

NORTH DAKOTA ADMINISTRATIVE CODE

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**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**



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TITLE 7
AGRICULTURE COMMISSIONER

APRIL 2010

**CHAPTER 7-06-01
GENERAL PROVISIONS**

Section

7-06-01-01	Weed Control Officer's Certification [Repealed]
7-06-01-02	Noxious Weeds Listed

7-06-01-01. Weed control officer's certification. A weed control officer shall be certified upon completion of certification in two categories under North Dakota Century Code chapter 4-35. The two categories are agricultural pest control and right of way. A temporary certification may be issued for a period of one year to a weed control officer. Repealed effective April 1, 2010.

History: Amended effective February 1, 1982.

General Authority: NDCC 28-32-02, 63-01-1-03

Law Implemented: NDCC 63-01-1-05.1

7-06-01-02. Noxious weeds listed. Weeds declared noxious shall be confined to weeds that are difficult to control, easily spread, and injurious to public health, crops, livestock, land, or other property. The following weeds have been declared noxious for the purpose of North Dakota Century Code chapter 63-01.1:

1. Absinth wormwood (*artemisia Artemisia absinthium L.*).
2. Canada thistle (*cirsium Cirsium arvense (L.) ssp. (L.) Scop.*).
3. Dalmatian toadflax (*Linaria genistifolia ssp. spp. dalmatica*).
4. Diffuse knapweed (*centaurea Centaurea diffusa Lam.*).
5. Field bindweed (*convolvulus arvensis L.*).
6. Leafy spurge (*euphorbia Euphorbia esula L.*).
7. Musk thistle (*carduus Carduus nutans L.*).

8. 7. Purple loosestrife (*Lythrum* *Lythrum salicaria* L., *Lythrum* *Lythrum virgatum* L., and all cultivars).
9. 8. Russian knapweed (*Aeroptilon* *Centaurea repens* (L.) DC. L.).
10. 9. Saltcedar (*Tamarix ramosissima* Ledeb., including *T. chinensis* and *T. parviflora* DC. *Tamarisk* spp.).
11. 10. Spotted knapweed (*centaurea* *Centaurea maculosa* Lam.).
12. Yellow starthistle (*centaurea solstitialis* L.).
11. Yellow toadflax (*Linaria vulgaris*).

History: Amended effective June 1, 1985; February 1, 2000; September 1, 2002; April 1, 2010.

General Authority: NDCC 4.1-47-04, 28-32-02, 63-01.1-03

Law Implemented: NDCC 63-01.1-03 4.1-47-04

TITLE 10
ATTORNEY GENERAL

APRIL 2010

CHAPTER 10-12-01

10-12-01-01. Incomplete application Definitions. All applications for a concealed weapons permit must be made on a form approved by the chief agent of the bureau of criminal investigation. All applications received by the chief agent of the bureau of criminal investigation must be completed before they will be considered for approval and processing. To be considered complete, an application must The terms used throughout this chapter have the same meaning as in the North Dakota Century Code unless otherwise defined here:

1. Have all the information blanks on the front of the application answered, either with the information requested or with an N/A for nonapplicable where appropriate. "Agency" means the attorney general's office bureau of criminal investigation division.
2. Have the test block section on the reverse side of the application filled in by the test administrator. The test administrator must indicate whether the written and proficiency tests have been passed and must include that administrator's signature. "Applicant" means an individual who is applying for a concealed weapons license.
3. Have the signed approval of the local county sheriff. "Class 1 license" means a concealed weapons license issued to a person at least twenty-one years of age who has participated in classroom instruction on weapon safety rules and the deadly force law of North Dakota, has demonstrated evidence of familiarity with a firearm or dangerous weapon, and has successfully completed an actual shooting or certified proficiency exercise in accordance with these rules.
4. Have the signed approval of the local chief of police, if there is one. "Class 2 license" means a concealed weapons license issued to a person at least eighteen years of age who has successfully completed an open-book examination on weapon safety rules and the deadly force law of North Dakota.

5. Have one fingerprint card containing the classifiable fingerprints of the applicant attached. "Concealed weapons license" means a class 1 or class 2 license issued by the director of the bureau of criminal investigation to carry a firearm or dangerous weapon concealed.
6. Have two driver's license-style color photographs attached. "Director" means the director of the bureau of criminal investigation.
7. "Instructor" means an individual certified by the attorney general to provide classroom instruction on weapon safety rules and the North Dakota deadly force law, administer written examinations for concealed weapons licenses, determine evidence of familiarity with firearms and dangerous weapons, and conduct shooting and proficiency exercises for firearms and dangerous weapons.

All incomplete applications received by the chief agent of the bureau of criminal investigation will be returned to the applicant for completion.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03

10-12-01-02. Permits for multiple types of weapons Application for concealed weapons license. If an individual wishes a concealed weapons permit for several different weapons types, i.e., firearm and knife, stun gun and knife, etc., only one written test need be taken and passed. However, the applicant must pass a proficiency test for each weapon type for which a proficiency test is required. The test administrator may charge for each proficiency test, as long as the total charge does not exceed fifty dollars.

If the applicant wishes to obtain a concealed weapons permit for additional weapons types after receiving the initial permit, then a new application with the word "amended" printed on the top must be completed. The only blank on the application that would not need to be completed is the blank indicating that the written test has been passed. The test administrator may charge a fee for the proficiency test on these additional weapons types as long as that fee does not exceed fifty dollars.

1. An application for a class 1 or class 2 concealed weapons license must be on a form approved by the director of the bureau of criminal investigation. Only a completed application may be approved by the director. The application must include:
 - a. All questions on the application answered, either with the information requested or marked "N/A" for nonapplicable, where appropriate;
 - b. A valid reason for the applicant carrying a concealed weapon;

- c. The signed approval of the sheriff of the applicant's county of residence. The sheriff may not approve the application for a concealed weapons license until the applicant has successfully completed a background investigation in that county and has successfully completed the testing procedures specified in this chapter:
- d. If the applicant resides in a city with a police department, signed approval of the chief of police or the chief's designee:
- e. Two fingerprint cards containing the classifiable fingerprints of the applicant; and
- f. Two passport-size color photographs of the applicant.

The applicant shall provide to the agency all documentation relating to any court-ordered treatment or commitment for mental health or alcohol or substance abuse or incidents of domestic violence.

The applicant shall provide to the director written authorizations for disclosure of the applicant's mental health and alcohol or substance abuse evaluation and treatment records.

A license fee in the amount of forty-five dollars, by certified check or money order, payable to the order of the attorney general.

- 2. The sheriff shall process the application within thirty days after completion of the testing portion of the application process.
- 3. If the applicant resides in a city that has a police department, the chief of police shall process the application within ten working days from receipt of the application by the city's police department.
- 4. The agency shall process the application and make a determination whether to issue the concealed weapons license within thirty days from receipt of the application from the forwarding law enforcement agency.
- 5. The applicant must be a citizen of the United States and successfully pass a criminal history background investigation conducted by the agency.
- 6. The instructor shall complete the application as follows:
 - a. If the application is for a class 2 concealed weapons license, the instructor shall complete the test block section and verify whether the applicant has completed an open-book written test on weapon safety rules and the deadly force law of North Dakota. The instructor shall sign the application.

- b. If the application is for a class 1 concealed weapons license, the instructor shall complete the test block section and verify whether the applicant has participated in classroom instruction on weapon safety rules and the deadly force law of North Dakota, has demonstrated familiarity with a firearm or dangerous weapon, has completed a shooting course for firearms or a proficiency exercise for other dangerous weapons, and has passed an open-book written test on weapon safety rules and the deadly force law of North Dakota. The instructor shall sign the application.
7. An incomplete application will be returned to the applicant for completion.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03 62.1-04-03(1), 62.1-04-03(4), 62.1-04-03(5)

10-12-01-03. Nonresident applicants. Residents of the United States citizens who are not residents of North Dakota may obtain a North Dakota concealed weapons permit license. To obtain a permit license, the individual must complete the same application process and meet the same criteria as a North Dakota resident nonresident shall comply with all requirements of North Dakota Century Code chapter 62.1-04 and these rules.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03 62.1-04-03(1)

10-12-01-04. Written Classroom instruction and written test. The written test must be an open-book test approved by the attorney general. The test must consist of ten questions.

1. Applicants for a class 2 concealed weapons license shall successfully complete the written examination and submit an application for a concealed weapons license.
2. Applicants for a class 1 concealed weapons license shall attend classroom instruction on weapon safety rules and the deadly force law of North Dakota before they may complete the written examination and submit an application for a concealed weapons license. Only instructors certified under this chapter may conduct classroom instruction for applicants for concealed weapons licenses.
3. The written test must be an open-book test approved by the attorney general. The written test must include examination on weapons safety rules and the deadly force law of North Dakota. A minimum score of seventy percent overall and one hundred percent on the deadly force law of North Dakota is necessary to pass the written test. The written

test may only be administered within the state of North Dakota and by an instructor certified under this chapter. The written test may not be administered in conjunction with any other state's concealed weapons laws or procedures.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03 62.1-04-03(2)

10-12-01-05. Proficiency and shooting test. ~~The attorney general shall set forth the criteria for the proficiency tests.~~

For firearms, it must be as follows:

1. **Target.** Must be a humanoid, silhouette target of either the duelatron or the B-27 type. Only an instructor certified under this chapter may administer a firearm shooting or proficiency exercise. Successful completion of the firearm shooting or proficiency exercise requires demonstrated familiarity and safety with a firearm or dangerous weapon.
2. **Range.** Seven yards (twenty-one feet [6.40 meters]). Evidence of familiarity with a firearm or dangerous weapon may be satisfied by one of the following:
 - a. Certification of familiarity with a firearm or dangerous weapon by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, hunter safety instructor, or dangerous weapons instructor;
 - b. Evidence of equivalent experience with a firearm or dangerous weapon through participation in an organized shooting competition, law enforcement, military service, or dangerous weapons course of training;
 - c. Possession of a license from another state to carry a firearm or dangerous weapon, concealed or otherwise, which is granted by that state upon completion of similar or equivalent classroom instruction, testing, and demonstration of firearm or dangerous weapon familiarity and proficiency; or
 - d. Evidence that the applicant, during military service, was found to be qualified to operate a firearm or dangerous weapon.
3. **Time.** Five minutes. The firearm shooting exercise may only be conducted within the state of North Dakota and in accordance with shooting criteria approved by the director. The minimum passing score is seventy percent of the total rounds fired.

4. **Number of rounds.** Ten. No more than six rounds may be loaded at any time. The individual must safely reload during the firing sequence. The applicant may use any safe firearm with any type of ammunition suitable for that firearm. The instructor shall determine whether the firearm is safe and the ammunition is appropriate before the shooting exercise starts. The applicant must be able to load, unload, and holster and carry the firearm safely.
5. **Weapon.** Any safe weapon with any type of ammunition suitable for that weapon may be used. If the applicant is applying for a concealed weapons license for a dangerous weapon as defined in subsection 1 of North Dakota Century Code section 62.1-01-01 and the weapon is not a firearm, the applicant shall demonstrate familiarity, safety, and proficiency in handling the weapon.
6. **Starting position.** The weapon must be loaded and holstered after arrival to the line and under the direction and observation of the test administrator. Upon command, the weapon should be drawn and fired. If no holster is to be used, then any safe carrying method may be used. The firearm shooting or proficiency exercise may not be administered in conjunction with any other state's concealed weapons license application process.
7. **Scoring.** All hits on the silhouette count one point. Seven points are needed to pass.
8. **Position.** Any standing position may be used, i.e., one-handed or two-handed, "weaver" stance, "crouch," etc.
9. **Passing.** In order to pass, the individual must:

 - a. Score a minimum of seven points; and
 - b. Be able to load, unload, carry, and fire the weapon safely.

Only this course of fire may be used.

For other weapons, it must be designated by the attorney general on an individual weapon type basis. The emphasis on this testing must be testing the applicant for familiarity with the weapon and to demonstrate safety in the handling of that weapon type.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03 62.1-04-03(2)

10-12-01-06. Lost or destroyed permits licenses. If a permitholder loses his or her permit or if concealed weapons license is lost or destroyed, the licenseholder may obtain a replacement may be obtained license. In order to

obtain a new permit replacement license, the applicant must licenseholder shall send a letter to the chief agent director of the bureau of criminal investigation indicating the applicant's licenseholder's name, address, and date of birth. In addition, the letter must state include the reason the applicant licenseholder needs a replacement permit license. In addition, the applicant must also attach one driver's license style photograph to the letter.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03

10-12-01-07. Revocation or suspension Denial, revocation, or cancellation of a concealed weapons permit license. The chief agent director of the bureau of criminal investigation may deny, revoke, or suspend cancel a concealed weapons permit license for the following reasons:

1. The permitholder has become one of the persons listed in applicant or licenseholder is prohibited from owning, possessing, or having a firearm under North Dakota Century Code section 62.1-02-01 or under federal law or has committed any other violation of North Dakota Century Code title 62.1; or
2. Upon the written recommendation of any law enforcement officer or upon information received from any other source that would indicate to the chief agent of the bureau of criminal investigation that there exists a valid reason to revoke or suspend such permit. Examples of these valid reasons are as follows:
 - a. A criminal violation occurred while the permitholder was in the possession of a concealed weapon.
 - b. A conviction of any weapons law or this chapter has occurred.
 - c. The applicant made a material false statement misstatement on the application form for the concealed weapons permit license.
 - d. Any other good and valid reason that has a direct bearing on the individual's fitness to carry and possess a concealed weapon.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03 62.1-04-03(1)(f), 62.1-04-03(6), 62.1-04-03(7)

10-12-01-08. Denial Renewal of a concealed weapons permit license. The chief agent of the bureau of criminal investigation may deny a concealed weapons permit for any of the following reasons. A concealed weapons license may be renewed if a current licenseholder is eligible for a concealed weapons license and completes a renewal application subject to the following conditions:

1. The applicant is prohibited by North Dakota Century Code section 62.1-02-01 from possessing any weapon. Licenses issued before August 1, 2009, regardless of the age of the licenseholder, convert to a class 2 license upon renewal and no additional testing is required. No additional testing is required to renew a class 2 license. Renewal applications for a class 2 license must be submitted not earlier than ninety days prior to and not later than ninety days after the class 2 license expires. Approval of renewal applications received outside these timeframes is at the discretion of the director.
2. The applicant has failed to state a valid reason to possess a concealed weapon. A class 1 license may be renewed upon successful completion of the class 1 requirements within one year before submission of the application for renewal. Renewal applications for a class 1 license must be submitted not earlier than ninety days prior to and not later than ninety days after the class 1 license expires. Approval of renewal applications received outside these timeframes is at the discretion of the director.
3. The applicant has not filed a completed application as required in section 10-12-01-01. A license issued before August 1, 2009, and a class 2 license may be upgraded to a class 1 license upon successful completion of the class 1 license requirements and satisfaction of the age requirement.
4. The applicant made a material false statement on the application for a concealed weapons permit. The renewal application must be processed within thirty days after its receipt by the sheriff. The chief of police, if applicable, is required to process the renewal application within ten working days of receipt by the agency. The bureau of criminal investigation is required to process the renewal application and make a determination within thirty days of receipt.
5. For any other good and valid reasons that has a direct bearing on the individual's fitness to carry and possess a concealed weapon.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03

10-12-01-09. Residence change or change in material facts. All holders of a concealed weapons permit must

1. A concealed weapons licenseholder shall notify the chief agent director of the bureau of criminal investigation within thirty days of their moving to an address different than what is listed on their permit of that a change of address. That The notification must be in writing and must contain at a minimum include the applicant's licenseholder's name, former address, permit license number, and new address. The new

address must include the new house number or apartment number, street name, city, zip code, and county.

2. The applicant or licenseholder shall notify the director of any change of material facts that affect the need for or possession of a concealed weapons license.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03 62.1-04-03(5)

10-12-01-10. Appeals and reconsideration. All appeals of decisions of the chief agent of the bureau of criminal investigation must be made pursuant to and in accord with North Dakota Century Code chapter 28-32.

1. An individual who is aggrieved by the decision of the director to deny an application for a license or a renewal of a license, or to suspend or cancel a license, may petition for reconsideration and rehearing under North Dakota Century Code section 28-32-40.
2. An individual who is aggrieved by the decision of the director to deny an application for a license or a renewal of a license, or to suspend or cancel a license, may appeal to the district court of Burleigh County under North Dakota Century Code section 28-32-42.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 28-32-40, 28-32-42, 62.1-04-03

Law Implemented: NDCC 62.1-04-03 62.1-04-03(7)

10-12-01-11. Applicability of requirements Reciprocity. All three-year permits are issued pursuant to and subject to this chapter and all North Dakota weapons law restrictions. The attorney general may enter into reciprocity agreements with other states to recognize another state's concealed weapons license if a reciprocity agreement is required by the other state in order to recognize North Dakota's concealed weapons license.

History: Effective September 1, 1986; amended effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03

10-12-01-12. Firearm or dangerous weapons instructor certification.

1. The attorney general may certify firearm or dangerous weapons instructors to conduct classroom instruction, administer the written examination, have the applicant demonstrate familiarity with a firearm or dangerous weapon, and conduct the shooting and dangerous weapons proficiency examination.

2. In order to become certified as a firearm or dangerous weapons instructor, an individual shall successfully complete the concealed weapons instructor course approved by the director. Successful completion of the certification program requires a passing score on a written examination and a shooting course of fire.
3. The attorney general may certify a peace officer as a firearm or dangerous weapons instructor to conduct classroom instruction and administer the written examination who has current certification from the North Dakota peace officer standards and training board in methods of instruction.
4. The attorney general may certify a peace officer as a firearm or dangerous weapons instructor to conduct firearm and dangerous weapons familiarity demonstrations and shooting and proficiency exercises who has current certification from the North Dakota peace officer standards and training board as a weapons instructor.
5. All applications for instructor certification must be made on a form approved by the director of the bureau of criminal investigation.
6. Firearm or dangerous weapons instructor certification is effective for three years from the date of certification.

History: Effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03(1)(d)

10-12-01-13. Renewal of firearm or dangerous weapons instructor certification.

1. The director shall prescribe and provide the required training program for renewal of firearm or dangerous weapons instructor certification, including classroom, firearm, and dangerous weapons instruction. Successful completion of the renewal training program requires a passing score on a written examination and a shooting course of fire or dangerous weapons proficiency.
2. Applications for renewal must be submitted on a form approved by the director.

History: Effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03(1)(d)

10-12-01-14. Firearm or dangerous weapons instructor training and testing procedures and fees.

1. A certified firearm or dangerous weapons instructor may only conduct the training and testing procedures according to the requirements established by the director. The instructor may determine the frequency and class size of training and testing sessions.
2. A certified firearm or dangerous weapons instructor shall submit all classroom instruction and training information to the director on a form approved by the director prior to the commencement of classroom instruction or training to monitor course content and instructor development.
3. A certified firearm or dangerous weapons instructor may not charge a fee exceeding fifty dollars to conduct the requirements for a concealed weapons license.

History: Effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03(1)(d)

10-12-01-15. Denial, revocation, or cancellation of firearm or dangerous weapons instructor certification. The director may deny, revoke, or cancel firearm or dangerous weapons instruction certification. Grounds for denial, revocation, or cancellation include:

1. The instructor is prohibited from owning, possessing, or having a firearm under North Dakota Century Code section 62.1-02-01 or under federal law;
2. The instructor has committed any other violation of North Dakota Century Code title 62.1;
3. The instructor willfully submitted material false information for the purposes of obtaining instructor certification or renewal;
4. The instructor has failed to follow the approved procedures for the issuance of a concealed weapons license;
5. The instructor has willfully submitted material false information concerning the training or testing conducted for a concealed weapons license; or
6. The instructor has not filed a completed application for certification as a firearm or dangerous weapons instructor or has not met the requirements for certification as a firearms or dangerous weapons instructor.

History: Effective April 1, 2010.

General Authority: NDCC 62.1-04-03

Law Implemented: NDCC 62.1-04-03(1)(d)

CHAPTER 10-17-01

10-17-01-02. Definitions. The following terms are defined as follows for purposes of this chapter, unless otherwise made appropriate by use and context.

1. "Buccal swab" means a sample from the inside of the mouth taken by scraping the cheek. The sample includes saliva.
2. "Designated agency" means the entity designated by this chapter to be responsible for the collection of ~~sample specimens~~ DNA samples.
3. "Division" means the state crime laboratory division of the office of the attorney general.
4. "DNA identification index" means the division's DNA identification record system and the federal bureau of investigation's combined DNA index system, established under North Dakota Century Code section 31-13-05.
5. "DNA record" means DNA identification information stored in the state DNA data base and the federal bureau of investigation's combined DNA index system for purposes of generating investigative leads, establishing identification in connection with law enforcement investigations, and supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of analysis, such as numerical representation of DNA fragment lengths, ~~autoradiographs and the digital image of autoradiographs~~, and discrete allele assignments numbers.
6. "DNA testing" means DNA analysis of ~~materials derived samples collected from the human body, crime scenes, medical examinations, unidentified human remains, and qualified offenders~~ for the purposes of identification.
7. "Kit" means the ~~genetic marker~~ sample collection kit provided by the division.
8. "Marker" means a method of describing individuals by the genetic loci recognized for the participation in the combined DNA index system.
9. "Other body fluids" means a sample of fluid containing human cells, including saliva, in which markers can be profiled from a qualifying offender.
10. "Qualified medical personnel" means any person trained in sampling techniques and approved by the division ~~as described in North Dakota Century Code chapter 31-13 to collect DNA samples~~.

11. "Qualifying offender" means any convicted a person eighteen years of age or over arrested for a felony offense; a person required to register under North Dakota Century Code section 12.1-32-15; or a person as convicted of an offense described in North Dakota Century Code chapter 31-13 section 31-13-03.
12. "Registering agency" means a law enforcement agency where a qualifying individual is required to register under North Dakota Century Code section 12.1-32-15.
13. "Sample" includes a vial of blood and other body fluids collected from a qualifying offender.
14. "Sampling techniques" includes venipuncture and buccal swab and other recognized medical techniques.
15. "Venipuncture" means a puncture of a vein as for drawing blood.

History: Effective May 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-08

10-17-01-03. Procedures for responsibilities of samples Responsibility for collection of DNA.

1. When a person becomes a qualifying offender, the state's attorney, at the time of sentencing, shall request the court to issue an order requiring the qualifying offender to comply with North Dakota Century Code chapter 31-13. The following agencies are designated agencies for the collection of DNA samples from qualifying offenders:
 - a. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA database, the law enforcement agency in the county where the qualifying offender has been arrested or the correctional facility where the qualifying offender has been booked for the commission of a felony offense shall collect the DNA sample.
 - b. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA database and is serving a term of incarceration in a correctional facility subject to North Dakota Century Code chapter 12-44.1, the correctional facility shall collect the DNA sample prior to release of the offender.
 - c. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA database and is in the custody of the department of corrections and rehabilitation, the department of corrections and rehabilitation shall collect the DNA sample.

- d. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA database and is subject to probation under the supervision and management of the department of corrections and rehabilitation, the department of corrections and rehabilitation shall collect the DNA sample from the offender prior to expiration of the offender's probation.
 - e. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA database and is required to register under North Dakota Century Code section 12.1-32-15, the registering agency in the county where the qualified offender is registered shall collect the DNA sample.
- 2. At the time of sentencing the qualifying offender, the sentencing judge shall issue an order requiring the offender to provide a sample and shall assess costs against the qualifying offender which shall be submitted to the division in accordance with North Dakota Century Code chapter 31-13. At the time of arrest or booking, registration under North Dakota Century Code section 12.1-32-15, or sentencing, if no order has been issued requiring the qualifying offender to provide a sample and the qualified offender refuses to provide a sample, the designated agency may ask the state's attorney of the county of arrest, registration under North Dakota Century Code section 12.1-32-15, or conviction, or the county in which the offender is located, to request the court to issue an order requiring the qualifying offender to submit a DNA sample for inclusion in the law enforcement DNA database. The court may require the qualifying offender to pay costs.
- 3. The designated agency responsible for sample collection of qualifying offenders is as follows:
 - a. The sheriff's office in the county where the qualifying offender is sentenced is the designated agency and is responsible for the sample collection.
 - b. If the qualifying offender has not previously had a sample collected and is serving a term of incarceration in a facility under the control of the county sheriff, the sheriff's office is the designated agency and is responsible for the sample prior to release of the offender.
 - c. The department of corrections and rehabilitation shall be responsible for collecting, storing, and sending sample specimens of people housed in facilities administered by the department of corrections and rehabilitation.
 - d. If the qualifying offender has not previously had a sample collected and is serving a sentence but is not physically incarcerated, the supervising agency (such as a probation office) is the designated

~~agency and is responsible for the collection of the sample prior to the termination of the sentence.~~

4. ~~At the time of sentencing, if no order has been issued requiring the qualifying offender to provide a sample, the designated agency shall ask the state's attorney of the county of the conviction or the county in which the offender is located to request the court to issue such an order, including awarding costs to the division.~~
5. ~~The state's attorney shall designate a person or entity to collect, store, and send the sample specimen of all other people.~~
6. ~~For convictions on or after August 1, 1995, if If the qualifying offender voluntarily consents to provide the sample and pays the costs, no court order is necessary and the state's attorney is not required to request one.~~
7. ~~A general order issued under the administrative authority of the chief judge of a judicial district is sufficient to satisfy the court order requirements of these rules. In the event such an order exists and is valid with respect to the qualifying offender, the state's attorney need not seek an individualized order.~~

History: Effective May 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 31-13-08

Law Implemented: NDCC 12.1-32-15, 31-13-03

10-17-01-04. Procedures for collection of samples.

1. The division shall provide kits to the designated agencies as needed. Each kit must include a receipt form, an instruction sheet, and containers for sample collections.
2. The collection site shall be any location chosen by the designated agency for sample collection.
3. The qualifying offender must be identified by the designated agency by one or more of the following: a driver's license, fingerprints, identification by law enforcement that has the individual qualifying offender in custody, or any other reasonable means within the designated agency's discretion before the samples are collected.
4. The samples must be collected by personnel described in North Dakota Century Code section 31-13-04 and by qualified medical personnel as described in this chapter a qualified individual approved by the division.
5. The receipt form must be completed by the designated agency at the time of sample collection.

6. The completed kit must be delivered or sent to the division address indicated in the kit instructions.
7. All costs associated with the collection of the sample must be assessed to the qualifying offender as provided in North Dakota Century Code section 31-13-03.

History: Effective May 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-04

10-17-01-05. Procedures for analysis of samples. The division shall perform DNA analysis in accordance with ~~national standards for DNA quality assurance and proficiency testing issued pursuant to the DNA Identification Act of 1994 [Pub. L. 103-322; 108 Stat. 2065]~~ the quality assurance standards established by the federal bureau of investigation.

History: Effective May 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-05

10-17-01-06. Procedures for classification of samples. The division shall classify samples in accordance with the ~~criteria quality assurance standards~~ established by the federal bureau of investigation for inclusion of DNA records in the combined DNA index system.

History: Effective May 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-05

10-17-01-07. Procedures for database system usage and integrity.

1. Except as provided in subsection 2, the results of the genetic marker grouping analysis profile may be disclosed only to:
 - a. Criminal justice agencies for law enforcement official purposes;
 - b. A defendant for criminal defense purposes in response to valid subpoenas or other court orders;
 - c. Any person who is the subject of a record;
 - d. A public official or the official's authorized agent who requires that information in connection with the discharge of the official's duties; or
 - e. Any other person required by law.

2. In addition, the division may use test results for system integrity and quality control, including to assist assisting in a population statistics database and for other research purposes if personally identifying information is removed.
3. The DNA identification index may include the analysis of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains, and qualified offenders. For the purpose of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.
4. If a court with proper jurisdiction has ordered an expungement and no other grounds exist for sample collection, the record of the sample will be removed from the database and all samples from the person will be destroyed.

History: Effective May 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 31-13-06, 31-13-07, 31-13-09

Law Implemented: NDCC 31-13-08

TITLE 43
INDUSTRIAL COMMISSION

APRIL 2010

CHAPTER 43-02-03

43-02-03-16. Application for permit to drill and recomplete. Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to the nearest lines of a governmental section. The plat shall also include latitude and longitude of the proposed well location to the nearest tenth of a second. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, the proposed pad layout, including cut and fill diagrams, and the proposed amount of cement to be used, including the estimated top of cement.

Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4) to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the casing program to be followed, and the original total depth with a permit fee of fifty dollars.

The applicant shall provide all information, in addition to that specifically required by this section, if requested by the director. The director may impose such terms and conditions on the permits issued under this section as the director deems necessary.

The director shall deny an application for a permit under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002; April 1, 2010.

General Authority: NDCC 38-08-05

Law Implemented: NDCC 38-08-05

43-02-03-16.3. Recovery of a risk penalty. The following govern the recovery of the risk penalty pursuant to subsection 3 of North Dakota Century Code section 38-08-08 and subsection 3 of North Dakota Century Code section 38-08-09.4:

1. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-08, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling a well, including reentering a plugged and abandoned well, or the risk and cost of reentering an existing well to drill deeper or a horizontal lateral. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.
 - a. The invitation to participate in drilling must contain the following:
 - (1) The location of the proposed or existing well and its proposed depth and objective zone.
 - (2) An itemization of the estimated costs of drilling and completion.
 - (3) The approximate date upon which the well was or will be spudded or reentered.

- (4) ~~The time within which A statement indicating the invitation must be accepted within thirty days of receiving it. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.~~
- (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
- b. An election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.
- c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, ~~by facsimile transmission followed within one business day by mailing~~, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
- d. An election to participate is only binding upon an owner electing to participate if the well is spudded or reentry operations are commenced on or before ninety days after the date the owner extending the invitation to participate sets as the date upon which a response to the invitation is to be received. It also expires if the permit to drill or reenter expires without having been exercised. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
2. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-09.4, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the unit expense. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.
- a. The invitation to participate in the unit expense must contain the following:
- (1) A description of the proposed unit expense, including the location, objectives, and plan of operation.

- (2) An itemization of the estimated costs.
 - (3) The approximate date upon which the proposal was or will be commenced.
 - (4) ~~The time within which A statement indicating the invitation must be accepted within thirty days of receiving it. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.~~
 - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
- b. An election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.
 - c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, ~~by facsimile transmission followed within one business day by mailing~~, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
 - d. An election to participate is only binding upon an owner electing to participate if the unit expense is commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which a response to the request invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
 - e. An invitation to participate in a unit expense covering monthly operating expenses shall be effective for all such monthly operating expenses for a period of five years if the unit expense identified in the invitation to participate is first commenced within ninety days after the date set in the invitation to participate as the date upon which a response to the invitation to participate must be received. An election to participate in a unit expense covering monthly operating expenses is effective for five years after operations are first commenced. If an election to participate in a unit expense comprised of monthly operating expenses expires or lapses after

five years, a risk penalty may only be assessed and collected if the owner seeking the penalty once again complies with this section.

3. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the invitation and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

History: Effective December 1, 1996; amended effective May 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 38-08-08

43-02-03-18. Drilling units - Well locations. In the absence of an order by the commission setting spacing units for a pool:

1. a. Vertical or directional oil wells projected to a depth not deeper than the Mission Canyon formation ~~shall~~ must be drilled upon a governmental quarter-quarter section or equivalent lot, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter-quarter section or equivalent lot. No more than one well shall be drilled to the same pool on any such governmental quarter-quarter section or equivalent lot, except by order of the commission, nor shall any well be drilled on any such governmental quarter-quarter section or equivalent lot containing less than thirty-six acres [14.57 hectares] except by order of the commission.

b. Vertical or directional oil wells projected to a depth deeper than the Mission Canyon formation ~~shall~~ must be drilled on a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lots containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.
2. a. Horizontal wells with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], projected to a depth not deeper than the Mission Canyon formation, must be drilled upon a drilling unit described as a governmental section or described as two adjacent governmental quarter sections within the same section or equivalent lots, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. The horizontal well proposed to be drilled must, in the director's opinion, justify the creation of such drilling unit. No more than one well may

be drilled to the same pool on any such tract, except by order of the commission.

- b. Horizontal wells with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], projected to a depth deeper than the Mission Canyon formation, must be drilled upon a drilling unit described as a governmental section or ~~described as two adjacent governmental quarter sections within the same section or equivalent lots~~, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. The horizontal well proposed to be drilled must, in the director's opinion, justify the creation of such drilling unit. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.
3. a. Gas wells projected to a depth not deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.

b. Gas wells projected to a depth deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.
4. Within thirty days, or a reasonable time thereafter, following the discovery of oil or gas in a pool not then covered by an order of the commission, a spacing hearing shall be docketed. Following such hearing the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order shall continue in force for a period of not more than eighteen months at the expiration of which time a hearing shall be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

During the interim period between the discovery and the issuance of the temporary order, no permits shall be issued for the drilling of an offset well to the discovery well, unless approved by the director. Approval shall be consistent with anticipated spacing for the orderly development of the pool.

Any well drilled within one mile [1.61 kilometers] of an established field shall conform to the spacing requirements in that field except when it is apparent that the well will not produce from the same common source of supply. In order to assure uniform and orderly development, any well drilled within one mile [1.61 kilometers] of an established field boundary shall conform to the spacing and special field rules for the field, and for the purposes of spacing and pooling, the field boundary shall be extended to include the spacing unit for such well and any intervening lands. The foregoing shall not be applicable if it is apparent that the well will not produce from the same common source of supply as wells within the field.

5. If the director denies an application for permit, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002; January 1, 2006; April 1, 2010.

General Authority: NDCC 38-08-04, 38-08-07

Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-19. Reserve pit for drilling mud and drill cuttings - Reclamation of surface. In the construction of a drill site, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil.

When necessary to prevent pollution of the land surface and freshwaters, the director may require the drill site to be sloped and diked, to divert surface drainage.

In order to assure a supply of proper material or mud-laden fluid to confine oil, gas, or water to its native strata during the drilling of any well, each operator shall provide, before drilling is commenced, a container or reserve pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings. A reserve pit may be utilized to contain solids and fluids used and generated during well drilling and completion operations, providing the pit can be constructed, used and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, the director may prohibit construction of a reserve pit or may impose more stringent pit construction and reclamation requirements. Under no circumstances shall reserve pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and fluids used or recovered while drilling and completing the well.

Reserve pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No reserve pit shall be wholly or partially constructed in fill dirt unless approved by the director.

When required by the director, the reserve pit or site or appropriate parts thereof must be fenced.

1. Within a reasonable time, but not more than one year, after the completion of a well, the reserve pit shall be reclaimed. Prior to reclaiming the pit, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a pit reclamation plan. Verbal approval to reclaim the pit may be given. The notice shall include, but not be limited to:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner;
 - c. The location and name of the disposal site for the pit water; and
 - d. A description of the proposed work, including details on treatment and disposition of the drilling waste.

All pit water and oil on the pit must be removed prior to reclamation. Drilling waste should be encapsulated in the pit and covered with at least four feet [1.22 meters] of backfill and topsoil and surface sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

2. Within a reasonable time, but not more than one year, after a well is plugged, the well site, access road, and other associated facilities constructed for the well shall be reclaimed as closely as practicable to original condition, or in the case of a completed well, the unused portion of the site shall be reclaimed. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice shall include, but not be limited:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;

- c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other associated facilities; and
- d. Reseeding plans, if applicable.

The commission will mail a copy of the approved notice to the surface owner.

All production equipment, waste, and debris shall be removed from the site. Flow lines shall be purged in a manner approved by the director. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

3. Gravel or other surfacing material shall be removed and the well site, access road, and other associated facilities constructed for the well shall be reshaped as near as is practicable to original contour.
4. The stockpiled topsoil shall be evenly distributed over the disturbed area, and where applicable the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
5. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
6. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1992; July 1, 2002; January 1, 2008; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19.3. Earthen pits and open receptacles. Except as otherwise provided in section 43-02-03-19, no saltwater, drilling mud, crude oil, waste oil, or other waste shall be stored in earthen pits or open receptacles except in an emergency and upon approval by the director.

An earthen pit or open receptacle may be temporarily used to retain oil, water, or fluids generated in well servicing or plugging operations. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of the oil, water, or fluids. The contents of the pit or receptacle must be removed within seventy-two hours after operations have ceased and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2.

The director may permit pits or receptacles used solely for the purpose of flaring casinghead gas. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of fluids. Permission for such a pit or receptacle will be conditioned on keeping the pit it free of any saltwater, crude oil, waste oil, or other waste. Saltwater, drilling mud, crude oil, waste oil, or other waste shall be removed from the pit or receptacle within twenty-four hours after being discovered and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2.

History: Effective September 1, 2000; amended effective April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-21. Casing, tubing, and cementing requirements. All wells drilled for oil, natural gas, or injection shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately protect and isolate all formations containing water, oil, or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the uppermost sand of the Dakota group.

Drilling of the surface hole shall be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. The surface casing shall consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing shall be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement shall be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method or other methods approved by the director. The director is authorized to require an accurate gauge be maintained on the surface casing of any well, not properly plugged and abandoned, to detect any buildup of pressure caused by the migration of fluids.

Surface casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least three hundred fifty pounds per square inch [2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement shall be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

Production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at

least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours, although in any horizontal well performing a single stage cement job from a measured depth of greater than thirteen thousand feet [3962.4 meters], the filler cement utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within forty-eight hours and at least five hundred pounds per square inch [3450 kilopascals] within ninety-six hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius]. After cementing, the casing shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals]. If, at the end of thirty minutes, this pressure has dropped one hundred fifty pounds per square inch [1035 kilopascals] or more, the casing shall be repaired. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

All flowing wells must be equipped with tubing. A tubing packer must also be utilized unless a waiver is obtained after demonstrating the casing will not be subjected to excessive pressure or corrosion. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 1997; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-25. Deviation tests and directional surveys. When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. The director is authorized to waive the deviation test for a shallow gas well if the necessity therefor can be demonstrated to the director's satisfaction. When the deviation from the vertical exceeds five degrees at any point, the director may require that the hole be straightened. Directional surveys may be required by the director, whenever, in the director's judgment, the location of the bottom of the well is in doubt.

A directional survey shall be made and filed with the director on any well utilizing a whipstock or any method of deviating the well bore. The obligation to run the directional survey may be waived by the director when a well bore is deviated to sidetrack junk in the hole, straighten a crooked hole, control a blowout, or if the necessity therefor can be demonstrated to the director's satisfaction. The survey contractor shall file two with the director free of charge one certified copies electronic copy of all surveys with the director free of charge, in a form approved by the director, within thirty days of completion attaining total depth. Surveys must

~~be submitted as one paper copy and one electronic copy, or in a form approved by the director. However, the~~ The director may require the directional survey to be filed immediately after completion if the survey is needed to conduct the operation of the director's office in a timely manner. Special permits may be obtained to drill directionally in a predetermined direction as provided above, from the director.

If the director denies a request for a permit to directionally drill, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

History: Amended effective April 1, 1980; April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; September 1, 2000; January 1, 2006; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-27. Perforating, fracturing, and chemically treating wells. ~~The director may prescribe pretreatment casing pressure testing as well as other operational requirements designed to protect wellhead and casing strings during treatment operations.~~ If damage results to the casing or the casing seat from perforating, fracturing, or chemically treating a well, the operator shall immediately notify the director and proceed with diligence to use the appropriate method and means for rectifying such damage, pursuant to section 43-02-03-22. If perforating, fracturing, or chemical treating results in irreparable damage which threatens the mechanical integrity of the well, the commission may require the operator to plug the well.

History: Amended effective January 1, 1983; May 1, 1992; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-30. Notification of fires, leaks, spills, or blowouts. All persons controlling or operating any well, pipeline, receiving tank, storage tank, or production facility into which oil, gas, or water is produced, received, stored, processed, or through which oil, gas, or water is injected, piped, or transported, shall verbally notify the director within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time also notify the surface owners upon whose land the incident occurred or traveled. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility. The verbal notification must be followed by a written report within ten days after cleanup of the incident, unless deemed unnecessary by the director. Such report must include the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, cause of the accident, and action taken to prevent reoccurrence. The signature, title, and telephone number of the company representative must be

included on such report. ~~If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time also notify provide a copy of the written report to the surface owners upon whose land the incident occurred or traveled.~~

The commission, however, may impose more stringent spill reporting requirements if warranted by proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 2008; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-31. Well log, completion, and workover reports. After the plugging of a well, a plugging record (form 7) shall be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6) shall be filed with the director. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. The operator shall cause to be run a log from which the presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. Two copies of all logs run shall be submitted to the director free of charge. Logs shall be submitted as one paper copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on new permits, except the operator name, well name, location, spacing or drilling unit description, spud date, rig contractor, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period shall commence on the date the well is spudded.

All information furnished to the director on recompletions or reentries, except the operator name, well name, location, spacing or drilling unit description, spud date, rig contractor, and any production runs, shall be kept confidential for not more

than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the well was approved for recompletion or reentry, whichever is earlier. Any information furnished to the director prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

After the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4) with the director. The report shall present a detailed account of all work done and the date of such work; the daily production of oil, gas, and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the installation of pumping equipment on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof including the date of such installation, and the daily production of the well prior to and after the pump has been installed.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-49. Oil spills, production equipment, dikes, and seals. Storage of oil in underground or partially buried tanks or containers is prohibited. Surface oil tanks and production equipment must be devoid of leaks and in good condition. Unusable tanks and production equipment must be removed from the site or repaired and placed into service, within a reasonable time period, not to exceed one year. Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.

Dikes must be erected around oil tanks at any new production facility within thirty days after the well has been completed. Dikes must be erected and maintained around oil tanks at production facilities built prior to July 1, 2000, when

deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment and. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

At no time shall oil be allowed to flow over or pool on the surface of the land or infiltrate the soil. Discharged oil must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

Numbered metal security seals shall be properly utilized on all oil access valves and access points to secure the tank or battery of tanks.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53. Saltwater handling facilities.

1. All saltwater liquids or brines produced with oil and natural gas shall be processed, stored, and disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over or pool on the surface of the land or infiltrate the soil.
2. Underground injection of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
3. Surface facilities are acceptable provided that:
 - a. They are devoid of leaks and constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unusable tanks and injection equipment must be removed from the site or repaired and placed into service, within a reasonable time period, not to exceed one year.
 - b. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility built or rebuilt on or after July 1, 2000. Dikes must be erected around saltwater tanks at any new facility within thirty days after the well has been completed. Dikes must be erected and maintained around saltwater tanks at saltwater handling facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment and. Dikes must be of sufficient dimension to

contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

4. The operator shall take steps to minimize the amount of solids stored at the facility.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-55. Abandonment of wells - Suspension of drilling.

1. The removal of production equipment or the failure to produce oil or gas, other than a gas well shut in for lack of a market, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. An abandoned well must be plugged and its site must be reclaimed pursuant to sections 43-02-03-34 and 43-02-03-19.
2. The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of oil and gas. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status beyond one year. A fee of one hundred dollars shall be submitted with for each application to extend the temporary abandonment status of any well.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director exercises this discretion, the director shall set a date or circumstance upon which the waiver expires.
4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise

authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-03-34 and 43-02-03-19.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999; January 1, 2008; April 1, 2010.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-90.2. Official notice. The evidence in each case heard by the commission, unless specifically excluded by the hearing officer, includes the certified directional surveys, and all oil, water, and gas production records on file with the commission.

History: Effective May 1, 1992; amended effective April 1, 2010.

General Authority: NDCC 28-32-06

Law Implemented: NDCC 28-32-06

CHAPTER 43-02-12

43-02-12-01.1. Scope of chapter. This chapter contains general rules of statewide application which have been adopted by the industrial commission to govern geophysical exploration in North Dakota. Special rules, regulations, and orders have been and will be issued when required and shall prevail as against general rules, regulations, and orders if in conflict therewith. However, wherever this chapter does not conflict with special rules heretofore or hereafter adopted, this chapter will apply in each case. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will protect correlative rights.

History: Effective April 1, 2010.

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-08

43-02-12-04. Exploration permit - Application - Expiration.

1. Any person applying to the commission for an exploration permit must have a certificate to conduct geophysical exploration pursuant to subsection 3 of North Dakota Century Code section 38-08.1-03.1. A person may not commence geophysical exploration activities in this state without first obtaining an exploration permit from the commission. An application for an exploration permit must be submitted to the commission at least three business days before commencing operations and include the following:
 - a. The name, permanent address, and telephone number of the geophysical contractor and the geophysical contractor's local representative.
 - b. The name, permanent address, and telephone number of the drilling and hole plugging contractor, if different from the seismic contractor.
 - c. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
 - d. The bond number, type, and amount for the geophysical company.
 - e. The geophysical exploration method (i.e., shot hole, nonexplosive, 2D, or 3D).
 - f. The number, depth, and location of the seismic holes and the size of the explosive charges, if applicable.
 - g. The anticipated starting date of seismic and plugging operations.

- h. The anticipated completion date of seismic and plugging operations.
 - i. A description of hole plugging procedures.
 - j. A description of the identifying marks that will be on the nonmetallic plug to be used in the plugging of the seismic hole.
 - k. A preplot map displaying the proposed seismic source points and receiver lines and specifically identifying all source points that do not comply with section 43-02-12-05.
 - I. A fee of one hundred dollars.
2. The permitholder shall notify the commission at least twenty-four hours, excluding Saturdays and holidays, before commencing geophysical activity.
 3. The permitholder shall immediately notify the commission of any revisions to an approved seismic permit.
 4. An exploration permit expires one year after the date it was issued, unless geophysical exploration activities have commenced.

History: Effective December 1, 1997; amended effective September 1, 2000; May 1, 2004; April 1, 2010.

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-04.1

43-02-12-06. Notification of work performed. Within thirty days following the completion of geophysical exploration by any person within this state, such person shall file with the commission a seismic completion report in the form of an affidavit deposing that the seismic project was completed in accordance with chapter 43-02-12, and incorporating a postplot map displaying the actual source point location and the location of all undetonated (loaded) holes, blowouts, and flowing holes or any other problem holes the director deems necessary. If obtained by the contractor, the latitude and longitude of each source and receiver point shall be submitted to the commission to the nearest tenth of a second.

Any person plugging a seismic hole must submit a plugging report and an affidavit of plugging detailing the line number, shot point number, hole depth, drill type, hole condition (wet, dry), bentonite used (sacks, capsules), and the depth at which the surface plug was set, and all other information necessary to describe the conditions of the shot hole.

The director is authorized to approve an operator's request to suspend a geophysical exploration project, although no suspension shall be granted beyond ninety days unless all charges are detonated.

The director is authorized to suspend operations of the entire geophysical exploration project, or any portion thereof, if further activity will cause excessive damage to the surface of the land. The geophysical exploration activity may continue upon the director approving a plan to mitigate the damage.

History: Effective December 1, 1997; amended effective September 1, 2000; May 1, 2004; January 1, 2008; April 1, 2010.

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-02, 38-08.1-05

ARTICLE 43-05

GEOLOGIC STORAGE OF CARBON DIOXIDE

<u>Chapter</u>	
<u>43-05-01</u>	<u>Geologic Storage of Carbon Dioxide</u>
<u>CHAPTER 43-05-01</u>	
<u>GEOLOGIC STORAGE OF CARBON DIOXIDE</u>	
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43-05-01-01. Definitions. Terms used in this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapter 38-08. Further, in this chapter:

1. "Carbon dioxide" means carbon dioxide produced by anthropogenic sources which is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain a stored gas.
2. "Closure period" means that period from permanent cessation of carbon dioxide injection until the commission issues a certificate of project completion.
3. "Commission" means industrial commission.

4. "Flow lines" means pipelines transporting carbon dioxide from the carbon dioxide facility injection facilities to the wellhead.
5. "Formation fracture pressure" means the pressure, measured in pounds per square inch, which, if applied to a subsurface formation, will cause that formation to fracture.
6. "Freshwater" means an underground source of drinking water unless otherwise defined by the commission.
7. "Geologic storage" means the permanent or short-term underground storage of carbon dioxide in a storage reservoir.
8. "Injection well" means a well used to inject carbon dioxide into or withdraw carbon dioxide from a reservoir.
9. "Minerals" means coal, oil, and natural gas.
10. "Operational period" means the period during which injection occurs.
11. "Permit" means a permit issued by the commission allowing a person to operate a storage facility.
12. "Postclosure period" means that period after the commission has issued a certificate of completion.
13. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including oil and gas reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.
14. "Storage facility" means the reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a geologic storage operation. It does not include pipelines used to transport carbon dioxide to the storage facility.
15. "Storage operator" means a person holding or applying for a permit.
16. "Storage reservoir" means a reservoir proposed, authorized, or used for storing carbon dioxide.
17. "Subsurface observation well" means a well used to observe subsurface phenomena, including the presence of carbon dioxide, pressure fluctuations, fluid levels and flow, temperature, and in situ water chemistry.
18. "Underground source of drinking water" means an aquifer or any portion of an aquifer that supplies drinking water for human consumption, or in which the ground water contains fewer than ten thousand milligrams per

liter total dissolved solids and is not an exempted aquifer as determined by the commission under section 43-02-05-03.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-02. Scope of chapter. This chapter governs the geologic storage of carbon dioxide.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-03. Books and records to be kept to substantiate reports. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing storage facilities shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-04. Access to records. The industrial commission and the commission's authorized agents shall have access to all storage facility records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing storage facilities shall permit the industrial commission, or its authorized agents, to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of wells and to conduct sampling and testing. Any information so obtained shall be public information. If requested, copies of storage facility records must be filed with the commission.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-05. Storage facility permit.

1. An application for a permit must include the following:

- a. A site map showing the boundaries of the storage reservoir and the location of all proposed wells, proposed cathodic protection boreholes, and surface facilities within the carbon dioxide storage facility;

b. A technical evaluation of the proposed storage facility, including the following.

- (1) The name, description, and average depth of the storage reservoirs;
- (2) A geologic and hydrogeologic evaluation of the facility area, including an evaluation of all existing information on all geologic strata overlying the storage reservoir, including the immediate caprock containment characteristics and all subsurface zones to be used for monitoring. The evaluation must include any available geophysical data and assessments of any regional tectonic activity, local seismicity and regional or local fault zones, and a comprehensive description of local and regional structural or stratigraphic features. The evaluation must describe the storage reservoir's mechanisms of geologic confinement, including rock properties, regional pressure gradients, structural features, and adsorption characteristics with regard to the ability of that confinement to prevent migration of carbon dioxide beyond the proposed storage reservoir. The evaluation must also identify any productive existing or potential mineral zones occurring within the facility area and any freshwater in the facility area and within one mile [1.61 kilometers] of its outside boundary. The evaluation must include exhibits and plan view maps showing the following:
 - (a) All wells, including water, oil, and natural gas exploration and development wells, and other manmade subsurface structures and activities, including coal mines, within the facility area and within one mile [1.61 kilometers] of its outside boundary;
 - (b) All manmade surface structures that are intended for temporary or permanent human occupancy within the facility area and within one mile [1.61 kilometers] of its outside boundary;
 - (c) Any regional or local faulting;
 - (d) An isopach map of the storage reservoirs;
 - (e) An isopach map of the primary and any secondary containment barrier for the storage reservoir;
 - (f) A structure map of the top and base of the storage reservoirs;

- (g) Identification of all structural spill points or stratigraphic discontinuities controlling the isolation of stored carbon dioxide and associated fluids;
 - (h) Evaluation of the potential displacement of in situ water and the potential impact on ground water resources, if any; and
 - (i) Structural and stratigraphic cross sections that describe the geologic conditions at the storage reservoir or reservoirs;
- (3) A review of the data of public record for all wells within the facility area, which penetrate the storage reservoir or primary or secondary seals overlying the reservoir, and all wells within the facility area and within one mile [1.61 kilometers], or any other distances deemed necessary by the commission, of the facility area's boundary. This review must determine if all abandoned wells have been plugged in a manner that prevents the carbon dioxide or associated fluids from escaping from the storage reservoir. The review required under this paragraph shall be conducted by a geologist or engineer;
- (4) The proposed calculated maximum volume and areal extent for the storage reservoir using a method acceptable to and filed with the commission; and
- (5) The proposed maximum bottom hole injection pressure to be utilized at the reservoir. The maximum allowed injection pressure, measured in pounds per square inch gauge, shall be approved by the commission and specified in the permit. In approving a maximum injection pressure limit, the commission shall consider the results of well tests and other studies that assess the risks of tensile failure and shear failure. The commission shall approve limits that, with a reasonable degree of certainty, will avoid initiating a new fracture or propagating an existing fracture in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water;
- c. The extent of the pore space that will be occupied by carbon dioxide as determined by utilizing all appropriate geologic and reservoir engineering information and reservoir analysis, which may include various computational models if appropriate for reservoir characterization, and the projected response and storage capacity of the geologic storage unit;

- d. A detailed description of the storage facility's public safety and emergency response plan. The plan must detail the safety procedures concerning the facility and residential, commercial, and public land use within one mile [1.61 kilometers], or any other distance set by the commission, of the outside boundary of the area. The public safety and emergency response procedures must include contingency plans for carbon dioxide leakage from any well, flow lines, or other facility and identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to such leaks or loss of containment from the storage reservoir. These emergency response procedures must be reviewed and updated annually;
- e. A detailed worker safety plan that addresses carbon dioxide safety training and safe working procedures at the storage facility;
- f. A corrosion monitoring and prevention plan for all wells and surface facilities;
- g. A leak detection and monitoring plan for all wells and surface facilities. The plan must:
 - (1) Identify the potential for release to the atmosphere;
 - (2) Identify potential degradation of ground water resources with particular emphasis on underground sources of drinking water; and
 - (3) Identify potential migration of carbon dioxide into any mineral zone in the facility area;
- h. A leak detection and monitoring plan utilizing subsurface observation wells to monitor any movement of the carbon dioxide outside of the storage reservoir. This may include the collection of baseline information of carbon dioxide background concentrations in ground water, surface soils, and chemical composition of in situ waters within the facility area and the storage reservoir and within one mile [1.61 kilometers] of the facility area's outside boundary. Provisions in the plan will be dictated by the site characteristics as documented by materials submitted in support of the permit application but must:
 - (1) Identify the potential for release to the atmosphere;
 - (2) Identify potential degradation of ground water resources with particular emphasis on underground sources of drinking water; and

- (3) Identify potential migration of carbon dioxide into any mineral zone in the facility area;
- i. The proposed well casing and cementing program detailing compliance with section 43-05-01-09;
 - j. A performance bond in an amount and under terms set by the commission to provide it with funds sufficient to satisfy any regulatory obligation that the storage operator fails to fulfill. If the commission uses a part of the bond, the storage operator shall immediately replenish the bond or secure a new bond to ensure that the full bond amount set by the commission is maintained;
 - k. Any other information that the commission requires; and
 - l. A closure plan.
2. Any person filing a permit application or an application to amend an existing permit shall pay a processing fee. The fee will be based on actual processing costs, including computer data processing costs, incurred by the commission.
- a. A record of all application processing costs incurred must be maintained by the commission.
 - b. Promptly after receiving an application, the commission shall prepare and submit to the applicant an estimate of the processing fee and a payment billing schedule.
 - c. After the commission's work on the application has concluded, a final statement will be sent to the applicant. The full processing fee must be paid before the commission issues its final decision on an application.
 - d. The applicant must pay the processing fee regardless of whether a permit is issued or denied, or the application withdrawn.
3. The commission has one year from the date an application is deemed complete to issue a final decision regarding the application.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-06. Storage facility permit transfer.

1. Notification. The storage operator and proposed transferee shall notify the commission in writing of any proposed permit transfer. The notice must contain the following:

- a. The name and address of the person to whom the permit is to be transferred.
 - b. The name of the permit subject to transfer and location of the storage facility and a description of the land upon which the storage facility is situated.
 - c. The date that the storage operator desires the proposed transfer to occur.
 - d. Performance bonds required by section 43-05-01-05.
2. **Commission review.** The commission shall review the proposed transfer to ensure that the purposes of North Dakota Century Code chapter 38-22 are not compromised but are promoted. For good cause, the commission may deny a transfer request, delay acting on it, and place conditions on its approval.
 3. **Commission approval required.** A permit transfer can occur only upon the commission's written order.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-07. Amending storage facility permit.

1. The following changes to a permit require compliance with all the provisions of section 43-05-01-05:
 - a. Any change in the areal extent of the storage facility;
 - b. Using a reservoir not specified in the permit;
 - c. Any increase in the carbon dioxide storage volume; and
 - d. Any change in the chemical composition of the injected carbon dioxide.
2. Significant changes to operational methods and procedures contained in the permit or upon which the permit was based will require compliance with subsection 2 of section 43-05-01-05.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-08. Amalgamation of subsurface rights to operate geological storage unit.

1. On or before the date a permit application is filed with the commission, the applicant shall give the following notice that it has filed the application:
 - a. Each operator of mineral extraction activities within the facility and within one-half mile [.80 kilometer] outside of the facility area;
 - b. Each mineral lessee of record within the facility area and within one-half mile [.80 kilometer] of its outside boundary;
 - c. Each owner of record of the surface within the facility area and one-half mile [.80 kilometer] of its outside boundary;
 - d. Each owner of record of minerals within the project area and within one-half mile [.80 kilometer] of its outside boundary;
 - e. Each owner and each lessee of record of the pore space within the storage reservoir and within one-half mile [.80 kilometer] of the reservoir's boundary; and
 - f. Any other persons as required by the commission.
2. The notice must contain:
 - a. A legal description of the land overlying the storage reservoir.
 - b. The date, time, and place that the commission will hold a hearing on the permit application.
 - c. A statement that a copy of the permit application may be obtained from the commission.
 - d. A notice of the right to file comments.
3. The commission shall give at least fifteen days' notice, except in an emergency, of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation in Bismarck, North Dakota, and in a newspaper of general circulation in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the commission and shall conform to the other requirements provided by law. The public notice must state that an application has been filed with the commission for permission to store carbon dioxide

and describe the location of the proposed facility area and the date, time, and place of the hearing before the commission at which time the merits of the application will be considered.

4. Objections received by the commission shall be in writing and specify the nature of the objection.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-09. Well permit application requirements.

1. Following receipt of a storage facility permit, the storage operator shall submit applications to drill, deepen, convert, operate, or, upon demonstration of mechanical integrity, reenter a previously plugged and abandoned well for storage purposes.
2. Application for permits to drill, deepen, convert, operate, or reenter a well must be submitted on a form prescribed by the commission and must include at a minimum:
 - a. A plat prepared by a licensed land surveyor showing the location of the proposed injection or subsurface observation well. The plat must be drawn to the scale of one inch [25.4 millimeters] equals one thousand feet [304.8 meters], unless otherwise directed by the commission and must show distances from the proposed well to the nearest storage reservoir boundary. The plat must show the latitude and longitude of the well in decimal degrees to five significant digits. The plat must also show the location and status of all other wells that have been drilled within one-fourth mile [402.34 meters], or any other distance deemed necessary by the commission, of the proposed injection or subsurface observation well;
 - b. The drilling, completion, or conversion procedures for the proposed injection or subsurface observation well;
 - c. A well bore schematic showing the name, description, and depth of the storage reservoirs and the depth of the deepest underground source of drinking water; a description of the casing in the injection or subsurface observation well, or the proposed casing program, including a full description of cement already in place or as proposed; and the proposed method of testing casing before use of the injection well;
 - d. A geophysical log, if available, through the storage reservoir to be penetrated by the proposed injection well or if an injection or subsurface observation well is to be drilled, a complete log

through the reservoir from a nearby well is permissible. Such log must be annotated to identify the estimated location of the base of the deepest underground source of drinking water, showing the stratigraphic position and thickness of all confining strata above the reservoirs and the stratigraphic position and thickness of the reservoir.

3. No later than the conclusion of well drilling and completion activities, a permit application shall be submitted to operate an injection well and must include at a minimum:
 - a. A schematic diagram of the surface injection system and its appurtenances;
 - b. A final well bore diagram showing the name, description, and depths of the storage reservoir and the base of the deepest underground source of drinking water and a diagram of the well depicting the casing, cementing, perforation, tubing, and plug and packer records associated with the construction of the well;
 - c. The well's complete dual induction or equivalent log through the storage reservoir. Such a log shall be run prior to setting casing through the storage reservoir. Logs must be annotated to identify the estimated location of the base of the deepest underground source of drinking water, showing the stratigraphic position and thickness of all confining strata above the storage reservoir and the reservoir's stratigraphic position and thickness unless that information has been previously submitted. When approved in advance by the commission, this information can be demonstrated with a dual induction or equivalent log run in a nearby well or by such other method acceptable to the commission;
 - d. An affidavit specifying the chemical constituents of the injection stream other than carbon dioxide and their relative proportions;
 - e. Proof that the long string of casing of the well is cemented adequately so that the carbon dioxide is confined to the storage reservoirs. Such proof must be provided in the form of a cement bond log or the results of a fluid movement study or such other method specified by the commission; and
 - f. The results of a mechanical-integrity test, if applicable to well type, of the casing in accordance with the pressure test requirements of this section if a test was run within one calendar year preceding the request for a conversion permit for a previously drilled well.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-10. Well permit.

1. Upon review and approval of the application to drill, deepen, convert, reenter, or operate an injection well, submitted in accordance with section 43-05-01-09, the commission shall issue permits to drill and operate.
2. A permit shall expire twelve months from the date of issue if the permitted well has not been drilled, deepened, reentered, operated, or converted.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-11. Well operational standards.

1. Surface casing in all newly drilled carbon dioxide injection and subsurface observation wells drilled below the underground source of drinking water must be set fifty feet [15.24 meters] below the base of the Fox Hills formation and cemented pursuant to section 43-02-03-21.
2. The long string casing in all injection and subsurface observation wells must be cemented pursuant to section 43-02-03-21.
3. Any liner set in the well bore must be cemented with a sufficient volume of cement to fill the annular space.
4. All cements used in the cementing of casings in injection and subsurface observation wells must be of sufficient quality to maintain well integrity in the carbon dioxide injection environment.
5. All casings must meet the standards specified in either of the following documents, which are hereby adopted by reference:
 - a. The most recent American petroleum institute bulletin on performance properties of casing, tubing, and drill pipe;
 - b. Specification for casing and tubing (United States customary units), American petroleum institute specification 5CT, as published by the American petroleum institute in October 1998;
 - c. North Dakota Administrative Code section 43-02-03-21; or
 - d. Other casing as approved by the commission.
6. All casings used in new wells must be new casing or reconditioned casing of a quality equivalent to new casing and that has been pressure-tested in accordance with the requirements of subsection 5.

For new casings, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill the requirements of subsection 5.

7. The location and amount of cement behind casings must be verified by a cement bond log, cement evaluation log, or any other evaluation method approved by the commission.
8. All injection wells must be completed with and injection must be through tubing and packer.
9. All tubing strings must meet the standards contained in subsection 5. All tubing must be new tubing or reconditioned tubing of a quality equivalent to new tubing and that has been pressure-tested. For new tubing, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill this requirement.
10. All wellhead components, including the casinghead and tubing head, valves, and fittings, must be made of steel having operating pressure ratings sufficient to exceed the maximum injection pressures computed at the wellhead and to withstand the corrosive nature of carbon dioxide. Each flow line connected to the wellhead must be equipped with a manually operated positive shutoff valve located on or near the wellhead.
11. All packers, packer elements, or similar equipment critical to the containment of carbon dioxide must be of a quality to withstand exposure to carbon dioxide.
12. All injection wells must have at all times an accurate, operating pressure gauge or pressure recording device. Gauges must be calibrated as required by the commission and evidence of such calibration must be available to the commission upon request.
13. All newly drilled wells must establish internal and external mechanical integrity as specified by the commission and demonstrate continued mechanical integrity through periodic testing as determined by the commission. All other wells to be used as injection wells must demonstrate mechanical integrity as specified by the commission prior to use for injection and be tested on an ongoing basis as determined by the commission using these methods:
 - a. Pressure tests. Injection wells, equipped with tubing and packer as required, must be pressure-tested as required by the commission. A testing plan must be submitted to the commission for prior approval. At a minimum, the pressure must be applied to the tubing casing annulus at the surface for a period of thirty minutes and must have no decrease in pressure greater than ten percent of the required minimum test pressure. The packer must be set at

- a depth at which the packer will be opposite a cemented interval of the long string casing and must be set no more than fifty feet [15.24 meters] above the uppermost perforation or open hole for the storage reservoirs; and
- b. The commission may require additional testing, such as a bottom hole temperature and pressure measurements, tracer survey, temperature survey, gamma ray log, neutron log, noise log, casing inspection log, or a combination of two or more of these surveys and logs, to demonstrate mechanical integrity.
14. The commission has the authority to witness all mechanical integrity tests conducted by the storage operator.
15. If an injection well fails to demonstrate mechanical integrity by an approved method, the storage operator shall immediately shut in the well, report the failure to the commission, and commence isolation and repair of the leak. The operator shall, within ninety days or as otherwise directed by the commission, perform one of the following:
- a. Repair and retest the well to demonstrate mechanical integrity;
- b. Properly plug the well; or
- c. Comply with an alternative plan approved by the commission.
16. All injection wells must be equipped with shutoff systems designed to alert the operator and shut in wells when necessary.
17. Additional requirements may be required by the commission to address specific circumstances and types of projects.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-12. Amendment to carbon dioxide storage facility well permits.

1. An amendment to a well permit for a change in injection formation, or modifying the maximum allowable injection rate and pressure, must comply with the provisions of section 43-05-01-05.
2. Modifying well construction must comply with section 43-05-01-09.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-13. Storage facility operational safety plans. Each storage operator shall implement the commission-approved storage facility public safety and emergency response plan and the worker safety plan proposed in section 43-05-01-05. This plan must include emergency response and security procedures. The plan, including revision of the list of contractors and equipment vendors, must be updated as necessary or as the commission requires. Copies of the plans must be available at the storage facility and at the storage operator's nearest operational office.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-14. Leak detection and reporting.

1. Leak detectors or other approved leak detection methodologies must be placed at the wellhead of all injection and subsurface observation wells. Leak detectors must be integrated, where applicable, with automated warning systems and must be inspected and tested on a semiannual basis and, if defective, shall be repaired or replaced within ten days. Each repaired or replaced detector must be retested if required by the commission. An extension of time for repair or replacement of a leak detector may be granted upon a showing of good cause by the storage operator. A record of each inspection must include the inspection results, must be maintained by the operator for at least six years, and must be made available to the commission upon request.
2. The storage operator must immediately report to the commission any leak detected at any well or surface facility.
3. The storage operator must immediately report to the commission any pressure changes or other monitoring data from subsurface observation wells that indicate the presence of leaks in the storage reservoir.
4. The storage operator must immediately report to the commission any other indication that the storage facility is not containing carbon dioxide, whether the lack of containment concerns the storage reservoir, surface equipment, or any other aspect of the storage facility.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-15. Storage facility corrosion monitoring and prevention requirements. Each operator must conduct a corrosion monitoring and prevention program approved by the commission.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-16. Storage facility identification requirements. Identification signs must be placed at each storage facility in a centralized location and at each well site. The signs must show the name of the operator, the facility name, and the emergency response number to contact the operator.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-17. Storage facility fees.

1. Each storage operator shall pay the commission a fee of one cent on each ton of carbon dioxide injected for storage.
2. Each storage operator shall pay the commission a fee of seven cents on each ton of carbon dioxide injected for storage.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-18. Quarterly and annual reporting requirements.

1. The storage operator shall file with the commission quarterly, or more frequently if the commission requires, a report on the volume of carbon dioxide injected into or withdrawn since the last report, the average injection rate, average composition of the carbon dioxide stream, wellhead and downhole temperature and pressure data, or other pertinent operational parameters as required by the commission.
2. The quarterly report is due thirty days after the end of the quarter.
3. The storage operator shall file with the commission an annual report that summarizes the quarterly reports and that provides updated projections of the response and storage capacity of the storage reservoir. The projections must be based on actual reservoir operational experience, including all new geologic data and information. All anomalies in predicted behavior as indicated in permit conditions or in the assumptions upon which the permit was issued must be explained and, if necessary, the permit conditions amended in accordance with

section 43-05-01-07. The annual report is due forty-five days after the end of the year.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-19. Facility closure.

1. Prior to the conclusion of the operational period, and at a time set by the commission, the storage operator must provide an assessment of the operations conducted during the operational period, including the volumes injected, volumes extracted, all chemical analyses conducted, and a summary of all monitoring efforts. The report must also document the stored carbon dioxide's location and characteristics and predict how it might move during the closure period.
2. The storage operator shall submit a monitoring plan for the closure period for approval by the commission, including a proposal specifying which wells will be plugged and which will remain unplugged to be used as subsurface observation wells.
3. Following well plugging and removal of all surface equipment, the surface must be reclaimed to the commission's specifications that will, in general, return the land as closely as practicable to original condition.
4. The well casing must be cut off at a depth of five feet [1.52 meters] below the surface and a steel plate welded on top identifying the well name and that it was used for carbon dioxide injection.
5. The commission shall develop in conjunction with the storage operator a continuing monitoring plan for the postclosure period, including a review and final approval of wells to be plugged.
6. Upon project closure, all wells designated by the commission must be properly plugged and abandoned; all storage facility equipment, appurtenances, and structures removed; and the project area reclaimed to the commission's specifications that will, in general, return the land as closely as practicable to original condition.
7. All subsurface observation and ground water monitoring wells as approved in the closure plan must remain in place for continued monitoring during the closure period.
8. Before the closure period ends and at a time set by the commission, the storage operator shall provide a final assessment of the stored carbon dioxide's location, characteristics, and its future movement and location within the storage reservoir.

9. Wells other than those deemed as subsurface observation wells per subsection 2 shall be plugged by the storage operator in accordance with section 43-02-03-34.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-20. Determining storage amounts.

1. The commission, after notice and hearing, shall issue an order determining the amount of injected carbon dioxide stored in a reservoir that has been or is being used for an enhanced oil or gas recovery project or in a storage reservoir that has been or is being used for storage under a permit issued pursuant to North Dakota Century Code chapter 38-22.
2. Any person applying for a storage amount determination shall pay a processing fee.

Processing fee. The applicant shall pay a processing fee based on the commission's actual processing costs, including computer data processing costs, as determined by the commission. The following procedures and criteria will be utilized in establishing the fee:

- a. A record of all application processing costs incurred must be maintained by the commission.
- b. Promptly after receiving an application, the commission shall prepare and submit to the applicant an estimate of the processing fee and a payment billing schedule.
- c. After the commission's work on the application has concluded, a final statement will be sent to the applicant. The full processing fee must be paid before the commission issues its decision on the application.
- d. The applicant must pay the processing fee even if the application is denied or withdrawn.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

**TITLE 45
INSURANCE COMMISSIONER**

APRIL 2010

CHAPTER 45-02-02

45-02-02-01. Definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26.1-26. "Department" means North Dakota insurance department.

History: Effective September 1, 1983; amended effective April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-02

45-02-02-03. Examination for licensure.

1. An applicant must qualify for ~~lines a line~~ of authority by passing the examination set out in subsection 5 as provided in this chapter.
2. The examination is administered under a contract with a testing service.
3. An applicant must present a photo identification card at the test center prior to being admitted for testing.
4. There are two basic parts to each examination:
 - a. ~~Part One is the part of the examination developed as a test of general knowledge for the lines of insurance and there are four such Part Ones:~~
 - (1) Life and annuity
 - (2) Accident and health
 - (3) Property
 - (4) Casualty

- b. ~~Part Two is the part of each examination which tests the applicant's knowledge of North Dakota law.~~
- 5. An applicant applying to conduct insurance in the following lines must pass the following examinations:
 - a. Life and annuity Life and annuity
 - b. Accident and health Accident and health
 - c. Property Property
 - d. Casualty Casualty
 - e. Variable life and annuity Life and annuity
- 6. 4. An examination score is valid for one year after the date of the examination for a license applicant who has not completed the application process and who has not obtained licensure. After one year from the date of the examination, an applicant must retake the required examination.
- 7. 5. An examination is valid for as long as a person continuously holds a valid insurance producer's license issued by the North Dakota insurance department and for twelve months following cancellation of a license, with the exception that an examination ceases to be valid immediately upon the suspension or revocation of the license unless the order of suspension or revocation specifies otherwise.
- 8. ~~An applicant for a consultant license must take and pass the insurance producer's examination for the lines in which the applicant wishes to consult.~~

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

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-12, 26.1-14, 26.1-23, 26.1-24, 26.1-27, 26.1-28, 26.1-29 26.1-26-14, 26.1-26-27

45-02-02-04. Exceptions to Specific examination requirement requirements.

- 1. ~~Consultants' exemption:~~
 - a. If an applicant holds an insurance producer's license in North Dakota, the applicant is exempt from the testing requirements for the lines held on that license within the last twelve months; however, the applicant must terminate all other licenses prior to obtaining a consultant's license.

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

- c. Crop or crop hail. Crop or crop hail insurance is insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions, or perils provided by the private insurance market, or that is subsidized by the federal crop insurance corporation, including multiperil crop insurance.
 - d. Legal expense, including prepaid legal service.
 - e. Personal lines. Personal lines is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.
6. An applicant for a consultant's license shall take and pass the insurance producer's examination for the lines in which the applicant seeks to consult. If an applicant for a consultant's license holds a North Dakota insurance producer's license, the applicant is exempt from the testing requirements for the lines held on the insurance producer's license within the twelve months preceding the date on which the consultant application is filed with the commissioner. However, the applicant must terminate the insurance producer's license prior to obtaining a consultant's license.

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

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-25

45-02-02-05.1. Biennial license continuation. On or before the last day of the month of the licensee's birthday following the two-year anniversary of the issuance of a license by the commissioner and every two years thereafter, an individual insurance producer shall submit an application for license continuation. Applications must be accompanied by the biennial continuation fee of twenty-five dollars. Resident insurance producers must have on file with the commissioner proof of compliance with continuing education requirements before submitting the application. Nonresident insurance producers must have satisfied the producer's home state's insurance continuing education requirements and be in good standing in the producer's home state before submitting the continuation application.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-13.4

45-02-02-05.2. Cancellation of license. The license of an insurance producer who fails to complete the biennial continuation and pay the twenty-five dollar continuation fee will be canceled.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-13.4, 26.1-26-31

CHAPTER 45-02-04

45-02-04-09. Licensee report of compliance. Reports of compliance for continuing education credit must be submitted with a fee of twenty-five dollars at the end of each two-year period following licensure, except as provided below. All licensed resident insurance producers shall submit a compliance report and fee based on the following schedule. Licensed resident insurance producers with surnames beginning with: Repealed effective April 1, 2010.

1. A-K shall report twenty-four hours or more of approved coursework of which three hours must be ethics for the previous two years within thirty days of January first of every odd-numbered year.
2. L-Z shall report twenty-four hours or more of approved coursework of which three hours must be ethics for the previous two years within thirty days of January first of every even-numbered year.
3. A newly licensed resident insurance producer shall have the remainder of the calendar year in which initially licensed as a grace period. Beginning January first of the next calendar year, newly licensed resident insurance producers must comply with continuing education requirements, reporting the required continuing education credits for each calendar year according to the alphabetized schedule.
4. An insurance producer licensed exclusively for the sale of title insurance, travel or baggage insurance, surety, bail bonds, legal expense insurance, and credit is exempt from continuing education requirements.

History: Effective July 1, 1986; amended effective November 1, 1990; May 1, 1997; October 1, 1997; January 1, 2000; December 1, 2001; January 1, 2006.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31.1(1), 26.1-26-31.1(2), 26.1-26-31.4

45-02-04-09.1. Continuing education due dates. On or before the last day of the month of the licensee's birthday following the two-year anniversary of the issuance of a license and every two years thereafter, an individual resident insurance producer must complete continuing education requirements set out in North Dakota Century Code section 26.1-26-31.1.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31.1

45-02-04-09.2. Reporting continuing education to commissioner. Continuing education providers are required to report completion of continuing education courses to the commissioner. However, it is the responsibility of the individual resident insurance producer to ensure that the commissioner's records reflect the completion of the required number of continuing education courses on

or before the continuing education due date. The insurance producer must correct any discrepancies in the record through the continuing education provider.

History: Effective April 1, 2010.
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-49

45-02-04-10. License revocation. Persons subject to revocation of license for falsification of certificates or noncompliance of insurance continuing education statutes shall, when seeking recertification, be subject to the requirements of a new license applicant unless otherwise waived by the commissioner. Repealed effective April 1, 2010.

History: Effective July 1, 1986; amended effective January 1, 2008.
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-49

45-02-04-11. Reciprocity - Proof of good standing and filing of fee Nonresident continuing education. A nonresident insurance producer who has satisfied the producer's home state's insurance continuing education requirements and is in good standing in the producer's home state shall electronically submit a uniform application for individual producer license renewal or continuation through the national association of insurance commissioners and pay a biennial continuation fee of twenty-five dollars as required in North Dakota Century Code section 26.1-26-20. The filing of the biennial fee must be in accordance with section 45-02-04-09.

History: Effective January 1, 1992; amended effective December 1, 2001; January 1, 2008; April 1, 2010.
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-13.4, 26.1-26-31.7

45-02-04-13. Penalty. All resident insurance producers who are late in filing the required report of continuing education compliance shall pay a penalty of twenty-five dollars in addition to the fee required by North Dakota Century Code section 26.1-26-31.4. Repealed effective April 1, 2010.

History: Effective January 1, 1992; amended effective December 1, 2001.
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-31.1, 26.1-26-31.4

45-02-04-14. Cancellation. The license of a nonresident insurance producer who fails to pay the biennial continuation fee of twenty-five dollars within the required timeframe will be canceled. Repealed effective April 1, 2010.

History: Effective December 1, 2001.
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-20

45-02-04-15. Continuing education for relicensure. A resident insurance producer whose license is voluntarily canceled or whose license is canceled for failure to complete the biennial continuation, may apply within twelve months of the cancellation date for a license by submitting an application form and license fee. The applicant will not be required to retake qualifying examinations if the examination results are still valid pursuant to subsection 7 of section 45-02-02-03. However, the applicant must have completed continuing education requirements as though the license had been continuously active throughout the period of cancellation.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

CHAPTER 45-03-13

45-03-13-01. Standards. The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors, or the general public. The commissioner may consider:

1. Adverse findings reported in financial condition and market conduct examination reports, audit reports, actuarial opinions, reports, or summaries.
2. The national association of insurance commissioners insurance regulatory information system and its related other financial analysis solvency tools and reports.
3. ~~The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus.~~
4. ~~The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature. Whether the insurer has made adequate provision according to presently accepted actuarial standards of practice for the anticipated cashflows required by the contractual obligations and related expenses of the insurer when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including the investment earnings on the assets, and considerations anticipated to be received and retained under the policies and contracts.~~
5. ~~4.~~ The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's insurer's remaining surplus after taking into account the insurer's cashflow and the classes of business written as well as the financial condition of the assuming reinsurer.
6. ~~5.~~ The insurer's operating loss in the last twelve-month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.
6. ~~Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.~~

7. Whether a reinsurer, obligor, or any affiliate, subsidiary, or reinsurer entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation and which may affect the solvency of the insurer.
8. Contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer.
9. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer.
10. The age and collectibility of receivables.
11. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position.
12. Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry.
13. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner.
14. Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer.
14. 15. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.
15. 16. Whether the company insurer has experienced or will experience in the foreseeable future cashflow or liquidity problems, or both.
17. Whether management has established reserves that do not comply with minimum standards established by state insurance laws, rules, statutory accounting standards, sound actuarial principles, and standards of practice.
18. Whether management persistently engages in material under reserving that results in adverse development.

19. Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains or both do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.
20. Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

History: Effective January 1, 1992; amended effective April 1, 2010.

General Authority: NDCC 28-32

Law Implemented: NDCC 26.1-01-03.1, 26.1-05-04, 26.1-05-32, 26.1-06.1-01(3)(a), 26.1-06.1-11

45-03-13-02. Commissioner's authority.

1. For the purposes of making a determination of an insurer's financial condition under this chapter, the commissioner may:
 - a. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding.
 - b. Make appropriate adjustments, including disallowance, to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the national association of insurance commissioners accounting policies and procedures manual, state laws, and rules.
 - c. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor.
 - d. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.
2. If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the its policyholders, creditors, or the general public, then the commissioner may, upon his determination, issue an order requiring the insurer to:
 - a. Reduce the total amount of present and potential liability for policy benefits by reinsurance.
 - b. Reduce, suspend, or limit the volume of business being accepted or renewed.

- c. Reduce general insurance and commission expenses by specified methods.
- d. Increase the insurer's capital and surplus.
- e. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders.
- f. File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets.
- g. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary.
- h. Document the adequacy of premium rates in relation to the risks insured.
- i. File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on such format as promulgated by the commissioner.
- j. Correct corporate governance practice deficiencies and adopt and use governance practices acceptable to the commissioner.
- k. Provide a business plan to the commissioner in order to continue to transact business in the state.
- l. Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustment, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.

- 3. Any insurer subject to an order under subsection 2 may request a hearing to review that order. The notice of hearing must be served upon the insurer pursuant to North Dakota Century Code chapter 28-32. The notice of hearing must state the time and place of hearing, and the conduct, condition, or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing must occur not less than ten days nor more than forty-five days after notice is served and must be in the place to be designated by the commissioner. The commissioner shall hold all

hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing must be public.

History: Effective January 1, 1992; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-03.1, 26.1-05-04, 26.1-05-32, 26.1-06.1-01(3)(a), 26.1-06.1-11(1)

CHAPTER 45-03-15

45-03-15-01. Accounting practices and procedures. Every insurance company doing business in this state shall file with the commissioner, pursuant to North Dakota Century Code section 26.1-03-07, the appropriate national association of insurance commissioners annual statement blank, prepared in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March 2007 2009 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance.

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

General Authority: NDCC 28-32-02

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

45-03-15-02. Reporting of financial information. Every insurance company licensed to do business in this state shall transmit to the commissioner and to the national association of insurance commissioners its most recent financial statements compiled on a quarterly basis, within forty-five days following the calendar quarters ending March thirty-first, June thirtieth, and September thirtieth. The financial statements must be prepared and filed in the form prescribed by the commissioner and in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March 2007 2009 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance. The commissioner may exempt any company or category or class of companies from the filing requirement.

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

General Authority: NDCC 28-32-02

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

CHAPTER 45-03-19.1
PROPERTY AND CASUALTY ACTUARIAL OPINION

Section
45-03-19.1-01 Statement of Actuarial Opinion and Supporting Documentation

45-03-19.1-01. Statement of actuarial opinion and supporting documentation.

1. **Statement of actuarial opinion.** Every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit to the North Dakota insurance commissioner the opinion of an appointed actuary entitled "statement of actuarial opinion". This opinion shall be filed in accordance with the appropriate national association of insurance commissioners property and casualty annual statement instructions.
2. **Actuarial opinion summary.**
 - a. Every property and casualty insurance company domiciled in this state that is required to submit a statement of actuarial opinion shall annually submit to the North Dakota insurance commissioner an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate national association of insurance commissioners property and casualty annual statement instructions and shall be considered as a document supporting the actuarial opinion required in subsection 1.
 - b. A company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.
3. **Actuarial report and workpapers.**
 - a. An actuarial report and underlying workpapers as required by the appropriate national association of insurance commissioners property and casualty annual statement instructions shall be prepared to support each actuarial opinion.
 - b. The insurance company must provide a supporting actuarial report or workpapers at the request of the commissioner.

History: Effective April 1, 2010.
General Authority: NDCC 26.1-03-11.1
Law Implemented: NDCC 26.1-03-11.1

CHAPTER 45-03-20

45-03-20-01. Purpose and scope.

1. The purpose of this chapter is to improve the North Dakota insurance department's surveillance of the financial condition of insurers by requiring an:
 - a. An annual examination audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants of the financial statements reporting the financial position and the results of operations of insurers.
 - b. Communication of internal control-related matters noted in an audit; and
 - c. Management's report of internal control over financial reporting.
2. Every insurer, as defined in section 45-03-20-02, is subject to this chapter, except a company, so defined, which is licensed only in North Dakota. The commissioner may exempt an insurer, or type of insurer, from the requirements of this chapter. Insurers having direct premiums written in this state of less than one million dollars in any calendar year and less than one thousand policyholders or certificate holders of directly direct written policies nationwide at the end of the calendar year are exempt from this chapter for that year, unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities, except that insurers having assumed premiums pursuant to contracts or treaties of reinsurance of one million dollars or more will not be so exempt.
3. Foreign or alien insurers filing the audited financial reports report in another state, pursuant to the other state's requirement for filing of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from this chapter sections 45-03-20-03 through 45-03-20-12 if:
 4. a. A copy of the audited financial report, report on significant deficiencies in internal controls communication of internal control-related matters noted in an audit, and the accountant's letter of qualifications which are filed with another state are filed with the commissioner in accordance with the filing dates specified in sections 45-03-20-03, 45-03-20-10, and 45-03-20-11, respectively. Canadian insurers may submit accountants' reports as filed with the office of the superintendent of financial institutions, Canada.

2. b. A copy of any notification of adverse financial condition report filed with another state is filed with the commissioner within the time specified in section 45-03-20-09.
4. Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.
5. This chapter may not prohibit, preclude, or in any way limit the commissioner of insurance commissioner from ordering or conducting or performing examinations of insurers under the rules and regulations of the North Dakota insurance department of insurance and the practices and procedures of the North Dakota insurance department of insurance.

History: Effective October 1, 1995; amended effective April 1, 1996; April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-02. Definitions. The terms and definitions in this section are intended to provide definitional guidance as the terms are used within this chapter.

1. "Accountant" and or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in all states in which they are licensed to practice. For Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
2. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
3. "Audit committee" means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. Refer to subsection 5 of section 45-03-20-12.1 for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

4. "Audited financial report" means and includes those items specified in section 45-03-20-04.
5. "Group of insurers" means those licensed insurers included in the reporting requirements of North Dakota Century Code chapter 26.1-10, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financing reporting.
3. 6. "Indemnification" means an agreement of indemnity or a release from liability if the intent or effect is to shift or limit in any manner the potential liability of a person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.
7. "Independent board member" has the same meaning as described in subsection 3 of section 45-03-20-12.1.
4. 8. "Insurer" means a licensed insurer as defined in North Dakota Century Code chapter 26.1-02.
9. "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, that is those items specified in subsections 2 through 7 of section 45-03-20-04 and includes those policies and procedures that:

 - a. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
 - b. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04 and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
 - c. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04.
10. "Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204; 116 Stat. 745] and the United States securities and exchange commission's rules and regulations promulgated thereunder.

11. "Section 404 report" means management's report on internal control over financial reporting as defined by the United States securities and exchange commission and the related attestation report of the independent certified public accountant as described in subsection 1.
12. "SOX-compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204; 116 Stat. 745]:
 - a. The preapproval requirements of section 201 (section 10A(i) of the Securities Exchange Act of 1934 [Pub. L. 73-291; 48 Stat. 881]);
 - b. The audit committee independence requirements of section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934 [Pub. L. 73-291; 48 Stat. 881]); and
 - c. The internal control over financial reporting requirements of section 404 (item 308 of the United States securities and exchange commission regulation S-K).

History: Effective October 1, 1995; amended effective January 1, 2008; April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-03. Filing General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

1. All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June first for the year ended December thirty-first immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June first with ninety days' advance notice to the insurer.
2. Extensions of the June first filing date may be granted by the commissioner for thirty-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.
3. If an extension is granted in accordance with the provisions in subsection 2 of section 45-03-20-03, a similar extension of thirty days

is granted to the filing of management's report of internal control over financial reporting.

4. Every insurer required to file an annual audited financial report pursuant to this chapter shall designate a group of individuals as constituting its audit committee, as defined in section 45-03-20-02. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this chapter at the election of the controlling person.

History: Effective October 1, 1995; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-04. Contents of annual audited financial report. The annual audited financial report must report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cashflows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

The annual audited financial report must include the following:

1. Report of independent certified public accountant.
2. Balance sheet reporting admitted assets, liabilities, capital, and surplus.
3. Statement of operations.
4. Statement of cashflows.
5. Statement of changes in capital and surplus.
6. Notes to financial statements. These notes must be those required by the appropriate national association of insurance commissioners annual statement instructions and the national association of insurance commissioners accounting practices and procedures manual. These notes must also include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to North Dakota Century Code section 26.1-03-07 with a written description of the nature of these differences.
7. The financial statements included in the audited financial report must be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement must be comparative, presenting the amounts as of December thirty-first of the current year and the amounts as of the immediately preceding December thirty-first. However, in the first year in which an insurer is

required to file an audited financial report, the comparative data may be omitted.

History: Effective October 1, 1995; amended effective August 1, 2000; April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-05. Designation of independent certified public accountant.

1. Each insurer required by this chapter to file an annual audited financial report within sixty days after becoming subject to the requirement, shall register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm—generally referred to in this chapter as the "accountant", retained to conduct the annual audit under this chapter. Insurers not retaining an independent certified public accountant on October 1, 1995, shall register the name and address of their retained independent certified public accountants not less than six months before the date when the first audited financial report is to be filed.
2. The insurer shall obtain a letter from the accountant and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the rules and regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that department, specifying the exceptions as the accountant may believe appropriate.
3. If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the department commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding the event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of the disagreement in connection with the accountant's opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decisionmaking level, that is between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible

for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which the accountant does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

History: Effective October 1, 1995; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-06. Qualifications of independent certified public accountant.

1. The commissioner shall not recognize any person or firm as a qualified independent certified public accountant ~~which if the person or firm:~~
 - a. Is not in good standing with the American institute of certified public accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
 - b. Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.
2. Except as otherwise provided in this chapter, the commissioner shall recognize an independent certified public accountant ~~must be~~ recognized as qualified as long as the independent certified public accountant conforms to the standards of the independent certified public accountant's profession, as contained in the code of professional ethics of the American institute of certified public accountants and rules and regulations and code of ethics and rules of professional conduct of the North Dakota board of accountancy, or similar code.
3. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under North Dakota Century Code chapter 26.1-06.1, the mediation or arbitration provisions shall operate at the option of the statutory successor.
4. a. ~~A partner or other person responsible for rendering a report The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than seven five consecutive years. Following any period of service, the The person must be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two five consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on~~

the basis of unusual circumstances. This application should be made at least thirty days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

- a. (1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
- b. (2) Premium volume of the insurer; or
- c. (3) Number of jurisdictions in which the insurer transacts business.

~~The requirements of this subsection become effective October 1, 1997.~~

- b. The insurer shall file, with its annual statement filing, the approval for relief from subdivision a with the states that it is licensed in or doing business in and with the national association of insurance commissioners. If the nondomestic state accepts electronic filing with the national association of insurance commissioners, the insurer shall file the approval in an electronic format acceptable to the national association of insurance commissioners.
- 5. The commissioner shall not neither recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:
 - a. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;
 - b. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this chapter; or
 - c. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.
- 6. The commissioner may hold a hearing to determine whether a an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

7. a. The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:
- (1) Bookkeeping or other services relating to the accounting records or financial statements of the insurer;
 - (2) Financial information systems design and implementation;
 - (3) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
 - (4) Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:
 - (a) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
 - (b) The insurer has competent personnel or engages a third-party actuary to estimate the reserves for which management takes responsibility; and
 - (c) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;
 - (5) Internal audit outsourcing services;
 - (6) Management functions or human resources;
 - (7) Broker or dealer, investment adviser, or investment banking services;
 - (8) Legal services or expert services unrelated to the audit; or
 - (9) Any other services that the commissioner determines, by regulation, are impermissible.

- b. In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit the accountant's own work, and cannot serve in an advocacy role for the insurer.
8. Insurers having direct written and assumed premiums of less than one hundred million dollars in any calendar year may request an exemption from subdivision a of subsection 7. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.
9. A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subdivision a of subsection 7 or that do not conflict with subdivision b of subsection 7, only if the activity is approved in advance by the audit committee, in accordance with subsection 10.
10. All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity or:
- a. The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;
- b. The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and
- c. The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.
11. The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection 10. The decisions of any member to whom this authority

is delegated shall be presented to the full audit committee at each of its scheduled meetings.

12. a. The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, or chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.
- b. The insurer shall file, with its annual statement filing, the approval for relief from subdivision a with the states that it is licensed in or doing business in and the national association of insurance commissioners. If the nondomestic state accepts electronic filing with the national association of insurance commissioners, the insurer shall file the approval in an electronic format acceptable to the national association of insurance commissioners.

History: Effective October 1, 1995; amended effective January 1, 2008; April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-08. Scope of examination audit and report of independent certified public accountant. Financial statements furnished under section 45-03-20-04 must be examined by an the independent certified public accountant. The independent certified public accountant shall examine audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. The independent certified public accountant shall also consider In accordance with AU 319 of the professional standards of the American institute of certified public accountants, consideration of internal control in a financial statement audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to section 45-03-20-12.3, the independent certified public accountant should consider, as that term is defined in statements on auditing standards no. 102, defining professional requirements in statements on auditing standards or its replacement, the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the financial condition

examiner's handbook promulgated by the national association of insurance commissioners as the independent certified public accountant deems necessary.

History: Effective October 1, 1995; amended effective January 1, 2008; April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-09. Notification of adverse financial condition.

1. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination audit or that the insurer does not meet the minimum capital and surplus requirement of the North Dakota insurance statute as of that date. An insurer who has received a report under this section shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-business-day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.
2. An independent certified public accountant is not liable in any manner to any person for any statement made in connection with this section if the statement is made in good faith in compliance with this section subsection 1.
3. If the accountant, subsequent to the date of the audited financial report filed under this chapter, becomes aware of facts that might have affected the accountant's report, the department commissioner notes the obligation of the accountant to take action as prescribed in volume 1, section AU 561 of the professional standards of the American institute of certified public accountants.

History: Effective October 1, 1995; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

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

**45-03-20-10. Report on significant deficiencies in internal controls
Communication of internal control-related matters noted in an audit.**

1. In addition to the annual audited financial statements report, each insurer shall furnish the commissioner with a written report

communication as to any unremediated material weaknesses in its internal controls over financial reporting noted during the audit. Such communication shall be prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60, communication of internal control structure matters noted in an audit, AU section 325 of the professional standards of the American institute of certified public accountants, requires an accountant to communicate significant deficiencies known as "reportable conditions" noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report must be filed annually by the insurer with the department within sixty days after the filing of the annual audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the accountant's report within sixty days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness, as the term material weakness is defined by statements on auditing standards no. 60, communication of internal control-related matters noted in an audit or its replacement, as of December thirty-first immediately preceding, in the insurer's internal control over financial reporting noted by the accountant during the course of the accountant's audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

2. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

History: Effective October 1, 1995; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-12. Definition, availability, and maintenance of independent certified public accountant workpapers.

1. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountant's examination audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's examination audit of the financial statements of an insurer and which support the accountant's opinion thereof.

2. Every insurer required to file an audited financial report under this chapter, shall require the accountant to make available for review by insurance department examiners, all workpapers prepared in the conduct of the accountant's examination audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the insurance department has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.
3. In the conduct of the aforementioned periodic review by the insurance department examiners, it must be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners must be considered investigations and all working papers and communications obtained during the course of the investigations must be afforded the same confidentiality as other examination workpapers generated by the department.

History: Effective October 1, 1995; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-12.1. Requirements for audit committees. This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity.

1. The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this chapter. Each accountant shall report directly to the audit committee.
2. Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection 5 of this section and subsection 3 of section 45-03-20-02.
3. In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in the member's capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such

members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

4. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.
5. To exercise the election of the controlling person to designate the audit committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.
6.
 - a. The audit committee shall require the accountant that performs for an insurer any audit required by this chapter to timely report to the audit committee in accordance with the requirements of statements on auditing standards no. 61, communication with audit committees, or its replacement, including:
 - (1) All significant accounting policies and material permitted practices;
 - (2) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
 - (3) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.
 - b. If an insurer is a member of an insurance holding company system, the reports required by subdivision a may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

7. The proportion of independent audit committee members shall meet or exceed the following criteria:

<u>Prior Calendar Year Direct Written and Assumed Premiums</u>		
<u>\$0-\$300,000,000</u>	<u>Over \$300,000,000-\$500,000,000</u>	<u>Over \$500,000,000</u>
<u>No minimum requirements. See also notes A and B.</u>	<u>Majority (50% or more) of members shall be independent. See also notes A and B.</u>	<u>Supermajority of members (75% or more) shall be independent. See also note A.</u>

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

8. An insurer with direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars may make application to the commissioner for a waiver from this section requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the national association of insurance commissioners. If the nondomestic state accepts electronic filing with the national association of insurance commissioners, the insurer shall file the approval in an electronic format acceptable to the national association of insurance commissioners.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-12.2. Conduct of insurer in connection with the preparation of required reports and documents.

1. No director or officer of an insurer shall, directly or indirectly:

- a. Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this chapter; or
 - b. Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this chapter.
2. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.
3. For purposes of subsection 2, actions that if successful, could result in rendering the insurer's financial statements materially misleading include actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant:
 - a. To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances, due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;
 - b. Not to perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards;
 - c. Not to withdraw an issued report; or
 - d. Not to communicate matters to an insurer's audit committee.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-12.3. Management's report of internal control over financial reporting.

1. Every insurer required to file an audited financial report pursuant to this chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of five hundred million dollars or more shall prepare a report of the insurer's or group of insurers'

internal control over financial reporting, as these terms are defined in section 45-03-20-02. The report shall be filed with the commissioner along with the communication of internal control-related matters noted in an audit described under section 45-03-20-10. Management's report of internal control over financial reporting shall be as of December thirty-first immediately preceding.

2. Notwithstanding the premium threshold in subsection 1, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any risk-based capital level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in chapter 45-03-13.

3. An insurer or a group of insurers that is:

- a. Directly subject to section 404;
- b. Part of a holding company system whose parent is directly subject to section 404;
- c. Not directly subject to section 404 but is a SOX-compliant entity; or
- d. A member of a holding company system whose parent is not directly subject to section 404 but is a SOX-compliant entity;

may file its or its parent's section 404 report and an addendum in satisfaction of this section's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements were included in the scope of the section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in subsections 2 through 7 of section 45-03-20-04) excluded from the section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the section 404 report, the insurer or group of insurers may either file a report under this section, or the section 404 report and a report under this section for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the section 404 report.

4. Management's report of internal control over financial reporting shall include:

- a. A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
 - b. A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;
 - c. A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;
 - d. A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
 - e. Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December thirty-first immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;
 - f. A statement regarding the inherent limitations of internal control systems; and
 - g. Signatures of the chief executive officer and the chief financial officer or equivalent position or title.
5. Management shall document and make available upon financial condition examination the basis upon which its assertions required in subsection 4 are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities.
- a. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.
 - b. Management's report on internal control over financial reporting, required by subsection 1, and any documentation provided in support thereof during the course of a financial condition

examination, shall be kept confidential by the insurance department.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-13. Exemptions and effective dates.

1. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. Such The hearing must be held in accordance with the rules and regulations of the North Dakota department of insurance department pertaining to administrative hearing procedures.
2. Domestic insurers retaining a certified public accountant on October 1, 1995, who qualify as independent shall comply with this chapter for the year ending December 31, 1996, and each year thereafter unless the commissioner permits otherwise.
3. Domestic insurers not retaining a certified public accountant on October 1, 1995, who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise:
 4. a. As of December 31, 1996, file with the commissioner: an audited financial report.
 - a. ~~Report of independent certified public accountant.~~
 - b. ~~Audited balance sheet.~~
 - c. ~~Notes to audited balance sheet.~~
 2. b. For the year ending December 31, 1996, and each year thereafter, the insurers shall file with the commissioner all reports and communications required by this chapter.
4. Foreign insurers shall comply with this chapter for the year ending December 31, 1996, and each year thereafter, unless the commissioner permits otherwise.
5. The requirements of subsection 4 of section 45-03-20-06 shall be in effect for audits of the year beginning January 1, 2010, and thereafter.

6. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.
7. The requirements of section 45-03-20-01, subsection 3 of section 45-03-20-03, subsections 7 through 12 of section 45-03-20-06, and sections 45-03-20-08 and 45-03-20-12.3, except for section 45-03-20-12.1 covered above, are effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

History: Effective October 1, 1995; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

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

45-03-20-14. Canadian and British companies.

1. In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.
2. For such insurers, the letter required in subsection 2 of section 45-03-20-05 shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to section 45-03-20-03 and shall affirm that the opinion expressed is in conformity with those requirements.

History: Effective April 1, 2010.

General Authority: NDCC 28-32-02

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

CHAPTER 45-03-23

45-03-23-01. Definitions. As used in this chapter, unless the context requires otherwise, the term:

1. "Agent" means a national bank, state bank, or trust company, or broker-dealer which maintains an account in its name in a clearing corporation or which is a member of the federal reserve system and through which a custodian participates in a clearing corporation or the federal reserve book-entry system; including the treasury/reserve automated debt entry securities system (TRADES) or treasury direct systems except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "agent" may include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such those laws to accept custody of securities.
2. "Clearing corporation" means a corporation as defined in subsection 1 of North Dakota Century Code section 41-08-02 which is organized for the purpose of effecting transactions in securities by computerized book-entry; except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation which that is organized or existing under the laws of any foreign country and which is legally qualified under such those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes treasury/reserve automated debt entry securities system" and "treasury direct" book-entry securities systems established under 31 U.S.C. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301.
3. "Custodian" means a:
 - a. A national bank, state bank, or trust company which has that must at all times aggregate capital, surplus, and undivided profits of not less than one million dollars during which it acts as a custodian under this chapter be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and which is regulated by either state banking laws or is a member of the federal reserve system and which is legally qualified to accept custody of securities in accordance with the standards set forth below; except that with respect to securities issued by institutions organized or existing under the laws of any foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "custodian" may include

- a bank; or trust company, or similar institution which has at all times aggregate capital, surplus, and undivided profits or net less than the equivalent of one million dollars incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency of that country that must be at all times during which it acts as a custodian pursuant to this chapter be no less than adequately capitalized as determined by the standards adopted by international banking authorities and which is legally qualified to accept custody of securities; or
- b. A broker-dealer that shall be registered with and subject to jurisdiction of the securities and exchange commission, maintains membership in the securities investor protection corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars.
4. "Federal reserve book-entry system" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks through banks which are members of the federal reserve system or which otherwise have access to such computerized systems. "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the treasury/reserve automated debt equity securities system or treasury direct systems.
5. "Securities" means certificated securities and uncertificated securities as defined in subdivisions d and r of subsection 1 of North Dakota Century Code section 41-08-02.
6. "Securities certificate" means a certificate as defined in subdivision p of subsection 1 of North Dakota Century Code section 41-08-02.
7. "Tangible net worth" means shareholders' equity, less intangible assets, as reported in the broker-dealer's most recent annual or transition report under section 13 or 15(d) of the Securities Exchange Act of 1934 (SEC form 10-K) filed with the securities and exchange commission.
8. "Treasury/reserve automated debt entry securities system" ("TRADES") and "treasury direct" mean the book-entry securities systems established under 31 U.S.C. 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and treasury direct systems are subject to 31 C.F.R. pt. 357, et seq.

History: Effective March 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

45-03-23-02. Custody of agreement - Requirements.

1. An insurance company may provide, by written agreement with a custodian, for the custody of its securities with a custodian, ~~which securities may be held by the custodian or its agent or in a clearing corporation or in the federal reserve book-entry system. Securities so held, whether held by the custodian or its agent or in a clearing corporation or in the federal reserve book-entry system, are referred to herein as "custodied securities". The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.~~
2. ~~Any such~~ The agreement must be in writing and must be authorized by the resolution of the board of directors of the insurance company or of an authorized committee ~~thereof of the board~~. The terms of the agreement must comply with the following:
 - a. ~~Certified securities~~ Securities certificates held by the custodian must be held either separate from the securities of the custodian and of all of its other customers ~~or in a fungible bulk of securities as part of a filing of securities by issue arrangement.~~
 - b. ~~Securities held in a fungible bulk~~ indirectly by the custodian and securities in a clearing corporation ~~or in the federal reserve book-entry system~~ must be separately identified on the custodian's official records as being owned by the insurance company. Said The records must identify which ~~custodied~~ securities are held by the custodian or by its agent and which securities are in a clearing corporation ~~or in the federal reserve book-entry system~~. If the securities are in a clearing corporation ~~or in the federal reserve book-entry system~~, said, the records must also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation and, if through an agent, the name of the agent.
 - c. All custodied securities that are registered must be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.
 - d. Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in North Dakota Century Code section 26.1-05-23 must, to the extent required by that section, be under the control of the insurance commissioner and must not be withdrawn by the insurance company without the commissioner's approval.

- e. The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company. The custodian's trust committee's annual reports of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.
- f. During the course of the custodian's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, and any representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.
- g. The custodian and its agents shall be required to send to the insurance company:
 - (1) All reports which they receive from a clearing corporation ~~or the federal reserve book-entry system~~ on their respective systems of internal accounting control; and
 - (2) Any reports prepared by outside auditors on the custodians or its agent's internal accounting control of custodied securities that the insurance company may reasonably request.
- h. The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in any audit of the financial statements of the insurance company.
- i. The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form attached hereto described in the appendices to this chapter, with respect to custodied securities.
- j. A national bank, state bank, or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator. A broker-dealer shall secure and

maintain insurance protection for each insurance company's custodied securities in excess of that provided by the securities investor protection corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

- k. The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities, except that the custodian shall not be so obligated to the extent that the loss was caused by other than the negligence or dishonesty of the custodian.
- l. The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction.
- k. m. In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company, the custodian shall promptly replace the securities or the their value thereof and the value of any loss of rights or privileges resulting from said the loss of securities.
- l. n. The agreement may provide that the custodian will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations rules, orders, or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.
- m. o. In the event that the custodian gains entry in a clearing corporation ~~or in the federal reserve book-entry system~~ through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian; provided, however, that if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian, the insurance commissioner of the state of domicile of the insurance company may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the custodian.

- f. p. The custodian shall provide written notification to the insurer's domiciliary commissioner if the custodial agreement with the insurer has been terminated or if one hundred percent of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three business days of the receipt by the custodian of the insurer's written notice of termination or within three business days of the withdrawal of one hundred percent of the account assets.

History: Effective March 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

45-03-23-03. Deposit with affiliates - Requirements.

1. Nothing prevents an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof of the board and that the receiving insurance company is organized under the laws of one of the states of the United States or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of such deposit to the insurance commissioner in the state of its domicile and the commissioner shall not have objected thereto to it within thirty days of the receipt of said the notice.
2. The terms of such an the agreement must comply with the following:
 - a. The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.
 - b. The receiving insurance company shall allow representatives of any appropriate regulatory body to examine records relating to securities held subject to the agreement.
 - c. The depositing insurance company may authorize the receiving insurance company:
 - (1) To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company; and

- (2) To provide for such securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation ~~or the~~ federal reserve book entry system.

History: Effective March 1, 2004; amended effective April 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

APPENDIX I

FORM A CUSTODIAN AFFIDAVIT

(For use by a custodian where securities entrusted to its care have not been redeposited elsewhere)

STATE OF _____)
) ss.

COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is
of _____, a banking corporation organized under and
pursuant to the laws of the _____ with the principal place of business at
_____ (hereinafter called the "bank" "corporation"):

That his or her duties involve supervision of activities of the bank corporation as
custodian and records relating thereto to the corporation;

That the bank corporation is custodian for certain securities
of _____ having a place of business at
_____ (hereinafter called the "insurance company")
pursuant to an agreement between the bank corporation and the insurance
company;

That the schedule attached hereto is a true and complete statement of securities
(other than those caused to be deposited with The Depository Trust Company
or like entity or a Federal Reserve Bank under the Federal Reserve book-entry
procedure TRADES or Treasury Direct systems) which were in the custody of
the bank corporation for the account of the insurance company as of the close of
business on _____; that, unless otherwise indicated on the
schedule the next maturing and all subsequent coupons were then either attached
to coupon bonds or in the process of collection; and that, unless otherwise shown
on the schedule, all such securities were in bearer form or in registered form in
the name of the insurance company or its nominee, or of the corporation or its
nominee, or were in the process of being registered in such form;

That the bank corporation as custodian has the responsibility for the safekeeping
of such the securities as that responsibility is specifically set forth in the agreement
between the bank corporation as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the
schedule, said the securities were the property of said the insurance company and
were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to before me this
_____ day of _____, 20____.

(L.S.)

Vice President (or other
authorized officer)

APPENDIX II

FORM B CUSTODIAN AFFIDAVIT

(For use in instances where a custodian bank corporation maintains securities on deposit with The Depository Trust Company or like entity)

STATE OF _____)
) ss.

COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is
of _____, a banking corporation organized under and
pursuant to the laws of the _____ with the principal place of business at
_____ (hereinafter called the "bank" "corporation");

That his or her duties involve supervision of activities of the bank corporation as
custodian and records relating thereto;

That the bank corporation is custodian for certain securities
of _____ having a place of business at
_____ (hereinafter called the "insurance company")
pursuant to an agreement between the bank corporation and the insurance
company;

That the bank corporation has caused certain of such the securities to be
deposited with _____ and that the schedule attached hereto is
a true and complete statement of the securities of the insurance company
of which the bank custodian was custodian as of the close of business on
_____, and which were so deposited on such date;

That the bank corporation as custodian has the responsibility for the safekeeping
of such the securities both in the possession of the bank corporation or deposited
with _____ as is specifically set forth in the agreement
between the bank corporation as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the
schedule, said the securities were the property of said the insurance company and
were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to before me this

_____ day of _____, 20____.

(L.S.)

Vice President (or other
authorized officer)

APPENDIX III

FORM C CUSTODIAN AFFIDAVIT

(For use where ownership is evidenced by book-entry at a Federal Reserve Bank)

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is
of _____, a banking corporation organized under and
pursuant to the laws of the _____ with the principal place of business at
(hereinafter called the "bank" "corporation"):

That his or her duties involve supervision of activities of the bank corporation as
custodian and records relating thereto to the corporation;

That the bank corporation is custodian for certain securities of
("insurance company") with a place of
business at _____ (hereinafter called the "insurance
company") pursuant to an agreement between the bank corporation and the
insurance company;

That it has caused certain securities to be credited to its book-entry account with
the Federal Reserve Bank of _____ under the Federal Reserve book-entry procedure TRADES or Treasury Direct systems; and that the
schedule attached hereto is a true and complete statement of the securities of the
insurance company of which the bank corporation was custodian as of the close
of business on _____ which were in a "General" book-entry
account maintained in the name of the bank corporation on the books and records
of the Federal Reserve Bank of _____ at such date;

That the bank corporation has the responsibility for the safekeeping of such the
securities both in the possession of the bank corporation or in said the general
book-entry account as is specifically set forth in the agreement between the bank
corporation as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the
schedule, said the securities were the property of said the insurance company and
were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to before me this
_____ day of _____, 20____.

(L.S.)

Vice President (or other
authorized officer)

CHAPTER 45-04-04

45-04-04-03. Insurance policy requirements. The commissioner will not approve any variable life insurance form filed pursuant to this chapter unless it conforms to the requirements of this section.

1. **Filing of variable life insurance policies.** All variable life insurance policies, and all riders, endorsements, applications, and other documents which are to be attached to and made part of the policy and which relate to the variable nature of the policy, must be filed with the commissioner and approved by the commissioner prior to delivery or issuance for delivery in this state.
 - a. The procedures and requirements for filing and approval are, to the extent appropriate and not inconsistent with this chapter, the same as those otherwise applicable to other life insurance policies.
 - b. The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this chapter.
2. **Mandatory policy benefit and design requirements.** Variable life insurance policies delivered or issued for delivery in this state must comply with the following minimum requirements:
 - a. Mortality and expense risks must be borne by the insurer. The mortality and expense charges must be subject to the maximums stated in the contract.
 - b. For scheduled premium policies, a minimum death benefit must be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of subdivision b of subsection 3).
 - c. The policy must reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the variable life insurance policy is actuarially sound.
 - d. Each variable life insurance policy must be credited with the full amount of the net investment return applied to the benefit base.
 - e. Any changes in variable death benefits of each variable life insurance policy must be determined at least annually.
 - f. The cash value of each variable life insurance policy must be determined at least monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the

policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, must be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other nonforfeiture benefits must be at least equal to the minimum values required by North Dakota Century Code chapter 26.1-33 for a general account policy with such premiums and benefits. The assumed investment rate may not exceed the maximum interest rate permitted under North Dakota Century Code chapter 26.1-33. If the policy does not contain an assumed investment rate this demonstration must be based on the maximum interest rate permitted under North Dakota Century Code chapter 26.1-33. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity is at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

- g. The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.
3. **Mandatory policy provisions.** Every variable life insurance policy filed for approval in this state must contain at least the following:
 - a. The cover page or pages corresponding to the cover pages of each such policy shall contain:
 - (1) A prominent statement in either contrasting color or in boldface type that the amount or duration of death benefit may be variable or fixed under specified conditions.
 - (2) A prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees.
 - (3) A statement describing any minimum death benefit required pursuant to subdivision b of subsection 2.
 - (4) The method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death.

- (5) To the extent permitted by state law, a captioned provision that the policyholder may return the variable life insurance policy within ten days of receipt of the policy by the policyholder, and receive a refund equal to the sum of (a) the difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy and (b) the value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its agent. Until such time as state law authorizes the return of payments as calculated in the preceding sentence, the amount of the refund must be the total of all premium payments for such policy.
- (6) Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this chapter.
 - b. (1) For scheduled premium policies, a provision for a grace period of not less than thirty-one days from the premium due date which must provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.
 - (2) For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. Such grace period must end on a date not less than sixty-one days after the mailing date of the report to policyholders required by subsection 3 of section 45-04-04-08.

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day.

- c. For scheduled premium policies, a provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash

surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding that permitted by North Dakota law.

- d. A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy.
- e. A provision designating the separate account to be used and stating that:
 - (1) The assets of the separate account will be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.
 - (2) The assets of such separate account will be valued at least as often as any policy benefits vary but at least monthly.
- f. A provision specifying what documents constitute the entire insurance contract under state law.
- g. A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on the insured's behalf, are considered as representations and not warranties.
- h. An identification of the owner of the insurance contract.
- i. A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation.
- j. A statement of any conditions or requirements concerning the assignment of the policy.
- k. A description of any adjustments in the policy values to be made in the event of misstatement of age or sex of the insured.
- l. A provision that the policy is contestable by the insurer after it has been in force for two years during the lifetime of the insured; provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and

was subject to satisfactory proof of the insured's insurability, is incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the date of issue of such increase.

- m. A provision stating that the investment policy of the separate account will not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state.
 - n. A provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (, except when used to pay premiums), or partial surrenders may be deferred:
 - (1) For up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account; or
 - (2) Otherwise, for any period during which the New York stock exchange is closed for trading (, except for normal holiday closing) or when the securities and exchange commission has determined that a state of emergency exists which may make such payment impractical.
 - o. If settlement options are provided, at least one such option must be provided on a fixed basis only.
 - p. A description of the basis for computing the cash value and the surrender value under the policy.
 - q. Premiums or charges for incidental insurance benefits must be stated separately.
 - r. Any other policy provision required by this chapter.
 - s. Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this chapter.
 - t. A provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any nonforfeiture insurance options will not be available.
4. **Policy loan provision.** Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state must contain provisions which are not less favorable to the policyholder than the following:

- a. A provision for policy loans after the policy has been in force for — three full years which provides the following:
 - (1) At least seventy-five percent of the policy's cash surrender value may be borrowed.
 - (2) The amount borrowed must bear interest at a rate not to exceed that permitted by chapter 45-04-03.
 - (3) Any indebtedness must be deducted from the proceeds payable on death.
 - (4) Any indebtedness must be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.
 - (5) For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following processing day exceed the amounts available under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by subsection 3 of section 45-04-04-08.
 - (6) The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding one hundred percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request.
 - (7) The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum may not apply to any automatic premium loan provision.
 - (8) No policy loan provision is required if the policy is under extended insurance nonforfeiture option.
 - (9) The policy loan provisions may be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

- (10) Amounts paid to the policyholders upon the exercise of any policy loan provision must be withdrawn from the separate account and must be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account.
5. **Other policy provisions.** The following provision may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:
- a. An exclusion for suicide within one year of the issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within one year of any increase in death benefits which results from an application of the owner subsequent to the policy issue date.
 - b. Incidental insurance benefits may be offered on a fixed or variable basis.
 - c. Policies issued on a participating basis must offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:
 - (1) The amount of the dividend may be credited against premium payments.
 - (2) The amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance.
 - (3) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest.
 - (4) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year one-year term insurance.
 - (5) The amount of the dividend may be deposited as a variable deposit in a separate account.
 - d. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under subsection 4, except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.
 - e. A provision allowing the policyholder to make partial withdrawals.

- f. Any other policy provision approved by the commissioner.

History: Effective June 1, 1984; amended effective April 1, 2010.

General Authority: NDCC 26.1-33-17, 26.1-34-11

Law Implemented: NDCC 26.1-33, 26.1-34

45-04-04-05. Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer.

1. **Establishment and administration of separate accounts.** Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to North Dakota Century Code sections 26.1-33-13 and 26.1-34-11.
 - a. If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets must be in writing and the commissioner may review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.
 - b. The insurer may not without the prior written approval of the commissioner employ in any material connection with the handling of separate account assets any person who:
 - (1) Within the last ten years has been convicted of any felony or misdemeanor arising out of such person's conduct involving embezzlement, fraudulent, conversion, or misappropriation of funds or securities or involving violation of 18 U.S.C. 1341, 1342, or 1343;
 - (2) Within the last ten years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or
 - (3) Within the last ten years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.
 - c. All persons with access to the cash, securities, or other assets of the separate account must be under bond in the amount of not less than \$____ a value indexed to the fidelity bonding recommendations stated in the financial condition examiners handbook published by the national association of insurance commissioners, 2009 edition, regarding personnel handling general account assets.

- d. The assets of such separate accounts must be valued at least as often as variable benefits are determined but in any event at least monthly.
- 2. **Amounts in the separate account.** The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.
- 3. **Investments by the separate account.**
 - a. No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:
 - (1) In case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and
 - (2) The transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.
 - b. The separate account must have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.
- 4. **Limitations on ownership.**
 - a. A separate account may not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by these regulations, would exceed ten percent of the value of the assets of the separate account. The commissioner may waive this limitation in writing if the commissioner believes waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.
 - b. No separate account may purchase or otherwise acquire the voting securities of an issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of the issuer. The commissioner may waive this limitation in writing if the commissioner believes waiver will not render the operation of the

separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

- c. The percentage limitation specified in subdivision a may not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or assets pools comply substantially with subsection 3 and the other applicable portions of this chapter.
- 5. **Valuation of separate account assets.** Investments of the separate account must be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.
- 6. **Separate account investment policy.** The investment policy of a separate account operated by a domestic insurer filed under subdivision c of subsection 2 of section 45-04-04-02 may not be changed without first filing the change with the commissioner.
 - a. Any change filed pursuant to this subsection is effective sixty days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such sixty-day period of approval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this subsection.
 - b. The commissioner may disapprove the change if the commissioner determines that the change would be detrimental to the interests of the policyholders participating in such separate account.
- 7. **Charges against separate account.** The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to, the following:
 - a. Taxes or reserves for taxes attributable to investment gains and income of the separate account.
 - b. Actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets.
 - c. Actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities.

- d. Charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account.
 - e. A charge, at a rate specified in the policy, for mortality and expense guarantees.
 - f. Any amounts in excess of those required to be held in the separate accounts.
 - g. Charges for incidental insurance benefits.
8. **Standards of conduct.** Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. The standards of conduct must be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of section 17j under the Investment Company Act of 1940 and applicable rules and regulations thereunder satisfies the provisions of this subsection.
9. **Conflicts of interest.** Rules under any provision of the insurance laws of this state or any rule applicable to the officers and directors of insurance companies with respect to conflicts of interest also apply to members of any separate account's committee or other similar body.
10. **Investment advisory services to a separate account.** An insurer may not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to the insurer with respect to its separate accounts maintained for variable life insurance policies unless the investment advisory contract is in writing and provides that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty days' written notice to the investment adviser and unless:
- a. The person providing such advice is registered as an investment adviser under the Investment Advisers Act of 1940;
 - b. The person providing such advice is an investment manager under the Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or
 - c. The insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed adviser:

- (1) The name and form of organization, state of organization, and its principal place of business;
- (2) The names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual;
- (3) A written standard of conduct complying in substance with the requirements of subsection 8 which has been adopted by the investment adviser and is applicable to the investment adviser, its officers, directors, and affiliates;
- (4) A statement provided by the proposed adviser as to whether the adviser or any person associated therewith:
 - (a) Has been convicted within ten years of any felony, or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment adviser involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of 18 U.S.C. 1341, 1342, or 1343;
 - (b) Has been permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging or in continuing any conduct or practice in connection with any such activity;
 - (c) Has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or
 - (d) Has been censured, denied an investment adviser registration, had a registration as an investment adviser revoked or suspended, or been barred or suspended from being associated with an investment adviser by order of federal or state regulatory authorities.

The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if

~~he~~ the commissioner deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

History: Effective June 1, 1984; amended effective April 1, 2010.

General Authority: NDCC 26.1-33-17, 26.1-34-11

Law Implemented: NDCC 26.1-33, 26.1-34

CHAPTER 45-04-13
VIATICAL SETTLEMENT ADVERTISING

[Repealed effective April 1, 2010]

CHAPTER 45-05-05

45-05-05-06. Risk retention group representatives and purchasing group representatives.

1. License requirement. No person, resident or nonresident in this state, may act as or hold out in this state to be a risk retention group representative for a risk retention group, or a purchasing group representative for a purchasing group which solicits members for the purpose of selling liability insurance coverage, purchases liability insurance coverage for group members located within this state or otherwise does business in this state unless then licensed as such under these rules.
2. Any person, resident or nonresident in this state, acting as or holding out in this state to be a risk retention group representative or a purchasing group representative must either:
 - a. Hold hold a current North Dakota insurance producer license as agent or broker, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota; or,
 - b. Be the holder of a current North Dakota nonresident license as agent or broker in another state, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota.
3. Any person acting as a risk retention group representative or purchasing group representative in compliance with subdivision a or b of subsection 2 shall otherwise be subject to and comply with the provisions of North Dakota Century Code chapter 26.1-46 as they pertain to agents and brokers insurance producers.
4. Exceptions to license requirement. Risk retention group representative and purchasing group representative for the purpose of licensing does not include:
 - a. Any officer, director, owner, partner, trustee, or full-time salaried employee of a risk retention group or purchasing group; and
 - b. Any telemarketing or mass mailing organization or any radio or television station or network or, newspaper or magazine publisher or distributor which makes statements or carries advertisements for a risk retention group or purchasing group to the extent only general, nonrisk specific information is given concerning the Federal Liability Risk Retention Act, North Dakota Century Code chapter 26.1-46, and the risk retention group or purchasing group and no application for insurance is received, no underwriting

information is taken, and no insurance rate or premium is quoted or collected.

5. Licensing of partnership or corporation.
 - a. A partnership or corporation may be licensed as a risk retention group representative or purchasing group representative. Each general partner and each other individual authorized to act for the partnership and each individual authorized to act for the corporation must be named in the license or registered with the commissioner and shall qualify as through an individual licensee; and
 - b. The licensee shall promptly notify the commissioner of any changes among its members, directors, officers, and other individuals designated in or registered as to the license.
6. ~~Risk retention group representative and purchasing group representative bond. Prior to issuance of an appointment as a risk retention group representative or purchasing group representative for any risk retention group or insurer not chartered in this state, the applicant shall file with the commissioner, and shall keep in force for as long as such an appointment remains in effect, a bond in favor of the state of North Dakota in the penal sum of one thousand dollars, with an authorized corporate surety the commissioner approves, conditioned that the person will conduct business under the person's risk retention group or purchasing group license in accordance with North Dakota Century Code chapter 26.1-46 and this chapter and that the person will promptly remit the taxes pursuant to North Dakota Century Code section 26.1-46-03. Any risk retention group representative or purchasing group representative licensed as a surplus line broker in the state of North Dakota and maintaining a bond pursuant to North Dakota Century Code section 26.1-26-18 or previously appointed by a risk retention group or insurer not chartered in this state group or unauthorized insurer and maintaining a bond pursuant to this section shall not be subject to any additional bond requirement. The aggregate liability of the surety for any claims on the bond may not exceed the penal sum of the bond. The bond shall not be terminated unless not less than thirty days' prior written notice thereof is given to the licensee and filed with the commissioner.~~

History: Effective October 1, 1989; amended effective April 1, 2010.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-08. Insurance purchase. Any purchasing group duly authorized to do business in the state of North Dakota may purchase insurance only from the following sources:

1. A risk retention group authorized to do business in this state.

2. An admitted insurance carrier.
3. An authorized surplus lines carrier listed on the commissioner's white list, only if the purchase is effected through a licensed surplus lines broker producer who has been appointed by the purchasing group.

History: Effective October 1, 1989; amended effective April 1, 2010.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-12. Severability. If any section of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this chapter and the application of such section to other persons and circumstances shall not be affected thereby.

History: Effective October 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

**STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT**
APPLICATION FOR REGISTRATION AS A PURCHASING GROUP

We, the undersigned President (or Chief Executive Officer) and Secretary,
on behalf of _____, make
(Name of Purchasing Group)

application for registration in North Dakota as a Purchasing Group ("Group")
and do hereby affirm that:

1. The Group is domiciled in the State of _____.
2. The Group's principal place of business (street and mailing address) is:

3. The Group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations (Give general description of business or activities engaged in by Group members):

4. The Group has as one of its purposes the purchase of liability insurance on a group basis.
5. The Group purchases such liability insurance only for its group members and only to cover their similar or related liability exposure, as described in item (3) above.
6. The Group intends to purchase the following lines and classifications of liability insurance:

7. The Group intends to purchase the liability insurance described in item (6) above from the following insurance company or companies (Give full name of company and state of domicile):

8. The name and address of the ~~broker or agent~~ insurance producer licensed by the insurance commissioner through whom purchases in North Dakota will be effected are as follows:

9. The Group has designated the insurance commissioner of North Dakota to be its agent solely for the purpose of receiving service of legal documents.
10. The Group's federal identification number is: _____

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive
Officer

Secretary

Sworn to before me this _____
day of _____, 20____

Notary Public

State of _____

My Commission Expires: _____

**STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT
APPLICATION FOR REGISTRATION AS
A RISK RETENTION GROUP
(FOREIGN)**

We, the undersigned President (or Chief Executive Officer) and Secretary,
on behalf of _____

(Name must include the phrase "Risk Retention Group")
located at _____

make application for registration in North Dakota as a Risk Retention Group
("Group") and do hereby affirm that:

1. The primary activity of this Group consists of assuming and spreading all, or any portion, of the liability exposure of its Group members.
2. The Group is organized for the primary purpose of conducting the activity described under (1) above.
3. The Group is chartered and licensed as a liability insurance company under the laws of the State of _____, and is authorized to engage in the business of insurance under the laws of its chartering state.
4. The Group does not exclude any person from its membership in the Group solely to provide for members of the Group a competitive advantage over such a person.
5. Ownership of the Group consists of one or the other of the following (check one):

_____ the owners of the Group are only persons who comprise the membership of the Group and who are provided insurance by the Group;

_____ the sole owner of the Group is

_____ (Give name and address of organization)

an organization whose members only comprise the membership of the Group, and whose owners are only persons who comprise the membership of the Group and who are provided insurance by the Group.

6. The Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar, or common business, trade, produce, services, premises or operations (Give general description of business or activities engaged in by Group members):

7. The activities of the Group do not include the provision of insurance other than:
- a. liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and
 - b. reinsurance with respect to the similar or related liability exposure of another risk retention group (or a member of such other risk retention group) engaged in businesses or activities which qualify such other risk retention group (or member) under item (6) above for membership in this Group.
8. The Group will comply with the unfair claim settlement practices laws of North Dakota.
9. The Group will pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers under the laws of North Dakota.
10. The Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the laws of North Dakota for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.
11. The Group has designated the Insurance Commissioner of North Dakota to be its agent solely for the purpose of receiving service of legal documents or process.
12. The Group will submit to examination by the Insurance Commissioner to determine the Group's financial condition, if:
 - a. the Insurance Commissioner of the Group's chartering state has not begun or has refused to initiate an examination of the Group; and

- b. any such examination by the Insurance Commissioner is coordinated so as to avoid unjustified duplication and unjustified repetition.
- 13. The Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner upon a finding of financial impairment, or in a voluntary dissolution proceeding.
- 14. The Group will comply with the laws of North Dakota concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.
- 15. The Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner alleging that the Group is in hazardous financial condition or is financially impaired.
- 16. The Group will provide the following notice, in 10-point type, in any insurance policy issued by the Group:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

- 17. The Group has submitted to the Insurance Commissioner, as part of this application and before it has offered any insurance in North Dakota, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner of its chartering state. The plan or study submitted herewith discloses the name of the state in which the Group is chartered, as well as the Group's principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the Insurance Commissioner any revisions of such plan or study to reflect any changes therein including, but without limitation, additional lines of liability insurance which the Group intends to offer, and any change in the designation of the Group's chartering state.
- 18. The Group has submitted to the Insurance Commissioner, as part of this application, a copy of the Group's annual financial statement submitted to the state in which it is chartered as an insurance company. The annual financial statement has been certified by an independent public accountant and contains a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. Hereafter, the Group will submit its annual financial statement to the Insurance Commissioner by March 1 of each year.

19. The Group will not solicit or sell insurance to any person in North Dakota who is not eligible for membership in the Group.
20. The Group will not solicit or sell insurance in North Dakota, or otherwise operate in this state, if the Group is financially impaired or is in a hazardous financial condition.
21. The name and address of the ~~broker(s) or agent(s)~~ insurance producer(s) licensed by the Insurance Commissioner through whom purchases in North Dakota will be effected are as follows:

22. The Group's federal identification number is _____.

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer

Secretary

Sworn to before me this day of

_____, 20___.

Notary Public, State of:

My Commission Expires:

EXHIBIT A

STATE OF NORTH DAKOTA

DEPARTMENT OF INSURANCE

REGISTRATION OF APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

KNOW ALL MEN BY THESE PRESENTS:

The (name of group), a [risk retention] [purchasing] group authorized to transact liability insurance under the Federal Liability Risk Retention Act of 1986 and Chapter 26.1-46 of the North Dakota Century Code, domiciled in the State of _____ and whose principal place of business is located at (address) (city) (state) (zip code) does hereby constitute, designate and appoint the Insurance Commissioner of the State of North Dakota, and the commissioner's successors in office, as its true and lawful agent to receive legal documents and service of process issued against said [risk retention] [purchasing] group in the State of North Dakota. This appointment shall be irrevocable, shall be binding upon the group, and its successors in interest, as to the assets and liabilities of the group and shall remain in full force and effect for so long as there is in force any contract or certificate insuring any member [of the risk retention group] [of the purchasing group] in the State of North Dakota or any obligation of the group arising out of its transactions in the State of North Dakota.

The [risk retention] [purchasing] group hereby designates the following person as the person to whom legal documents and process against it served shall be forwarded by the Insurance Commissioner:

<u>(name)</u>	,	<u>(title)</u>
<u>(company or group name)</u>	,	<u>(street address)</u>
<u>(city)</u>	,	<u>(state)</u> <u>(zip code)</u>

IN WITNESS WHEREOF, the said [risk retention] [purchasing] group has caused this appointment to be duly executed this _____ day of _____, 20____.

(name of group)
BY: _____

(SEAL)

[President, Chief
Executive Officer,
Secretary, Partner,
Trustee, or title of the
officer or party who
under the organization
of the group has
authority to bind the
group with that person's
signature]

State of _____)
) ss
County of _____)

The foregoing instrument was acknowledged and executed before me this
____ day of _____, 20 ____.

(SEAL)

NOTARY PUBLIC

My Commission Expires: _____

CHAPTER 45-06-09

45-06-09-03. Definitions.

1. "Business plan" means the plan of operation of the health insurance purchasing cooperative.
2. "Commissioner" means the ~~commissioner of insurance~~ commissioner.
3. "Group" means a collection of small employers subject to the requirements of North Dakota Century Code chapter 26.1-36.3 who elect to join together to form a group health insurance purchasing cooperative. It does not include an industrywide trade association meeting the exemption requirements outlined in subsection 15 of North Dakota Century Code section 26.1-36.3-07 or any other insurance purchasing group arrangements in existence prior to August 1, 1994.
4. "Health insurance purchasing cooperative" means a group of small employers who join together to purchase health insurance.

History: Effective August 1, 1994; amended effective April 1, 2010.

General Authority: NDCC 26.1-01-07.4

Law Implemented: NDCC 26.1-01-07.4

45-06-09-07. Insurance risk. ~~A health insurance purchasing cooperative may bear no insurance risk and may not self insure.~~ Repealed effective April 1, 2010.

History: Effective August 1, 1994.

General Authority: NDCC 26.1-01-07.4

Law Implemented: NDCC 26.1-01-07.4

CHAPTER 45-12-01

45-12-01-01. Definitions. As used in this article:

1. "Alteration" means a structural modification of or a departure from an original or existing construction.
2. "Apartments" means all multiple dwellings, including condominiums.
3. "Approved" means approved by the commissioner.
4. "A.S.M.E. code" means the boiler and pressure vessel construction code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1 and 3), IX, and X, 2007 edition and section VIII, (division 2), 2004 edition, are hereby adopted by the commissioner and incorporated by reference as a part of this article. A copy of the American society of mechanical engineers code is on file at the office of the boiler inspection program. The American society of mechanical engineers code may be obtained from the American society of mechanical engineers headquarters at 3 park avenue, New York, New York 10016-5990.
5. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for heating or vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves, as provided under North Dakota Century Code section 26.1-22.1-01.
6. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate may be issued under North Dakota Century Code section 26.1-22.1-10.
7. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.
8. "Chief inspector" means the chief boiler inspector appointed by the commissioner to serve in the capacity as stated by law.
9. "Commissioner" means the insurance commissioner of North Dakota.
10. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.

11. "Deputy inspector" means a boiler inspector or inspectors employed by the commissioner to assist the chief inspector in making inspections of boilers.
12. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.
13. "External inspection" means an inspection made when a boiler is in operation.
14. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermic welding is also classed as fusion.
15. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it must be deemed the same as a power boiler.
16. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and includes all service-type and domestic-type water heaters not otherwise exempt by North Dakota Century Code section 26.1-22.1-06.
17. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.
18. "Internal inspection" means an inspection made when a boiler is shut down and handholes and manholes are opened for inspection of the interior.
19. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [103 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius] for water.
20. "Major repair" means a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in the national board inspection code.
21. "Miniature boiler" means any boiler that does not exceed any of the following limits:
 - a. Sixteen-inch [40.64-centimeter] inside diameter of shell.

- b. Twenty square feet [1.86 square meter] heating surface.
 - c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.
 - d. One hundred pounds per square inch gauge [689.48 kilopascals] maximum allowable working pressure.
22. "National board" means the national board of boiler and pressure vessel inspectors, 1055 crupper avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American society of mechanical engineers code.
23. "National board inspection code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The national board inspection code, 2004 2007 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 crupper avenue, Columbus, Ohio 43229.
24. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.
25. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamping, the American society of mechanical engineers stamp, or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.
26. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler which is not specifically exempt under North Dakota Century Code section 26.1-22.1-06 within North Dakota.
27. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [103 kilopascals] by the direct application of heat.
28. "Reciprocal commission" means a commission issued by the commissioner to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have passed the written examination prescribed by the national board and are employed by an accredited national board owner/user inspection organization.

29. "Reinstalled boiler" means a boiler removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
30. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
31. "Repair" is a restoration of any damaged or impaired part to an effective and safe condition.
32. "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.
33. "Secondhand pressure vessel" means a pressure vessel of which both the location and ownership have been changed after primary use.
34. "Service-type or domestic-type water heater" means a fired water heater of either instantaneous or storage type, used for heating or combined heating and storage of hot water to be used exclusively for domestic or sanitary purposes, with temperatures not exceeding two hundred ten degrees Fahrenheit [98.68 degrees Celsius], and a heat input not in excess of two hundred thousand British thermal units [2.11×10 to the 8th power joules] per hour, and pressure not to exceed one hundred sixty pounds per square inch [1103.17 kilopascals].
35. "Special inspector" means an inspector regularly employed by an accredited national board authorized inspection agency or an inspector who has passed the national board examination and is employed by an accredited national board owner/user inspection organization.
36. "Standard boiler" means a boiler that bears the stamp of North Dakota or of another state that has adopted a standard of construction equivalent to that required by this article or a boiler that bears the national board stamping or American society of mechanical engineers stamp.
37. "State of North Dakota boiler construction code" is used to designate the accepted reference for construction, installation, operation, and inspection of boilers and will be referred to as this article. Anything not amended or specifically covered in this article must be considered the same as the American society of mechanical engineers code.

38. "Steam traction engines" means boilers on wheels which are used solely for show at state fairs and other exhibitions in which the public is invited to attend.

History: Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-02

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

1. **Power boilers.** Each authorized inspection agency or owner/user inspection organization, to which a special inspector commission has been issued, shall submit to the chief boiler inspector complete data of each high pressure boiler insured or inspected by it or covered by a written inspection agreement in North Dakota on form SFN 10706. Each certificate inspection must be reported to the chief boiler inspector within fifteen days after inspection on form SFN 10706. ~~None~~ certificate inspections on high pressure boilers must be reported on form SFN 10706 only when hazardous conditions affecting the safety of the boiler are found to exist.
2. **Low pressure, hot water heating, and hot water supply boilers.** Within one year from effective date of this article, each authorized inspection agency or owner/user inspection organization shall submit to the chief boiler inspector complete data of each boiler insured or inspected by it or covered by a written inspection agreement in North Dakota on form SFN 10706. All required ~~e~~ certificate inspections must be reported on form SFN 10706.

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-03

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

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

2. ~~The only reports normally required by the chief boiler inspector will be reports of inspections made as a certificate inspection. Certificate inspections must be made during the period of thirty days prior to and thirty days after the expiration date of the certificate. Noncertificate inspections, when required by the provisions of this section, must be documented in such a manner that reports of these inspections may be furnished to the state insurance department upon the request of the chief boiler inspector made between certificate inspections.~~ The chief boiler inspector encourages reports to be made at any time adverse conditions are found, or when difficulty is encountered getting cooperation from the owner or user.
3. The inspections required under this section must be made by the chief boiler inspector, or by a deputy inspector, or by a special inspector provided for in this article.
4. If at any time a hydrostatic test is deemed necessary by the inspector, it must be made by the owner or user in the presence of, and under the supervision of the inspector, and must be approved by the inspector.
5. Cast iron boilers must be considered as boilers that do not lend themselves to internal inspections. Internal inspections of electric boilers must be made when deemed necessary by the inspector.

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-10

45-12-10-01. Construction and installation standards - Exceptions.

Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1-2; or 3, 2004 2007 edition or section VIII, division 2, 2004 edition, and bear the "U" stamp as proof of such construction.

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

The requirements of this section apply to all pressure vessels within the scope of the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1-2; or 3, 2004 2007 edition or section VIII, division 2, 2004 edition, with these exceptions:

1. Pressure vessels under federal control.
2. Pressure vessels that do not exceed four cubic feet [30 United States gallons] in volume and two hundred fifty pounds per square inch gauge [1723.70 kilopascals] in pressure.
3. Pressure vessels that do not exceed one and one-half cubic feet [11.22 United States gallons] in volume and six hundred pounds per square inch gauge [4136.88 kilopascals] in pressure.
4. Unfired pressure vessels installed or ordered prior to November 1, 1987. However, these unfired pressure vessels must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines. Unfired pressure vessels referenced by this section must be protected with the American society of mechanical engineers stamped pressure relief devices as defined in section VIII of the American society of mechanical engineers boiler and pressure vessel code, 2004 2007 edition. Existing pressure relief devices installed on unfired pressure vessels referenced by this section will be considered acceptable if the pressure relief device is set for the correct pressure, if the usage is correct, and if the device is in a satisfactory operating condition.

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

ARTICLE 45-16

LIFE SETTLEMENTS

<u>Chapter</u>	
<u>45-16-01</u>	<u>Life Settlement Licenses</u>
<u>45-16-02</u>	<u>Life Settlement Advertising</u>

CHAPTER 45-16-01 LIFE SETTLEMENT LICENSES

<u>Section</u>	
<u>45-16-01-01</u>	<u>Definitions</u>
<u>45-16-01-02</u>	<u>Provider License Fees - Due Date</u>
<u>45-16-01-03</u>	<u>Broker License Fees - Due Date</u>
<u>45-16-01-04</u>	<u>Training Requirement - Penalty</u>
<u>45-16-01-05</u>	<u>Consumer Guide</u>

45-16-01-01. Definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26.1-33.4.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-01

45-16-01-02. Provider license fees - Due Date. The fee to submit a provider application is two hundred fifty dollars. The fee to renew a provider license is one hundred dollars. The renewal fee is due on the anniversary date of issuance of the provider license. If the renewal fee is not paid on or before the anniversary date, the provider license is automatically revoked.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-02

45-16-01-03. Broker license fees - Due date. The fee to submit a broker application is one hundred dollars. A life insurance producer deemed to meet the licensing requirements of North Dakota Century Code section 26.1-33.4-02 must pay an initial broker license fee of one hundred dollars. The fee to renew a broker license is twelve dollars. The renewal fee is due on the anniversary date of issuance of the broker license. If the renewal fee is not paid on or before the anniversary date, the broker license is automatically revoked.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-02

45-16-01-04. Training requirement - Penalty. An individual licensed as a broker must submit proof of completion of no less than fifteen hours of training related to life settlement and life settlement transactions. The proof must be submitted to the commissioner on or before the anniversary date of issuance of the broker license beginning on the second anniversary of issuance of the license and every two years thereafter. If the proof is not submitted on or before the due date, the individual broker license will not be renewed. A life insurance producer who is licensed and operating as a broker is not subject to these training requirements.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-02

45-16-01-05. Consumer guide. A provider shall prepare a buyer's guide or similar consumer advisory package for delivery to owners during the solicitation process. The buyer's guide or similar consumer advisory package must substantially comply with the commissioner's model guide.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-08

CHAPTER 45-16-02
LIFE SETTLEMENT ADVERTISING

Section

45-16-02-01

Definitions

45-16-02-02

Applicability

45-16-02-03

Disclosure Requirements

45-16-02-01. Definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26.1-33.4.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-01

45-16-02-02. Applicability.

1. This chapter applies to any advertisement of the business of life settlements intended for dissemination in this state and which advertisement is disseminated in any manner by or on behalf of a provider or broker required to be licensed under North Dakota Century Code section 26.1-33.4-02.
2. Every provider and broker required to be licensed under North Dakota Century Code section 26.1-33.4-02 shall submit a statement of compliance regarding advertising as part of the initial application and at other times as requested by the commissioner.
3. Life settlement promotional, advertising, or marketing materials need not be filed with the commissioner except upon request or order of the commissioner.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-01

45-16-02-03. Disclosure requirements.

1. Advertisements must be accurate and truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

2. A person or trust may not directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy.
3. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

 - a. An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving owners as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the life settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the owner is not satisfied or that the life settlement contract includes a free-look period that satisfies or exceeds legal requirements, does not remedy misleading statements.
 - b. An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.
 - c. An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.
 - d. The words "free", "no cost", or words of similar import may not be used in the marketing, advertising, soliciting, or otherwise promoting of a life settlement contract. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.
 - e. Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement contract advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisal, or analysis, a licensee under this chapter makes as its own all the statements contained therein and the statements are subject to all the provisions of this section.

 - (1) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement.

either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

- (2) An advertisement shall not state or imply that a life settlement contract has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
- (3) When an endorsement refers to benefits received under a life settlement contract, all pertinent information shall be retained for a period of five years after its use.
4. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
5. An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, life settlement investment agents, insurance producers, policies, services, or methods of marketing.
6. The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.
7. An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the life settlement licensee if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.
8. An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or

other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners into believing that the solicitation is in some manner connected with a government program or agency.

9. An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears provided it does not exaggerate that fact or suggest or imply that a competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's website or contact the insurance department to find out if the state requires licensing and, if so, whether the life settlement provider or life settlement broker is licensed.
10. An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by any government entity.
11. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.
12. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves, or favors:
 - a. Any life settlement licensee or its business practices or methods of operation;
 - b. The merits, desirability, or advisability of any life settlement contract;
 - c. Any life settlement contract; or
 - d. Any life insurance policy or life insurance company.
13. If the advertiser emphasizes the speed with which the life settlement transaction will occur, the advertising must disclose the average timeframe from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.
14. If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a

percentage of face value obtained by owners contracting with the licensee during the past six months.

History: Effective April 1, 2010.
General Authority: NDCC 26.1-33.4-07, 26.1-33.4-11
Law Implemented: NDCC 26.1-33.4-07

TITLE 62
STATE BOARD OF PLUMBING

APRIL 2010

CHAPTER 62-01-01

62-01-01-01. Organization of board of plumbing.

1. **History.** The 1941 legislative assembly passed a state plumbing law, codified as North Dakota Century Code chapter 43-18. The chapter was intended to promote and protect the public health through the regulation of the business of plumbing by creating a state board of plumbing and empowering the board and the state department of health to adopt rules governing the practice of plumbing and establishing a code of minimum standards of plumbing work. The 1973 legislative assembly passed legislation, codified as North Dakota Century Code chapter 43-18.1, which regulates the installation of water-conditioning equipment. The 1987 legislative assembly passed legislation, codified as North Dakota Century Code chapter 43-18.2, which regulates the installation of sewer and water services.
2. **Board membership.** The board of plumbing consists of the chief sanitary engineer of the state department of health, and four persons appointed by the governor: one a master plumber; one a journeyman plumber; one a registered professional engineer; and one a representative of the consuming public. The four appointed members of the board serve four-year terms, with one term expiring each year.
3. **Secretary and chief inspector.** The secretary and chief inspector of the board is appointed by the board and is responsible for administration of the board's activities.
4. **Inquiries.** All inquiries and communication relating to licensing, plumbing installation, and inspections may be directed to:

North Dakota State Plumbing Board
204 West Thayer Avenue 1110 College Drive, Suite 210
Bismarck, ND 58501

Phone (701) 328-9977
Fax (701) 328-9979
E-mail ndplumb@state.nd.us ndplumb@nd.gov

History: Amended effective November 1, 1981; September 1, 1987; April 1, 1994; March 1, 2000; April 1, 2010.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 62-03.1-01

62-03.1-01-01. Conformance with Uniform Plumbing Code - Exceptions.

1. State plumbing code defined. The board adopts, as the state plumbing code, the 2000 2009 edition of the Uniform Plumbing Code, including appendices A, B, D, E, I, and L, published by the international association of plumbing and mechanical officials, with the exceptions and modifications described in section 62-03.1-02-02 and chapter 62-03.1-03.
2. All plumbing as defined in North Dakota Century Code section 43-18-01, including materials, must meet or exceed the minimum provisions of this article and the Uniform Plumbing Code.

History: Effective March 1, 2000; amended effective April 1, 2010.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03.1-01-03. Interpretive rules. Some of the details of plumbing construction may vary, but the basic sanitary and safety principles desirable and necessary to protect the health of the people are the same everywhere. As interpretations may be required and as unforeseen situations arise which are not specifically covered in the code, the following principles must be used to define the intent of this code. Repealed effective April 1, 2010.

1. **All occupied premises must have potable water.** All premises intended for human habitation, occupancy, or use must be provided with a supply of potable water. Such a water supply must not be connected with unsafe water sources, nor be subject to the hazards of backflow.
2. **Adequate water required.** Plumbing fixtures, devices, and appurtenances must be supplied with water in sufficient volume and at pressures adequate to enable them to function properly and without undue noise under normal conditions of use.
3. **Hot water required.** Hot water must be supplied to all plumbing fixtures that normally need or require hot water for their proper use and function.
4. **Water conservation.** Plumbing must be designed and adjusted to use the minimum quantity of water consistent with proper performance and cleaning.
5. **Safety devices.** Devices for heating and storing water must be so designed and installed as to guard against dangers from explosion or overheating.

- ~~6. Use public sewer where available. Every building with installed plumbing fixtures and intended for human habitation, occupancy, or use, and located on premises where a public sewer is on or passes said premises within a reasonable distance, must be connected to the sewer.~~
- ~~7. Required plumbing fixtures. Each family dwelling unit must have at least one water closet, one lavatory, one kitchen-type sink, and one bathtub or shower to meet the basic requirements of sanitation and personal hygiene.~~

All other structures for human habitation must be equipped with sufficient sanitary facilities. Plumbing fixtures must be made of durable, smooth, nonabsorbent, and corrosion-resistant material and must be free from concealed fouling surfaces.
- ~~8. Drainage system. The drainage system must be designed, constructed, and maintained to guard against fouling, deposit of solids, and clogging and with adequate cleanouts so arranged that the pipes may be readily cleaned.~~
- ~~9. Durable materials and good workmanship. The piping of the plumbing system must be of durable material, free from defective workmanship, and so designed and constructed as to give satisfactory service for its reasonably expected life.~~
- ~~10. Fixture traps. Each fixture directly connected to the drainage system must be equipped with a liquid seal trap.~~
- ~~11. Trap seals must be protected. The drainage system must be designed to provide an adequate circulation of air in all pipes with no danger of siphonage, aspiration, or forcing of trap seals under conditions of ordinary use.~~
- ~~12. Exhaust foul air to outside. Each vent terminal must extend to the outer air and be so installed as to minimize the possibilities of clogging and the return of foul air to the building.~~
- ~~13. Test the plumbing system. The plumbing system must be subjected to such tests as will effectively disclose all leaks and defects in the work or the material.~~
- ~~14. Exclude certain substances from the plumbing system. A substance that will clog or accentuate clogging of pipes, produce explosive mixtures, destroy the pipes or their joints, or interfere unduly with the sewage disposal process must not be allowed to enter the building drainage system.~~

15. **Prevent contamination.** Proper protection must be provided to prevent contamination of food, water, sterile goods, and similar materials by backflow of sewage. When necessary, the fixture, device, or appliance must be connected indirectly with the building drainage system.
16. **Light and ventilation.** A water closet or similar fixture must not be located in a room or compartment that is not properly lighted and ventilated.
17. **Individual sewage disposal system.** If water closets or other plumbing fixtures are installed in buildings where there is no sewer within a reasonable distance, suitable provision must be made for disposing of the sewage by some accepted method of sewage treatment and disposal.
18. **Prevent sewer flooding.** Where a plumbing drainage system is subject to backflow of sewage from the public sewer or private disposal system, suitable provision must be made to prevent its overflow in the building.
19. **Proper maintenance.** Plumbing systems must be maintained in a safe and serviceable condition from the standpoint of both mechanics and health.
20. **Fixtures must be accessible.** All plumbing fixtures must be so installed with regard to spacing as to be accessible for their intended use and for cleaning.
21. **Structural safety.** Plumbing must be installed with due regard to preservation of the strength of structural members and prevention of damage to walls and other surfaces through fixture usage.
22. **Protect ground and surface water.** Sewage or other waste must not be discharged into surface or subsurface water unless it has first been subjected to some acceptable form of treatment.

History: Effective March 1, 2000.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03.1-01-05. Application for plumbing installation certificate. Any plumbing installation requiring inspection must have a plumbing installation certificate properly executed by the master or journeyman plumber in charge of the installation. The board shall have on hand a supply of certificates for distribution to the person in charge of the installation.

1. Inspection fees for each certificate issued must be according to the schedule of fees shown on the plumbing installation certificate. If work has commenced prior to submittal of the certificate and proper fees, the fee will be double or actual cost incurred to investigate, whichever

- is less. Requested inspection, reinspection, or inspection for which no fee is specifically indicated must be charged at twenty-five ~~fifty~~ dollars per hour, plus travel expense.
2. The certificate must be signed by the applicant and the original returned to the board along with the proper fees prior to commencement of work. The duplicate copy must be retained by the plumbing contractor and the triplicate copy must be submitted to the building owner. The issuing certificate fee must be charged for each certificate that must be reissued.

History: Effective March 1, 2000; amended effective April 1, 2010.

General Authority: NDCC 43-18-08

Law Implemented: NDCC 43-18-17.2, 43-18-17.3

CHAPTER 62-03.1-02

62-03.1-02-02. Uniform Plumbing Code - Exceptions and modifications. The following chapters and appendices of the Uniform Plumbing Code are modified as follows:

1. **Permits and inspections 103.0 Administration.** Add to 101.5.6 the words "or within" after the word "into". The following subsections do not apply: 103.1 through 103.4; 103.5.1.2, 103.5.3.1, 103.5.6, and table 1-1.
2. **Definition of terms 202.0 Definitions.** Add to 211.0-l 211.0: "Inspection report" means a notice, written by a plumbing inspector to the person responsible for the plumbing installation, describing work inspected and stating violations and noncompliance of rules and regulations as listed, which must be corrected within a designated time.

Add to 218.0-P- 218.0: "Plumbing installation certificate" means a document consisting of one or more copies certifying that certain plumbing installations, plumbing fixtures, plumbing appliances, and other appurtenances were installed in conformity with the rules and regulations of the plumbing board. "Permit" as used in the Uniform Plumbing Code has the same meaning as plumbing installation certificate.

"Plumbing" add to definition: Maintenance does not include making repairs to faucets, valves, appliances, and fixtures, or removal of stoppages in waste or drainage pipes. See also North Dakota Century Code section 43-18-01.

"Plumbing system": Not included in this definition are medical gas and medical vacuum systems, liquid and fuel gas piping, and vents for water heaters.

3. **Protection of piping materials and structures 313.0 General regulations.** Add to 313.2: When a water heater is located in an attic, attic-ceiling assembly, floor-ceiling assembly, or floor-subfloor assembly where damage results from a leaking water heater, a watertight pan of corrosion-resistant materials shall be installed beneath the water heater with not less than three-quarters of an inch [19.05 millimeters] diameter drain to an approved location. Add to 313.6: Water service piping must be installed with a minimum earth cover of seven feet [2.13 meters] or below record frostlines. Minimum earth cover for building sewers must be four feet [1.22 meters].

Subsection 313.12.4 does not apply.

4. **Metered faucets 402.6 Plumbing fixtures and fixture fittings.** Add to 402.4: Mixing-type hand-closing faucets may be installed on lavatories

for public use. Lavatories must have waste outlets not less than one and one-fourth inches [31.75 millimeters] in diameter, with open strainers.

~~Prohibited urinal 406.2. Add to 405.2:~~ Urinals with nonintegral traps shall be prohibited.

~~Water closets 409.1. Add to 408.1:~~ Water closets in private rooms of hotels, motels, dormitories, and boarding houses must be of the elongated bowl type.

~~Fixture count 413.1. Delete table 4-1 does not apply. Add: Plumbing fixture requirements shall be according to the 2000 from 412.1 and add table 2902.1 of the most recently state-adopted International Building Code, Table 2902.1, Minimum Number of Plumbing Facilities, with the following modifications:~~

Occupancy	Water Closets (h)		Lavatories (i)	Drinking Fountains (g)
	Male	Female		
Nightclubs				None
Restaurants (j)	1 per 60	1 per 60	1 per 120	None
Mercantile	1 per 300	1 per 300	1 per 600	
Business	1 per 40	1 per 40		

~~See section 2902.2, 2902.4, 2902.4.1, 2902.5, 2902.6, does not apply.~~

~~See section 410.1, 411 of the International Plumbing Code, does not apply. References on table 2902.1 to sections of the International Building Code and International Plumbing Code do not apply.~~

Add to Note a:

4. Types of occupancies not shown on this table shall be considered individually by the administrative authority.
2. The occupant load shall be composed of fifty percent of each sex.

Add the following notes:

- g: Drinking fountains. There shall be a minimum of one drinking fountain per occupied floor in schools, theaters, auditoriums, dormitories, and businesses.
- (1) Where food is consumed indoors, water stations may be substituted for drinking fountains. Where bottled water coolers are provided, drinking fountains shall not be required.

- (2) Drinking fountains shall not be required in occupancies with less than thirty persons.
 - (3) Drinking fountains shall not be installed in toilet rooms.
- h. (1) Urinals. The provision of urinals may offset water closets otherwise required but the number of water closets required may not be reduced in this manner by more than fifty percent.
- (2) Walls and floors within two feet [609.6 millimeters] of the sides and front of urinals must be finished with a smooth, hard, nonabsorbent finish of a material approved by the administrative authority.
- i. Lavatories. Where circular or similar handwashing appliances are provided, twenty-four lineal inches [609.6 millimeters] of wash sink or eighteen inches [457.2 millimeters] of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one lavatory.
- j. (1) Restaurant. For the purpose of this table, a restaurant is defined as a business that sells food to be consumed on premises. The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls.
- (2) A hand sink is required to be available to employees in a restaurant or other food preparation occupancy.

Subsection 414.5 does not apply.

5. **Permit 503.0 Water heaters.** Does not apply.
6. **Exception 604.2 Water supply and distribution.** Add: Type M copper shall not be used to 602.4. Every building intended for human habitation, occupancy, or use, and located on premises where public water is available, must be connected to such public water. Public water is considered available if located within two hundred feet [60.96 meters] from any proposed building required to have potable water located on any lot or premises which abuts and is served by public water.

Delete from 604.2 exception: or underground outside of structures.

Delete from 604.8 exception: Plastic materials for water service piping outside underground shall have a blue insulated copper tracer wire or other approved conductor installed adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate aboveground at each end of the nonmetallic piping. The tracer wire

size shall be not less than eighteen AWG and the insulation type shall be suitable for direct burial.

~~Valves~~ **605.0**: Add to 605.2: Each building water supply shall be provided with a fullway valve installed on the inlet side of each water meter. Valves up to and including two inches [50.8 millimeters] in size must be a ball valve.

~~Add to 605.3: In single and multidwelling units with two or more bathroom groups, one or more shutoff valves must be provided so that each group may be isolated from the other. In multidwelling units, wall hydrants must be separately controlled within eight feet [2.438 meters] by an accessible valve inside the building.~~

~~Add to 605.5: All water closets and kitchen sinks must have individual fixture valves installed.~~

7. **Molded rubber coupling joints 705.1.6 Sanitary drainage.** Add: to **705.1.6**. For aboveground installations an approved shielded coupling must be used to prevent outward expansion.

Delete from 712.1: Except that plastic pipe shall not be tested with air.
Add to table 7-1, under reference standards column for PVC, SDR 35 ASTM 3034 or heavier. Note 1.

Delete from 723.0: Plastic drainage waste and vent (DWV) piping systems shall not be tested by the air test method.

8. **Food and beverage handling establishments 801.2 Indirect wastes.** Add to **801.2.3**: Food preparation sinks must be directly connected to the building drain on a line to the sewer side of a floor drain trap located adjacent to the sink.

~~Bar and fountain sink traps 801.3. Add: Where the fixture cannot be vented, a special island sink vent or a combination waste and vent system must be used.~~

Add to 807.4 or the discharge line from the dishwasher may be looped up and securely fastened to the underside of the counter.

9. **Vertical wet venting 908.0 Vents.** Add to **908.1**: Special horizontal wet venting shall be permitted according to appendix L-6.0 special venting of fixtures. Subsections **908.2.1**, **908.2.2**, and **908.2.3** do not apply: Replace **908.2.1** with an individually vented lavatory in a single bathroom or single toilet room shall be permitted to serve as the wet vent for one water closet and one bathtub or shower stall, or one water closet and one bathtub and shower combination if all of the following conditions are met:

- a. The wet vent, and the dry vent extending from the wet vent, shall be two inches [50.8 millimeters] minimum pipe size.
- b. The wet vent pipe opening shall not be below the weir of the trap that it serves. Vent sizing, grades, and connections shall comply with sections 904.0 and 905.0.
- c. The horizontal branch drain serving both the lavatory and the bathtub or shower stall shall be two inches [50.8 millimeters] minimum pipe size.
- d. The length of the trap arm from the bathtub or shower stall complies with the limits in table 10-1.
- e. The distance from the outlet of the water closet to the connection of the wet vent complies with the limits in table 10-1.
- f. The horizontal branch drain serving the lavatory and the bathtub or shower stall shall connect to the horizontal water closet branch above its centerline. When the bathroom or toilet room is the topmost load on a stack, the horizontal branch serving the lavatory and the bathtub or shower stall shall be permitted to connect to the stack below the water closet branch.
- g. No fixture other than those listed in L 6.2.1 shall discharge through a single bathroom or single toilet room wet-vented system.

Replace 908.2.2 with: Double Bathtubs, Bathtub and Shower Combinations, Shower Stalls, and Lavatories.

Two lavatories, each rated at 1.0 drainage fixture unit, and two bathtubs, bathtub and shower combinations or shower stalls, installed in adjacent bathrooms, shall be permitted to drain to a horizontal drain branch that is two inches [50.8 millimeters] minimum pipe size, with a common vent for the lavatories and no individual vents for the bathtubs, bathtub and shower combinations or shower stalls, provided that the wet vent from the lavatories and their dry vent is two inches [50.8 millimeters] minimum pipe size and the length of all trap arms comply with the limits in table 10-1.

Special venting for island fixtures Add to 909.0. Add: A combination waste and vent system may also be used for island sinks. The vertical waste pipe must be the same size as required for the combination waste and vent. The fixture trap size must be as required by chapter 7.

Combination waste and vent system 910.0. Subsection 910.2 does not apply.

10. **Traps and interceptors.** Chapter 10 no No change.

11. **Storm drainage.** Chapter 11 no No change.
12. **Fuel piping.** Chapter 12 does Does not apply.
13. **Medical Health care facilities and medical gas and vacuum systems.** Chapter 13 does Does not apply.
14. **Mandatory referenced Referenced standards.** Chapter 14 no No change.
15. **Firestop protection for DMV and stormwater applications.** Chapter 15 does Does not apply.
16. **Nonpotable water reuse systems.** No change.
17. **Appendix E, manufactured or mobile home parks and recreational vehicle parks.** Add to E5: The department having jurisdiction shall be the division of food and lodging of the state department of health. See also North Dakota Century Code chapter 23-16 and North Dakota Administrative Code section 33-33-01-02 E1.0 water and sewer connections under the manufactured home may be made by individuals certified by the North Dakota department of commerce in accordance with the North Dakota manufactured home installation guidelines.

Part D does not apply.

18. **Appendix L.** Delete from L8.1 circuit venting shall be designed by a registered professional engineer as an engineered design.

History: Effective March 1, 2000; amended effective March 1, 2002; April 1, 2010.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

TITLE 75

DEPARTMENT OF HUMAN SERVICES

APRIL 2010

CHAPTER 75-02-01.3
CHILD CARE ASSISTANCE

Section

75-02-01.3-01

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Reconsideration and Appeal Requests

75-02-01.3-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-33. In addition, as used in this chapter:

1. "Eligible child" means a child member of a child care assistance unit eligible for payment under the child care and development state plan.
2. "Intentional program violation" means an individual's intentional action or failure to act which consists of:
 - a. Making a false or misleading statement or misrepresenting, concealing, or withholding facts; or

- b. Being convicted in federal or state court of having made a fraudulent statement or representation with respect to child care assistance.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33

75-02-01.3-02. Decision and notice.

1. The county agency shall notify the applicant of any determination of eligibility or ineligibility.
2. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice.
3. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-03. Closing a case. A case must be closed when:

1. The parent or other caretaker is not participating in an allowable activity.
2. The child care assistance unit includes no eligible child.
3. The redetermination form:
 - a. Is not submitted timely;
 - b. Is incomplete so further eligibility cannot be determined; or
 - c. Indicates the family's income exceeds the upper income limit for the family size.
4. The family moves out of state.
5. For four consecutive months the payment share of the child care assistance program has been less than ten dollars and the child care assistance program has issued no payment.

6. The client requests that the case be closed.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-04. Available benefits.

1. The child care assistance program shall pay child care costs related to allowable activities of the eligible caretaker in a temporary assistance for needy families household or diversion assistance household.
2. The child care assistance program shall pay a portion of child care costs related to allowable activities of the caretaker based on family size and countable income by applying a sliding fee schedule established by the department which is based on household size and income.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-05. Approved relative provider's background check information. Before approving an individual as an approved relative provider, the department shall review available public records.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-06. Payments to providers - Child care certificate.

1. Unless a provider otherwise elects in a signed and dated writing, all payments of child care assistance must be made to a provider.
2. No payment may be made except on presentation of a claim in a form and manner required by the department for periods during which all parents or other caretakers in the child care assistance unit were engaged in an allowable activity.
3. No payment to a provider may be made at a rate in excess of that charged by the provider for services to individuals who do not receive child care assistance.
4. The department will issue to the eligible caretaker a child care certificate.
5. When a caretaker fails to pay the provider, the family is ineligible for child care assistance until:

- a. The payment is made; or
- b. The family reaches an agreement for payment with the provider and the family continues to comply with the payment agreement.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-06-06.1, 50-09-02, 50-33

75-02-01.3-07. Treatment of income.

1. A caretaker's earned income from wages or any other source must be considered received in the month it is normally received or available.
2. A caretaker's earned income from self-employment is computed by use of a federal income tax return and must be prorated over a twelve-month period that coincides with either the calendar year or the fiscal year used on the caretaker's federal tax return. Depreciation and other costs of doing business that do not require outlays during the period covered by the tax return must be added to the net income.
3. A caretaker's earned income that is received on a contractual basis must be prorated over the period of the contract, regardless of when it is actually received.
4. Expenses necessarily incurred to maintain the source of the caretaker's unearned income may be deducted to determine countable unearned income. All countable unearned income must be considered received in the month in which it is normally received or normally available.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-08. Disregarded income. The following types of income must be disregarded in determining child care assistance eligibility and benefits.

1. Money payments made by the department in connection with foster care, subsidized guardianship, family subsidy, or the subsidized adoption program;
2. Temporary assistance for needy families benefits and support services payments;
3. Benefits received through the low-income home energy assistance program;
4. County general assistance;

5. Bureau of Indian affairs general assistance;
6. Irregular cash gifts received by a caretaker;
7. A loan from any source that is subject to a written agreement requiring repayment by the caretaker;
8. A caretaker's income tax refunds and earned income credits;
9. A caretaker's educational loans, scholarships, grants, and awards; educational assistance provided under the Montgomery GI Bill, Public Law No. 95-525 [98 Stat. 2553; 38 U.S.C. 101 et seq.]; vocational rehabilitation payments; job service payments; and work study received by a caretaker who is an allowable postsecondary student in allowable vocational training;
10. Any fellowship or gift or portion of a gift used to pay the cost of a caretaker's tuition and fees at any educational institution;
11. Training funds received by a caretaker from vocational rehabilitation;
12. Training allowances of up to thirty dollars per week provided to a caretaker through a tribal native employment works program;
13. Needs-based payments, support services, and relocation expenses provided to a caretaker through programs established under the Workforce Investment Act of 1998 [Pub. L. 105-220, August 7, 1998; 112 Stat. 936];
14. Training stipends provided by private, charitable organizations to a caretaker who is a victim of domestic violence for the caretaker to attend educational programs;
15. The first two thousand dollars per year of lease payments deposited in an individual Indian monies account for a caretaker;
16. Any income required by federal law to be disregarded;
17. Earned income of all children in the child care assistance unit;
18. A one-time bonus incentive payment or commission to a caretaker;
19. Vendor payments or other payments made to a third party on behalf of the child care assistance unit;
20. Stipend payments to a caretaker that do not require work as a condition of receipt;
21. Nonrecurring lump sum payments to a caretaker;

22. Irregular income from sale of craft items and rummage sales;
23. Payments made by cafeteria or flex compensation plans to a caretaker;
24. Funds raised on behalf of the child care assistance unit, or any member of that unit, if the child care assistance unit does not have access to the funds;
25. Income from contracts for deed; and
26. A fifth paycheck received in a single month by an individual who is paid a weekly wage or a third paycheck received in a single month by an individual who is paid a biweekly wage.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-09. Deduction for child support and spousal support. Child support and court-ordered spousal support, including arrearages, interest, and fees charged for income withholding, paid by or collected from a child care assistance unit member, whose income is counted in determining eligibility and benefit amounts, may be deducted from the child care assistance unit's income.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-10. Parental choice - Contract between parent or caretaker and provider. The parent or caretaker of each eligible child who receives or is offered child care services for which financial assistance is provided through the child care and development fund may choose the approved, registered, or licensed provider of services to that child. The department is not bound by or responsible for either party's compliance with the terms of any contract entered between a provider and a caretaker.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-11. Limitations.

1. No caretaker in a child care assistance unit that includes two or more caretakers may be provided a benefit under this chapter for anytime another caretaker is available, or is treated under this chapter as available, to meet the needs of the child for whom assistance is sought.
2. If other eligibility criteria is met, a caretaker who is attending school in a one-year or two-year postsecondary vocational program that will lead to

a certificate or a degree, high school or, a program leading to a general equivalency diploma may be eligible to receive assistance under this program.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-12. Intentional program violation - Disqualification penalties.

1. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court is subject to the penalties provided in this section. An individual who waives the individual's right to appear at an intentional program violation hearing is subject to the penalties provided in this section.
2. During any period of disqualification, if a disqualified individual:
 - a. Is a provider, the individual may not receive any child care assistance payment;
 - b. Is employed by a provider, that provider may not receive any child care assistance payment; and
 - c. Is a member of a child care assistance unit, that child care assistance unit is ineligible for child care assistance benefits.
3. The duration of the penalty described in this section is:
 - a. One year for the first offense;
 - b. Two years for the second offense; and
 - c. Permanently for the third offense.
4. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until a court of appropriate jurisdiction subsequently reverses the finding upon which the penalty was based.
5. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
6. The department shall issue a written notice informing the individual of the period of disqualification.
7. Overpayments may be recovered from:

- a. The child care assistance unit that includes the disqualified individual;
- b. Any child care assistance unit of which the disqualified individual subsequently becomes a member;
- c. Any individual members of the child care assistance unit that included the disqualified individual;
- d. The provider who was disqualified; and
- e. The provider who employed the disqualified individual.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-13. Reconsideration and appeal requests.

1. An applicant or recipient of child care assistance aggrieved by a determination made under this chapter may request reconsideration of that decision by the department, and must request reconsideration before appealing that decision. A provider or member of a child care assistance unit aggrieved by a decision issued after a request for reconsideration must appeal in writing and include documentation of all of the following information:
 - a. A copy of the letter received from the department advising of the department's decision on the request for reconsideration;
 - b. A statement of disputed facts, if any;
 - c. The authority in statute or rule upon which the applicant for or recipient of child care assistance relies for each disputed item; and
 - d. The name, address, and telephone number of the individual to whom the department will send all notices and information regarding the appeal.
2. A request for reconsideration must be made within thirty days after notice of a determination made under this chapter. An appeal must be filed within thirty days after the date of mailing of a decision issued pursuant to a request for reconsideration.

3. Chapter 75-01-03 governs an appeal made under this chapter.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

CHAPTER 75-02-02.1

75-02-02.1-31. Trusts.

1. A trust is an arrangement whereby a person known as the "grantor" or "trustor" gives assets to another person known as the "trustee" with instructions to use the assets for the benefit of a third person known as the "beneficiary". The assets placed in trust are called the "principal" or "corpus". The positions of grantor, trustee, and beneficiary occur in all trusts, but it is not uncommon for a single trust to involve more than one grantor, trustee, or beneficiary. It is also not uncommon for a grantor to establish a trust where the grantor is also a beneficiary or where the trustee is also a beneficiary. "Trusts" includes escrow accounts, investment accounts, conservatorship accounts, and any other legal instruments, devices, or arrangements, whether or not written, managed by an individual or entity with fiduciary obligations. A trust may have an effect on eligibility whether the applicant is a grantor, trustee, or beneficiary.
2. Review of a trust as a part of an eligibility determination includes efforts to ascertain the intent of the grantor. The grantor has no authority or power to determine eligibility or to require a particular outcome in an eligibility determination, and a grantor's efforts to do so may be disregarded.
3. Trusts may be categorized in many ways, but the revocability of a trust is a fundamental characteristic. A revocable trust is a trust that the grantor, or someone acting at the request, direction, or influence of the grantor, has the power to revoke, remove from, or otherwise end the trust. An irrevocable trust is a trust that may not be revoked in any way by the grantor or anyone acting at the request, direction, or influence of the grantor. The determination of trust revocability is not based solely on trust terms stating the trust is irrevocable. A trust is treated as revocable, regardless of its terms, if:
 - a. The trust reserves a power to amend to the grantor, or grants a power to amend to some other person, unless the power to amend is limited to authority to terminate the trust for impossibility of administration, and the trust also provides for distribution of the trust assets to the primary beneficiary, free of trust;
 - b. The grantor and the beneficiaries consent to the revocation;
 - c. The grantor is also the sole beneficiary of the trust;
 - d. The grantor of a trust and all trust beneficiaries are part of a medicaid unit;

- e. The grantor is a parent, and beneficiaries of the trust include only the grantor, the grantor's spouse, or the grantor's minor children;
 - f. The trust has been amended subsequent to its establishment, unless the trust was amended under North Dakota Century Code section 59-12-11;
 - g. The trust provides for termination and disbursement to the grantor upon conditions relating to the grantor during the grantor's lifetime; or
 - h. The trust provides for revocation or amendment only upon order of a court.
4. In the case of a revocable trust:
- a. The corpus of the trust shall be considered assets available to the grantor;
 - b. Payments from the trust to or for the benefit of grantor, the grantor's spouse, or the grantor's dependent child shall be considered income of the grantor;
 - c. Any other payments from the trust shall be considered income or assets disposed of by the grantor for purposes of section 75-02-02.1-33.1 or 75-02-02.1-33.2.
5. Once distributed or paid, a distribution or payment from a trust is not a trust asset, but is an asset of, or income to, the distributee or payee.
6. a. For purposes of this subsection:
- (1) "Medicaid-qualifying trust" means a trust established, other than by will, by an individual or the individual's spouse, under which the individual may be the beneficiary of all or part of the payments from the trust, and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.
 - (2) "A trust established by an individual or the individual's spouse" includes trusts created or approved by courts or by the individual or the individual's spouse where the property placed in trust is intended to satisfy or settle a claim made by or on behalf of the individual or the individual's spouse against any third party.
- b. The amount from an irrevocable medicaid-qualifying trust deemed available to the grantor or the grantor's spouse is the maximum

amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of this subdivision, "grantor" means the individual referred to in paragraph 1 of subdivision a.

- c. This subsection applies:
 - (1) Even though the medicaid-qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for medicaid; and
 - (2) Whether or not the discretion described in paragraph 1 of subdivision a is actually exercised.
- 7. a. For purposes of this subsection, "support trust" means a trust which has, as a purpose, the provision of support or care to a beneficiary. The purpose of a support trust is indicated by language such as "to provide for the care, support, and maintenance of . . ."; "to provide as necessary for the support of . . ."; or "as my trustee may deem necessary for the support, maintenance, medical expenses, care, comfort, and general welfare". No particular language is necessary, but words such as "care", "maintenance", "medical needs", or "support" are usually present. The term includes trusts which may also be called "discretionary support trusts", so long as support is a trust purpose and the trustee's discretion is not unfettered. This subsection applies without regard to:
 - (1) Whether or not the support trust is irrevocable or is established for purposes other than to enable a beneficiary to qualify for medicaid or any other benefit program where availability of benefits requires the establishment of financial need; or
 - (2) Whether or not the discretion is actually exercised.
- b. Except as provided in subdivisions c and d, the amount from a support trust deemed available to the beneficiary, the beneficiary's spouse, and the beneficiary's children is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the beneficiary.
- c. A beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise any discretion with respect to that

distribution, may show that the amounts deemed available under subdivision b are not actually available by:

- (1) Commencing proceedings against the trustee or trustees in a court of competent jurisdiction;
 - (2) Diligently and in good faith asserted in the proceeding that the trustee or trustees is required to provide support out of the trust; and
 - (3) Showing that the court has made a determination, not reasonably subject to appeal, that the trustee must pay some amount less than the amount determined under subdivision b.
- d. If the beneficiary makes the showing described in subdivision c, the amount deemed available from the trust is the amount determined by the court.
 - e. Any action by a beneficiary or the beneficiary's representative, or by the trustee or the trustee's representative, in attempting a showing under subdivision c, to make the department, the state of North Dakota, or a county agency a party to the proceeding, or to show to the court that medicaid benefits may be available if the court limits the amounts deemed available under the trust, precludes the showing of good faith required under subdivision c.
8. a. For purposes of this subsection, "other trust" means any trust for which treatment is not otherwise described in this section or section 75-02-02.1-31.1.
 - b. The amount from an "other trust" deemed available to a beneficiary of that trust is the greater of the amount which must be distributed to that beneficiary under the terms of the trust, whether or not that amount is actually distributed, and the amount which is actually distributed.
 9. An applicant or recipient who is a trustee has the legal ownership of trust property and the legal powers to distribute income or trust assets which are described in the trust. However, those powers may be exercised only on behalf of trust beneficiaries. If the trustee or other members of the medicaid unit are not also beneficiaries or grantors to whom trust income or assets are treated as available, trust assets are not available to the trustee.
 10. Trusts may provide that trust benefits are intended only for a beneficiary's "special needs", and require the trustee to take into consideration the availability of public benefits and resources, including medicaid. Some trusts may provide that the trust is not to be used

to supplant or replace public benefits, including medicaid benefits. Some trusts may contain terms which attempt to declare or make the determination of the availability of trusts assets for medicaid purposes. If a trust contains such terms, the amount available to the medicaid applicant or recipient is the amount provided in this section, assuming, for the purposes of making that determination, that the applicant or recipient is ineligible for medicaid.

11. A trust is established, with respect to any asset that is a part of the trust corpus, on the date that asset is made subject to the trust by an effective transfer to the trustee.
12. This section applies to any trust to which section 75-02-02.1-31.1 does not apply. Subsections 1, 2, and 3 apply to trusts described in section 75-02-02.1-31.1.

History: Effective December 1, 1991; amended effective December 1, 1991; October 1, 1993; July 1, 2003; April 1, 2008; April 1, 2010.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396a(k)

CHAPTER 75-02-04.1

75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.
2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from public assistance programs that are means tested or provided in the form of subsidy payments made to adoptive parents.
4. "Custodial parent" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of custody descriptions such as "shared" or "joint" custody given in relevant judgments, decrees, or orders.
5. a. "Gross income" means income from any source, in any form, but does not mean:
 - (1) Benefits received from public assistance programs that are means tested such as temporary assistance for needy families, supplemental security income, and food stamps, or that are provided in the form of subsidy payments made to adoptive parents;
 - (2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:
 - (a) That benefit may be liquidated; and
 - (b) Liquidation of that benefit does not result in the employee incurring an income tax penalty; or
 - (3) Child support payments; or
 - (4) Atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control.
- b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently

deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income to the extent not previously considered in determining a child support obligation for the child whose support is under consideration, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent they annually exceed one thousand dollars in value, spousal support payments received, refundable tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.

- c. For purposes of this subsection, income tax due or paid is not an income tax penalty.
- 6. "In-kind income" means the receipt from employment or income-producing activity of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.
- 7. "Net income" means total gross annual income less:
 - a. A hypothetical federal income tax obligation based on the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to federal income tax and reduced by deductions allowed in arriving at adjusted gross income under the Internal Revenue Code, and applying:
 - (1) The standard deduction for the tax filing status of single;
 - (2) One exemption for the obligor;
 - (3) (a) One additional exemption for each child, as defined in this section, that the obligor is allowed to claim pursuant to a court order unless the obligor and obligee alternate claiming the exemption for the child pursuant to the court order, in which case, an amount equal to one-half of the exemption; or
 - (b) If there is no court order allocating the exemption, or if it is unknown whether there is such a court order, then one additional exemption for each child, as defined in this section, actually claimed on a disclosed tax return

or one additional exemption for each child, as defined in this section, if a tax return is not disclosed; and

- (4) Tax tables for a single individual for the most recent year published by the internal revenue service, reduced by one child tax credit for each child's exemption considered under paragraph 3, provided such child is a qualifying child for purposes of the child tax credit;
- b. A hypothetical state income tax obligation equal to fourteen percent of the amount determined under subdivision a without reduction for child tax credits;
- c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, medicare, and self-employment tax obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, medicare, or self-employment tax under the Internal Revenue Code;
- d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, intended to afford coverage for the child or children for whom support is being sought, determined by:
 - (1) If the cost of single coverage for the obligor and the number of persons associated with the premium payment are known:
 - (a) Reducing the premium payment by the cost for single coverage for the obligor;
 - (b) Dividing the difference by the total number of persons, exclusive of the obligor, associated with the premium payment; and
 - (c) Multiplying the result times the number of insured children for whom support is being sought; or
 - (2) If the cost of single coverage for the obligor is not known:
 - (a) Dividing the payment by the total number of persons covered; and
 - (b) Multiplying the result times the number of insured children for whom support is being sought;
- e. Payments made on actual medical expenses of the child or children for whom support is sought to the extent it is reasonably likely similar expenses will continue;

- f. Union dues and occupational license fees if required as a condition of employment;
 - g. Employee retirement contributions, deducted from the employee's compensation and not otherwise deducted under this subsection, to the extent required as a condition of employment;
 - h. Employee expenses for special equipment or clothing required as a condition of employment or for lodging expenses incurred when engaged in travel required as a condition of employment (limited to fifty dollars per night or actual documented costs, whichever is greater); and
 - i. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.
8. "Obligee" includes, for purposes of this chapter, an obligee as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support.
 9. "Obligor" includes, for purposes of this chapter, an obligor as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.
 10. "Self-employment" means employment that results in an obligor earning income from any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control. For purposes of this chapter, it also includes any activity that generates income from rental property, royalties, business gains, partnerships, trusts, corporations, and any other organization or entity regardless of form and regardless of whether such activity would be considered self-employment activity under the Internal Revenue Code.
 11. "Split custody" means a situation where the parents have more than one child in common, and where each parent has custody of at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; April 1, 2010.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-09. Criteria for rebuttal of guideline amount.

1. The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:

- a. The subsistence needs, work expenses, and daily living expenses of the obligor; or
 - b. Except as provided for in subdivision m of subsection 2, the income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a custodial parent.
2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:
 - a. The increased need if support for more than six children is sought in the matter before the court;
 - b. The increased ability of an obligor, with a monthly net income which exceeds twelve thousand five hundred dollars, to provide child support;
 - c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
 - d. The increased needs of children with disabling conditions or chronic illness;
 - e. The increased needs of children age twelve and older;
 - f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
 - g. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;
 - h. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
 - i. The reduced ability of the obligor to provide support due to travel expenses incurred predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court-ordered visitation and, when such history is available, actual expenses and practices of the parties;

- j. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;
 - k. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:
 - (1) Exceed ten percent of the obligor's gross income;
 - (2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;
 - (3) Are not subject to payment or reimbursement from any source except the obligor's income; and
 - (4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor; or
 - ~~i. The reduced ability of the obligor to provide support when calculation of the obligation otherwise reflects consideration of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control; or~~
 - ~~m. The reduced needs of the child to support from the obligor in situations where the net income of the obligee is at least three times higher than the net income of the obligor.~~
- 3. Assets may not be considered under subdivisions g and h of subsection 2, to the extent they:
 - a. Are exempt under North Dakota Century Code section 47-18-01;
 - b. Consist of necessary household goods and furnishings; or
 - c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.
 - 4. For purposes of subdivision h of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:
 - a. The transaction occurred after the birth of a child entitled to support;
 - b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and

- c. The obligor's income is less than it likely would have been if the transaction had not taken place.
- 5. For purposes of subdivision j of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of spousal support payments, discretionary purchases, or illegal activity.
- 6. For purposes of subdivisions a through f of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter.
- 7. For purposes of subdivisions g through l of subsection 2, any adjustment shall be made to the obligor's net income.
- 8. For purposes of subdivision m l of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter after taking into consideration the proportion by which the obligee's net income exceeds the obligor's net income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; July 1, 2008; April 1, 2010.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

CHAPTER 75-03-36
LICENSING OF CHILD-PLACING AGENCIES

Section

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75-03-36-01. Definitions - Application.

1. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-12. In addition, as used in this chapter:
 - a. "Adoption disruption" means an interruption of an adoption prior to finalization in which the child is returned to foster care or placed with another family.
 - b. "Adoption services" is a coordinated program of services for the child, the child's birth parents, and the adoptive applicants and adoptive parents.
 - c. "Family foster home" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the home to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply. For the purposes of this subsection, foster care for children applies to those agencies placing children that are in the custody of a county, a tribe, or the state in family foster homes.
 - d. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family.
 - e. "Legal risk adoptive placement" means placement of a child with a prospective adoptive family when the child is not legally free for adoption.
 - f. "Life book" means a tool used with children in out-of-home care and children who have been adopted to record memories and life events as they move to different placements.
 - g. "Permanent adoption record" means all paper, records, and identifying and nonidentifying information related to an adopted individual, birth siblings, birth parents, or adoptive parents which pertains to an adoption.

- h. "Regional supervisor" means the regional supervisor of county social services located in each of the eight regional human service centers.
 - i. "Resident child-placing agency" means a child-placing agency that maintains an office within this state.
- 2. In these rules, the requirements for licensure for a child-placing agency apply to a new application for licensure as well as to an application for relicensure unless the context otherwise specifically implies.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-02. Child-placing agency license.

- 1. Application for a child-placing agency license must be made on an application form provided by the department.
- 2. At the initial application, the applicant shall submit a written purpose and policy statement for the general operation and management of the child-placing agency. The statement must include:
 - a. The purpose of the child-placing agency, the geographic area the agency expects to serve, the ages of children to be placed, and any other specific factors regarding the children to be placed or the homes in which the children will be placed;
 - b. A written placement policy, including parental agreement forms, and a description of the legal procedures which will be used to obtain the authority to place the child; and
 - c. A written statement of the fees that will be charged for each service.
- 3. Upon receipt of the application for license or renewal of license, the department shall conduct a licensing study or a license review to determine if the applicant meets all applicable requirements for licensure.
- 4. After completion of a licensing study, the department shall issue a license to any applicant that meets all requirements for licensure.
- 5. The department shall renew the license on the expiration date of the previous year's license if:
 - a. The licensed child-placing agency makes written application for renewal prior to the expiration date of its current license;

- b. The licensed child-placing agency continues to meet all requirements for licensure at the time of the relicensing study; and
 - c. The licensed child-placing agency submits a copy of its yearly budget and annual audit of expenditures.
6. If the department determines that an application or accompanying information is incomplete or erroneous, the department shall notify the applicant of the specific deficiencies or errors, and the applicant shall submit the required or corrected information. The department may not issue or renew a license until it receives all required or corrected information.
7. The licensure requirements of this chapter do not apply to county social service agencies nor does this chapter apply to child-placing activities undertaken by county social service agencies.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-03. License revocation and denial.

1. After written notice to the applicant or licensee, the department may deny or revoke a license upon finding that:
 - a. The applicant or the licensee is not in compliance with all licensure requirements;
 - b. The applicant or the licensee has made a material misrepresentation to the department regarding its operations or facility; or
 - c. The applicant, licensee, or a member of the applicant's or licensee's staff has been named as the subject in a services required report of child abuse or neglect; has been convicted of a crime that the department has determined as having a direct bearing on the applicant's, licensee's, or staff member's ability to serve the public; or has been convicted of another offense and has not been determined rehabilitated.
2. If an action to revoke a license is appealed, the licensee may continue the operation of the facility pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the

department may take pursuant to North Dakota Century Code section 50-12-11.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12-10, 50-12-11, 50-12-12

75-03-36-04. Suspension review. A child-placing agency may submit a written request for review to the department if its license is suspended. The written request must include a statement of the disputed facts and the name, address, and telephone number of the person to be contacted regarding the review. The request for review must be received by the department within five working days after the child-placing agency receives written notice of the suspension. The department shall complete its review and issue its decision within thirty days after the department receives the child-placing agency's request for review. The child-placing agency may submit supporting documents or affidavits for the department to consider during its review. The department shall prepare a written decision upon the files, records, and other information received from the child-placing agency which was considered during its review. The department's decision constitutes the final determination of the suspension. If the department concludes that the child-placing agency made a false or misleading report to the department, the department will issue a notice of revocation of the child-placing agency's license.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12-11

75-03-36-05. Resident child-placing agency office requirements. A resident child-placing agency shall maintain a physical office within the state, including an in-state mailing address and an in-state telephone number. The resident child-placing agency must ensure that the telephone is answered during regular business hours, or has messaging capabilities.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-06. Governance and responsibilities.

1. The governing body of the child-placing agency shall:

- a. Be responsible for establishing policies, determining programs, and guiding the child-placing agency's development and providing leadership.
- b. Be composed of at least three members, none of whom are family members of employees of the child-placing agency.

- c. Meet as often as necessary, but at least four times a year with a quorum of its members present at the meetings.
- d. Develop policies for selection criteria and rotation of its members of the governing body.
- e. Ensure that the child-placing agency is funded, housed, staffed, and equipped in a manner required for the provision of services.
- f. Employ a qualified administrator and delegate responsibility to that administrator for the administration of the child-placing agency.
- g. Regularly evaluate the performance of the administrator.
- h. Approve the child-placing agency's annual budget of anticipated income and expenditures necessary to provide services described in the child-placing agency's statement of purpose.
- i. Review a quarterly summary of revenues and expenditures as compared with the child-placing agency's approved annual budget.
- j. Arrange for an annual financial audit to be prepared by a certified public accountant or a licensed public accountant and submitted to the department with the child-placing agency's request for relicensure.
- k. Establish personnel policies for the selection and retention of staff necessary to operate the child-placing agency.
- l. Ensure that the child-placing agency has written policies and practices conducive to recruitment, retention, training, staff development, effective performance by qualified personnel, job descriptions for each position, and review of personnel policies and practices with staff participation at least every five years.
- m. Request formal, initial orientation from the administrator on behalf of new board members of the child-placing agency's goals, programs, and methods of operation.
- n. Maintain attendance records and minutes of the governing body's meetings.

2. Each agency shall provide the department with the names and addresses of the members of the governing body within thirty days after the members' selection.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-07. Responsibilities of the child-placing agency administrator.

1. The administrator shall:
 - a. Plan and coordinate with the governing body the development of policies and procedures governing the child-placing agency's services.
 - b. Ensure that the governing body is kept informed of matters affecting the child-placing agency's finances, operation, and provision of services.
 - c. Ensure employment of qualified staff and the administration of the child-placing agency's personnel policies.
 - d. Ensure that the child-placing agency and its services are made known to the community.
 - e. Maintain the child-placing agency's policies and procedures in written form.
 - f. Maintain a current organizational chart showing the child-placing agency's lines of accountability and authority.
 - g. Maintain a records retention policy that ensures adoption files are maintained permanently and foster care files are retained according to applicable foster care regulations.
2. The child-placing agency, under the administrator's direction, shall maintain a record for each client. A client's record must be kept current from the point of intake to termination of service and must contain information relevant to the provision of services.
3. The administrator who delegates responsibility for program development shall delegate those responsibilities to qualified staff members.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-08. Financial structure.

1. For purposes of initial licensure, the child-placing agency shall demonstrate that it has sufficient predictable income to operate its program of services and, upon relicensure, shall demonstrate ongoing financial stability.
2. The child-placing agency shall prepare an annual budget based on the assessment of agency program priorities and a realistic appraisal of anticipated funding, including reimbursement for services. The child-placing agency shall submit a copy of its budget to the department with a cost breakdown of budget items utilized to determine fees for services.
3. If the child-placing agency increases fees for adoption services, the agency shall submit a copy of the cost analysis to the department to justify the increase.
4. The child-placing agency shall maintain a bonding program as protection for its governing body, staff, clients, funds, and property. The child-placing agency shall review the insurance program annually to assure adequate agency coverage.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-09. Personnel files. The child-placing agency shall have a personnel file for each employee that includes the following:

1. The application for employment, including history of employment.
2. Reference letters, telephone notes, or both from former employers and personal references.
3. Applicable professional credentials and certifications.
4. Annual performance evaluations.
5. Orientation and training records.
6. Record of salary and salary adjustments.
7. Employee's first and last dates of employment.
8. Reason employment ended.

9. Copies of criminal history record investigation results and child abuse and neglect index findings.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-10. Staff functions and qualifications.

1. The child-placing agency shall employ or contract with staff with sufficient qualifications to enable them to perform the agency's fiscal, clerical, and maintenance functions.
2. The child-placing agency shall employ or contract with staff to perform the agency's administrative, supervisory, and placement services. These staff and their qualifications are as follows:
 - a. The administrator shall provide for the general management and administration of the child-placing agency in accordance with the licensing requirements and policies of the child-placing agency's governing body. The administrator must have a bachelor's degree and a minimum of four years of professional experience in human services, at least two of which have been in administration including financial management, or must be an individual otherwise qualified and serving the child-placing agency as an administrator prior to April 1, 2010.
 - b. The placement supervisor shall supervise, evaluate, and monitor the work progress of the placement staff. The placement supervisor must be a licensed certified social worker and have a minimum of two years of experience in supervision of child placement workers or in child placement, or must have a master's degree in a human service-related field from an accredited school, and a minimum of two years of experience in supervision of child placement workers or in child placement, or must be an individual otherwise qualified and serving the child-placing agency as a placement supervisor prior to April 1, 2010.
 - c. The child placement worker shall perform intake services; provide casework or group work services, or both, for children and families; recruit and assess foster and adoptive homes; and plan and coordinate resources affecting children and families. The child placement worker must be a licensed certified social worker or a licensed social worker.
3. If the child-placing agency has no placement supervisor, the child placement worker must meet the education and experience requirements of the placement supervisor.

4. Staff serving as child placement workers or child placement supervisors must meet the above-stated education and experience requirements or be excused from those requirements found in North Dakota Century Code chapter 43-41 on the licensing of social workers.
5. Placement worker caseload must be limited to ensure the placement worker is able to make all the required contacts with the biological, foster, and adoptive families; adopted adults; and collateral parties.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-11. Staff development. The child-placing agency shall ensure that the placement supervisor and placement workers receive training, as applicable to their position, in current foster and adoptive placement practices during each full year of employment. Activities related to orientation and supervision of the staff members and routine tasks are not training activities for the purpose of this requirement.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-12. Employee background checks.

1. Criminal history record investigations and child abuse and neglect index investigations must be completed for all child-placing agency employees who have direct contact with clients. The investigations must be completed prior to an employee's unsupervised contact with clients.
2. Criminal history record investigations must be a fingerprint-based check completed against a national database.
3. Child abuse and neglect index investigations must be obtained from each state where the applicant has resided in the past five years. After the initial investigation, a child abuse and neglect index investigation must be repeated annually in this state and in the employee's state of residence for continued employment.
4. A subsequent criminal history record investigation is not required for an employee who maintains continuous employment at the child-placing agency unless the child-placing agency or the department determines that a need exists to conduct a subsequent investigation.
5. If an employee changes employment from one licensed child-placing agency to another licensed child-placing agency within a year of the completion of a criminal history record investigation and provides

documentation of the individual's background check clearance, a new criminal history record investigation will not be required.

6. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-13. Criminal connection - Effect on licensure.

1. A prospective adoptive parent or any adult living in the prospective adoptive parent home, or a child-placing agency owner or employee, must not have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults, threats, coercion, and harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code section 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; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the North Dakota statutes identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without a subsequent charge or conviction, has elapsed. An offender's 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 charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity as an adoptive home placement and as an owner or employee of a child-placing agency.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The department may deny a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-14. Volunteers.

1. A child-placing agency which utilizes volunteers who work directly with children and families on a regular basis shall:
 - a. Develop a description of duties and specify responsibilities for volunteer positions;
 - b. Require personal references;
 - c. Designate a staff member to supervise and evaluate volunteers;
 - d. Develop a plan for orientation which includes education on the legal requirements for confidentiality, training in the philosophy of the agency, and the needs of children and families served by the child-placing agency;

- e. Require that a volunteer sign a statement of confidentiality; and
 - f. Require a criminal history record investigation and a child abuse and neglect index investigation, the results of which do not disqualify the volunteer, prior to allowing the volunteer to have unsupervised contact with children.
2. Volunteers may not be used in the place of full-time paid staff.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-15. Student field placements.

1. A child-placing agency that accepts students for field placements shall:
 - a. Develop a written plan describing the students' tasks and functions;
 - b. Require references from the students' placing institutions;
 - c. Designate a staff member to supervise and evaluate the students;
 - d. Develop a plan for orientation and training of students in the philosophy of the child-placing agency and the needs of children and families served by the child-placing agency;
 - e. Provide for students to participate in developing and carrying out the case plans for children and families with whom they are working directly;
 - f. Require that students sign a statement of confidentiality; and
 - g. Require successful completion of criminal history record investigations and child abuse and neglect index investigations prior to allowing students to have unsupervised contact with children.
2. Students may not be used in the place of full-time paid staff.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-16. Child abuse and neglect reporting.

1. The child-placing agency shall follow the mandated procedures for reporting child abuse and neglect as outlined in North Dakota Century Code section 50-25.1-03.
2. The agency shall develop policy for handling any suspected incidents of child abuse or neglect involving child-placing agency staff or foster or adoptive parents. These procedures must include:
 - a. A provision that assures that any person having knowledge of or reasonable cause to suspect that a child is abused or neglected reports the circumstances to the local county social service board, regional human service center, or the department;
 - b. A provision for preventing a recurrence of the alleged incident pending investigation; and
 - c. A provision for rehabilitation of the individual and for evaluating the continued utilization of any child-placing agency staff member or foster or adoptive parent who has been the subject of a services-required finding in a report of child abuse or neglect.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-17. Critical incident reporting. The child-placing agency shall have written policy outlining the critical incident recording and reporting process to the regional supervisor, and parent or custodian of the child, if any, when any of the following occurs:

1. An incident requires the services of law enforcement, including in the case of a runaway or an absent child;
2. A serious injury or trauma of a child in foster care, including a child placed for adoption, that requires the services of a medical practitioner;
3. Damage to a foster parent's home which could affect compliance with licensing standards, including damage caused by fire, natural disaster, or other incident, which would cause any kind of major structural damage affecting the safety or shelter of the child or children in foster care;
4. Extended failures that are not repairable within a twenty-four-hour period, including heating, electrical, plumbing, or safety warning in the foster home or the home in which the child is placed for adoption;
5. The death of a child placed in a home by the child-placing agency;

6. Any attempt at suicide by a child placed in a foster home, including a child placed for adoption, by the licensed child-placing agency;
7. Pregnancy of a child placed in a foster home, including a child placed for adoption;
8. Criminal activity by the foster or adoptive parent;
9. An assault on a staff person or family foster home member by a foster child that requires medical attention by a medical practitioner;
10. Outbreak of a serious communicable disease;
11. Any condition requiring closure of the child-placing agency or family foster home; and
12. Any behavior involving a foster child, including a child placed for adoption, that results in a serious threatening situation of harm to the family members, staff, or other foster children.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-18. Emergency plan. The child-placing agency shall establish a written emergency plan for responding to potential natural, manmade, and health emergencies, including flood, avalanche, fire, severe weather, loss of water or food supplies, intruder, and lost child clients or staff. The plan must include:

1. Designation of crisis intervention leader responsibilities;
2. Development of a crisis response organizational chart;
3. Primary and alternate plans for evacuation, including transportation and relocation of participants, when necessary, and evacuation of injured persons; and
4. Supervision of participants after evacuation or relocation.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-19. Confidentiality and retention of files.

1. The child-placing agency shall have written procedures for safeguarding the confidentiality of records.

2. The child-placing agency shall ensure that all records are kept in a safe place, protected from damage, theft, and unauthorized access.
3. The child-placing agency shall have written policies regarding retention of permanent adoption records, foster care records, and personnel files.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-20. Legal services and responsibilities. The child-placing agency shall employ or retain legal staff to represent the child-placing agency in legal matters and to assure prompt resolution of legal questions for children in the legal custody of the agency. The agency shall have sufficient liability insurance to protect itself and children entrusted to its care from serious financial jeopardy.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-21. Quality assurance. The child-placing agency or applicant shall develop written policy outlining its process for determining that the child-placing agency is providing quality programming and services, including the following:

1. A process for reviewing the case plans for each child to evaluate the continued appropriateness of each service plan;
2. A process for reviewing select files, on a regular basis, to determine the quality and effectiveness of services being provided; and
3. A process for reviewing the child-placing agency's referral and admissions policies, procedures, and practices.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-22. Child-placing agency closure. A child-placing agency licensed under this chapter may not cease operations before:

1. Notifying the department in writing of the child-placing agency's intent to close and the proposed date of closure, with details regarding how the child-placing agency plans to meet the requirements of this subsection. This notification must be received by the department not less than ninety days prior to the proposed date of closure;
2. All pending adoptive placements are finalized;

3. All families awaiting adoptive placement have been referred to other agencies or have closed their cases;
4. Custodians of children referred for services have been informed of the child-placing agency's closure and arrangements for transfer of the cases have been made;
5. The child-placing agency makes a reasonable attempt, which may require publication of a notice of closure, to notify former clients of the child-placing agency's closure;
6. Arrangements have been made with another resident licensed child-placing agency to retain all permanent adoption records and provide post-finalization services;
7. Arrangements have been made to transfer any other records which must be retained for a specific time period to the department; and
8. Temporarily retained records must be:
 - a. Boxed in banker-style boxes;
 - b. Clearly labeled; and
 - c. Indexed with the child-placing agency providing the index to the department in writing and electronically as specified by the department.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-23. Adoption services - Coordination with referral source. A child-placing agency shall:

1. Distribute information regarding its adoption services to referral sources and inquiring birth and adoptive families;
2. Request complete pertinent information from a referral source, including the following:
 - a. Medical and developmental information on the child;
 - b. Birth parent medical and social history, including the birth parent's medical and social history;
 - c. Discharge hospital report and updated medical information on the child after the birth of the child;

- d. The child's life book;
 - e. Child protection and child welfare history information, if applicable;
 - f. Information from foster parents on the child prior to adoptive placement, if applicable;
 - g. Information regarding the child's religious affiliation, if available;
 - h. A certified copy of the termination of parental rights order prior to adoptive placement; and
 - i. A copy of the child's birth certificate and social security card, if available.
3. Attend the child and family team meetings of any child referred who is in the custody of county social services or the department.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-24. Provision of services to birth parents - Adoption.

- 1. The child-placing agency shall:
 - a. Inform a birth parent of the birth parent's rights, obligations, and responsibilities under state law, or as specified by court order;
 - b. Inform a birth parent of the continuum of openness in adoption and the options available to the birth parent and the child for future contact as allowed by state law;
 - c. Assist the birth parent in making a decision and understanding the finality of relinquishment of parental rights;
 - d. Assist the birth parent to legally terminate the birth parent's parental rights provided this is the decision of the parent and the parent has the legal authority to unilaterally relinquish his or her rights or make an adoption plan;
 - e. Honor the preference of the birth parent for the religious faith in which their child will be reared, provided it does not unduly delay placement of the child for adoption;
 - f. Include the birth parent, and other significant persons including the child when appropriate, in the development of the case plan;

- g. Obtain, if assuming custody of a child for voluntary placement purposes:
 - (1) Written authority from the parent or parents to place the child; and
 - (2) Written authority from the parent or parents to provide medical services for the child;
 - h. Make reasonable efforts to involve the birth father in planning for the adoptive placement of the child; and
 - i. Offer supportive and referral services to the birth parents.
- 2. No fee, with the exception of reasonable fees as verified by the court and allowed by state law, may be paid by the prospective adoptive parents to the birth parents. The services provided birth parents are not dependent on their willingness to relinquish their child for adoption.
- 3. The child-placing agency arranging the adoptive placement of a foreign-born child is not expected to provide services to the birth parents, but shall obtain available medical and other pertinent information regarding the adoptive child.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-25. Provision of services to the child - Adoption.

- 1. The child-placing agency shall make every effort to place siblings together in an adoptive home. If it is not possible to place siblings together, the child-placing agency shall add written documentation in the child's file identifying the reasons the siblings could not be placed together and the plans formulated to keep the siblings in contact with one another after the adoption.
- 2. The child-placing agency shall provide a life book to the child, if the child does not already have one, and shall give the child an opportunity to explore the child's birth history in preparation for the child's adoptive placement.
- 3. When appropriate to the child's developmental needs, the child-placing agency shall provide preplacement counseling to the child to assist the child in adjusting to adoption.
- 4. The child-placing agency shall begin recruitment efforts immediately upon referral for a child referred to the child-placing agency without an identified family. Diligent recruitment will include listing the child

with local, regional, and national child-specific recruitment resources as directed by the child's child and family team.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-26. Selection of interim care for child pending adoptive placement.

1. The child-placing agency designated by the child's custodian or by the court shall select the most appropriate form of care for the child consistent with the child's needs.
2. The child-placing agency shall select care that has the capacity to assist in the achievement of the goal of permanency and shall make efforts as appropriate to involve the birth parents in the selection of care.
3. The child-placing agency may make a legal risk adoptive placement, prior to the termination of parental rights, into the home of a prospective adoptive parent of that child, provided that:
 - a. The prospective family home has been fully studied and recommended for adoption placement;
 - b. The legal risk adoptive placement is anticipated to be for less than thirty days; and
 - c. The prospective adoptive parents sign a document acknowledging that they understand the risk of the birth parent reclaiming the child and that the prospective adoptive parents will return the child to the child-placing agency upon the child-placing agency's request.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-27. Licensed child placing agencies - Interim family foster homes for infants.

1. The child-placing agency may recruit and arrange for licensing family foster homes that will provide interim care for infants being relinquished to the custody of the child-placing agency prior to the adoptive placement of the child. Foster homes must be licensed according to North Dakota Century Code chapter 50-11, North Dakota Administrative Code chapter 75-03-14, and department policy found in manual chapter 622-05.

2. The child-placing agency shall provide orientation to a foster parent to increase the foster parent's awareness of the following:
 - a. The foster parents' roles and relationships with adoptable children, birth parents, and prospective adoptive parents;
 - b. The estimated timeframe for adoptive placement;
 - c. The record of the child's development and needs;
 - d. The child's life book information;
 - e. The provision of pertinent, nonidentifying information regarding the child's background, case plan, and written authority from the custodian for medical care, including prescribed medication; and
 - f. An explanation of reimbursement procedures for cost of care.
 3. If the child-placing agency wishes to use a county-supervised foster home, the child-placing agency shall secure permission to utilize the home from the appropriate county social service board prior to the placement. Permission must be limited to a specific child for a specific period of time. The child-placing agency shall provide the same information regarding the child to the county foster home as it would provide to the child-placing agency's foster home.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-28. Pre-adoption placement preparation services.

1. A child-placing agency may not place a child into an adoptive home without a full adoption assessment being completed on the prospective adoptive parents, including required fingerprint-based criminal history record investigations and child abuse and neglect index investigations.
2. If the age and circumstances of the child warrants, the child-placing agency shall give the prospective adoptive parents an opportunity to review the records of the child in the child-placing agency's possession, and shall provide the prospective adoptive parents an opportunity to meet with the child's case manager, therapists, foster parents, and other treatment providers to gain an understanding of the child's needs and the services the child will require upon placement in the prospective adoptive home.
3. If the age of the child allows, the child-placing agency worker shall help the child understand the reasons for placement, shall prepare the child

for the new family and environment, and shall be available to the child and the birth parents for supportive services.

4. If the age or the mental, physical, or emotional condition of the child allows, preplacement preparation services must include:
 - a. A visit between the adoptive parents and the child in the foster home;
 - b. Sharing the child's life book with the child and the adoptive parents;
 - c. Making arrangements for a physical examination unless the child had a physical examination within one year prior to placement and a copy of the physician's report and the child's immunization record is in the child-placing agency's file for the child;
 - d. Making arrangements for an eye, dental, and hearing examination for a child three years of age or older unless the child had these examinations within one year prior to placement and copies of the examination reports are in the child-placing agency's file; and
 - e. The sharing of information regarding the child's development and needs between the foster parents and the adoptive parents.
5. The child-placing agency shall prepare the adoptive parents for an understanding of separation anxiety, grief reaction, and problems related to attachment.
6. The child-placing agency shall notify the referral source of the date of placement.
7. The child-placing agency shall make any interstate adoptive placement in accordance with the interstate compact on the placement of children.
8. If warranted, the child-placing agency shall discuss the availability of adoption assistance and shall make a referral to county social services when appropriate. The child-placing agency must provide county social services with supporting documentation of the need for adoption assistance when making the referral.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-29. Adoption placement.

1. The child-placing agency shall adopt written policies for the placement of a child free for adoption. The policies must provide for the following:

- a. A placement contract as specified in North Dakota Century Code section 50-12-06;
 - b. Placement into an adoptive home as soon as possible after the child is legally free for adoption;
 - c. Placement of an Indian child according to the Indian Child Welfare Act;
 - d. Placement in the best interests of the child;
 - e. Placement with relatives or extended family members if it is in the best interests of the child;
 - f. Placing siblings together, and if this is not possible, a plan to keep separated siblings connected after adoption;
 - g. Placement to meet each child's distinctive needs;
 - h. Prohibition of placement based solely on the basis of race, color, or national origin of the adoptive or foster parent or the child involved;
 - i. Continuation of services to assist the child and family; and
 - j. Delivery of a copy of the child's current medical records to the child's adoptive parents.
2. The child-placing agency shall give notice to the department of any child placed by the child-placing agency for adoption. The child-placing agency shall provide notice within two weeks of placement on the form prescribed by the department.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-30. Post-placement and post-finalization.

1. The child-placing agency shall:
 - a. Make continuing supportive services available for children and families following adoptive placement;
 - b. Interview all members of the adoptive family in the family home;
 - c. Have face-to-face visits with the child on a monthly basis primarily in the child's residence and the content of the visits must be documented in the child's file;

- d. Provide assistance to the adoptive family in completing the legal adoption of the child; and
- e. Make post-finalization services available to adoptive parents, birth parents, and the adopted child or adult, when needed. Minimally, the agency shall provide for:
 - (1) An exchange of pictures and letters between birth and adoptive families consistent with contact agreements;
 - (2) Adoption search services; and
 - (3) Information and referral services.
- 2. The child-placing agency may charge a reasonable fee for adoption search services.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-31. Services to prospective adoptive parents.

- 1. A child-placing agency serving minority race children shall have a recruitment plan that actively recruits homes of the same race as the adoptive children to preserve the adoptive child's culture.
- 2. The child-placing agency shall provide information to a prospective adoptive parent about the adoption process, the child-placing agency's policies and practices, legal procedures, and the approximate time the adoption process will take, adoptive standards, children available, the availability of a subsidy if appropriate, and a payment schedule which clarifies provision of services, dates of payment, and an estimate of final costs.
- 3. The child-placing agency shall require the prospective adoptive parent of a foreign-born child to purchase a surety bond, or have five thousand dollars in savings, to provide financial protection for a possible disruption or unexpected medical costs prior to finalization unless the adoptive parent is provided a copy of the decree of adoption from the foreign court at the time of finalization in the foreign country.
- 4. The child-placing agency shall document the following information in the applicant's record and a summary of the information must be recorded in the adoption assessment:
 - a. Motivation for adoption;
 - b. Strengths and challenges of each member of the family;

- c. The attitudes and feelings of the family members and extended family regarding adoption, with emphasis, if indicated, on attitudes and feelings about potential special needs and foreign-born children;
- d. Evidence of stability of the adoptive parents' marital or other significant relationships;
- e. The applicant's understanding of and plans for assisting a minority or foreign-born child to understand and value the child's racial and cultural background;
- f. Attitudes of the applicant toward the birth parents and the birth parents' reasons for placement;
- g. The applicant's plan for discussing adoption with the child;
- h. The applicant's emotional stability and maturity, including a history of treatment for substance abuse, mental health concerns, abuse or neglect issues, or other issues impacting the applicant's emotional stability and maturity. If indicated, the child-placing agency shall make arrangements for psychological evaluation of the applicant's emotional stability and maturity;
- i. The applicant's parenting skills and willingness to acquire additional skills needed for the child's development;
- j. The attitude of the applicant's birth children or previously adopted children about adoption, if applicable;
- k. Reports of the physical examination of the applicant or self-disclosure of medical concerns, current within the last twelve months;
- l. The applicant's ability to provide financially for the child to be adopted with or without financial assistance under subsidized adoption, including the availability of health insurance;
- m. The applicant's references, including at least five personal and community character references;
- n. The applicant's religious preference, if any;
- o. Description of the applicant's home and community;
- p. Substitute care for child care if the applicant works;

- q. Plans for care of the child in the event of the death of the applicant after the adoption;
 - r. Results of fingerprint-based criminal history record investigation and child abuse and neglect index investigations; and
 - s. Recommendations for adoption in regard to number, age, sex, characteristics, and special needs of children best served by the applicants.
5. During the course of the study, the child-placing agency shall keep the applicant informed of the applicant's status with the child-placing agency. When an applicant is denied a positive recommendation for adoption, the child-placing agency shall inform the applicant, in writing, of the reasons the child cannot be placed in the applicant's home. The child-placing agency shall offer services to the applicant as needed.
6. The child-placing agency shall require an adoptive family assessment be updated at least every two years from the date of completion of the original assessment until a child is placed into the home for the purpose of adoption.
7. The child-placing agency shall have regular contact with an approved waiting adoptive family to assess their circumstances and current ability to receive a child for adoptive placement.
8. The child-placing agency shall develop a procedure to allow applicants to grieve the services provided by the child-placing agency and to allow prospective adoptive parents to appeal the child-placing agency's decision regarding adoption assessment denial.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-32. Case plan for adoption.

1. The child-placing agency shall develop a written case plan for each client. The case plan must include a description of specific services to be provided and must include goals and the timeframes for meeting those goals.
2. The child-placing agency shall review the case plan periodically.
3. The child-placing agency shall develop the case plan cooperatively with the client, including with a child when developmentally appropriate.
4. The case plan must be signed and dated by the client.

5. The case plan must be signed and dated by the case manager.
6. For a child in the custody of county social services or the department, the case plan must be directed by the child's child and family team.
7. For a child in the custody of the child-placing agency, the child-placing agency may direct the case plan.
8. For a child in the custody of a birth or adoptive parent, the legal custodial parent may direct the case plan.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-33. Client adoption case records.

1. The child-placing agency shall maintain a current and systematically filed case record on each client served. The child-placing agency shall maintain a master file or card catalog on all case records of the child-placing agency. The case records must include the following:
 - a. A face sheet with current addresses of parents of child clients or other significant persons;
 - b. Application documents;
 - c. Child-placing agency assessments and supporting documentation, including criminal history record investigation, child abuse and neglect index investigation results, and medical records with significant family health history for the adoptive parents;
 - d. Medical records with significant family health history for the child and any birth parent;
 - e. Signed statements authorizing necessary medical or surgical treatment for the child;
 - f. Correspondence;
 - g. Legal documents;
 - h. Child-placing agency agreements or contracts;
 - i. Reports from schools, specialists, and other agencies;
 - j. A case service plan; and

- k. Dated, ongoing records of treatment, supervisory visits, conferences, and contacts with other persons concerning services provided to the client.
2. In the event a family is denied a positive recommendation for adoption or did not have a child placed with them, the child-placing agency shall keep on file a narrative clearly indicating the reason and the manner in which the decision was presented to the family.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-34. Adoption disruption. The child-placing agency shall:

1. Report immediately to the department any adoption disruptions;
2. Provide services to assist the child with feelings of anger, separation, and loss that occur after an adoption disruption;
3. Assess the needs of the child when considering replacement options;
4. Offer counseling to the adoptive parents to assist them with feelings of anger, separation, and loss; and
5. Assess the needs of the adoptive family with whom the child was placed at the time of the disruption prior to considering any future adoptive placement.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-35. Foster care services related to child-placing agencies - Programs and services.

1. The child-placing agency shall adopt a written program description, which includes the following:
 - a. The purpose or mission of the child-placing agency, as it relates to the child-placing agency's role as a child-placing agency;
 - b. A description of the services provided by the child-placing agency, clearly stating which services are provided directly by the child-placing agency and which services are to be provided in collaboration with county social services, the division of juvenile services, tribal entities, community resources such as schools, and other appropriate agencies;

- c. Characteristics and eligibility requirements of individuals appropriate for referral to the child-placing agency;
 - d. A list of information that is required to be submitted with the referral; and
 - e. Acknowledgment that final decisions regarding a child referred to the child-placing agency rest with the custodian pursuant to the authority and responsibility conferred on the custodian under North Dakota Century Code section 27-20-38.
- 2. The child-placing agency shall have a written intake, admission, and discharge policy. The written policy must include:
 - a. An assessment process for screening referrals, including a method of determining the appropriateness of each referral, including the age, sex, and characteristics of a child eligible for child placement;
 - b. Verification that a child referred to the child-placing agency and accepted for services is under the age of eighteen at the time of intake and is determined to be:
 - (1) Unable to receive parental care in the child's own home;
 - (2) Potentially capable of accepting other family ties;
 - (3) Able to participate in family and community life without danger to self or others; and
 - (4) Verification that acceptance for services would not hinder an adoption plan;
 - c. A child-placing agency engaged in providing therapeutic foster care services must follow all requirements contained in the department's policy found at manual chapter 624-05;
 - d. A requirement that the child-placing agency will provide services to a child referred to the child-placing agency's care without discrimination on the basis of race, color, national origin, religion, or sexual orientation;
 - e. A requirement that the child-placing agency accept a child for placement only when legally authorized to do so;
 - f. A process for assisting the applicant or referral source, or both, in obtaining services from other agencies when the child-placing agency's services are not appropriate to the applicant's or referral source's needs; and

- g. A requirement that the child-placing agency discuss with the child and the child's guardian the suitability of the child-placing agency's services in meeting the child's identified needs.
3. A licensed child-placing agency shall work with the department to set the child-placing agency's foster care rate.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-36. Child-placing agencies' file and documentation requirements for foster care placements.

1. The child-placing agency shall adopt a written file and documentation policy requiring that, within thirty days after placement, the child-placing agency establish and thereafter maintain a file for each child. This file must include:
 - a. The child's full name, birth date, age, and gender;
 - b. Name and contact information, including that of the custodian, parents, and other pertinent individuals;
 - c. A signed care agreement, contract, or current court order establishing the child-placing agency's authority to accept and care for the child;
 - d. An explanation of custody and legal responsibility for consent to any medical or surgical care;
 - e. An explanation of responsibility for payment for care and services;
 - f. A current care plan;
 - g. A copy of the appropriate interstate compact forms;
 - h. Copies of periodic, at least quarterly, written reports to the child's parent, guardian, or legal custodian;
 - i. Medical records, including annual health tracks screenings, and evidence of appropriate medical followthrough, immunization records, and height and weight records;
 - j. Records of dental examinations at intervals not to exceed six months. Provide for dental treatments, including necessary prophylaxis, repairs, and extractions;

- k. School records, including individual education plans, if applicable; and
 - l. Records of eye examinations at intervals not to exceed two years. Children who are in need of glasses shall be supplied with glasses as required.
- 2. The child-placing agency shall adopt a written file and documentation policy ensuring that the child-placing agency shall maintain a current and systematically filed case record on each client served. Permanent case records shall be kept in locked, fire-resistant filing cabinets. There shall be a master file or card catalog on all case records of the child-placing agency. The case records shall include at least the following:
 - a. A face sheet with current addresses of parents of child clients or other significant persons;
 - b. Application documents;
 - c. Agency assessments and supporting documentation, including criminal history and child protection services registry check results;
 - d. Medical records with significant family health history and signed statements authorizing necessary medical or surgical treatment;
 - e. Correspondence;
 - f. Legal documents;
 - g. Child-placing agency agreements or contracts; and
 - h. A case service plan.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-37. Child and family plan of care for foster children. The child-placing agency shall adopt a written policy that ensures the child-placing agency will develop a written plan of care for each child and family. The policy must require:

- 1. The child-placing agency develop the care plan in conjunction with the child and family team;
- 2. The child's care plan be developed or reviewed within thirty days of placement with the child-placing agency;

3. The child's care plan be developed or reviewed with the appropriate participation and informed consent of the child or, when appropriate, the child's guardian or custodian;
4. Documentation that the child and a child-placing agency representative have participated in child and family team meetings on a regular basis, and that input has been obtained from the custodian, child, family, foster family, and other pertinent team members;
5. Documentation that the child-placing agency has collaborated and communicated at regular intervals with other agencies that are working with the child to ensure coordination of services and to carry out the child's plan;
6. Documentation of services provided by other agencies, including arrangements that are made in obtaining them;
7. Documentation of the arrangements by which the child's special needs, including prescribed medication, diets, or special medical procedures, are met;
8. The child-placing agency make reasonable efforts to gather information from the custodian, parents, foster parents, courts, schools, and any other appropriate individuals or agencies;
9. Completion of a strengths and needs assessment of the child, biological family, and foster family;
10. Identification of measurable goals, including timeframes for completion;
11. Identification of the measures that will be taken or tasks that will be performed to assist the child and family with meeting the goals;
12. Identification of the individual or entity responsible for providing the service or completing the task;
13. A discharge plan, including a projected discharge date with special attention to discharge planning efforts for a child who is aging out of the foster care system; and
14. The child-placing agency to document in a child's service plan evidence of individualized treatment progress, to review the plan at least every thirty days, or more often if necessary, to determine if services are adequate and still necessary or whether other services are needed.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-38. Family foster homes - Recruitment - Licensing - Foster parent training - Support. The child-placing agency shall adopt a written family foster home policy that encompasses the following:

1. The child-placing agency shall recruit family foster homes and evaluate the homes' suitability to meet the individual and specialized needs of children accepted for family foster care, including those with physical, mental, and emotional disabilities;
2. The child-placing agency shall recruit foster parents who have experience or who have the personal characteristics and temperament suited to working with a child placed in their home, who can provide a child with care, protection, and the relationships and experiences that foster normal, healthy childhood development;
3. The child-placing agency shall make efforts to recruit family foster homes which reflect the race of children being served;
4. The child-placing agency shall arrange for licensing family foster care providers as follows:
 - a. Family foster homes must be licensed according to North Dakota Century Code chapter 50-11 and North Dakota Administrative Code chapter 75-03-14; and
 - b. Providers of therapeutic family foster care must meet the requirements of department policy found at manual chapter 624-05;
5. The child-placing agency shall place children only in licensed family foster homes;
6. The child-placing agency shall make available, and shall ensure the foster parents complete, the following training:
 - a. Fire prevention training as specified in North Dakota Century Code section 50-11-01.5;
 - b. Training requirements contained in North Dakota Administrative Code chapter 75-03-14;
 - c. Training requirements contained in department policy found in manual chapter 622-05, foster care for children licensing standards; and
 - d. Training requirements contained in department policy found in manual chapter 624-05, foster care services - permanency planning policies and procedures, required training for foster parents providing specialized care;

7. The child-placing agency shall provide for ongoing supervision of foster parents to ensure foster parents have the training necessary to provide quality care;
8. The child-placing agency shall provide, and ensure that foster parents have the necessary support from the child-placing agency, and the child welfare system and shall provide an orientation to foster parents on the child-placing agency's policies; and
9. The child-placing agency shall ensure staff and foster parents have training in, precautions for severe weather, first aid, and cardiopulmonary resuscitation.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-39. Foster care placements. The child-placing agency shall create and maintain written policy outlining how the child-placing agency will evaluate placement decisions. The evaluation must consider the appropriateness of initially placing a child with a specific foster family and must provide for ongoing assessment of the appropriateness of the placement. Additionally, the evaluation must include:

1. The child's view of the placement and of the foster family;
2. The foster parent's commitment to the child's best interests;
3. The foster parent's relationship with the biological family and support of the biological family;
4. Evidence that the placement supports the child's educational needs, including avoiding change of school placement;
5. Evidence that the placement supports the child's religious and spiritual needs;
6. Evidence that the placement supports the child's cultural needs;
7. An assessment of the quality of the relationship between the foster family and child;
8. An assessment of the foster family's ability to accept and work with the child's birth family, when applicable;
9. Evidence that the placement supports maintaining sibling connections, i.e., siblings are being placed together, or the vicinity of the placement encourages sibling visits and contacts;

10. Evidence that the placement supports appropriate parent-child visits and contacts; and
11. Use of staff trained to determine the needs of children and their families, to assess placement resources for children found to be in need of placement, and to make decisions necessary to effect appropriate placements.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-40. Service delivery. The child-placing agency shall develop written policy addressing the service delivery component of its programming, including the following:

1. A description of how the child-placing agency engages in the child and family team and wraparound philosophies, and how collaboration efforts occur;
2. A description of how the child-placing agency provides services for a child to accommodate the child's needs, either directly or through cooperative arrangements with other agencies;
3. A description of how the child-placing agency demonstrates that it is guided by the best interests of the child in all matters relating to services for children;
4. Regarding religion and spirituality, a requirement that:
 - a. The child-placing agency assess the religious and spiritual needs of the child and the child's family upon admission;
 - b. The child-placing agency give appropriate consideration to the religious and spiritual needs requests of the child and the child's family when determining programming and placement;
 - c. The child-placing agency and foster parents respect the religious and spiritual beliefs of the child and the child's family;
 - d. The child-placing agency and foster parents make opportunities available for the child to attend religious and spiritual ceremonies of the child's choosing within the area in which the child is placed, whenever possible; and
 - e. The child-placing agency document the religious and spiritual activities in which the child participates;
5. Regarding culturally sensitive programming, a requirement that:

- a. The child-placing agency assess the cultural needs of the child and the child's adoptive and birth families upon admission;
 - b. The child-placing agency give appropriate consideration to the cultural needs of the child and the child's adoptive and birth families when determining programming and placement;
 - c. The child-placing agency and foster parents respect the cultural beliefs of the child and the child's adoptive and birth families;
 - d. The child-placing agency and foster parents make cultural opportunities available within the area in which the child is placed, whenever possible; and
 - e. The child-placing agency document its efforts to meet the cultural needs of the child and the child's adoptive and birth families;
6. Regarding educational needs, a requirement that:
- a. The child-placing agency provide opportunities for academic and vocational training;
 - b. The child-placing agency attempt to place a child to maintain the child's current school placement; and
 - c. When applicable, the child-placing agency document the reasons why a child had to change schools due to placement;
7. Regarding how the child-placing agency supports the state's efforts to maintain sibling connections, a requirement that:
- a. The child-placing agency make efforts, and document efforts made to place siblings together;
 - b. The child-placing agency document the reasons siblings were not placed together;
 - c. The child-placing agency arrange sibling visits and contacts;
 - d. The child-placing agency document visits between siblings; and
 - e. The child-placing agency educate foster parents on the importance of sibling visits, state requirements regarding these visits, and assist the foster parents with overcoming obstacles regarding sibling visits;
8. Regarding how the child-placing agency supports the child welfare system's parent and child visitation policy, a requirement that:

- a. The child-placing agency arrange visits between a child and the child's parents;
 - b. The child-placing agency document the visits between parents and a child in care;
 - c. When visits are not occurring as required, the child-placing agency document efforts made, and the reasons the visits are not occurring; and
 - d. The child-placing agency educate foster parents on the importance of parent-child visits, and that the visits are required, and assist the foster parents with overcoming obstacles regarding these visits;
9. Regarding the clothing and personal items allowance available to foster children, a requirement that:
- a. The child-placing agency provide each child with clothing, which is individually selected and fitted, appropriate to the season and comparable to that of other children in the community; and
 - b. The child-placing agency provide each child with age-appropriate personal hygiene items;
10. Addressing how the child-placing agency will participate in preparing adolescents with the skills required for them to live independently;
11. Requiring that services are delivered by, or under the supervision of, professionally trained staff who:
- a. Possess knowledge of child development, family dynamics, and the effects of separation and loss within the child's developmental level;
 - b. Have specialized knowledge, skill, or experiences required to provide or locate resources most suitable to the needs of a child in foster care and to help the child and the foster parents make effective use of those resources;
 - c. Help foster parents improve their parenting skills and teach foster parents what they need to know in caring for a child who is not their own; and
 - d. Work collaboratively with the legal custodian in coordinating services for a child, the child's parents, and foster parents to achieve permanent arrangements for the care of the child; and

12. Commitment to the involvement of the child's parents in planning for the child.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-41. Rights of the foster child. The child-placing agency shall have written policy indicating that the agency supports the rights of foster children. Specifically, the child-placing agency shall:

1. Respect the religious beliefs of the child;
2. Respect the biological family;
3. Ensure the child has visits and contacts with parents and siblings on a regular basis when not contraindicated by the custodial agency;
4. Allow the child to have personal property and a place for safe storage of that property;
5. Ensure programming takes into account cultural sensitivities;
6. Allow the child to express the child's opinions on issues concerning the child's care or treatment;
7. If developmentally appropriate, ensure the child's participation in child and family team meetings;
8. If developmentally appropriate, ensure the child's input into the child's plan of care;
9. Ensure the child's right to safety, permanency, and well-being; and
10. Outline the process that can be utilized by the foster child if the child feels the child's rights are not being protected.

History: Effective April 1, 2010.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

CHAPTER 75-03-37
TRANSITION-AGED YOUTH AT RISK

Section

75-03-37-01

Definitions

75-03-37-02

Transition-Aged Youth-at-Risk Program - Eligibility - Services

75-03-37-03

Transition-Aged Youth-at-Risk Program - Statewide

Interagency Advisory Council - Regional Subcommittees

75-03-37-01. Definitions. As used in this chapter:

1. "Department" means the department of human services.
2. "Independent living skills" includes self-advocacy; the sufficiency to economically meet one's daily needs and to have a safe and stable place to live; ability to attain academic, vocational, or educational goals; the ability to develop a sense of connectedness; ability to avoid illegal or high-risk behaviors; and an understanding of how to access physical and mental health services.
3. "Individualized assessment" means the process that each service provider uses to determine the needs and appropriate services to transition-aged youth at risk.
4. "In-home supports" means supports provided to a youth, the youth's family, or both, in the home environment, including mentoring, individual and family training, and respite care.
5. "Single plan of care" means a plan of care that identifies and documents needs, tasks, goals, and the safety plan of the family which is developed by the children and family team based on the family's unique strengths, values, and needs.
6. "Transition-aged youth at risk" means children and young adults who are at risk due to deprivation or other activities resulting in youth being involved with the foster care or juvenile justice system, serious mental illness or serious disabilities that do not qualify the youth for developmental disabilities case management, or suicidal tendencies.
7. "Vocational rehabilitation" means an employment-focused program that helps eligible individuals with physical or mental impairments improve their employment opportunities by assisting individuals with disabilities to achieve competitive employment and increased independence.
8. "Wraparound" means a strength-based philosophy of care that includes a definable process involving the child and family that results in a unique

set of community services and supports individualized for that child and family.

History: Effective April 1, 2010.

General Authority: NDCC 50-06-34

Law Implemented: NDCC 50-06-34

75-03-37-02. Transition-aged youth-at-risk program - Eligibility - Services.

1. The executive director of the department shall designate an individual from within the department to oversee the program for transition-aged youth at risk. Transition-aged youth at risk ages fourteen through twenty-four are eligible for participation in the program.
2. Services to an individual youth must be appropriate to that youth and do not need to include all services of the transition-aged youth-at-risk program. The department shall provide the services. Services available under the transition-aged youth-at-risk program include:
 - a. An individualized assessment for transition-aged youth at risk;
 - b. Development of a single plan of care to coordinate services among available service systems, emphasizing existing case management resources;
 - c. Assistance in developing independent living skills;
 - d. Services for transitioning students from high school to employment or postsecondary education;
 - e. In-home support, including mentors, individual and family training, and access to respite care;
 - f. Development of a statewide independent living skills curriculum for youth and families;
 - g. Substance abuse assessment and treatment;
 - h. Psychological and psychiatric evaluation and treatment;
 - i. Individual, group, and family therapy services;
 - j. Case aide services; and

k. Crisis residential services.

History: Effective April 1, 2010.

General Authority: NDCC 50-06-34

Law Implemented: NDCC 50-06-34

75-03-37-03. Transition-aged youth-at-risk program - Statewide interagency advisory council - Regional subcommittees.

1. The statewide interagency advisory council consists of representatives of the various system partners, such as education, juvenile justice, child welfare, tribes, case management, vocational rehabilitation, legislative assembly, parents, and youth. Members are selected based on their knowledge, understanding, and interest in the needs of transition-aged youth. The advisory council shall advise the department concerning program and policy issues, delivery of services, and methods for reaching potential consumers.
 - a. Department staff providing oversight for the program will develop and facilitate the advisory council.
 - b. The statewide interagency advisory council shall meet on a regular basis as determined by the council.
2. The regional subcommittees consist of representatives of the various system partners, such as education, juvenile justice, child welfare, tribes, case management, vocational rehabilitation, parents, and youth. Members are selected based on their knowledge, understanding, and interest in the needs of transition-aged youth. The purpose of the regional subcommittee will be to advise the human service center in the subcommittee's region on program and policy issues, delivery of services, and methods for reaching consumers. A subcommittee will be formed in each of the eight human service center regions.
 - a. The individual providing oversight for this program shall designate a person from a human service center to develop and facilitate the regional subcommittee within the region of the human service center.
 - b. The regional subcommittee shall meet on a regular basis as determined by the subcommittee.

History: Effective April 1, 2010.

General Authority: NDCC 50-06-34

Law Implemented: NDCC 50-06-34