or land surveyor may not misrepresent or exaggerate the person's degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or the person's past accomplishments with the intent and purpose of enhancing the person's qualifications and work. Registrants shall not offer, give, solicit, or receive, either directly or indirectly, any political contribution in an amount intended to influence the award of a contract by public authority, or which may be reasonably construed by the public of having the effect or intent to influence the award of a contract.
4. Registrants shall not pay a commission, percentage, or brokerage fee in order to secure work except to a bona fide employee.
5. A registrant shall not tender any gift, pay, or offer to pay, directly or indirectly, anything of substantial value, whether in the form of a commission or otherwise, as an inducement to secure employment. A registrant is not prohibited from paying a commission to an employment agency for securing a position.
6. A registrant shall not knowingly seek or accept employment for professional services for an assignment for which another registrant is employed or contracted to perform. This prohibition shall not preclude a registrant from responding to a client-initiated or owner-initiated solicitation.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-13. Reporting of unethical or illegal practice.** ~~If the engineer or land surveyor believes that another engineer or land surveyor is guilty of unethical or illegal practice, the engineer or land surveyor shall present such information to the proper authority for action. A registrant who has knowledge or reasonable grounds for believing that another registrant has violated any statute or rule regulating the practice of the profession shall have the duty of presenting such information to the board.~~

1. A registrant possessing knowledge of a violation shall report such knowledge to the board in writing and shall cooperate with the board in furnishing such further information or assistance as it may require.
2. A registrant, when questioned concerning any alleged violation on the part of another person by any member or authorized representative of the board commissioned or delegated to conduct an official inquiry, shall neither fail nor refuse to divulge such information as the registrant may have relative thereto.
3. Registrants must notify the board within thirty days if another state has disciplined them with a reprimand, censure, suspension, temporary suspension, probation, revocation, or refusal to renew a license, or if they have voluntarily surrendered their license as part of a settlement proceeding.
4. If a registrant, during the course of the registrant's work, discovers a material discrepancy, error, or omission in the work of another registrant, which may impact the life, health, property, and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the registrant whose work is believed to contain the discrepancy, error, or omission. Such communication shall reference specific codes, standards, or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The registrant whose work is believed to contain the discrepancy shall respond in writing within thirty calendar days to any question about the work raised by another registrant. Failure to respond on the part of the registrant whose work is believed to contain the discrepancy shall be considered a violation of these rules. The discoverer shall notify the board in the event a response satisfactory to the discoverer is not obtained within thirty days.

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-14. Professional associations relationships.** ~~The engineer or land surveyor~~ registrant will not knowingly associate professionally with or allow the use of one's name with engineers or land surveyors who do not conform to ethical

practices, or with persons not legally qualified to render the professional services for which the association is intended.

1. Registrants in private practice shall not review the work of another registrant for the same client, except with the knowledge of such registrant, or unless the connection of such registrant with the work has been terminated. This prohibition shall not preclude a registrant from responding to a client-initiated or owner-initiated solicitation for a second opinion.
2. Registrants in governmental, industrial, or educational employment are entitled to review and evaluate the work of other registrants when so required by their employment duties.
3. Registrants in sales or industrial employment are entitled to make engineering comparisons of represented products with products of other suppliers.
4. Registrants shall not use association with a nonregistrant, a corporation, or partnership, as a cloak for unethical acts.
5. The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:
  - a. Federal, state, and local laws and regulations, including building permit requirements; or
  - b. Registration requirements.
6. The registrant may not take over, review, revise, or sign or seal drawings or revisions thereof when such plans are begun by persons not properly registered and qualified or do any other act to enable either such persons or the project owners, directly or indirectly, to evade the registration requirements.

**History:** Effective January 1, 1988; amended effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-15. Proprietary interests of others.**

1. Whenever possible, the ~~engineer or land surveyor~~ registrant will name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
2. When ~~an engineer or land surveyor~~ a registrant uses designs supplied by a client, the designs remain the property of the client and should not be duplicated by the ~~engineer or land surveyor~~ registrant for others without express permission.

3. Before undertaking work for others in which the ~~engineer or land surveyor~~ registrant may make improvements, plans, ~~design designs~~, inventions, or other records which may justify copyrights or patents, the ~~engineer or land surveyor~~ registrant should enter into an agreement regarding the ownership of the improvements, plans, designs, inventions, or other records.
4. Designs, data, records, and notes made by ~~an engineer or land surveyor~~ a registrant and referring exclusively to the employer's work are the employer's property.

**History:** Effective January 1, 1988; amended effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-16. Professional cooperation enhancement.** The ~~engineer or land surveyor~~ registrant will cooperate in extending the effectiveness of the profession by interchanging information and experience with other engineers or land surveyors and students, and will endeavor to provide opportunity for the professional development and advancement of engineers or land surveyors under the ~~engineer's or land surveyor's~~ registrant's supervision. The ~~engineer or land surveyor~~ registrant:

1. Will encourage one's engineering or land surveying employees' efforts to improve their education.
2. Will encourage one's engineering or land surveying employees to attend and present papers at professional and technical society meetings.
3. Will urge one's engineering or land surveying employees to become registered at the earliest possible date.
4. Will assign a professional engineer or land surveyor duties of a nature to utilize the engineer's or land surveyor's full training and experience, insofar as possible, and delegate lesser functions to subprofessionals or to technicians. The ~~engineer or land surveyor~~ registrant will provide a prospective employee with complete information on working conditions and the employee's proposed status of employment, and after employment will keep the employee informed of any changes in them.

~~Guidelines setting forth the parameters for the principles of practice must be established from time to time. Reference materials setting forth those parameters of the principles of practice enumerated herein include, but are not limited to, the following:~~

~~"Ethical Problems in Engineering" - current edition~~

~~Alger Christiansen and Olmsted~~

~~John Wiley and Sons~~

~~"Opinions of the Board of Ethical Review"~~  
~~National Society of Professional Engineers~~

~~"Guide to Practice"~~  
~~American Society of Civil Engineers~~

~~"Canon of Ethics" - latest version~~  
~~Engineering Council on Professional Development~~

~~Guide for Ethical Conduct of Consulting Engineers~~  
~~Consulting Engineers Council~~

**History:** Effective January 1, 1988; amended effective April 1, 1999; October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

**28-03.1-01-17. Professional conduct.**

1. Registrants shall indicate any reservation on a reference for an applicant if they have reason to believe the applicant is unqualified by education, training, or experience to become licensed. The registrant's opinion shall be based on the qualifications a reasonable and prudent professional would require an applicant to possess.
2. A registrant shall not submit a materially false statement or fail to disclose a material fact requested in connection with the application for certification or licensure in this state or any other state.
3. Registrants shall comply with the licensure laws and rules governing their professional practice in any United States jurisdiction.
4. A registrant shall not further the application for certification or licensure of another person known by the registrant to be unqualified in respect to character, education, or other relevant factor.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-08

**Law Implemented:** NDCC 43-19.1-24

## ARTICLE 28-04

### CONTINUING PROFESSIONAL COMPETENCY

Chapter  
28-04-01

Continuing Education

#### CHAPTER 28-04-01 CONTINUING EDUCATION

Section

<u>28-04-01-01</u>	<u>Purpose</u>
<u>28-04-01-02</u>	<u>Definitions</u>
<u>28-04-01-03</u>	<u>General Requirements</u>
<u>28-04-01-04</u>	<u>Recordkeeping</u>
<u>28-04-01-05</u>	<u>Qualifying Activities</u>
<u>28-04-01-06</u>	<u>Audit</u>
<u>28-04-01-07</u>	<u>Exemptions</u>

**28-04-01-01. Purpose.** The purpose of mandatory continuing education is to reinforce the need for lifelong learning in order to stay current with everchanging technology, equipment, procedures, processes, tools, and established standards. Qualifying activities must have a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the registrant's field of practice. Registrants are encouraged to select meaningful activities that will be of benefit in the pursuit of their chosen fields.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

**28-04-01-02. Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 43-19.1 and North Dakota Administrative Code section 28-01-02.1-07. Additional terms are:

1. "Active participation" means making a regular, substantial contribution to an organization. Membership by itself does not constitute active participation.
2. "Contact hour" is a minimum of fifty minutes of actual instruction not to include any breaks.
3. "Continuing education units" is equivalent to ten contact hours of instruction, i.e., ten professional development hours. Continuing education units are nationally recognized and are a uniform unit of measure for continuing education and training.
4. "International association for continuing education and training programs" means those continuing education and training courses

offered by various organizations that meet the minimum requirements for a qualifying continuing education and training course as established by the international association for continuing education and training.

5. "Professional development hour" is defined as one contact hour of instruction or presentation. It is the common denominator for the other units of credit. Round off professional development hours to the nearest one-half hour. No activity under one-half hour will be accepted for credit.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

**28-04-01-03. General requirements.** All individual registrants must acquire thirty professional development hours every two years before renewing their license.

1. At least twenty professional development hours must be in technical subjects that directly safeguard the public's health, safety, and welfare, including technical professional management subjects such as total quality process or technical engineering or land surveying software training.
2. A maximum of ten professional development hours may be in nontechnical professional management subjects such as ethics-oriented or administration-oriented computer classes.
3. All registrants will be required to submit a list of continuing professional development activities that they participated in and sign a statement that they have met this requirement as part of the renewal process.
4. Registrants holding both professional engineering and surveying registrations must earn a minimum of one-third, or ten professional development hours in each profession with a total of thirty professional development hours every two years. A dual registrant is not required to obtain more than thirty professional development hours per biennial renewal period because of dual registrations.
5. A maximum of fifteen qualifying professional development hours may be forwarded to the subsequent biennial renewal period.
6. Comity for continuing professional development is allowed if the registrant is currently licensed in a jurisdiction or state that requires mandatory continuing professional competency and meets the minimum requirements as established by the North Dakota state board of registration for professional engineers and land surveyors.

7. New registrants shall comply with continuing education requirements as follows: registrants who receive their license prior to the fourth quarter in an odd-numbered year shall report the full biennial requirement of thirty professional development hours at the time of next renewal; and registrants who receive their license prior to the fourth quarter in an even-numbered year shall report one-half of the biennial requirement, i.e., fifteen professional development hours, at the time of next renewal.

**History:** Effective October 1, 2004

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

**28-04-01-04. Recordkeeping.** Recordkeeping is the responsibility of the registrant. Adequate records must be maintained for a minimum of four years from the date of last biennial renewal for auditing purposes. Records may be maintained by a professional registry, such as the professional development registry for engineers and surveyors. Records that are maintained by such a registry do not necessarily require approval of these courses by this board. Records required include:

1. A log showing the type of activity claimed, sponsoring organization, location, duration, date, instructor's or speaker's name, and professional development hour credits claimed. This permits the proper completion of professional development hour activities at renewal time. Specific information on each activity is required. Simply stating "attending education activities at ABC Company" is not acceptable.
2. Attendance verification records in the form of certificates or other documents supporting evidence of attendance. The registrant must have sufficient verification for all credits claimed.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

**28-04-01-05. Qualifying activities.** The board may preapprove courses, providers, or activities. Until the board preapproves such courses or activities, it is the responsibility of the registrant to determine whether the activity qualifies under this board's requirements. The board has final approval of professional development hour credit. Examples of typical qualifying and nonqualifying activities are available by contacting the office of the board or visiting the board's web site. All professional development hour allowances stated in this section are biennial allowances. Qualifying activities include:

1. **College unit, semester, or quarter hour credit for college courses.** A course must be regularly offered and participants tested with a passing grade required. One semester hour generally consists of fifteen class meetings of fifty to fifty-five minutes duration. It is assumed

that twice as much study time is required as class contact time, thus equating to forty-five professional development hours. Similarly, a quarter hour qualifying course meets ten times and thus thirty professional development hours are allowed. Monitoring courses do not require a test, and therefore only the actual class contact hours are allowed. On occasion, educational institutions may offer a one-day seminar and award fractional quarter hour credit such as one-half of a quarter hour. These courses do not qualify on the quarter hour basis since they are not part of the regular curriculum of the educational institution, do not require testing, and have no provision for additional out-of-class requirements. For courses such as this, only actual contact hours will be allowed for professional development hour credit.

2. **Interactive activities.** Other qualifying courses, seminars, employer-sponsored educational activities, programs, and activities are allowed one professional development hour credit for each contact hour. A correspondence course, videotaped programs, and online courses (self-study) must require the participant to show evidence of achievement with a final graded test.
3. **Teaching credit for short courses.** Teaching credits for the instructor are twice that of the participants in qualifying courses and seminars. However, repetitive teaching of the same course will not earn additional credit.
4. **Published paper, article, or book.** A published paper, article, or book must be a serious effort to qualify. For example, a news article in a technical or professional bulletin is not considered a published paper. Although it is recognized that often many more hours are spent in being an author of a publication, ten professional development hours are allowed for publication. Only one publication may be claimed for professional development hours per renewal period. Repetitive publication of the same paper or article will not earn additional credit.
5. **Active participation in professional and technical societies.** Active participation in professional and technical societies is to encourage registrants to participate fully in appropriate technical and professional societies. Contact with one's peers at such meetings is considered one way to stay abreast of current topics, issues, technical developments, ethical situations, and learning opportunities. Two professional development hours per biennium can be earned for each organization with a maximum of six professional development hours per biennium allowed. All technical and professional societies are included, but this does not include civic or trade organizations.

6. **Patents.** Patents are allowed ten professional development hours after a patent is issued and the inventor submits details to the board. The invention must be related to the registrant's profession.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

**28-04-01-06. Audit.** Audits can be conducted anytime up to three years after the biennial renewal is submitted to ensure compliance with continuing education requirements. If selected for audit, the registrant will be contacted to provide necessary documentation. Each registrant selected for audit must respond with detailed information on the professional development hour activities within thirty days. If the audit conducted indicates a failure to comply with continuing education requirements, the registrant has sixty calendar days after receipt of written notice to further reinforce the claim of professional development hour credits or to acquire sufficient professional development hour credit to meet the requirements. The board may also audit a registrant's professional development hour activities based on complaints or charges against a registrant. Registrants who refuse to comply with continuing professional competency requirements may be subject to disciplinary action as allowed by North Dakota Century Code section 43-19.1-25.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

**28-04-01-07. Exemptions.** A registrant may be exempt from the continuing education requirements for one of the following reasons:

1. A registrant serving on temporary active duty in the armed forces of the United States, or a registrant serving on regular active duty who is deployed for a period of time exceeding one hundred twenty consecutive days in a year, shall be exempt from obtaining the professional development hours required during that year.
2. Registrants experiencing physical disability, illness, temporary leave from professional activity, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board. In the event such a person elects to return to active practice of professional engineering or land surveying, fifteen professional development hours must be earned before returning to active practice for each year exempted not to exceed the biennial requirement of thirty professional development hours.
3. Professional engineer registrants exempt from registration by North Dakota Century Code section 43-19.1-29 but voluntarily registered are exempt from continuing professional competency requirements. A

claim of exemption under this provision must be verified by the board. This exemption is based on the registrant's primary employment. If the registrant provides engineering services outside the scope of primary employment, the exemption will be voided and the registrant will be required to comply with the continuing professional competency requirements. A person who is registered because of a requirement in the person's job description or qualification for a pay grade is not voluntarily registered. Noncompliance with the provisions of this exemption shall be grounds for disciplinary action as allowed by North Dakota Century Code section 43-19.1-25.

4. Registrants who qualify for retired status on the board-approved renewal form shall be exempt from the continuing education requirements. A registrant whose license has been retired for one year or more and who meets all other requirements may reinstate a retired license. A registrant who has reinstated a license is required to file an interim continuing professional competency report within one year of the date of reinstatement verifying that a minimum of fifteen professional development hours have been accomplished. A registrant whose license has been retired for less than one year and who meets all other requirements may reinstate a retired license. A registrant who has reinstated a license must show compliance within the previous two years with the continuing professional competency requirements set forth in this chapter.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 43-19.1-33

**Law Implemented:** NDCC 43-19.1-33

**TITLE 33**  
**STATE DEPARTMENT OF HEALTH**



## AUGUST 2004

### CHAPTER 33-11-01

#### 33-11-01-09. Other requirements.

1. Personnel must be able to identify and locate all equipment items required to be carried in an ambulance.
2. All licensed ambulance services shall keep the ambulance vehicle and other equipment clean and in proper working order.
3. All linens, airways, oxygen masks, nasal cannulas, and other equipment coming in direct contact with the patient must be either a single-use disposable type or cleaned, laundered, or disinfected after each use.
4. When a vehicle has been utilized to transport a patient known to have a communicable disease other than a common cold, the vehicle and all exposed equipment shall be disinfected before the transport of another patient.
5. Each ambulance run must be reported to the department in the manner and in the form determined by the department.
6. All ambulance services must give the receiving licensed health care facility a copy of the run report.
7. All equipment must be stowed in cabinets or securely fastened when not in use.
8. All ambulance services must submit a trauma transport plan to the department.

**History:** Effective September 25, 1979; amended effective March 1, 1985; February 1, 1989; August 1, 2003; August 1, 2004.

**General Authority:** NDCC 23-27-04

**Law Implemented:** NDCC 23-27-04

## CHAPTER 33-36-01

**33-36-01-02. Emergency medical services training programs.** The department shall establish training, testing, and certification requirements for the following emergency medical services programs:

1. Primary certification programs:
  - a. First responder;
  - b. Emergency care technician;
  - c. Emergency medical technician-basic;
  - d. Emergency medical technician-intermediate/85;
  - e. Emergency medical technician-intermediate/99;
  - f. Emergency medical technician-paramedic;
  - g. Advanced first aid ambulance attendant;
  - h. Emergency vehicle operations;
  - i. Emergency medical dispatch; and
  - j. Automobile extrication.
2. Certification scope enhancement programs:
  - a. Emergency medical services instructor;
  - b. ~~Automatic defibrillation;~~
  - c. ~~Manual defibrillation;~~
  - d. ~~c.~~ Intravenous maintenance;
  - e. ~~d.~~ Flight medical crew;
  - f. ~~e.~~ Automobile extrication instructor;
  - g. ~~f.~~ Epinephrine administration;
  - h. ~~g.~~ Dextrose administration;
  - i. ~~Nitroglycerin administration;~~

- j- h. Bronchodilator/nebulizer administration;
  - k- i. Multi-lumen airway insertion;
  - l- j. Cardiac monitoring; and
  - m- k. Emergency vehicle operations instructor.
3. Certification refresher programs:
- a. First responder-refresher;
  - b. Emergency medical technician-basic refresher;
  - c. Emergency medical technician-intermediate/85 refresher;
  - d. Emergency medical technician-intermediate/99 refresher; and
  - e. Emergency medical technician-paramedic refresher.

**History:** Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**33-36-01-04. Training, testing, and certification standards for certification scope enhancement programs.** The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

1. **Automatic defibrillation:**
- a. ~~Student prerequisite certification. Students must be certified in cardiopulmonary resuscitation.~~
  - b. ~~Curriculum. The course curriculum must be the cardiovascular emergencies section of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department or its equivalent.~~
  - c. ~~Textbooks. The department shall approve textbooks.~~
  - d. ~~Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor, and currently certified in automatic defibrillation or its equivalent.~~

- e. ~~Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must consist of the automatic defibrillation of a simulated cardiac arrest patient.~~
- f. ~~Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.~~
- g. ~~Recertification. The department shall recertify for a two-year period those persons who have met all of the following requirements:~~
  - (1) ~~Quarterly review of the automatic defibrillation process conducted by a person trained at least to the emergency care technician level and certified in automatic defibrillation.~~
  - (2) ~~Successful completion of the department's written and practical examinations.~~

2. Manual defibrillation:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "Manual Defibrillator/Monitor Curriculum".
- c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified by the American heart association in advanced cardiac life support or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must consist of the manual defibrillation of a simulated cardiac arrest patient and correctly identify eleven out of thirteen static cardiac strips.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between

January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.

- f. Recertification. The department shall recertify for a two-year period those persons who have met all of the following requirements:
  - (1) Quarterly review of the manual defibrillation process conducted by a person trained at least to the emergency care technician level and certified in manual defibrillation.
  - (2) Successful completion of the department's written and practical examinations.

~~3.~~ 2. Intravenous therapy maintenance:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT/ECT IV Maintenance Module".
- c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor, and currently certified in intravenous therapy maintenance, or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must consist of performing intravenous maintenance skills on a manikin.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

~~4.~~ 3. Flight medical crew:

- a. Student prerequisite certification. A student must be an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department or its equivalent.
- c. Course coordinator. The department shall approve the course coordinator.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course. A person who has completed an authorized course between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- e. Recertification. The department shall recertify for a two-year period those persons who have completed the department's four-hour refresher course or complete eight hours of air medical related education as approved by the department.

5- 4. Automobile extrication instructor:

- a. Curriculum. The course curriculum must be approved by the department.
- b. Student prerequisite. The candidate for this course must be certified for at least two years in automobile extrication.
- c. Course coordinator. The department shall designate the course coordinator.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.

- f. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an automobile extrication course or have audited eight hours of an automobile extrication instructor course.

6: 5. Emergency medical services instructor:

- a. Student prerequisite. An individual must be at least eighteen years of age, and certified for at least two years as a patient care provider, in order to be certified.
- b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department or its equivalent.
- c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course. Persons completing the course between January first and June thirtieth must be certified until March thirty-first of the second year. Persons completing the course between July first and December thirty-first must be certified until March thirty-first of the third year.
- e. Recertification. The department shall recertify for a two-year period those persons who have completed the department's eight-hour recertification course.

7: 6. Epinephrine administration:

- a. Student prerequisite certification. A student must be certified as a first responder or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT/ECT Epinephrine Administration Module".
- c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified in epinephrine administration or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must

consist of performing subcutaneous injection of epinephrine with the use of a preloaded, self-injecting device such as the epipen trainer.

- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

8. 7. Dextrose administration:

- a. Student prerequisite certification. A student must be certified as an emergency medical technician-intermediate or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT-I -- 50% Dextrose Administration Module".
- c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be certified in dextrose administration or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must consist of administration of the drug by aseptic injection into intravenous administration tubing.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

9. ~~Nitroglycerin administration:~~

- a. ~~Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.~~
- b. ~~Curriculum. The course curriculum must be the general pharmacology and the cardiovascular emergencies sections of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department.~~
- c. ~~Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and be certified in nitroglycerin administration or its equivalent.~~
- d. ~~Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.~~
- e. ~~Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.~~
- f. ~~Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.~~

40: 8. Bronchodilator/nebulizer administration:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be the general pharmacology and the respiratory emergencies sections of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department, or its equivalent.
- c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and be certified in bronchodilator administration or its equivalent.

- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

41. 9. Multi-lumen airway insertion:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "Multi-Lumen Airway Module".
- c. Course coordinator. The course coordinator must be certified as an emergency medical services instructor and must be currently certified in multi-lumen airway insertion or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's two-hour refresher course, written examination, and practical examination.

42. 10. Cardiac monitoring:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.

- b. Curriculum. The course curriculum must be that issued by the department entitled "Cardiac Monitoring".
- c. Course coordinator. The course coordinator must be certified as an emergency medical services instructor and must be certified in cardiac monitoring or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

~~43.~~ 11. Emergency vehicle operations instructor:

- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
- b. Course instructor. The department shall designate the course instructor.
- c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- e. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an emergency

vehicle operations course or have audited eight hours of an emergency vehicle operator's course.

**History:** Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004.

**General Authority:** NDCC 23-27-04.3

**Law Implemented:** NDCC 23-27-04.3

**TITLE 45**  
**INSURANCE COMMISSIONER**



**OCTOBER 2004**

**CHAPTER 45-14-01**

**45-14-01-04. Definitions.** As used in this chapter, unless the context requires otherwise:

1. "Affiliate" means a company that controls, is controlled by, or is under common control with another company.
2. a. "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.
  - b. Examples:
    - (1) Reasonably understandable. A licensee makes its notice reasonably understandable if it:
      - (a) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;
      - (b) Uses short explanatory sentences or bullet lists whenever possible;
      - (c) Uses definite, concrete, everyday words and active voice whenever possible;
      - (d) Avoids multiple negatives;
      - (e) Avoids legal and highly technical business terminology whenever possible; and
      - (f) Avoids explanations that are imprecise and readily subject to different interpretations.

- (2) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:
    - (a) Uses a plain-language heading to call attention to the notice;
    - (b) Uses a typeface and type size that are easy to read;
    - (c) Provides wide margins and ample line spacing;
    - (d) Uses boldface or italics for key words; and
    - (e) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.
  - (3) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site such as text, graphics, hyperlinks, or sound do not distract attention from the notice, and the licensee either:
    - (a) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
    - (b) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.
3. "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.
4. "Commissioner" means the insurance commissioner of the state.
5. "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.
6. a. "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that

is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

b. Examples:

- (1) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.
- (2) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.
- (3) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.
- (4) An individual is a licensee's consumer if:
  - (a)
    - [1] The individual is a beneficiary of a life insurance policy underwritten by the licensee;
    - [2] The individual is a claimant under an insurance policy issued by the licensee;
    - [3] The individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or
    - [4] The individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and
  - (b) The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under sections 45-14-01-14, 45-14-01-15, and 45-14-01-16.
- (5) Provided that the licensee provides the initial, annual, and revised notices under sections 45-14-01-05, 45-14-01-06, and 45-14-01-09 to the plan sponsor, group or blanket insurance policyholder, or group annuity contractholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under sections 45-14-01-14, 45-14-01-15, and 45-14-01-16,

an individual is not the consumer of the licensee solely because the individual is:

- (a) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary; or
  - (b) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee.
- (6) (a) The individuals described in subparagraphs a and b of paragraph 5 are consumers of a licensee if the licensee does not meet all the conditions of paragraph 5.
- (b) In no event shall the individuals, solely by virtue of the status described in subparagraphs a and b of paragraph 5, be deemed to be customers for purposes of this rule.
- (7) An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee.
- (8) An individual is not a licensee's consumer solely because the individual has designated the licensee as trustee for a trust.
7. "Consumer reporting agency" has the same meaning as in section 603(f) of the federal Fair Credit Reporting Act [15 U.S.C. 1681a(f)].
8. "Control" means:
- a. Ownership, control, or power to vote twenty-five percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
  - b. Control in any manner over the election of a majority of the directors, trustees, or general partners, or individuals exercising similar functions, of the company; or
  - c. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.
9. "Customer" means a consumer who has a customer relationship with a licensee.

10. a. "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.
- b. Examples:
  - (1) A consumer has a continuing relationship with a licensee if:
    - (a) The consumer is a current policyholder of an insurance product issued by or through the licensee; or
    - (b) The consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.
  - (2) A consumer does not have a continuing relationship with a licensee if:
    - (a) The consumer applies for insurance but does not purchase the insurance;
    - (b) The licensee sells the consumer travel insurance in an isolated transaction;
    - (c) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;
    - (d) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;
    - (e) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;
    - (f) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;
    - (g) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the

policyholder or owner of the insurance policy or annuity;  
or

- (h) For the purposes of this chapter, the individual's last-known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.
11. a. "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)].
- b. Financial institution does not include:
- (1) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the commodity futures trading commission under the Commodity Exchange Act [U.S.C. 1 et seq.];
  - (2) The federal agricultural mortgage corporation or any entity charged and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.]; or
  - (3) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.
12. a. "Financial product or service" means a product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)].
- b. Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.
13. "Health care" means:

- a. Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests, or counseling that:
    - (1) Relates to the physical, mental, or behavioral condition of an individual; or
    - (2) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or
  - b. Prescribing, dispensing, or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.
14. "Health care provider" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law, or a health care facility.
15. "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:
- a. The past, present, or future physical, mental, or behavioral health or condition of an individual;
  - b. The provision of health care to an individual; or
  - c. Payment for the provision of health care to an individual.
16. a. "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.
- b. Insurance service includes a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.
17. a. "Licensee" means all licensed insurers, producers, and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance law of this state and health maintenance organizations holding a certificate of authority pursuant to North Dakota Century Code chapter 26.1-18.1. As used herein, the term "licensee" does not include either of the following:
- (1) North Dakota life and health insurance guaranty association created pursuant to North Dakota Century Code chapter 26.1-38; or

- (2) North Dakota insurance guaranty association created pursuant to North Dakota Century Code chapter 26.1-42.1.
- b. A licensee is not subject to the notice and ~~opt-out~~ authorization requirements for nonpublic personal financial information set forth in this chapter if the licensee is an employee, agent, or other representative of another licensee ("the principal") and:
- (1) The principal otherwise complies with, and provides the notices required by, the provisions of this chapter; and
  - (2) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates unless in a manner permitted by this chapter.
- c. (1) Subject to paragraph 2, "licensee" also includes an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to North Dakota Century Code chapter 26.1-44.
- (2) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and ~~opt-out~~ authorization requirements for nonpublic personal financial information set forth in this rule provided:
- (a) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under section 45-14-01-14, except as permitted by section 45-14-01-15 or 45-14-01-16; and
  - (b) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in sixteen-point type:

PRIVACY NOTICE

"Neither the U.S. brokers that handled this insurance nor the insurers that have underwritten this insurance will disclose nonpublic personal information concerning the buyer to nonaffiliates of the brokers or insurers except as permitted by law."

18. a. "Nonaffiliated third party" means any person except:
- (1) A licensee's affiliate; or

- (2) A person employed jointly by a licensee and any company that is not the licensee's affiliate, but nonaffiliated third party includes the other company that jointly employs the person.
  - b. Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the federal Bank Holding Company Act [12 U.S.C. 1843(k)(4)(H) and (I)].
19. "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.
20. a. "Nonpublic personal financial information" means:
- (1) Personally identifiable financial information; and
  - (2) Any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.
- b. Nonpublic personal financial information does not include:
- (1) Health information;
  - (2) Publicly available information, except as included on a list described in paragraph 2 of subsection a; or
  - (3) Any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.
- c. Examples of lists:
- (1) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.
  - (2) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that

indicates that any of the individuals on the list is a consumer of a financial institution.

21. "Nonpublic personal health information" means health information:
  - a. That identifies an individual who is the subject of the information;  
or
  - b. With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.
  
22. a. "Personally identifiable financial information" means any information:
  - (1) A consumer provides to a licensee to obtain an insurance product or service from the licensee;
  - (2) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or
  - (3) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.
  
- b. Examples:
  - (1) Information included. Personally identifiable financial information includes:
    - (a) Information a consumer provides to a licensee on an application to obtain an insurance product or service;
    - (b) Account balance information and payment history;
    - (c) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;
    - (d) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;
    - (e) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

- (f) Any information the licensee collects through an internet cookie, an information-collecting device from a web server; and
    - (g) Information from a consumer report.
  - (2) Information not included. Personally identifiable financial information does not include:
    - (a) Health information;
    - (b) A list of names and addresses of customers of an entity that is not a financial institution; and
    - (c) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.
- 23. a. "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:
  - (1) Federal, state, or local government records;
  - (2) Widely distributed media; or
  - (3) Disclosures to the general public which are required to be made by federal, state, or local law.
- b. Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:
  - (1) That the information is of the type that is available to the general public; and
  - (2) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.
- c. Examples:
  - (1) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.
  - (2) Widely distributed media. Publicly available information from widely distributed media includes information from a

telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(3) Reasonable basis.

- (a) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.
- (b) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed ~~you~~ the licensee that the telephone number is not unlisted.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-05. Initial privacy notice to consumers required.**

1. **Initial notice requirement.** A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:
  - a. Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection 5; and
  - b. Consumer. A consumer, ~~before~~ when the licensee ~~discloses~~ requests authorization to disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by sections 45-14-01-15 and 45-14-01-16.
2. **When initial notice to a consumer is not required.** A licensee is not required to provide an initial notice to a consumer under subdivision b of subsection 1 if:
  - a. The licensee does not request authorization to disclose any nonpublic personal financial information about the consumer to

any nonaffiliated third party, other than as authorized by sections 45-14-01-15 and 45-14-01-16, and the licensee does not have a customer relationship with the consumer; or

- b. A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

**3. When the licensee establishes a customer relationship.**

- a. General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

- b. Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

- (1) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

- (2) Agrees to obtain financial, economic, or investment advisory services relating to insurance products or services for a fee from the licensee.

**4. Existing customers.** When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, the licensee satisfies the initial notice requirements of subsection 1 as follows:

- a. The licensee may provide a revised policy notice, under section 45-14-01-09, that covers the customer's new insurance product or service; or

- b. If the initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subsection 1.

**5. Exceptions to allow subsequent delivery of notice.**

- a. A licensee may provide the initial notice required by subdivision a of subsection 1 within a reasonable time after the licensee establishes a customer relationship if:

- (1) Establishing the customer relationship is not at the customer's election; or

- (2) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

b. Examples of exceptions:

- (1) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.
- (2) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.
- (3) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

6. **Delivery.** When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to section 45-14-01-10. If the licensee uses a short-form initial notice for noncustomers according to subsection 4 of section 45-14-01-07, the licensee may deliver its privacy notice according to subdivision c of subsection 4 of section 45-14-01-07.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-07. Information to be included in privacy notices.**

1. **General rule.** The initial, annual, and revised privacy notices that a licensee provides under sections 45-14-01-05, 45-14-01-06, and 45-14-01-09 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

- a. The categories of nonpublic personal financial information that the licensee collects;
  - b. The categories of nonpublic personal financial information that the licensee discloses;
  - c. The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under sections 45-14-01-15 and 45-14-01-16;
  - d. The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under sections 45-14-01-15 and 45-14-01-16;
  - e. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under section 45-14-01-14, and no other exception in sections 45-14-01-15 and 45-14-01-16 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;
  - f. An explanation of the consumer's right under subsection 1 of section 45-14-01-11 to ~~opt out of~~ authorize or not to authorize the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;
  - g. Any disclosures that the licensee makes under section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act [15 U.S.C. 1681a(d)(2)(A)(iii)] (that is, notices regarding the ability to opt out of disclosures of information among affiliates);
  - h. The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and
  - i. Any disclosure that the licensee makes under subsection 2.
2. **Description of parties subject to exceptions.** If a licensee discloses nonpublic personal financial information as authorized under sections 45-14-01-15 and 45-14-01-16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by sections 45-14-01-05 and 45-14-01-06. When describing the categories of parties to whom disclosure is made, the licensee is required to state

only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

**3. Examples:**

a. Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

- (1) Information from the consumer;
- (2) Information about the consumer's transactions with the licensee or its affiliates;
- (3) Information about the consumer's transactions with nonaffiliated third parties; and
- (4) Information from a consumer reporting agency.

b. Categories of nonpublic personal financial information a licensee discloses.

(1) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subdivision a, as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

- (a) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address, and social security number;
- (b) Transaction information, such as information about balances, payment history, and parties to the transaction; and
- (c) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(2) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(3) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it

collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

- c. Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.
  - (1) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.
  - (2) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking, or securities brokerage.
  - (3) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.
- d. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in section 45-14-01-14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of subdivision e of subsection 1 if it:
  - (1) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subdivision b of subsection 1, as applicable; and
  - (2) States whether the third party is:
    - (a) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or
    - (b) A financial institution with whom the licensee has a joint marketing agreement.
- e. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial

information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under sections 45-14-01-15 and 45-14-01-16, the licensee may simply state that fact, in addition to the information it shall provide under subdivisions a, h, and i of subsection 1 and subsection 2.

- f. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:
  - (1) Describes in general terms who is authorized to have access to the information; and
  - (2) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

4. **Short-form initial notice with ~~opt-out~~ notice regarding request for authorization for noncustomers.**

- a. A licensee may satisfy the initial notice requirements in subdivision b of subsection 1 of section 45-14-01-05 and subsection 3 of section 45-14-01-08 for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers ~~an opt-out~~ a notice regarding request for authorization as required in section 45-14-01-08.
- b. A short-form initial notice shall:
  - (1) Be clear and conspicuous;
  - (2) State that the licensee's privacy notice is available upon request; and
  - (3) Explain a reasonable means by which the consumer may obtain that notice.
- c. The licensee shall deliver its short-form initial notice according to section 45-14-01-10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to section 45-14-01-10.

- d. Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:
  - (1) Provides a toll-free telephone number that the consumer may call to request the notice; or
  - (2) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.
5. **Future disclosures.** The licensee's notice may include:
  - a. Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and
  - b. Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.
6. **Sample clauses.** Sample clauses illustrating some of the notice content required by this section are included in appendix A.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-08. ~~Form of opt-out notice~~ Notice to consumers and opt-out methods regarding request for authorization.**

1. a. Form of ~~opt-out~~ notice. If a licensee is required to provide an ~~opt-out~~ notice under subsection 1 of section 45-14-01-11, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to ~~opt-out~~ authorize disclosures under that section. The notice shall state:
  - (1) That the licensee ~~discloses or reserves the right to~~ may only disclose nonpublic personal financial information about its consumer to a nonaffiliated third party if the licensee first obtains authorization from the consumer; and
  - (2) That the consumer has the right to ~~opt-out of~~ authorize or not to authorize that disclosure; ~~and,~~
  - (3) ~~A reasonable means by which the consumer may exercise the opt-out right.~~

b. Examples:

(1) Adequate ~~opt out~~ notice. A licensee provides adequate notice that the consumer ~~can opt out of~~ has the right to authorize or not to authorize the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(a) (1) Identifies all of the categories of nonpublic personal financial information that it ~~discloses or reserves the right to~~ will disclose if authorization is obtained, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in subdivisions b and c of subsection 1 of section 45-14-01-07, and states that the consumer ~~can opt out of~~ has the right to authorize or not to authorize the disclosure of that information; and

(b) (2) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the ~~opt out direction~~ authorization would apply.

(2) ~~Reasonable opt out means.~~— A licensee ~~provides a reasonable means to exercise an opt out right if it:~~

(a) ~~Designates checkoff boxes in a prominent position on the relevant forms with the opt out notice;~~

(b) ~~Includes a reply form together with the opt out notice;~~

(c) ~~Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or~~

(d) ~~Provides a toll-free telephone number that consumers may call to opt out.~~

(3) ~~Unreasonable opt out means.~~ A licensee ~~does not provide a reasonable means of opting out if:~~

(a) ~~The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or~~

(b) ~~The only means of opting out as described in any notice subsequent to the initial notice is to use a checkoff box that the licensee provided with the initial notice but did not include with the subsequent notice.~~

- (4) ~~Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.~~
2. Same form as initial notice permitted. A licensee may provide the ~~opt-out notice~~ request for authorization together with or on the same written or electronic form as the initial notice the licensee provides in accordance with section 45-14-01-05.
  3. Initial notice required when ~~opt-out notice~~ request for authorization delivered subsequent to initial notice. If a licensee provides the ~~opt-out notice~~ to consumers regarding request for authorization later than required for the initial notice in accordance with section 45-14-01-05, the licensee shall also include a copy of the initial notice with the ~~opt-out notice~~ regarding request for authorization in writing or, if the consumer agrees, electronically.
  4. Joint relationships:
    - a. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single ~~opt-out notice~~ to the joint consumers. The licensee's ~~opt-out notice~~ shall explain how the licensee will treat an ~~opt-out direction~~ authorization by a joint consumer, as explained in subdivision e b.
    - b. ~~Any of the joint consumers may exercise the right to opt out. The licensee may either:~~
      - (1) ~~Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or~~
      - (2) ~~Permit each joint consumer to opt out separately.~~
    - c. ~~If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.~~
    - d. ~~A licensee may not require all joint consumers to opt out before it implements any opt out direction.~~
    - e. Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may ~~do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:~~
      - (1) ~~Send a single opt-out~~ authorization notice to John's address, ~~but the licensee shall accept an opt out direction from either John or Mary.~~

- (2) ~~Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.~~
- (3) ~~Permit John and Mary to make different opt out directions. If the licensee does so:~~
  - (a) ~~It shall permit John and Mary to opt out for each other;~~
  - (b) ~~If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and~~
  - (c) ~~If authorizations, provided if John opts out provides authorization and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary John, but not about John Mary and not about John and Mary jointly.~~
- 5. ~~Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.~~
- 6. ~~Continuing right to opt out. A consumer may exercise the right to opt out at any time.~~
- 7. ~~Duration of consumer's opt out direction: authorization. An authorization must specify the length of time for which the authorization is valid.~~
  - a. ~~A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.~~
  - b. ~~When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.~~

8. ~~6.~~ Delivery. When a licensee is required to deliver ~~an opt-out~~ a notice by this section, the licensee shall deliver it according to section 45-14-01-10.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-09. Revised privacy notices.**

1. **General rule.** Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under section 45-14-01-05, unless:
  - a. The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;
  - b. The licensee has provided ~~to the consumer~~ a new ~~opt-out~~ notice to the consumer regarding requests for authorization and a new authorization; and
  - c. The licensee has ~~given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and~~ obtained authorization from the consumer whose nonpublic personal financial information is sought to be disclosed.
  - d. ~~The consumer does not opt out.~~
2. **Examples.**
  - a. Except as otherwise permitted by sections 45-14-01-14, 45-14-01-15, and 45-14-01-16, a licensee shall provide a revised notice ~~before~~ if it requests authorization to disclose:
    - (1) ~~Discloses a~~ A new category of nonpublic personal financial information to any nonaffiliated third party;
    - (2) ~~Discloses nonpublic~~ Nonpublic personal financial information to a new category of nonaffiliated third party; or
    - (3) ~~Discloses nonpublic~~ Nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not ~~had the opportunity to exercise an opt-out right regarding that~~ authorized the disclosure.

- b. A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.
3. **Delivery.** When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to section 45-14-01-10.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-11. Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties.**

1. a. Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:
  - (1) The licensee has provided to the consumer an initial notice as required under section 45-14-01-05;
  - (2) The licensee has provided to the consumer ~~an opt-out a~~ notice as required in section 45-14-01-08; and
  - (3) ~~The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and~~ An authorization is obtained from the consumer whose nonpublic personal information is sought to be disclosed.
  - (4) ~~The consumer does not opt out.~~
- b. ~~Opt-out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by sections 45-14-01-14, 45-14-01-15, and 45-14-01-16. A valid authorization to disclose nonpublic personal information pursuant to section 45-14-01-11 shall be in written or electronic form separate from that used for any other purpose and shall contain all of the following:~~
  - (1) The identity of the consumer or customer who is the subject of the nonpublic personal information;
  - (2) A specific description of the types of nonpublic personal information to be disclosed;

- (3) Specific descriptions of the parties to whom the licensee discloses nonpublic personal information, the purpose of the disclosure, and how the information will be used;
  - (4) The signature of the consumer or customer who is the subject of the nonpublic personal information or the individual who is legally empowered to grant authority and the date signed; and
  - (5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.
- c. ~~Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:~~
- (1) ~~By mail. The licensee mails the notices required in subdivision a to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within thirty days from the date the licensee mailed the notices.~~
  - (2) ~~By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in subdivision a electronically, and the licensee allows the customer to opt out by any reasonable means within thirty days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.~~
  - (3) ~~Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subdivision a at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.~~
2. ~~Application of opt out to all consumers and all nonpublic personal financial information.~~
- a. ~~A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.~~
  - b. ~~Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before~~

or after receiving the ~~direction to opt out~~ authorization from the consumer.

3. Partial ~~opt out~~ authorization. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to ~~opt out~~ authorize disclosure.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-12. Limits on redisclosure and reuse of nonpublic personal financial information.**

1. a. Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in section ~~45-14-01-05~~ 45-14-01-15 or 45-14-01-16, the licensee's disclosure and use of that information is limited as follows:
  - (1) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;
  - (2) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and
  - (3) The licensee may disclose and use the information pursuant to an exception in section 45-14-01-15 or 45-14-01-16, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.
- b. Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.
2. a. Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in section 45-14-01-15 or 45-14-01-16, the licensee may disclose the information only:

- (1) To the affiliates of the financial institution from which the licensee received the information;
  - (2) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
  - (3) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.
- b. Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in section 45-14-01-15 or 45-14-01-16:
- (1) The licensee may use that list for its own purposes; and
  - (2) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, ~~as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose,~~ and the licensee may disclose the list in accordance with an exception in section 45-14-01-15 or 45-14-01-16, such as to the licensee's attorneys or accountants.
3. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in section 45-14-01-15 or 45-14-01-16, the third party may disclose and use that information only as follows:
- a. The third party may disclose the information to the licensee's affiliates;
  - b. The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
  - c. The third party may disclose and use the information pursuant to an exception in section 45-14-01-15 or 45-14-01-16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

4. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in section 45-14-01-15 or 45-14-01-16, the third party may disclose the information only:
  - a. To the licensee's affiliates;
  - b. To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
  - c. To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

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**General Authority:** NDCC 28-32-02

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**45-14-01-14. Exception to ~~opt-out~~ authorization requirements for disclosure of nonpublic personal financial information for service providers and joint marketing.**

**1. General rule.**

- a. The ~~opt-out~~ notice and authorization requirements in sections 45-14-01-08 and 45-14-01-11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:
  - (1) ~~Provides~~ provides the initial notice in accordance with section 45-14-01-05; and
  - (2) ~~Enters~~ enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in section 45-14-01-15 or 45-14-01-16 in the ordinary course of business to carry out those purposes.
- b. Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of ~~paragraph 2~~ of subdivision a if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in section 45-14-01-15 or 45-14-01-16 in the ordinary course of business to carry out that joint marketing.

2. **Service may include joint marketing.** The services a nonaffiliated third party performs for a licensee under subsection 1 may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.
3. **Definition of joint agreement.** For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

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**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-15. Exceptions to notice and ~~opt-out~~ authorization requirements for disclosure of nonpublic personal financial information for processing and servicing transactions.**

1. Exceptions for processing transactions at consumer's request. The requirements for initial notice in subdivision b of subsection 1 of section 45-14-01-05, the opt-out for notice and authorization in sections 45-14-01-08 and 45-14-01-11; and for service providers and joint marketing in section 45-14-01-14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:
  - a. Servicing or processing an insurance product or service that a consumer requests or authorizes;
  - b. Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
  - c. A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer;
  - d. Reinsurance or stop-loss or excess loss insurance; ~~or~~
  - e. Informing a policyholder or the policyholder's producer or broker with respect to a claim asserted by, or paid to, a consumer under the policy and servicing and processing such claim; or
  - f. Maintaining or servicing a customer's account as authorized by the customer, orally or otherwise, or as necessary to replace an insurance product or service that is nonrenewed as a result of the withdrawal of an insurer from a market.

2. "Necessary to effect, administer, or enforce a transaction" means that the disclosure is:
- a. Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
  - b. Required, or is a usual, appropriate, or acceptable method:
    - (1) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;
    - (2) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
    - (3) To provide a confirmation, explanation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's producer or a policyholder or the policyholder's agent, producer, or broker with respect to a claim asserted by, or paid to, a consumer under a policy;
    - (4) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
    - (5) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance or the policyholder's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation; processing premium payments; processing, adjusting, paying, and settling insurance claims; administering insurance benefits including utilization review activities; participating in research projects; or as otherwise required or specifically permitted by federal or state law; or
    - (6) In connection with:
      - (a) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;

- (b) The transfer of receivables, accounts, or interests therein; or
- (c) The audit of debit, credit, or other payment information.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-16. Other exceptions to notice and ~~opt-out~~ authorization requirements for disclosure of nonpublic personal financial information.**

1. **Exceptions to ~~opt-out~~ authorization requirements.** The requirements for initial notice to consumers in subdivision b of subsection 1 of section 45-14-01-05, the ~~opt-out~~ for notice and authorization in sections 45-14-01-08 and 45-14-01-11; and ~~service providers and joint marketing~~ for initial notice in paragraph 1 of subdivision a of subsection 1 of section 45-14-01-14 do not apply when a licensee discloses nonpublic personal financial information:
  - a. With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
  - b.
    - (1) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product, or transaction;
    - (2) To protect against or prevent actual or potential fraud or unauthorized transactions;
    - (3) For required institutional risk control or for resolving consumer disputes or inquiries;
    - (4) To persons holding a legal or beneficial interest relating to the consumer; or
    - (5) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
  - c. To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors;
  - d. To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies, including the federal reserve board, office of the comptroller of the currency, federal deposit insurance

corporation, office of thrift supervision, national credit union administration, the securities and exchange commission, the secretary of the treasury, with respect to 31 U.S.C. chapter 53, subchapter II (records and reports on monetary instruments and transactions) and 12 U.S.C. chapter 21 (financial recordkeeping), a state insurance authority, and the federal trade commission, self-regulatory organizations, or for an investigation on a matter related to public safety;

- e. (1) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act [15 U.S.C. 1681 et seq.]; or
- (2) From a consumer report reported by a consumer reporting agency;
- f. In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;
- g. (1) To comply with federal, state, or local laws, rules, and other applicable legal requirements;
- (2) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities; or
- (3) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance, or other purposes as authorized by law; or
- h. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.

2. ~~Example of revocation~~ **Revocation of consent authorization.** A consumer may revoke ~~consent authorization~~ authorization by subsequently exercising the right to ~~opt out of future disclosures of nonpublic personal information as permitted under subsection 6 of section 45-14-01-08~~ at any time by informing the licensee in writing of the revocation.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-19. Authorization request delivery.** A request for authorization and an authorization form may be delivered to a consumer or a customer ~~as part of an opt-out notice~~ pursuant to section 45-14-01-10, provided that the request

and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to subsection 1 of section 45-14-01-17.

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-01-25. Compliance Effective date.** This chapter shall become effective November 1, 2004. As of that date, nonpublic personal information, regardless as to when the information was collected by a licensee, may not be shared with a nonaffiliated third party except as authorized by the consumer or customer, or except as permitted under subsection 2 of section 45-14-01-13 or section 45-14-01-14, 45-14-01-15, or 45-14-01-16. An initial privacy notice or an annual privacy notice issued after November 1, 2004, must comply with the revised privacy notice requirements of this chapter.

- ~~1. Compliance date. A company must comply with this chapter by its effective date.~~
- ~~2. a. Notice requirement for consumers who are the licensee's customers on the compliance date. By this chapter's effective date, a licensee shall provide an initial notice, as required by section 45-14-01-05, to consumers who are the licensee's customers on this rule's effective date.~~  
~~b. Example. A licensee provides an initial notice to consumers who are its customers on this chapter's effective date if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.~~
- ~~3. Grandfathering of service agreements. Until March 1, 2003, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of paragraph 2 of subdivision a of subsection 1 of section 45-14-01-14, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before March 1, 2001.~~

**History:** Effective December 1, 2001; amended effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

## **APPENDIX A SAMPLE CLAUSES**

The examples in this rule and the sample clauses in this appendix are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to ~~opt out of~~ authorize disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

### **A-1-Categories of information a licensee collects (all institutions)**

A licensee may use this clause, as applicable, to meet the requirement of subdivision a of subsection 1 of section 45-14-01-07 to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

### **A-2-Categories of information a licensee discloses (institutions that disclose outside of the exceptions)**

A licensee may use one of these clauses, as applicable, to meet the requirement of subdivision b of subsection 1 of section 45-14-01-07 to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in sections 45-14-01-14, 45-14-01-15, and 45-14-01-16.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as **[provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"]**;
- Information about your transactions with us, our affiliates, or others, such as **[provide illustrative examples, such as "your policy coverage, premiums, and payment history"]**; and
- Information we receive from a consumer reporting agency, such as **[provide illustrative examples, such as "your creditworthiness and credit history"]**.

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described **[describe location in the notice, such as "above" or "below"]**.

**A-3-Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)**

A licensee may use this clause, as applicable, to meet the requirements of subdivisions b, c, and d of subsection 1 of section 45-14-01-07 to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in sections 45-14-01-15 and 45-14-01-16.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

**A-4-Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)**

A licensee may use this clause, as applicable, to meet the requirement of subdivision c of subsection 1 of section 45-14-01-07 to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in sections 45-14-01-14, 45-14-01-15, and 45-14-01-16, as well as when permitted by the exceptions in sections 45-14-01-15 and 45-14-01-16.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as **[provide illustrative examples, such as "life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents"]**;
- Nonfinancial companies, such as **[provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"]**; and
- Others, such as **[provide illustrative examples, such as "nonprofit organizations"]**.

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

#### **A-5-Service provider/joint marketing exception**

A licensee may use one of these clauses, as applicable, to meet the requirements of subdivision e of subsection 1 of section 45-14-01-07 related to the exception for service providers and joint marketers in section 45-14-01-14. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as **[provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"]**;
- Information about your transactions with us, our affiliates, or others, such as **[provide illustrative examples, such as "your policy coverage, premium, and payment history"]**; and
- Information we receive from a consumer reporting agency, such as **[provide illustrative examples, such as "your creditworthiness and credit history"]**.

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as "above" or "below"] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

#### **A-6-Explanation of ~~opt-out~~ authorization right (institutions that disclose outside of the exceptions)**

A licensee may use this clause, as applicable, to meet the requirement of subdivision f of subsection 1 of section 45-14-01-07 to provide an explanation of the consumer's right to ~~opt-out of~~ authorize the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in sections 45-14-01-14, 45-14-01-15, and 45-14-01-16.

Sample Clause A-6:

~~If you prefer that we~~ We will not disclose nonpublic personal information about you to nonaffiliated third parties ~~(other than as permitted by law), unless you may opt-out of~~ authorize us to make those disclosures, ~~that is, you may direct us not to make those disclosures other than disclosures permitted by law. Your authorization must be in writing or, if you agree, in electronic form.~~ If you wish to ~~opt-out of~~ authorize disclosures to nonaffiliated third parties, you may **[describe a reasonable means of ~~opting-out~~ authorization, such as "call the following toll-free number: (insert number)"]**.

#### **A-7-Confidentiality and security (all institutions)**

A licensee may use this clause, as applicable, to meet the requirement of subdivision h of subsection ~~a~~ 1 of section 45-14-01-07 to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to **[provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]**. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**CHAPTER 45-14-02**  
**INFORMATION SECURITY PROGRAM**

Section

45-14-02-01

Definitions

45-14-02-02

Information Security Program

45-14-02-03

Developing and Implementing an Information Security Program

**45-14-02-01. Definitions.** As used in this chapter:

1. "Customer" means "customer" as defined in section 45-14-01-04.
2. "Customer information" means "nonpublic personal financial information", as defined in section 45-14-01-04, about a customer, whether in paper, electronic, or other form that is maintained by or on behalf of the licensee.
3. "Customer information system" means the methods used to access, collect, store, use, transmit, protect, or dispose of customer information.
4. "Licensee" means "licensee" as defined in section 45-14-01-04.
5. "Service provider" means a person that provides services to the licensee and maintains, possesses, or otherwise is permitted access to customer information.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-02-02. Information security program.** Each licensee shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of customer information that is appropriate to the size and complexity of the licensee and the nature and scope of its activities. Each information security program shall be designed to ensure the security and confidentiality of customer information, protect against any anticipated threats or hazards to the security or integrity of customer information, and protect against unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to any customer.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27

**45-14-02-03. Developing and implementing an information security program.** The actions and procedures described in this section are examples of methods of implementation of this chapter. These examples are nonexclusive

illustrations of practices and procedures that a licensee may follow to implement this chapter.

1. Each licensee identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems. Each licensee assesses the likelihood and potential damage of the risks presented by the threats it has identified, taking into consideration the sensitivity of customer information. Each licensee assesses the sufficiency of the policies and procedures it has in place to control the risks it has identified.
2. Each information security program is designed to control the identified risks, commensurate with the sensitivity of the information and the complexity and scope of the licensee's activities. Each licensee trains staff, as appropriate, to implement the licensee's information security program and regularly tests or otherwise monitors the key controls, systems, and procedures of its information security program.
3. Each licensee exercises due diligence in selecting service providers and obtains satisfactory assurances from the service provider that it will appropriately safeguard the information to meet the objectives of section 45-14-02-02.
4. Each licensee monitors, evaluates, and adjusts, as appropriate, its information security program to reflect any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to its customer information systems.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-27



**TITLE 48**  
**STATE BOARD OF ANIMAL HEALTH**



## NOVEMBER 2004

### CHAPTER 48-09-01

**48-09-01-02. Brand inspection.** For the purpose of complying with North Dakota Century Code chapters 36-05, 36-09, and 36-22:

1. When cattle, horses, or mules are offered for sale at any brand inspection point, proof of ownership must be established by the shipper of the cattle, horses, or mules, either by a recorded brand, bill of sale, livestock market clearance, local inspection certificate, or an affidavit of ownership.
2. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the said shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of such animal by bills of sale, market clearance, local inspection certificate, or any other satisfactory evidence of ownership.
3. No claim for feed, pasture, or gathering shall be allowed at market. All such claims must be referred to and approved for payment from proceeds of sale by the North Dakota stockmen's association, unless payment is authorized in writing by the owner of the brand carried by such livestock.
4. Sales agency, packing plant, and buying stations where inspection is maintained must furnish necessary help without charge to assist the brand inspectors in handling cattle, horses, or mules to be inspected for brands.
5. All cattle, horses, or mules entering an inspection point shall be placed in pens assigned to individual sellers and shall be kept separate from all other cattle, horses, or mules until inspected by the brand inspector and released for sale or shipment.
6. No cattle, horses, or mules shall be inspected after dark or by artificial light or inspected when loaded in trucks; provided, however, that under

emergency circumstances deemed by the brand inspector to warrant inspection by artificial light, such inspection may be made at places designated by the chief brand inspector as having lighting which meets the specifications required by the chief brand inspector for inspection by artificial light. The chief brand inspector shall have authority to give approval to premises which meet such specifications and to extend or remove such approval.

7. It shall be the responsibility of the North Dakota stockmen's association to provide a sufficient and competent force of brand inspectors at inspection points to carry on the brand inspection in an efficient and timely manner.
8. Brand inspectors may not inspect their own livestock or trade at a market where they conduct inspections.
9. A buying station is a point where cattle, horses, or mules are gathered for sale and is also referred to as a weigh station or scale.
10. ~~A bill of lading is required by railroads or motor carriers when livestock is going to out-of-state markets where inspection is maintained for North Dakota livestock.~~
44. The North Dakota stockmen's association shall, when determined advisable by the chief brand inspector, make an inspection of any butcher shop, buying station, locker plant, or custom meat cutting and processing establishment where cattle are slaughtered or processed for the owner for a fee. Authorized inspectors of the association, when directed to do so by the chief brand inspector, shall be authorized to go upon the premises of any such butcher shop, buying station, locker plant, or custom meat cutting establishment, for the purpose of making physical inspection on the premises as to the ownership or identity of animals or their carcasses that may be found therein.
- 42: 11. A fee of seventy-five cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid mileage by the shipper, owner, or consignor at the same rate per mile [1.61 kilometers] paid state officials in addition to the regular brand inspection fee. A permanent ~~transportation~~ inspection permit

may be obtained, for horses and mules only, by payment of a ten dollar inspection fee.

13. 12. The following ~~terminal markets and~~ auction markets outside the state of North Dakota are designated official brand inspection markets for North Dakota cattle, horses, and mules by the North Dakota stockmen's association: Mobridge livestock auction, Mobridge, South Dakota; McLaughlin sales, inc., McLaughlin, South Dakota; Lemmon livestock market, inc., Lemmon, South Dakota; Sisseton livestock sale co., Sisseton, South Dakota; Britton livestock sale co., Britton, South Dakota; hub city livestock sale co., Aberdeen, South Dakota; Aberdeen livestock sales, Aberdeen, South Dakota; Herreid livestock sale co., Herreid, South Dakota; Baker livestock auction, inc., Baker, Montana; Glendive livestock auction, Glendive, Montana; Sidney livestock market center, Sidney, Montana.

If any of the above markets where the North Dakota stockmen's association provides brand inspection closes for a period of three months or longer, the market must file a written request and follow the same criteria as listed for new requests for brand inspection services.

- a. The request must be from a market within thirty-five miles of the North Dakota border.
- b. The number of potential inspections must be at a level that is feasible for the North Dakota stockmen's association to hire personnel to perform the inspection services.
- c. The auction must file a bond with the North Dakota stockmen's association in an amount to assure that any shortage of income from inspections will cover all expenses incurred in performing the services.
- d. The auctions must agree to abide by all North Dakota livestock inspection laws and rules. Failure to do so will result in immediate revocation of their service.

**History:** Amended effective April 1, 1980; July 1, 1982; June 1, 1983; April 1, 1988; September 1, 1988; July 1, 1995; September 1, 2003; November 1, 2004.

**General Authority:** NDCC 36-22-03

**Law Implemented:** NDCC 36-05-10, 36-09-15, 36-09-23, 36-09-26, 36-22-02, 36-22-03



**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**



**SEPTEMBER 2004**

**CHAPTER 75-03-21**

**75-03-21-01. Definitions.**

1. "Abuse" means the willful act or omission of a caregiver or any other ~~person~~ individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation, or financial exploitation to or of a resident.
2. "Activities of daily living" means tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the home.
3. "Agency" means an organization which monitors family foster homes for adults.
4. "Applicant" means the ~~person~~ individual or ~~persons~~ individuals completing and submitting to the department an application to be licensed to provide foster care for adults.
5. "Care" means foster care for adults as defined by North Dakota Century Code section 50-11-00.1 and includes the provision of personal, nonmedical services provided to assist a resident with activities of daily living.
6. ~~"Caregiver" means a qualified individual who provides care to an adult living in a family foster home for adults.~~
7. "County agency" means the county social service board in the county where the family foster home for adults is located.
8. 7. "Department" means the North Dakota department of human services.

- 9: 8. "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, or gratification.
- ~~10:~~ 9. "Home" means a family foster home for adults.
- ~~11:~~ 10. "License" means a document issued by the department authorizing an applicant to operate a family foster home for adults.
- ~~12:~~ 11. "Licensed capacity" means maximum number of residents for which the family foster home for adults is licensed.
- ~~13:~~ 12. "Licensing study" means an assessment of the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11.
- ~~14:~~ 13. "Mental anguish" means psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral changes or physical symptoms.
- ~~15:~~ 14. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to foster care for adults.
- ~~16:~~ 15. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid physical harm, mental anguish, or mental illness.
- ~~17:~~ 16. "Provider" means the primary caregiver in active charge of a family foster home for adults who has documented qualifications in providing foster care for adults and is enrolled as a qualified service provider.
- ~~18:~~ 17. "Qualified service provider" means an individual who has met all standards and requirements for that status established under chapter 75-03-23.
- ~~19:~~ 18. "Resident" means any adult who is receiving foster care in a family foster home for adults for compensation on a twenty-four-hour basis, but does not mean any other ~~person~~ individual who lives or stays in the home.
19. "Respite care" means care provided by a respite care provider to an adult family foster care resident for the purpose of providing temporary relief to the provider from the stresses and demands associated with daily care or emergencies.
20. "Respite care provider" means an individual enrolled as a qualified service provider who provides respite care to residents, whose care is funded by the county or state, in the absence of the provider.

- ~~21.~~ 21. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, and 12.1-20-11.
- ~~21.~~ 22. "Substantial functional impairment" means a substantial inability, determined through observation, diagnosis, evaluation, or assessment, to live independently or provide self-care resulting from physical limitations.
- ~~22.~~ 23. "Substantial mental impairment" means a substantial disorder of thought, mood perception, orientation, or memory which grossly impairs judgment, behavior, or the ability to live independently, or provide for self-care, and which is determined by observation, diagnosis, evaluation, or assessment.
24. "Substitute caregiver" means an individual who meets qualified service provider standards and provides respite care to private pay residents in the absence of the provider.
- ~~23.~~ 25. "Vulnerable adult" means an adult who has substantial mental or functional impairment.
- ~~24.~~ 26. "Willfully" means willfully as defined in North Dakota Century Code section 12.1-02-02.

**History:** Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-02. Application.**

1. An application for a license to operate a home must be made to the county agency in the county where the applicant proposes to provide foster care for adults.
2. An application must be made in the form and manner prescribed by the department.
3. A fee of twenty-five dollars must accompany the application for a license to operate a family foster home for adults. The fee will be retained by the county agency and used for training and education of the county agency staff who administer the license program.
4. An application for a license must be filed immediately upon change of provider or location.

5. An application is not complete until all required information and verifications are submitted to the department, including:
  - a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;
  - b. A self-declaration of medical history and, when requested by the department, a report of a physician's examination;
  - c. A report of psychological examinations, when requested by the department;
  - d. Proof of age and relationship, when requested by the department;
  - e. Sanitation and safety inspection reports, when requested by the department;
  - f. Completed application form;
  - g. Drug and alcohol evaluation report, when requested by the department;
  - h. Licensing study report;
  - i. Documentation of completion of a course related to fire prevention and safety;
  - j. Fire safety self-declaration form; and
  - k. Evidence that all caregivers are properly qualified to provide foster care for adults as provided in subsection 8 of section 75-03-21-08;
    - l. A successfully completed criminal background check as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9; and
    - m. Examples of service logs to be used to account for service time and tasks performed for each resident.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-01-09(6), 50-11-03

**75-03-21-03. License.**

1. Issuance of a license to operate a home indicates compliance with the required standards, rules, and laws at the time of issuance.

2. A license is nontransferable.
3. A license is valid only for the ~~person~~ individual or ~~persons~~ individuals named and the premises described on the license.
4. ~~A license is valid for no longer than the lesser of twenty-four months from the date of issuance or the date of expiration of the provider's status as a qualified service provider. An initial license is valid for no longer than twelve months from the date of issuance.~~
5. A license that is issued after the initial licensing period has expired is valid for no longer than twenty-four months from the date of issuance or the date of expiration of the provider's status as a qualified service provider, whichever occurs first.
6. A provider may obtain both a license to operate a family foster home for adults and a license as a family foster care home for children, but may not provide care to both adults and children simultaneously without prior written approval from the department.
6. 7. If the home of a native American family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal social welfare agency or an appropriate tribal officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the home was completed by the tribe's social welfare agency or tribal council.
  - b. That the prospective home is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.
7. 8. If the home of an active duty military family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized military base in North Dakota, an affidavit from an agent of the base social welfare agency or other appropriate military officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the home was completed by the military base's social welfare agency.

- b. That the prospective home is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.

**History:** Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-05. Sanitation.**

1. Septic tanks or other nonmunicipal sewage disposal systems must comply with chapter 62-03-16, state plumbing code.
2. Rubbish, garbage, and other refuse must be stored in readily cleanable containers and removed from the home at least every second day. Rubbish, garbage, and other refuse kept outside of the home must be stored in readily cleanable, rodent-proof containers and disposed of weekly.
3. The home must be kept ~~reasonable~~ reasonably free of animal feces, urine, and hair.
4. Drinking water must be obtained from an approved community water system or from a source tested by a certified laboratory and approved by the state department of health ~~and consolidated laboratories~~. A copy of the test report must be submitted to the department or its designee. The water and wastewater plumbing systems must comply with article 62-03, state plumbing code.
5. Milk must be obtained from an approved commercial source.

**History:** Effective May 1, 1992; amended effective September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-06. Safety - Inspections.**

1. Pets not confined in enclosures must not present a danger to a resident or the resident's guests based upon the size, temperament, or obedience of the pet. Proof of pet vaccination is required and shall be submitted to the county agency.
2. The home must be located where a community or rural fire department is available.
3. Firearms must be stored, unloaded, in a locked cabinet. Any firearms cabinet must be located in an area of the home that is not readily accessible to residents.

4. Interior doors with a locking mechanism must be provided with a means to unlock the door from either side.
5. The heating and electrical system must be inspected for operability and safety at the time of the initial license application and periodically thereafter if requested by the department.
6. Food preparation areas, equipment, and food storage areas must be clean, free of offensive odors, and in sound working condition.
7. The department may require that the home be inspected by a local fire inspector or the state fire marshal at the time of initial license application and periodically thereafter if the department suspects that the home is not fire safe or when structural changes are made to the home.
8. Deficiencies noted during an inspection must be corrected within a reasonable time, but, in any event, must be corrected within sixty days after the issuance of the inspection report.
9. Any fees for the inspections required by the department or costs associated with correcting deficiencies noted during an inspection must be the responsibility of the applicant or provider.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-08. Provider qualifications. ~~The provider shall:~~**

1. The provider shall:
  - ~~a.~~ a. Be twenty-one years of age or older;
  - ~~2.~~ b. Live continuously in the home in which family foster care for adults is provided;
  - ~~3.~~ c. Possess the physical health necessary to aid residents with activities of daily living;
  - ~~4.~~ d. Be literate and capable of understanding instructions and communicating in the English language;
  - ~~5.~~ e. Be free of communicable diseases;
  - ~~6.~~ f. Be in good physical health, emotionally and functionally stable, and not abusing drugs or alcohol;
  - ~~7.~~ g. Be a qualified service provider; and

8. ~~Provide evidence of competence in:~~

h. Successfully complete criminal background check requirements as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9.

2. In addition to the requirements of subsection 1, the provider shall also:

a. Provide evidence of competence in:

- (1) The generally accepted procedure for infection control and proper handwashing methods;
- ~~b:~~ (2) The generally accepted procedure for handling and disposing of body fluids;
- ~~c:~~ (3) The generally accepted procedure for tub, shower, and bed bathing techniques;
- ~~d:~~ (4) The generally accepted procedure for hair care techniques, bed and sink shampoo, and shaving;
- ~~e:~~ (5) The generally accepted procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
- ~~f:~~ (6) The generally accepted procedure for caring for an incontinent resident;
- ~~g:~~ (7) The generally accepted procedure for feeding or assisting a resident with eating;
- ~~h:~~ (8) The generally accepted procedure for basic meal planning and preparation;
- ~~i:~~ (9) The generally accepted procedure for assisting a resident with the self-administration of medications;
- ~~j:~~ (10) The generally accepted procedures and techniques, which include dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
- ~~k:~~ (11) The generally accepted procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;
- ~~l:~~ (12) The generally accepted procedure for assisting a resident with bill paying and balancing a check book;

- m. (13) The generally accepted procedure for dressing and undressing a resident;
- n. (14) The generally accepted procedure for assisting with toileting;
- o. (15) The generally accepted procedure for routine eye care;
- p. (16) The generally accepted procedure for proper care of fingernails;
- q. (17) The generally accepted procedure for caring for skin, including giving a back rub;
- r. (18) The generally accepted procedure for turning and positioning a resident in bed;
- s. (19) The generally accepted procedure for transfer using a belt, standard sit, bed to wheelchair;
- t. (20) The generally accepted procedure for assisting a resident with ambulation; and
- u. (21) The generally accepted procedure for making beds; or
- b. Meet developmental disability competency standards for homes in which the responsible service provider is licensed according to chapter 75-04-01 and services are provided according to chapter 75-04-07.

**History:** Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-08.1. Verification and demonstration of competence.**

1. A physician, registered nurse, occupational therapist, physical therapist, or other ~~person~~ individual with a professional degree in specialized areas of personal care shall verify in writing, on forms furnished by the department, that a provider is competent to perform each procedure specified in subsection ~~8~~ 9 of section 75-03-21-08. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.
2. Competence may be demonstrated in the following ways:
  - a. A demonstration of the procedure being performed;
  - b. A detailed verbal explanation of the procedure; or

- c. A detailed written explanation of the procedure.

**History:** Effective April 1, 1999; amended effective September 1, 2004.

**General Authority:** NDCC 50-06-16

**Law Implemented:** NDCC 50-11-03

**75-03-21-09. General practices.** The provider shall:

1. Permit a representative of the department, county agency, or other agency serving a resident entry into the home without prior notice;
2. Provide information about the residents to the department, county agency, or other agency serving a resident with reasonable promptness;
3. Report illness, hospitalization, or unusual behavior of a resident to the agency serving the resident, or to the resident's representative, whichever is appropriate;
4. Assure that information related to the resident is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident;
5. Not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap;
6. Be willing to accept direction, advice, and suggestions concerning the care of residents from the department, county agency, or other agency representative serving a resident;
7. Assure that residents receiving care in the home are not subjected to abuse, sexual abuse, neglect, or exploitation;
8. Undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department or county agency when there is reason to believe that such an examination or evaluation is reasonably necessary;
9. Authorize the release of a report of any examination or evaluation, required under subsection 8, to the department or county agency;
10. Immediately report changes in the identity or number of ~~persons~~ individuals living in the home to the department or county agency;
11. Immediately report an inability to carry out the parts of a care plan for which the provider is responsible to the monitoring agency and placing agency or ~~person~~ individual;

12. ~~When requested by a supervising agency, aid the resident with activities of daily living;~~
43. Allow a representative of the department, or its designee, to enter the premises, examine the home and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter;
44. 13. Cooperate with the department or county agency in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, county agency, ombudsman, or other authorized persons individuals to the home and its residents; ~~and~~
45. 14. Not retaliate against any resident, who has filed a complaint with the department or county agency, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner.;
15. Meet criteria established by the department for employment outside of the home; and
16. Be free of influence, control, and direction in the operation of the home by the landlord if the home is being rented.

**History:** Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03, 50-11-04

**75-03-21-09.1. Criminal conviction - Effect on licensure and operation of home.**

1. An applicant may not be an individual who has, and may not permit an individual, except a resident, to reside in the home or act as a caregiver in the home if the individual has been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century

Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

- b. An offense, other than an offense identified in subdivision a, if the department, in the case of a provider, or the provider, in the case of a substitute caregiver, determines that the individual has not been sufficiently rehabilitated.
2. ~~A provider shall engage in practices that effectively implement this section.~~
  3. For purposes of subdivision b of subsection 1, a provider shall treat completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
  4. ~~3.~~ The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in any capacity involving the provision of foster care to adults.

**History:** Effective April 1, 1999; amended effective September 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11

**75-03-21-10. Substitute caregiver and respite care provider qualifications.**

1. A substitute caregiver or respite care provider must:
  - a. Be eighteen years of age or older;
  - b. Not be a resident of the home; ~~and~~
  - c. Possess qualifications of a provider specified in subsections 3 through ~~7~~ 9 of section 75-03-21-08-; ~~and~~
  - d. Successfully complete criminal background check requirements as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9.
2. The provider is responsible for the foster care of residents at all times, even though the duties or tasks of furnishing resident care have been delegated to a substitute caregiver or respite care provider.

3. Substitute caregivers may not be left in charge of the home for more than sixty calendar days during the twenty-four-month period immediately following the date of issuance of the license. For purposes of this section, whenever a substitute caregiver is left in charge of a family foster home for adults for more than four hours during a calendar day, a calendar day will be counted toward the sixty calendar-day limit a substitute caregiver may be in charge of a family foster home for adults. Respite care providers who are caring for residents whose services are funded by the county or state are limited to the respite care service funding cap. Adult family foster care residents whose care is being paid for by the county or state can only receive respite care from an individual who is enrolled as a qualified service provider of respite care by the department. Respite care providers must bill the department for time spent caring for residents whose care is being paid for by a county or state agency.
4. Substitute caregivers or respite care providers who are providing care to private pay residents may not be left in charge of the home for more than sixty calendar days during the twenty-four-month period immediately following the date of issuance of the license or for more than thirty days during the twelve-month period immediately following the date of the issuance of the initial license.
5. For purposes of this section, whenever a substitute caregiver or respite care provider is left in charge of a family foster home for adults for more than eight hours during a calendar day, the calendar day will be counted toward the sixty-calendar-day or thirty-calendar-day limit a substitute caregiver or respite care provider may be in charge of a family foster care home for adults.
6. Employing individuals other than those who meet the definition of substitute caregiver or respite care provider to provide services to adult family foster care residents is prohibited.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-11. Meals and nutrition.**

1. Three meals must be served daily.
2. There may be no more than fourteen hours between the conclusion of the evening meal and service of breakfast.
3. Each meal must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.

4. Adequate amounts of food must be available at all meals.
5. The special dietary needs of the residents must be considered in all menu planning, food selection, and meal preparation.
6. Consideration must be given to residents' cultural, ethnic, and religious backgrounds in food preparation.
7. Meals must be regularly and routinely prepared in the home where the residents live.
8. Charges imposed for resident meals provided by ~~persons~~ individuals or facilities other than the provider must be paid by the provider unless the provider made a meal available at the home.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-12. Preadmission information and house rules.** The provider shall furnish each prospective resident, or the resident's conservator, guardian, relative, or other ~~person~~ individual responsible for placement, the following information prior to entering the home:

1. Any restrictions and limitations on the use of alcohol and tobacco;
2. Any restrictions and limitations on the use of the telephone;
3. Sample menus of meals served;
4. Procedure concerning the use and management of resident funds;
5. Procedure used for billing ~~and~~, collecting, and reimbursing the charge for board, room, and care;
6. Policies concerning the furnishing of nonemergency resident transportation by the provider;
7. A statement of other relevant house rules with which the resident will be expected to comply; and
8. Accurate and complete information regarding the extent and nature of the care available from the provider.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-16. Denial or revocation of license.** The denial of an application or the revocation of an adult family foster care license applies to all individuals who applied to be licensed at the home or who are listed as providers on the license. An application for a license may be denied or a license may be revoked if:

1. The license application or supporting documents contain fraudulent or untrue representations or if the license was otherwise issued based upon fraudulent or untrue representations; Any conditions set forth in North Dakota Century Code section 50-11-02 as prerequisites for issuance of the license do not exist;
2. The provider or proposed provider is in violation of this chapter or is unwilling to conform to this chapter; The application contains false or misleading material information or the applicant intentionally withholds material information;
3. The license was issued upon false, misleading, or intentionally withheld material information;
4. A licensee, caregiver, employee, or an agent of the facility has violated a provision of this chapter or any of the rules of the department;
5. An applicant, licensee, caregiver, employee, or agent of the facility has been convicted of an offense determined by the department to have a direct bearing upon the individual's ability to serve the public or residents of the facility, or the department determines, following conviction of any other offense, the individual is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1;
6. The home, or the premises proposed for the home, is not being or will not be maintained according to this chapter;
4. 7. The home, or the premises proposed for the home, is not in sanitary condition or properly equipped to provide good care for all residents who may be received;
5. 8. The provider or proposed provider is not properly qualified to carry out the duties required;
6. 9. The home, or the premises proposed for the home, is not being conducted or is not likely to be conducted for the public good in accordance with sound public policy and with due regard for the health, morality, and well-being of all residents cared for; or

- 7- 10. The provider or proposed provider is not a reputable and responsible ~~person~~ individual.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-17. Distribution of notice of denial or revocation.** A copy of a notice of revocation or a notice of denial of a license application may be provided to any resident, any ~~person~~ individual who resides in a place under circumstances which may require that place to be licensed as a home for care of that ~~person~~ individual, to any guardian, conservator, placement agency, or ~~person~~ individual making placement of such a resident or ~~person~~ individual, and to any placement agency which has placed residents for care in the home or in other licensed homes in the region.

**History:** Effective May 1, 1992; amended effective September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-20. Time period for correcting deficiencies.** The following time periods are established for correction of deficiencies identified in a correction order:

1. For a deficiency requiring a provider or substitute caregiver to provide written documentation of qualifications in providing foster care for adults, a period of up to ~~sixty~~ thirty days must be allowed to correct the deficiency;
2. For a deficiency that requires an inspection for compliance with fire, safety, and sanitation, a period of up to ~~sixty~~ thirty days must be allowed to correct the deficiency;
3. For a deficiency that requires obtaining and providing the results of a drug and alcohol evaluation, psychological evaluation, or a physical examination, a period of up to sixty days must be allowed to correct the deficiency;
4. For deficiencies that require building remodeling, renovation, or change, a period of up to sixty days must be allowed to correct the deficiency;
5. For all other deficiencies, a period of up to thirty days must be allowed to correct the deficiency;
6. All time periods must commence with the date the correction order is received by the provider; and
7. The department may grant extensions for a period of one-half the original allowable time to correct a deficiency upon demonstration by

the provider that the need for an extension is created by circumstances beyond the control of the provider and that the provider has diligently pursued the correction of the deficiency.

**History:** Effective May 1, 1995; amended effective September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-21. Penalties.** A licensed operator, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions.

1. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of twenty-five dollars per day: subsections 1, 3, 4, 5, 7, and 9 of section 75-03-21-04; section 75-03-21-05; subsections 3, 4, 5, and 6 of section 75-03-21-06; ~~subsection 9 of section 75-03-21-08; subsections~~ subsection 4, 7, and 15 of section 75-03-21-09; subsection 1 of section 75-03-21-10; subsections 3 and 4 of section 75-03-21-11; and subsection 1 of section 75-03-21-13.
2. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of fifteen dollars per day: subsections 6, ~~and 8, and 10~~ of section 75-03-21-04; ~~subsections 5 and 6 of section 75-03-21-08; subsections 8, 9, and 14~~ subsection 13 of section 75-03-21-09; and section 75-03-21-12.
3. A violation of any other provision of this chapter not noted in subsections 1 and 2 subjects the licensed operator to a fiscal sanction of five dollars per day.

**History:** Effective May 1, 1995; amended effective April 1, 1999; September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-22. Records.** The following records must be kept and maintained for each resident in the home:

1. The resident's full name and birth date;
2. The name, address, and telephone number of the resident's legal representative when one exists and an emergency contact;
3. Names, addresses, and telephone numbers of ~~persons~~ individuals who can assume responsibility or consent to health care under North Dakota Century Code section 23-12-13 for the resident if the legal representative cannot be reached immediately in an emergency;
4. The daily personal care needed and provided to the resident and the name of the individual or individuals who provided the care; and

5. A record of any matter required to be reported under subsection 3 of section 75-03-21-09 and of any accident resulting in injury to a resident.

**History:** Effective May 1, 1995; amended effective September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**TITLE 87**

**BOARD OF VETERINARY MEDICAL EXAMINERS**



**AUGUST 2004**

**CHAPTER 87-01-01**

**87-01-01-01. Organization of board of veterinary medical examiners.**

1. **History.** The 1895 legislative assembly passed a law entitled "Qualifications of Veterinarians" which requires the governor to appoint a board of veterinary examiners, known as the state board of veterinary medical examiners. The board consists of three practicing veterinarians who are graduates of a legally authorized veterinary school.
2. **Board membership.** The board consists of three members who serve three-year terms, with one term expiring each year.
3. **Compensation of members of board.** A member of the board may receive for each day during which that member is actually engaged in the performance of the duties of office a per diem in the amount of one hundred twenty-five dollars.
4. **Executive secretary.** The board employs an executive secretary and such other persons necessary to carry out administration of the board's activities.
4. **5. Inquiries.** Inquiries regarding the board may be addressed to the executive secretary:

Dr. John R. Boyce  
Executive Secretary  
North Dakota Board of Veterinary Medical Examiners  
P.O. Box 5001  
Bismarck, North Dakota 58502  
(701) 328-9540

**History:** Amended effective November 1, 1981; April 1, 1988; November 1, 1991; March 1, 1999; August 1, 2004.

**General Authority:** NDCC ~~28-32-02.1~~ 28-32-02, 43-29-03

**Law Implemented:** NDCC ~~28-32-02.1~~ 28-32-02, 43-29-02, 43-29-05, 43-29-05.1

## CHAPTER 87-01.1-01

### 87-01.1-01-01. Examination - Waiver.

1. To qualify for a North Dakota license, each applicant must take and pass a North Dakota examination, the national board examination, and the clinical competency test or the North American veterinary licensing examination. The North Dakota examination is a combination written jurisprudence examination and oral interview.
2. The board adopts the passing score on the examination recommended by the national board ~~examination committee~~ of veterinary medical examiners. Applicants must request that their examination scores be sent to the board.
3. The national board examination and clinical competency test or the North American veterinary licensing examination is required of all applicants for licensure in North Dakota who have been in practice less than five years. For an applicant who has been in practice more than five years, the applicant may petition the board to waive this requirement if the applicant meets the requirements of North Dakota Century Code section 43-29-07.2.
4. The North Dakota examination may not be waived.
5. A senior veterinary student may take the North Dakota test if the student has taken and passed the national board examination and the clinical competency test or the North American veterinary licensing examination and submits a letter from the dean of a veterinary college indicating the student's anticipated graduation date.
6. Candidates may take the North American veterinary licensing examination for the first time during the testing window eight months prior to their expected graduation.

**History:** Effective January 1, 1999; amended effective November 1, 2000; June 1, 2002; August 1, 2004.

**General Authority:** NDCC 43-29-03, 43-29-07.2

**Law Implemented:** NDCC 43-29-07.2

## CHAPTER 87-03-01

### **87-03-01-04. Application for certification - Fees - Certificate renewal.**

Any person desiring certification as a veterinary technician shall make written application for certification to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota board of veterinary medical examiners a fee of twenty-five dollars plus the cost of the national examination. Fees are not returned, except by action of the board. If the certificate is granted, the technician shall pay a ten dollar annual renewal registration fee before December thirty-first. The renewal registration fee shall be paid by all certified technicians. The certificate will expire if the renewal registration fee is not paid before December thirty-first. A certificate may be renewed for two years after it expires by payment of the renewal registration fee and a delinquency fee. After two years after expiration, a new application for certification must be made.

**History:** Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999; August 1, 2004.

**General Authority:** NDCC 43-29-03, 43-29-09

**Law Implemented:** NDCC 43-29-07.1, 43-29-08.1

### **87-03-01-05. Educational program attendance required.**

Each veterinary technician, except as otherwise provided, shall receive eight hours of veterinary technician continuing education, approved by the board, in the twenty-four months preceding each even-year renewal date. Veterinary technician continuing education is defined as an educational program that will enhance the licenseholder's professional ability to serve the public and which has the prior approval of the board. No more than two hours may be from in-house training. If a licenseholder fails to receive the amount of continuing education necessary, a written notice must be sent and a six-month grace period will be allowed to make up the requirement. If, after six months, the requirements have not been met, the license will expire.

**History:** Effective January 1, 1999; amended effective August 1, 2004.

**General Authority:** NDCC 43-29-03, 43-29-07.3, 43-29-09

**Law Implemented:** NDCC 43-29-07.3, 43-29-08.1

**CHAPTER 87-05-02**  
**UNPROFESSIONAL CONDUCT**

Section

87-05-02-01

Unprofessional Conduct

87-05-02-02

Minimum Standards of Practice

**87-05-02-01. Unprofessional conduct.** Unprofessional conduct manifestly disqualifying a licensee from practicing veterinary medicine includes:

1. Failing to meet the minimum standards of practice.
2. Engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, in which case, proof of actual injury need not be established.
3. Claiming to have performed or charging for an act or treatment that was, in fact, not performed or given.
4. Promoting, aiding, abetting, or permitting the practice of veterinary medicine by an unlicensed person.
5. Prescribing or dispensing, delivering, or ordering delivered a controlled substance without first having established a veterinarian-client-patient relationship by having personally examined the individual animal, herd, or a representative segment or a consignment lot and determining that treatment with the controlled substance is therapeutically indicated. Use of euthanizing drugs in recognized animal shelters or government animal control facilities is exempt from this requirement.
6. Performing surgery to conceal genetic or congenital defects, in any species, with the knowledge that the surgery has been requested to deceive a third party.
7. Promoting, selling, prescribing, or using a product for which the ingredient formula is unknown to the veterinarian.
8. Failing to report to law enforcement or humane officers inhumane treatment to animals, including staged animal fights or training events for fights, the veterinarian reasonably believed occurred.
9. Fraudulently issuing or using a certificate of veterinary inspection, test chart, vaccination report, or other official form used in the practice of veterinary medicine to prevent the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption.

10. Willfully harassing, abusing, or intimidating a client or animal owner either physically or verbally. Taking legal action to collect for services rendered cannot be considered harassment.
11. Engaging in conduct which willingly and knowingly leads to the spread of contagious disease from one herd or animal to another.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-14

**87-05-02-02. Minimum standards of practice.** Minimum standards of practice include:

1. The delivery of veterinary care must be provided in a competent and humane manner consistent with prevailing standards of practice for the species of animal and the professed area of expertise of the veterinarian. For a veterinarian to exercise properly the rights granted by the veterinary license, a veterinarian-client-patient relationship must exist.
2. Medical records and radiographs are the physical property of the hospital or the proprietor of the practice that prepared them. Records must be maintained for a minimum of three years after the last visit. Radiographs must be maintained for a minimum of three years.
3. Medical records, or an accurate summary of them, must be released to the animal owner or the owner's authorized agent, including the board, within a reasonable time of a request. A reasonable charge for copying or preparation of a summary may be made, except in the case of a board investigation, in which case no charges are authorized.
4. Contents of medical records must be kept private and not released to third parties unless authorized by the client or required by law.
5. A licensed veterinarian shall treat animals entrusted to the veterinarian by a client consistent with prevailing professional standards of humane treatment and care.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 43-29-03

**Law Implemented:** NDCC 43-29-14



**TITLE 98**

**OFFICE OF ADMINISTRATIVE HEARINGS**



## AUGUST 2004

### CHAPTER 98-01-01

**98-01-01-01. History.** The office of administrative hearings was established July 1, 1991, as a result of the passage of Senate Bill No. 2234 in the fifty-second legislative assembly. See S.L. 1991, ch. 637. The office must provide independent hearing officers for state agencies, boards, and commissions that are required to use independent hearing officers to conduct their hearings, and may provide independent hearing officers for other requesting state agencies, boards, and commissions, tribal governments in this state, the judicial branch, and units of local government, as well as for any agency to conduct a rulemaking hearing.

**History:** Effective January 1, 1992; amended effective August 1, 2004.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 28-32-02.1, 54-57-03

**98-01-01-02. Application of North Dakota Century Code chapter 28-32.** The office of administrative hearings itself is an agency subject to chapter 28-32. It is required to conduct hearings for other agencies that are subject to chapter 28-32. When conducting hearings for agencies subject to chapter 28-32, its hearing officers must conduct those hearings in accordance with the provisions of chapter 28-32 and any rules adopted pursuant to it. The office of administrative hearings is also required to provide hearing officers for the hearings of some agencies not subject to chapter 28-32. When conducting hearings for agencies not subject to chapter 28-32, its hearing officers need not conduct the hearing according to the provisions of chapter 28-32 and rules adopted pursuant to it. Additionally, the provisions of chapter 28-32, and rules adopted pursuant to it, do not apply to any hearings conducted by the office of administrative hearings for units of local government, tribal governments in this state, or the judicial branch, for which the office of administrative hearings may provide a hearing officer upon request.

**History:** Effective January 1, 1992; amended effective August 1, 2004.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 28-32-02.1, 54-57-03

**98-01-01-03. Inquiries.** Any inquiries concerning the office of administrative hearings, the uniform rules of administrative ~~practice and procedure~~ for adjudicative proceedings adopted by it, or any of the laws relating to the office of administrative hearings or the uniform rules may be addressed to:

Director  
Office of Administrative Hearings  
~~948 East Divide Avenue~~ 1707 North Ninth Street  
~~Suite 315~~  
Bismarck, ~~North Dakota~~ ND 58501

**History:** Effective January 1, 1992; amended effective August 1, 2004.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 28-32-02.1

## CHAPTER 98-02-02

**98-02-02-01. Complaint against a specific-named respondent.** [Reserved] See subsection 1 of North Dakota Century Code section ~~28-32-05~~ 28-32-21 for statutory requirements.

**98-02-02-02. Proceedings other than a complaint against a specific-named respondent.** [Reserved] See subsection 3 of North Dakota Century Code section ~~28-32-05~~ 28-32-21 for statutory requirements.

**98-02-02-07. Subpoenas.** ~~The hearing officer shall issue a subpoena to require the attendance and testimony of a witness at proceedings or a subpoena for the production of documentary evidence only upon the written request or motion of a party. The request or motion for a subpoena to require the attendance and testimony of a witness at proceedings must specifically identify the witness and state the complete address at which the witness may be served. The request or motion for a subpoena for the production of documentary evidence must sufficiently identify or describe the document or other object subpoenaed, must specifically identify the person who is to produce the documentary evidence, and must state the complete address at which that person may be served. The party requesting the subpoena is responsible for its timely service, as well as payment of all fees, in accordance with the North Dakota Rules of Civil Procedure. Any attorney representing a party to the proceedings may issue a subpoena to require the attendance and testimony of a witness at proceedings or a subpoena for the production of documentary evidence. The provisions of rule 45(c) and (d) of the North Dakota Rules of Civil Procedure regarding protection of persons subject to subpoenas and duties in responding to subpoenas apply in adjudicative proceedings except as provided in this section. A hearing officer may not impose a monetary or contempt sanction under this section.~~

1. Any attorney representing a party to the proceedings may issue a subpoena to require the attendance and testimony of a witness at proceedings or a subpoena for the production of documentary evidence.
2. The hearing officer shall issue a subpoena to require the attendance and testimony of a witness at proceedings or a subpoena for the production of documentary evidence only upon the written request or motion of a party. The request or motion for a subpoena to require the attendance and testimony of a witness at proceedings must specifically identify the witness and state the complete address at which the witness may be served. The request or motion for a subpoena for the production of documentary evidence must sufficiently identify or describe the document or other object subpoenaed, must specifically identify the person who is to produce the documentary evidence, and must state the complete address at which that person may be served.

3. The party requesting a subpoena is responsible for its timely service, as well as payment of all fees, in accordance with the North Dakota Rules of Civil Procedure.
4. The provisions of rule 45(c) and (d) of the North Dakota Rules of Civil Procedure regarding protection of persons subject to subpoenas and duties in responding to subpoenas apply in adjudicative proceedings except as provided in this section.
5. A hearing officer may not impose a monetary or contempt sanction under this section.

**History:** Effective January 1, 1992; amended effective April 1, 1998; August 1, 2004.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC ~~28-32-09~~ 28-32-33

**98-02-02-13. Intervention.** [Reserved] See North Dakota Century Code section ~~28-32-08.2~~ 28-32-28 for statutory requirements.

**98-02-02-14. Informal disposition.** [Reserved] See North Dakota Century Code section ~~28-32-05.4~~ 28-32-22 for statutory requirements.

**98-02-02-15. Disqualification of hearing officer.** This section applies only if a party has first petitioned the hearing officer for disqualification under North Dakota Century Code section ~~28-32-08.4~~ 28-32-27, and the hearing officer has refused to disqualify himself or herself.

1. If the hearing officer whose disqualification is sought has been appointed or designated by the director of the office of administrative hearings, the party may petition the director, requesting appointment or designation of a different hearing officer. Upon receipt of the petition, the director, upon good cause shown, may appoint or designate a different hearing officer.
2. If the hearing officer whose disqualification is sought is the director of the office of administrative hearings, the party may petition the agency head of the agency for which the hearing officer is presiding, requesting appointment or designation of a different hearing officer. Upon receipt of the petition, the agency head, upon good cause shown, may require the director to appoint or designate a different hearing officer.
3. If the hearing officer whose disqualification is sought is an agency hearing officer, i.e., a person assigned, appointed, or designated by the agency head, the agency supervising hearing officer, or another agency official to preside, the party may petition the agency head, requesting appointment or designation of a different hearing officer.

Upon receipt of the petition, the agency head, upon good cause shown, may appoint or designate a different hearing officer.

**History:** Effective January 1, 1994; amended effective August 1, 2004.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC ~~28-32-08.4~~ 28-32-27, 54-57-05

**98-02-02-16. Default.** [Reserved] See North Dakota Century Code section ~~28-32-08.4~~ 28-32-30 for statutory requirements.

## CHAPTER 98-02-03

**98-02-03-01. Evidentiary purpose.** An evidentiary hearing need be conducted only in cases where genuine issues of material fact must be resolved. When it appears from pleadings, admissions, stipulations, affidavits, or other documents that there are no matters of material fact in dispute, the hearing officer, upon motion of a party or upon the hearing officer's own motion, may conclude that the hearing can proceed without conducting an evidentiary hearing and enter an order so finding, vacating the hearing date if one has been set, ~~and fixing the~~. Before entering an order, the hearing officer may fix a time for filing briefs or taking oral argument.

**History:** Effective January 1, 1992; amended effective August 1, 2004.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC ~~28-32-11.4~~ 28-32-35, 54-57-04

**98-02-03-05. Evidence - Official notice.** [Reserved] See North Dakota Century Code section ~~28-32-06~~ 28-32-24 for statutory requirements.

**98-02-03-08. Ex parte communications.** [Reserved] See North Dakota Century Code section ~~28-32-12.4~~ 28-32-37 for statutory requirements.

**98-02-03-09. The record.** Requests by a party, or any other person allowed to participate in the proceeding, for the furnishing of a copy of the record, or a part thereof, under either North Dakota Century Code section ~~28-32-12~~ 28-32-36 or ~~28-32-17~~ 28-32-44, shall be made to the administrative agency. If the record is in the possession of the hearing officer, the hearing officer may temporarily return it to the administrative agency for preparation of the transcript, or a part thereof, to furnish to the requesting party or person, or the hearing officer may retain all or a part of the record until the issuance of the hearing officer's order.

**History:** Effective January 1, 1994; amended effective August 1, 2004.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC ~~28-32-12~~ 28-32-36, ~~28-32-17~~ 28-32-44

**98-02-03-10. Hearings conducted by electronic means.** A hearing officer conducting a hearing for an agency under North Dakota Century Code chapter 28-32 may conduct a hearing in total or in part by making use of electronic means. If the agency has a statute or rule about conducting the hearing by electronic means, the hearing officer will conduct the hearing in compliance with the statute or rule. If the agency has no statute or rule about conducting a hearing by electronic means, the hearing officer may select the electronic means necessary to conduct the hearing and determine the method and manner in which the hearing is to be electronically conducted. If the agency statute or rule with regard to conducting the hearing by electronic means is incomplete, the hearing officer may select the electronic means necessary to conduct the hearing and

determine the manner or means necessary to conduct the hearing electronically, if the selection or determination is not inconsistent with the statute or rule.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC 28-32-35

## CHAPTER 98-02-04

**98-02-04-02. Agency consideration of information not presented at formal hearing.** [Reserved] See North Dakota Century Code section 28-32-07 28-32-25 for statutory requirements.

**98-02-04-03. Findings of fact, conclusions of law, and order of agency.** [Reserved] See North Dakota Century Code section 28-32-13 28-32-39 for statutory requirements.

**98-02-04-04. Petition for reconsideration.** [Reserved] See North Dakota Century Code section 28-32-14 28-32-40 for statutory requirements.

**98-02-04-05. Effectiveness of orders.** [Reserved] See North Dakota Century Code section 28-32-14.1 28-32-41 for statutory requirements.

### **98-02-04-07. Petition to reopen the hearing.**

1. If a hearing officer issues either a recommended or final order and the hearing officer has not yet issued the order, any party may petition the hearing officer to reopen the hearing.
2. The petitioning party must submit with the petition to reopen the hearing a statement of specific grounds upon which reopening is requested or a statement of further showing to be made in the hearing. The petition and any statement will be considered a part of the record in the proceeding.
3. Specific grounds or a further showing sufficient to reopen a hearing include:
  - a. Any irregularities of procedure of or by the hearing officer or any party, any order of the hearing officer, or any abuse of discretion of the hearing officer by which any party was prevented from having a fair hearing.
  - b. Accident or surprise which ordinary prudence could not have guarded against.
  - c. Newly discovered evidence material to the party submitting the petition which the party could not with reasonable diligence have discovered or produced at the hearing.
4. The hearing officer may deny the petition or grant the petition on such terms as the hearing officer may prescribe.
5. If a hearing officer issues a recommended order and has already issued the recommended order, any petition to reopen the hearing must be made to the agency.

6. If a hearing officer issues a recommended order, the recommended order has already been issued, and a party submits to the agency a petition to reopen the hearing, the agency may designate a hearing officer to deny or grant the petition to reopen the hearing under subsections 3 and 4. If available, the hearing officer designated shall be the same hearing officer that conducted the hearing.
7. If a hearing officer issues a recommended order, the final order has already been issued by the agency, and a party submits to the agency a petition to reopen the hearing, the agency may treat the petition as a petition for reconsideration under North Dakota Century Code section 28-32-40.
8. A petition to reopen the hearing is deemed denied if a hearing officer or the agency does not dispose of it within thirty days of the filing of the petition.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 57-54-05

**Law Implemented:** NDCC 28-32-31, 28-32-35, 28-32-36, 28-32-40



**TITLE 109**

**PEACE OFFICERS STANDARD AND TRAINING BOARD**



OCTOBER 2004

ARTICLE 109-01

GENERAL ADMINISTRATION

Chapter  
109-01-01      Organization of the Board

CHAPTER 109-01-01  
ORGANIZATION OF THE BOARD

Section  
109-01-01-01      History and Function  
109-01-01-02      Board Membership  
109-01-01-03      Board Meetings  
109-01-01-04      Inquiries

**109-01-01-01. History and function.**

1. In 1981 the legislative assembly established a peace officer standards and training board under the law enforcement standards training and statistics division of the office of attorney general. In 2003 the legislative assembly repealed the statutory provisions relating to the law enforcement standards training and statistics division and established separate statutory authority for the board.
2. The function of the peace officer standards and training board is to prescribe criteria for certification of peace officer training, instructors, and schools, to certify curriculum, schools, and officers that have met the training certification criteria, to establish curriculum for peace officer training, to prescribe minimum standards for sidearm training and certification for peace officers, and to issue peace officer licenses to

persons who meet board-prescribed peace officer standards, training, and licensing requirements.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

**109-01-01-02. Board membership.**

1. The peace officer standards and training board consists of nine members, including the director of the highway patrol law enforcement training center, six peace officers, one county government representative, and one city government representative.
2. With the exception of the director of the highway patrol law enforcement training center, all members of the peace officer standards and training board must be appointed by the attorney general and serve staggered two-year terms.
3. Peace officers appointed by the attorney general may serve no more than three consecutive terms.
4. The attorney general shall appoint the chairman of the board.
5. The office of attorney general shall provide support staff to the board, including an employee to serve as the secretary to the board and as an ex officio nonvoting member of the board.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 12-63-01.1, 28-32-02

**109-01-01-03. Board meetings.** The board meets quarterly and when called at the direction of the board chairman.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

**109-01-01-04. Inquiries.**

1. All inquiries regarding the peace officer standards and training board may be addressed to the secretary of the board. All requests for hearings and for participating in rulemaking may be addressed to the secretary of the board, unless specific public notice provides otherwise.
2. Correspondence is to be addressed to the board as follows:

Secretary

Peace Officer Standards and Training Board  
4205 State Street  
P.O. Box 1054  
Bismarck, ND 58502-1054

**History:** Effective October 1, 2004.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 28-32-02

## ARTICLE 109-02

### PEACE OFFICER STANDARDS

#### Chapter

<u>109-02-01</u>	<u>General Provisions</u>
<u>109-02-02</u>	<u>Licensing and Training Requirements</u>
<u>109-02-03</u>	<u>Minimum Standards of Training Prior to Carrying a Weapon</u>
<u>109-02-04</u>	<u>Instructor and Training Course Certification</u>

### CHAPTER 109-02-01 GENERAL PROVISIONS

#### Section

<u>109-02-01-01</u>	<u>Definitions</u>
<u>109-02-01-02</u>	<u>Background Investigation Required</u>
<u>109-02-01-03</u>	<u>Minimum License Requirements</u>
<u>109-02-01-04</u>	<u>Other License Requirements</u>
<u>109-02-01-05</u>	<u>Agency's Responsibility</u>
<u>109-02-01-06</u>	<u>Record of Certified Instructors and Shooting Courses</u>
<u>109-02-01-07</u>	<u>Waiver</u>
<u>109-02-01-08</u>	<u>Additional Agency Requirements</u>
<u>109-02-01-09</u>	<u>Hearings and Appeals</u>

**109-02-01-01. Definitions.** The terms used throughout this article have the same meaning as in the North Dakota Century Code except:

1. "Agency" means a criminal justice agency of the state of North Dakota or one of its political subdivisions that employs peace officers.
2. "Auxiliary personnel" means personnel utilized by a municipal, county, or state law enforcement agency to provide service to that jurisdiction on a nonsalaried basis. Auxiliary personnel may be members of organized groups, including posse, search and rescue, and security at dances, who operate adjunct to a police or sheriff's department and who do not have arrest powers or peace officer authority.
3. "Basic law enforcement training course" means a board-certified entrance-level training course based on performance objectives essential for law enforcement in the state of North Dakota.
4. "Certified instructor" means an instructor certified by the board to instruct law enforcement subjects.
5. "Certified training course" means a course of training that has been approved by the board.

6. "College credits" means credits earned for studies satisfactorily completed at an accredited institution of higher learning in a program leading to an academic degree.
7. "Criminal justice agency" means a unit of government of the state of North Dakota or one of its political subdivisions charged by law with criminal law enforcement duties.
8. "Duty equipment" means the equipment issued or approved by the peace officer's employing agency and normally carried by a peace officer in the performance of the peace officer's duties.
9. "Duty weapon" means the sidearm issued or approved by the peace officer's employing agency and normally carried by the peace officer in the performance of the peace officer's duties.
10. "In-service training" refers to a certified training program conducted by an agency for peace officers employed by the agency.
11. "Law enforcement training academy" means the highway patrol law enforcement training center.
12. "License requirement" means any term, condition, or requirement established by the board that must be met before the board may issue, renew, or reinstate a peace officer's license.
13. "Moral turpitude" means conduct contrary to justice, honesty, modesty, or good morals.
14. "Peace officer" means a salaried public servant employed by a criminal justice agency of the state of North Dakota or one of its political subdivisions to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.
15. "Reserve officer" means any person utilized by a criminal justice agency to provide service in that jurisdiction on a nonsalaried basis and who may be granted full arrest authority.
16. "Salaried peace officer" means a peace officer who is employed by a criminal justice agency and who receives regular compensation on a weekly, biweekly, semimonthly, or monthly basis.
17. "School" means a facility or academy that conducts board-certified basic, advanced, and specialized peace officer training courses.
18. "Sidearm" means a handgun, including a semiautomatic handgun or revolver, carried by a peace officer.

19. "Weapon" includes a handgun, shotgun, and rifle.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**109-02-01-02. Background investigation required.**

1. The agency administrator shall conduct a background investigation when the agency hires a person to perform peace officer duties. The agency administrator shall file a copy of the completed background investigation on a form provided by the board. In addition to the form required, the agency shall require that each person submit a complete set of the person's fingerprints and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing.
2. A school shall conduct a background investigation on each enrollee in the school, unless the enrollee has a limited license or is attending the law enforcement training academy. The school shall file a copy of the completed background investigation on a form provided by the board. In addition to the form required, the school shall require each enrollee to submit a complete set of the enrollee's fingerprints and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a), 12-63-06(2)

**109-02-01-03. Minimum license requirements.** An applicant for a peace officer license:

1. Must be a United States citizen, or in resident alien status, as defined by United States immigration and naturalization service laws and regulations.
2. Must be a high school graduate or have a general educational development (GED) certificate.
3. Must not have pled guilty to or have been convicted in any state or federal court for any felony, crime of moral turpitude, crime of domestic violence, or any other offense that has a direct bearing on the applicant's ability to serve as a peace officer.

4. Must not be prohibited from using or possessing a firearm under state or federal law.
5. Must have a valid driver's license.
6. Must have undergone a background investigation by the employing agency and have fingerprint clearance from the North Dakota bureau of criminal investigation and the United States department of justice federal bureau of investigation.
7. Must have been administered a board-approved medical and psychological examination.
8. Must be employed as a salaried peace officer by a criminal justice agency.
9. Must submit all required documentation and application materials to the board.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**109-02-01-04. Other license requirements.**

1. In addition to other requirements of law when an agency employs or appoints a person as a peace officer, the agency administrator or designee shall verify that the person meets the requirements of the board. The agency shall also forward a record of that peace officer's previous training and law enforcement experience to the board.
2. A person may not legally exercise the authority of a peace officer unless the board has issued a license or a limited license and the person is employed by a criminal justice agency as a salaried peace officer, or the person meets one of the exceptions of North Dakota Century Code section 12-63-03.
3. Only a salaried peace officer that has a limited license may attend the basic law enforcement training course at the law enforcement training academy. The peace officer's employing agency shall submit a verified statement that the peace officer is a salaried peace officer of the agency in connection with the peace officer's application to attend the law enforcement training academy for the basic law enforcement training course and that the peace officer is receiving a salary while attending the law enforcement training academy.
4. Only a salaried peace officer may apply for a limited license or a peace officer license, take the licensing examination, apply for renewal of a license, or apply for reinstatement of a license. The peace officer's

employing agency shall submit a verified statement that the peace officer is a salaried peace officer of the agency in connection with the peace officer's application for a limited license, peace officer license, an application to take the licensing examination, or an application for renewal or reinstatement of a license.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1), 12-63-06, 12-63-07, 12-63-09

**109-02-01-05. Agency's responsibility.**

1. Every agency shall provide or obtain the necessary training for its peace officers in order that its peace officers meet all board license requirements.
2. Every agency shall maintain records of training provided to its peace officers, including:
  - a. Curriculum.
  - b. Listing of instructors.
  - c. Attendance.
  - d. Test and examination scores.
3. Every agency shall notify the board when it hires a peace officer, when it terminates the employment of a peace officer, or when a peace officer resigns from employment with the agency.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**109-02-01-06. Record of certified instructors and shooting courses.**

The board shall maintain a record of certified instructors, certified training courses, and certified shooting courses.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(b)(d)

**109-02-01-07. Waiver.** The board may waive the requirements of any of the rules in this article upon a showing of good cause.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**109-02-01-08. Additional agency requirements.** This article establishes minimum standards and requirements for peace officers and does not preclude an agency from establishing additional or more stringent hiring and training requirements and ethical standards.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**109-02-01-09. Hearings and appeals.** Hearings must be in accordance with North Dakota Century Code chapters 28-32 and 54-57. An aggrieved person may waive the provisions of North Dakota Century Code chapters 28-32 and 54-57. Appeals must be in accordance with North Dakota Century Code chapter 28-32 and subsection 3 of North Dakota Century Code section 12-63-12.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**CHAPTER 109-02-02**  
**LICENSING AND TRAINING REQUIREMENTS**

Section

<u>109-02-02-01</u>	<u>Compliance With Minimum Training Standards</u>
<u>109-02-02-02</u>	<u>Auxiliary Personnel</u>
<u>109-02-02-03</u>	<u>Reserve Officers</u>
<u>109-02-02-04</u>	<u>Limited Peace Officer License</u>
<u>109-02-02-05</u>	<u>Waiver of Required Training</u>
<u>109-02-02-06</u>	<u>Licensing Examinations</u>
<u>109-02-02-07</u>	<u>Licensing of Peace Officers</u>
<u>109-02-02-08</u>	<u>Medical and Psychological Evaluation</u>
<u>109-02-02-09</u>	<u>Compliance With Sidearm Qualification as a License Requirement</u>
<u>109-02-02-10</u>	<u>License Certificate</u>
<u>109-02-02-11</u>	<u>Fees</u>
<u>109-02-02-12</u>	<u>Surrender of License Certificate</u>
<u>109-02-02-13</u>	<u>Lapse of License</u>
<u>109-02-02-14</u>	<u>Inactive Status</u>
<u>109-02-02-15</u>	<u>License Requirements to Remain Licensed or to Obtain Renewal or Reinstatement of a License</u>
<u>109-02-02-16</u>	<u>License Renewal</u>
<u>109-02-02-17</u>	<u>Termination of Peace Officer Status</u>
<u>109-02-02-18</u>	<u>Notice of Termination</u>
<u>109-02-02-19</u>	<u>Notice of Denial, Suspension, or Revocation - Hearing</u>

**109-02-02-01. Compliance with minimum training standards.**

1. Each applicant for a peace officer's license shall successfully complete the first available board-certified basic law enforcement training course from the date of the issuance of the peace officer's limited license and successfully pass the licensing examination. The applicant must successfully pass the licensing examination before the board may issue a peace officer's license.
2. Training for reserve officers is the responsibility of the reserve officer's agency.
3. Training for auxiliary personnel is the responsibility of the auxiliary personnel's agency.
4. The board may grant an extension of time to a peace officer to complete required courses upon written request by the agency administrator upon a showing of extreme hardship.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-03(1)(2), 12-63-06, 12-63-07

**109-02-02-02. Auxiliary personnel.** These rules do not preclude payment of compensation to auxiliary personnel who assist in maintaining order and in security functions, including traffic and crowd control at sporting events, parades, or similar events.

**History:** Effective October 1, 2004.  
**General Authority:** NDCC 12-63-04(2)(d)  
**Law Implemented:** NDCC 12-63-03(1)

**109-02-02-03. Reserve officers.** These rules do not preclude payment of compensation to reserve officers who assist in maintaining order and in security functions, including traffic and crowd control at sporting events, parades, and other similar events. No agency may pay a reserve officer on a full-time or part-time basis for the performance of peace officer duties unless the reserve officer meets all board license requirements.

**History:** Effective October 1, 2004.  
**General Authority:** NDCC 12-63-04(2)(d)  
**Law Implemented:** NDCC 12-63-03(2)

**109-02-02-04. Limited peace officer license.** The board may issue a limited peace officer license to a person who has completed the educational, medical, and psychological examination licensing requirements and has been qualified to carry a sidearm. A limited license is effective until the person has successfully completed a certified basic training course and has successfully completed the licensing examination. The board may renew the limited license once if the person failed the examination. A person shall take the licensing examination within thirty days after completing the certified basic training course. A person may not take the examination more than three times. After the second unsuccessful attempt and before retaking the licensing examination, the person must successfully complete a board-approved law enforcement basic training course.

**History:** Effective October 1, 2004.  
**General Authority:** NDCC 12-63-04(2)(d)  
**Law Implemented:** NDCC 12-63-06, 12-63-07, 12-63-09

**109-02-02-05. Waiver of required training.**

1. A person having peace officer experience or having training not certified by the board may qualify for a waiver of applicable training or license requirements. The administrator of the agency employing the person may apply to the board for a waiver. The board shall review all such applications and may grant a complete or partial waiver. The person must be currently licensed or certified in another state, must have a minimum of one year of full-time experience as a certified or licensed peace officer, and must successfully complete the licensing examination and sidearm qualification before the board may grant a

partial or complete waiver of the license requirement and issue a peace officer license.

- a. Training received in states with laws governing or regulating peace officer training must have been approved or certified in the state in which the training was received.
  - b. The board may prescribe additional training as a license requirement for a person in order for the person to comply with board requirements.
2. If the board has granted a peace officer a waiver or a partial waiver, the board may only allow the peace officer one attempt to successfully complete the licensing examination. If a passing score is not obtained on the first attempt, the board shall deny the application for the waiver and the peace officer must complete the full certified basic training course before taking the licensing examination for the second time.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-08(1)

#### **109-02-02-06. Licensing examinations.**

1. **Application.** Licensing examinations must be according to board requirements. A minimum score of seventy percent is necessary for successful completion of the licensing examination. The applicant for any licensing examination shall submit a request prior to the date of the examination. The appropriate nonrefundable fee established by the board must accompany the request.
2. **Retaking examinations.** An applicant who fails an examination may retake that examination one time upon furnishing to the board a renewed request and required fee. After the second unsuccessful attempt and before retaking the examination, the applicant must successfully complete a board-approved law enforcement basic training program.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04, 12-63-07

#### **109-02-02-07. Licensing of peace officers.**

1. **Notification.** The employing agency shall notify the board of the appointment of any person to the position of peace officer before the first day of the person's employment. The agency shall provide the notification on a form provided by the board.

2. **Application procedures.** If the person is not already a licensed peace officer, but is eligible to be licensed, the person shall apply to be licensed at the time of appointment. The application must be made on a form provided by the board, and both the person and the agency administrator shall verify that the applicant is eligible to be licensed. The applicable license fee must accompany the application.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04, 12-63-06, 12-63-07, 12-63-09

**109-02-02-08. Medical and psychological evaluation.** An applicant for a peace officer license shall undergo a board-approved psychological and medical evaluation and shall submit the results of the evaluations with the application for the peace officer license or limited license.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-06(4)

**109-02-02-09. Compliance with sidearm qualification as a license requirement.** The board may not issue, renew, or reinstate a peace officer license or limited license unless the peace officer has complied with all sidearm qualification requirements.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(d)

**109-02-02-10. License certificate.** The board shall issue a license certificate to a person who has complied with the requirements of law and whose affirmations are consistent with the board's records and payment of required fees. The period of the initial licensure must be determined according to section 109-02-02-11.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d), 12-63-05

**Law Implemented:** NDCC 12-63-05, 12-63-10

**109-02-02-11. Fees.**

1. The following fees are nonrefundable:
  - a. Application for examination fee - twenty-five dollars.
  - b. License fee - the license fee is forty-five dollars if the licensee is to be licensed for thirty to thirty-six months; thirty dollars if the licensee is to be licensed for at least eighteen months but less than thirty

months; and fifteen dollars if the licensee is to be licensed for less than eighteen months.

- c. Renewal fee - forty-five dollars for a three-year period.
- d. Late renewal fee - one hundred dollars.
- e. Reinstatement fee - two hundred fifty dollars.
- f. Duplicate license fee - twenty-five dollars.

2. License period and renewal terms.

- a. If the peace officer's surname begins with the letters A through G, the peace officer's license term is for the period July 1, 2002, through December 31, 2005, and the peace officer shall renew the license by December thirty-first every third year thereafter.
- b. If the surname begins with the letters H through M, the peace officer's license term is for the period July 1, 2003, through December 31, 2006, and the peace officer shall renew the license by December thirty-first every third year thereafter.
- c. If the surname begins with the letters N through Z, the peace officer's license term is for the period July 1, 2001, through December 31, 2004, and the peace officer shall renew the license by December thirty-first every third year thereafter.
- d. If a peace officer is newly hired during the three-year cycle, the officer shall meet the prorated share of the requirements needed until the officer's renewal date arrives.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d), 12-63-05

**Law Implemented:** NDCC 12-63-05, 12-63-10

**109-02-02-12. Surrender of license certificate.** Licenses remain the property of the board. A peace officer shall surrender the license certificate and any renewal certificates if the board has suspended or revoked the peace officer's license or the peace officer has not requested inactive status and has allowed the peace officer license to expire.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-02, 12-63-04, 12-63-11(2)

**109-02-02-13. Lapse of license.** A peace officer that does not perform duties as a peace officer, is no longer employed by an agency, or otherwise allows

the peace officer's license to expire shall comply with the following conditions for reinstatement:

1. A person who has not been employed by a law enforcement agency for less than two years may apply for reinstatement of the person's peace officer license. The person shall pay the reinstatement fee. The person shall obtain sufficient makeup continuing education hours within three months of reinstatement.
2. A person who has not been employed by a law enforcement agency for two to five years may apply for reinstatement of the person's peace officer license. The person shall successfully complete the licensing examination and obtain sufficient continuing education hours within six months of reinstatement. The person shall pay the reinstatement fee and the application for examination fee.
3. A person who has not been employed as a peace officer by a law enforcement agency for five to seven years may apply for reinstatement of the person's peace officer license. The person shall successfully complete the licensing examination and pay the reinstatement fee and the application for examination fee. The person shall attain the sufficient makeup continuing education hours within six months of reinstatement. If the person fails the licensing examination on the first attempt, the person shall successfully complete the process that is required for a new peace officer.
4. A person who has not been employed as a peace officer by a law enforcement agency for seven or more years shall meet all license requirements necessary for an original application for a peace officer license.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**109-02-02-14. Inactive status.** A person who does not perform duties as a peace officer or is no longer employed by an agency may request that the person's license be placed on inactive status. The person's license may remain on inactive status indefinitely if the person maintains continuing education requirements and renews the license in accordance with board requirements.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-11(2)

**109-02-02-15. License requirements to remain licensed or to obtain renewal or reinstatement of a license.**

1. In order for a peace officer to remain licensed, the peace officer shall continue to meet all the minimum license requirements and shall receive a minimum of sixty hours of board-certified or board-approved training every three years, including up to sixty hours of certified law enforcement training or up to sixty hours attending board-approved or board-certified criminal justice seminars or a combination of both, as long as there is a total of sixty hours. Training may not be in increments of less than one hour. The training may be attended in any hour grouping, as long as it totals a minimum of sixty hours within a three-year period. A surplus in training hours may not be carried forward into the next three-year period.
2. All peace officers shall meet the continuing certified training license requirements by the following dates:
  - a. If the peace officer's surname begins with the letters A through G, the peace officer shall meet the sixty-hour continuing education requirement for the period July 1, 2002, through December 31, 2005, and shall meet the sixty-hour continuing education requirement within every three years by December thirty-first of the third year thereafter.
  - b. If the surname begins with the letters H through M, the peace officer shall meet the sixty-hour continuing education requirement for the period July 1, 2003, through December 31, 2006, and shall meet the sixty-hour continuing education requirement within every three years by December thirty-first of the third year thereafter.
  - c. If the surname begins with the letters N through Z, the officer shall meet the sixty-hour continuing education requirement for the period July 1, 2001, through December 31, 2004, and shall meet the sixty-hour continuing education requirement within every three years by December thirty-first of the third year thereafter.
  - d. If an officer is newly hired during the three-year cycle, the peace officer shall meet the prorated share of the sixty-hour continuing education requirements needed until the peace officer's license renewal date arrives.
3. It shall be the duty of each agency that employs peace officers to forward a record of each peace officer's board-approved training to the board prior to the peace officer's license renewal date.
4. A peace officer that has enrolled and completed college courses may request a waiver of the sixty-hour training requirement for renewal of

the peace officer's license. The board may grant the request upon a showing of successful completion of at least:

- a. Three semester hours of college credit in a criminal justice-related or job-related topic; or
  - b. Five quarter hours of college credit in a criminal justice-related or job-related topic.
5. If a training course or seminar does not have board preapproval, the peace officer or the peace officer's employing agency shall request approval of the training course or seminar at least thirty days prior to the commencement of the training course or seminar. A course or seminar that has not been approved by the board may not qualify toward the sixty-hour continuing training requirement.
  6. If a peace officer fails to complete the required sixty-hour continuing education within the time period specified in this section, or the peace officer or the peace officer's agency fails to submit a record of the peace officer's approved continuing education to the board within the time period specified in this section, the peace officer's license expires and is no longer in effect and the peace officer must go through the reinstatement process.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

#### **109-02-02-16. License renewal.**

1. **Application.** An application for renewal of a peace officer license must be made on forms issued by the board.
2. **Certificate of renewal.** The board shall issue a certificate of renewal, which is valid for three years, to each peace officer that has submitted the appropriate fee on or before December thirty-first of the year the peace officer's license must be renewed and who has complied with all licensing requirements, including continuing education and annual sidarm qualification. If the peace officer fails to apply for renewal by December thirty-first, the peace officer's license expires and is no longer in effect.
3. **Late renewal.** If a peace officer fails to renew a license by December thirty-first, the peace officer may apply for renewal no later than January thirty-first of the following year upon payment of the late renewal fee.
4. **Reinstatement of expired license.** If a peace officer fails to apply for renewal of a license within one month after the application for renewal is due, the peace officer may only apply for reinstatement of

the license. The application for reinstatement must include payment of the reinstatement fee provided in these rules. The board may reinstate the applicant's peace officer license after the applicant has complied with all board license requirements, including continuing education and sidearm qualification requirements.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04, 12-63-11

**109-02-02-17. Termination of peace officer status.** An agency's termination of a person's peace officer status as defined in North Dakota Century Code section 12-63-01, whether the termination is voluntary or involuntary, may not preclude revocation, suspension, or denial of the person's peace officer license by the board.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-13, 12-63-14

**109-02-02-18. Notice of termination.** If an agency terminates a peace officer's employment, the agency administrator shall notify the board within five days of the termination on a form prescribed by the board. The notice of termination must include:

1. The nature and cause of the termination.
2. The effective date of the termination.
3. A statement from the agency administrator indicating whether or not the agency administrator is recommending denial, suspension, or revocation of the peace officer license to the board.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-01(2), 12-63-12, 12-63-13

**109-02-02-19. Notice of denial, suspension, or revocation - Hearing.** The board shall notify a peace officer in writing when there is a reasonable basis to deny, refuse to renew or reinstate, suspend, revoke, or impose probationary conditions on a peace officer's license. The notice must specify the basis of the denial, refusal to renew or reinstate, suspension, revocation, or probationary conditions. The peace officer may request an administrative hearing on the denial, refusal to renew or reinstate, suspension, revocation, or probationary conditions. The board may take adverse license action by service of an administrative complaint on the peace officer. The board shall also notify a peace officer's

agency if the board has commenced adverse license action against a peace officer employed by the agency.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-12, 12-63-13

**CHAPTER 109-02-03**  
**MINIMUM STANDARDS OF TRAINING PRIOR TO CARRYING A WEAPON**

<u>Section</u>	
<u>109-02-03-01</u>	<u>Sidearm Authorization and Qualification</u>
<u>109-02-03-02</u>	<u>Weapons Safety and Proficiency Examination</u>
<u>109-02-03-03</u>	<u>Shotgun, Rifle, and Special Weapons Certification</u>
<u>109-02-03-04</u>	<u>Regualification Required Annually</u>
<u>109-02-03-05</u>	<u>Certified Shooting Course</u>
<u>109-02-03-06</u>	<u>Criteria for a Certified Shooting Course</u>
<u>109-02-03-07</u>	<u>Issuance, Denial, or Revocation of Qualification</u>
<u>109-02-03-08</u>	<u>Waiver</u>
<u>109-02-03-09</u>	<u>Notice of Denial or Revocation of Qualification - Hearing</u>

**109-02-03-01. Sidearm authorization and qualification.** A peace officer may not carry a sidearm in the course of employment or in the performance of official duties unless the officer has successfully completed the sidearm qualification requirements and the board has issued a peace officer license or limited license. Sidearm qualification requires completion of a weapons safety and proficiency test approved by the board.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(d)

**109-02-03-02. Weapons safety and proficiency examination.** The board shall establish and certify a weapons safety and proficiency qualification examination, including:

1. A written examination, including weapons safety, weapons handling, mechanical operations, criminal and civil liability on the use of force, and North Dakota laws on the use of force and on firearms requirements. A minimum score of seventy percent overall with one hundred percent required for the North Dakota law portion is necessary for successful completion of the written examination.
2. A certified sidearm shooting course using the duty weapon, duty equipment, and duty ammunition. Successful completion of this portion requires a minimum score of seventy percent and the demonstration of competence in sidearm skills as determined by a certified weapons instructor.
3. A peace officer may not take the written examination or sidearm qualification test more than three times in any twelve-month period. After the third unsuccessful attempt, the peace officer must wait one year before retaking the examination or sidearm qualification test.

4. Only a certified weapons instructor may administer the weapons safety and proficiency examination or sidearm qualification test.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(d)

**109-02-03-03. Shotgun, rifle, and special weapons certification.** An agency may require peace officers that carry a shotgun, rifle, or special weapons, including assault rifles, sniper or countersniper rifles, or automatic weapons, to complete a certified rifle, shotgun, or special weapons examination.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**109-02-03-04. Requalification required annually.** Every peace officer shall requalify with the peace officer's duty weapon each year as a license requirement.

1. Sidearm requalification requires successful completion of a certified shooting course at least once during each calendar year.
2. For those not required to carry a sidearm, the peace officer's agency may apply to the board for a waiver of the sidearm qualification requirements.
3. Peace officers who have not requalified in over two years shall successfully complete both the written examination and a certified shooting course as a condition of licensing, license renewal, or license reinstatement.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(d)

**109-02-03-05. Certified shooting course.** All agencies that use their own shooting course must have certification of the course from the board. A peace officer may not qualify or requalify on a noncertified course.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(d)

**109-02-03-06. Criteria for a certified shooting course.** A sidearm shooting course must meet the following requirements before the agency may receive certification for the course and before a peace officer may qualify or requalify with the peace officer's duty weapon:

1. The course must provide for a minimum of three firing positions, including:
  - a. Prone.
  - b. Sitting.
  - c. Standing.
  - d. Kneeling.
  - e. Point shoulder.
  - f. Crouch.
  - g. Walking.
  - h. Barricade position.
2. The course must induce stress by the use of time, physical activity, or night or low light conditions or a combination of all three. The course must provide a time limit for course completion.
3. The course must include firing from at least three different distances:
  - a. The distance may not be less than one yard [.91 meter] nor more than twenty-five yards [22.86 meters].
  - b. The majority of firing must occur at seven yards [6.40 meters] or more.
4. The course must include firing at least eighteen but not more than sixty rounds of ammunition from start to finish.
5. The course must be fired completely with the peace officer's duty weapon and duty equipment and include left-hand and right-hand shooting. An approved substitute weapon of the same type, model, and manufacture as the duty weapon may be used if the duty weapon becomes defective during firing.
6. The ammunition used when firing for qualification must be ballistically similar to the ammunition normally carried on duty.
7. Only silhouette targets may be used on a certified shooting course.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(d)

**109-02-03-07. Issuance, denial, or revocation of qualification.**

1. The board shall review all applications for sidearm qualification and requalification. The board may deny an application for sidearm qualification or requalification:
  - a. If the applicant failed to successfully complete the written examination or the shooting course;
  - b. Upon a finding that the applicant falsified any information required to obtain qualification or requalification;
  - c. Upon the written recommendation of a certified instructor; or
  - d. If the shooting course was not board-certified.
2. The board may require any peace officer to requalify based upon the written recommendation of the agency administrator or certified weapons instructor or when the board deems it necessary.
3. Documentation for sidearm qualification and requalification must be submitted to the board on forms provided by the board and must include:
  - a. Identification of the peace officer.
  - b. Identification of the weapons instructor.
  - c. Identification of the duty weapon, including model and manufacturer.
  - d. Date of qualification or requalification.
  - e. Shooting course.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(d)

**109-02-03-08. Waiver.** The board may waive the requirement of any provision of this chapter upon presentation of documentary evidence by an agency that a peace officer has satisfactorily completed equivalent training or has equivalent experience.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(d)

**109-02-03-09. Notice of denial or revocation of qualification - Hearing.**  
The board shall notify in writing any peace officer and the agency administrator when the board believes there is a reasonable basis for revoking or denying qualification or requalification of the peace officer. The notice must specify the basis of the revocation or denial. Every peace officer has the right to a hearing on the issue of denial or revocation.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04

**CHAPTER 109-02-04**  
**INSTRUCTOR AND TRAINING COURSE CERTIFICATION**

<u>Section</u>	
<u>109-02-04-01</u>	<u>Certification of Instructors</u>
<u>109-02-04-02</u>	<u>Requirements for Certification of Law Enforcement Instructors</u>
<u>109-02-04-03</u>	<u>Certification Duration</u>
<u>109-02-04-04</u>	<u>Application for Instructor Certification</u>
<u>109-02-04-05</u>	<u>Requirements for Weapons Instructor Certification</u>
<u>109-02-04-06</u>	<u>Weapons Instructors Must Be Recertified</u>
<u>109-02-04-07</u>	<u>Certification of Qualified Schools and Qualified Training Courses</u>
<u>109-02-04-08</u>	<u>Basic Law Enforcement Training Course Requirements</u>
<u>109-02-04-09</u>	<u>Application for Course Certification</u>
<u>109-02-04-10</u>	<u>Notice of Revocation or Denial - Hearing</u>

**109-02-04-01. Certification of instructors.** The board shall certify law enforcement instructors who the board has determined are qualified, based on the instructor's education, training, and experience, to teach one or more law enforcement subjects in accordance with the requirements of this chapter.

1. The board may deny, deny renewal of, or suspend an instructor's certification if it determines that the instructor fails to meet the requirements of this chapter to teach one or more law enforcement subjects.
2. The board may deny, deny renewal of, suspend, or revoke an instructor's certification if the board finds that false information was willfully submitted to the board for purposes of obtaining instructor certification or renewal of certification.
3. It is the responsibility of each agency administrator or agency training officer to regularly supervise its instructors to ensure that its instructors meet the requirements of this article and maintain quality instruction.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-02. Requirements for certification of law enforcement instructors.**

1. A person applying for certification as a law enforcement instructor to teach peace officer subjects, including patrol, investigation, or the use of weapons, must have:
  - a. A high school diploma or its equivalent;

- b. Two years' experience as a licensed peace officer or equivalent;
  - c. Verified training or documented experience in each subject to be taught;
  - d. Compliance with all board requirements, including successful completion of a course of instructor development training or its equivalent approved by the board, including training in the areas of communication, psychology of learning, techniques of instruction, use of instructional aids, preparation and use of lesson plans, preparing and administering tests, teaching resources, and motivation; and
  - e. A recommendation by the applicant's agency administrator or training officer.
2. The board may waive any part of the requirements of this section if it finds that a person who does not satisfy all requirements of this section is otherwise qualified to be an instructor.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-03. Certification duration.** A law enforcement instructor's certification is effective for no more than four years. At the end of the four-year period, the board may renew the instructor's certification provided that:

- 1. The instructor has completed a board-approved instructor refresher course at least once during the certification period;
- 2. The instructor is recommended by the agency administrator or training officer under whose supervision the instructor last instructed; and
- 3. A law enforcement instructor who has not completed a board-approved instructor refresher course during the forty-eight-month period of certification may not apply for renewal and instead must apply for new certification.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-04. Application for instructor certification.**

- 1. Applications for instructor certification must be made on a board-approved form.

2. The board shall review all applications for certification. The board may issue an instructor's certificate, issue an instructor's certificate subject to conditions, or deny issuance of the certificate.
3. The board shall forward an instructor's certificate to an applicant upon approval of an application by the board.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-05. Requirements for weapons instructor certification.** To be certified as a weapons instructor, a peace officer shall successfully complete a board-certified method of instruction course and a board-certified weapons instructor course. If the peace officer is only going to conduct qualification testing on a certified shooting course, the peace officer only needs to successfully complete a board-certified weapons instructor course.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-06. Weapons instructors must be recertified.**

1. Weapons instructors must apply to the board for instructor recertification every four years by the anniversary date of the instructor's original certification. Each instructor shall successfully complete a board-certified weapons instructor refresher course at least once during the four-year period in order to be eligible for recertification.
2. Within fifteen days after a peace officer or applicant has completed a certified shooting course, the weapons instructor shall forward a completed qualification or requalification form for the peace officer or applicant to the executive secretary.
3. The board may suspend a weapons instructor's certification if the weapons instructor fails to submit a peace officer's or applicant's qualification or requalification form to the executive secretary within fifteen days after the peace officer has completed a certified shooting course.
4. The board shall notify a weapons instructor in writing if it suspends the instructor's certification. The notice must specify the basis of the suspension. The weapons instructor may request an administrative

hearing on the issue of suspension of the weapons instructor's certification.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-07. Certification of qualified schools and qualified training courses.** The board shall certify those schools it has determined are qualified to teach one or more law enforcement-related subjects and qualified training courses.

1. The board shall issue temporary certification to qualified schools offering training programs on a one-time or infrequent basis and for qualified training courses that are offered on a one-time or infrequent basis. Temporary certification may only be for a specific program and may only be issued for a specified period of time not to exceed one year. The board may not issue temporary certification for training conducted within an agency on an unscheduled or infrequent basis for less than an hour per session or by an uncertified instructor.
2. The board shall grant continuing certification to qualified schools conducting peace officer training on a regular basis and for qualified training courses that are conducted on a regular basis. Continuing certification remains effective until surrendered or revoked, but may not exceed four years.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-08. Basic law enforcement training course requirements.**

1. The basic law enforcement training course must be based on performance objectives essential for law enforcement in the state of North Dakota, regardless of agency or assignment and must include classroom training, field training, and firearms training.
2. The board may waive the requirement to take any part of the basic law enforcement training course upon application by an agency and submission of sufficient documentation that the peace officer has equivalent training or experience.
3. The basic law enforcement training course shall include testing to determine whether a trainee has learned and can perform the performance objectives. The academy conducting the basic law enforcement training course shall maintain accurate records of tests and testing procedures.

4. The academy shall notify the board and the trainee's agency whenever the trainee fails to complete or pass any part of the basic law enforcement training course.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-09. Application for course certification.** The following procedures apply to all training courses for which certification is requested:

1. The person who plans or coordinates a training program shall submit an application for program certification to the board no later than thirty days in advance of the date the training program is to commence.
2. The application must include:
  - a. A course curriculum showing the date and location of the course, the hours of instruction, a description of the group to be taught, including the number of students and their background, the method of evaluation, and lesson plan; and
  - b. Information concerning the instructors' education and experience if the instructors have not been certified by the board.
3. Within fifteen days after the completion of a training program, the training coordinator shall submit to the board a completed student roster on a form approved by the board. The form must include each peace officer's name and employing agency, hours attended, course name and subject matter, the training location, and the dates and times of training.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

**109-02-04-10. Notice of revocation or denial - Hearing.** The board shall notify in writing any instructor or school when there is a basis for revoking or denying certification or renewal of certification of an instructor or school. The notice must specify the basis of the revocation or denial. The instructor or school has the right to a hearing on the issue of denial or revocation.

**History:** Effective October 1, 2004.

**General Authority:** NDCC 12-63-04(2)(d)

**Law Implemented:** NDCC 12-63-04(1)(a)(b)(c)

