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TITLE 4

OFFICE OF MANAGEMENT AND BUDGET

JULY 2010

CHAPTER 4-07-02

4-07-02-21. Performance bonus. Human resource management services may approve performance bonuses above the twenty-five percent limitation in subsection 4 of North Dakota Century Code section 54-06-30 upon a showing of special circumstances. Agencies must request, in writing, approval from the director or designee of human resource management services by documenting the special circumstances, which may include:

1. Instances of exceptional performance by employees in the face of a major disaster;

2. Instances of exceptional performance by employees as a result of federal or state program initiatives; or

3. Instances of exceptional performance by a team of employees.

History: Effective July 1, 2010.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-30

CHAPTER 4-07-19

4-07-19-04.1. Suspension without pay. A suspension without pay may not exceed thirty calendar days. If the suspended employee is exempt from the overtime provisions of the Fair Labor Standards Act of 1938 [~~Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.~~ 29 C.F.R. 541.602(5)], the appointing authority may ~~not suspend the employee without pay for a period less than one workweek as defined in section 4-07-07-03~~ make deductions from pay for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules.

History: Effective November 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

CHAPTER 4-07-20

4-07-20-02. Requirements for grievance procedures. Each agency, department, institution, board, and commission subject to this chapter shall establish internal grievance procedures that include the following:

1. A provision that allows an employee to grieve an employer action of demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment. The provision must require the employee to begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of reprisal. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery. The provision must also require that in the case of reprisal the employee shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action.

2. Specific steps to be followed in processing the grievance, limitations on the amount of time the parties have to respond, and any procedures for extending time limitations.

3. A requirement that the parties must respond to the issues raised in the grievance.

4. A method of counting time that is in working days.

5. Provisions that allow an employee a reasonable amount of time to process a grievance without loss of pay during regular working hours.

6. An option that if the appointing authority misses an established deadline in the grievance procedure, the grievance may be advanced to the next step.

7. The use of a standard grievance form.

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12(1), 54-44.3-12.2

CHAPTER 4-07-20.1

4-07-20.1-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Date of service" means the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery of electronic means, the date of actual delivery.

2. "Employer action" means an action taken by an appointing authority that affects a regular employee through a demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal.

~~2.~~ 3. "Forced relocation" means the involuntary transfer or reassignment of a regular employee from one work location in the state to another work location in the state that requires the employee to move to a different place of residence. Telecommuting and other alternative work location agreements are not considered forced relocations.

~~3.~~ 4. "Reduction-in-force" means the loss of employment by a regular employee as a result of a reduction in funding, lack of work, curtailment of work, or reorganization.

~~4.~~ 5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time the employer action occurred.

~~5.~~ 6. "Reprisal" means an unfavorable employment-related action taken against ~~a regular~~ an applicant or employee by an appointing authority for appealing to human resource management services or the state personnel board; for exercising the employee's rights under the Public Employees Relations Act of 1985, North Dakota Century Code chapter 34-11.1; for testifying before a legislative committee; or for ~~requesting~~ employees who request timely assistance under the employee assistance program.

~~6.~~ 7. "Waiver" means a written agreement between a regular employee and the appointing authority not to proceed with the agency grievance procedure and to permit an appeal to be made directly to human resource management services.

~~7.~~ 8. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 34-11.1-04(5), 54-44.3-12.2

4-07-20.1-04. Commencement of agency grievance procedure - Time limitations. The employee shall begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of reprisal. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery. The employee grieving reprisal action shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to human resource management services. The agency appointing authority or designee, for good cause shown, may waive the time limitations for filing a grievance. Good cause means those circumstances that reasonably and without any fault on the part of the grievant prevented the filing of a grievance in a timely fashion. In no event may a grievance be deemed timely after sixty days have elapsed from the date of the employer action.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-08. Procedure for ~~appeal~~ appeals of employer actions to human resource management services.

1. The employee shall file the properly completed prescribed appeal form with the director, human resource management services. The appeal form must be delivered, mailed, or transmitted by ~~facsimile~~ electronic means and must be received in the human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. An additional fifteen working days is not available if the requested waiver is denied. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual ~~notice~~ delivery. The agency shall prepare a certificate of ~~mailing, a certificate or admission of delivery in person, or other~~ service or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or ~~actual~~ hand delivery.

2. The director, human resource management services, shall within two working days submit a written request to the director, office of administrative hearings, to conduct a hearing on behalf of the division and shall forward a copy of the appeal form to the appointing authority.

3. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the

administrative law judge shall prepare an appropriate order dismissing the appeal, which shall be final, and provide a copy of it to the parties. The administrative law judge may, for good cause shown, waive the time limitations for filing an appeal. Good cause means those circumstances that reasonably and without any fault on the part of the appellant prevented the filing of an appeal in a timely fashion. In no event may an appeal be deemed timely after sixty days have elapsed from the date of the employer action.

4. The administrative law judge shall consider whether human resource management services has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the internal agency grievance process. If the administrative law judge is unable to establish whether human resource management services has jurisdiction over the subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.

5. If the administrative law judge determines that human resource management services does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.

6. If it is determined that human resource management services has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.

7. The administrative law judge shall notify the employee and the appointing authority of the final decision by sending each of them a copy of the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by subsection 3 of North Dakota Century Code section 28-32-39. The parties shall implement the final decision within any time periods specified by the administrative law judge.

8. The administrative law judge shall return the completed appeal file to human resource management services.

9. Any party to the appeal may review the recordings of the hearing by making a request to human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

CHAPTER 4-07-20.2

4-07-20.2-01. Scope of chapter. This chapter applies to applicants for positions classified by human resource management services ~~and~~, probationary employees or regular employees in classified positions who want to appeal reprisal or who want to appeal discrimination in employment because of race, color, religion, sex, national origin, age, genetics, the presence of any mental or physical disability, status with respect to marriage or public assistance, participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer, or political opinions or affiliations.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-01.1. Employees not in the classified service may appeal claims of reprisal. This chapter also applies to employees not in the classified service who appeal a claim of reprisal under subsection 5 of North Dakota Century Code section 34-11.1-04.

History: Effective July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 34-11.1-04(5)

4-07-20.2-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Applicant" means a person who has applied for a position classified by human resource management services and who has complied with the application procedures required by the employing agency.

2. "Date of service" means the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery of electronic means, the date of actual delivery.

3. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time the alleged action occurred.

~~3.~~ 4. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-03. Statutory definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meanings given to

them under North Dakota Century Code chapter 14-02.4 and subsection 5 of North Dakota Century Code section 34-11.1-04.

History: Effective November 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 34-11.1-04(5), 54-44.3-12.2

4-07-20.2-04. Applicants, probationary employees, or regular employees may appeal reprisal or discrimination in employment. Applicants for positions classified by human resource management services and probationary or regular employees in classified positions may appeal reprisal or may appeal discrimination in employment because of race, color, religion, sex, national origin, age, genetics, the presence of any mental or physical disability, status with respect to marriage or public assistance, participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer, or political opinions or affiliations.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-04.1. Procedure for applicant appeals of discrimination or reprisal in employment to agency appointing authority.

1. An applicant who has completed a timely and properly completed application for a classified position within an agency and who alleges discrimination or reprisal in employment shall file a written appeal to the agency appointing authority. The letter of appeal must specify what alleged discriminatory or reprisal action against the applicant was taken by the agency. The appeal information must be delivered, mailed, or transmitted by ~~facsimile~~ electronic means and must be received in the office of the agency appointing authority by five p.m. within fifteen working days of the alleged discriminatory or reprisal action.

2. The agency appointing authority has fifteen working days from the receipt of the appeal to review the appeal and provide a written response to the applicant.

3. If the applicant does not agree with the response of the agency appointing authority, the applicant may further appeal to human resource management services in accordance with section 4-07-20.2-07.

History: Effective July 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-44.3-12

4-07-20.2-05. Completion of agency grievance process prior to appeal to human resource management services. A probationary or regular employee

shall complete the agency grievance process prior to submitting an appeal to human resource management services for an appeal hearing, unless a waiver is granted as provided for in section 4-07-20.2-06. The employee shall begin the agency grievance procedure within fifteen working days from the date of the alleged discriminatory or reprisal action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to human resource management services. The agency appointing authority or designee, for good cause shown, may waive the time limitations for filing a grievance. Good cause means those circumstances that reasonably and without any fault on the part of the grievant prevented the filing of a grievance in a timely fashion. In no event may a grievance be deemed timely after sixty days have elapsed from the date of the employer action. If an agency does not have an established written grievance procedure, the employee shall submit the appeal to human resource management services within fifteen working days from the date of the alleged discriminatory or reprisal action.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-06. Waiver of agency grievance procedure. A waiver of the agency grievance procedure is allowed by mutual agreement of the probationary or regular employee and appointing authority. The waiver must be signed by both parties within fifteen working days of the alleged discriminatory or reprisal action. Upon obtaining the waiver, the employee may appeal directly to human resource management services in accordance with section 4-07-20.2-07.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-07. Procedure for ~~appeal~~ appeals of discrimination or reprisal to human resource management services.

1. ~~The~~ A probationary or regular employee shall file the properly completed prescribed appeal form with the director, human resource management services. The appeal form must be delivered, mailed, or transmitted by ~~facsimile~~ electronic means and must be received in the human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. An additional fifteen working days is not available if the requested waiver is denied. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual ~~notice~~ delivery. The agency shall prepare a certificate of ~~mailing, a certificate or admission of delivery in person~~ service, or ~~other~~ provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or ~~actual~~ hand delivery.

2. An applicant shall file the appeal form by delivery, mail, or transmittal by ~~facsimile~~ electronic means, and the form must be received in the human resource management services office by five p.m. within fifteen working days of the service of notice of the agency appointing authority's response to the alleged discriminatory or reprisal action. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual ~~notice~~ delivery. The agency shall prepare a certificate of ~~mailing, a certificate or admission of delivery in person~~ service, or ~~other~~ provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or ~~actual~~ hand delivery.

3. An employee in a nonclassified position may appeal claims of reprisal by filing the properly completed prescribed appeal form with the director, human resource management services. The appeal form must be delivered, mailed, or transmitted by electronic means and must be received in the human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure, or within fifteen working days of the date of the reprisal action if an agency does not have an established grievance process. When an employee is using an agency internal grievance procedure, the date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery.

4. The director, human resource management services, shall within two working days submit a written request to the director, office of administrative hearings, to conduct a hearing on behalf of human resource management services and shall forward a copy of the appeal form to the affected appointing authority.

~~4.~~ 5. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the administrative law judge shall prepare an appropriate order dismissing the appeal, which shall be final, and provide a copy of it to the parties. The administrative law judge may, for good cause shown, waive the time limitations for filing an appeal. Good cause means those circumstances that reasonably and without any fault on the part of the appellant prevented the filing of an appeal in a timely fashion. In no event may an appeal be deemed timely after sixty days have elapsed from the date of the employer action.

~~5.~~ 6. The administrative law judge shall consider whether human resource management services has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the internal agency grievance process. If the administrative law judge is unable to establish whether human resource management services has jurisdiction over the subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.

~~6.~~ 7. If the administrative law judge determines that human resource management services does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.

~~7.~~ 8. If it is determined that human resource management services has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.

~~8.~~ 9. The administrative law judge shall notify the employee or the applicant and the affected appointing authority of the final decision by sending each of them the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by subsection 3 of North Dakota Century Code section 28-32-39. The parties shall implement the final decision within any time periods specified by the administrative law judge.

~~9.~~ 10. The administrative law judge shall return the completed appeal file to human resource management services.

~~10.~~ 11. Any party to the appeal may review the recordings of the hearing by making a request to human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008; July 1, 2010.
General Authority: NDCC 54-44.3-12(1)
Law Implemented: NDCC 34-11.1-04(5), 54-44.3-12.2

CHAPTER 4-07-36

4-07-36-02. Payment of training and tuition. An appointing authority may adopt policies to provide training and educational opportunities to its employees to learn new required skills or to enhance their current skills, to increase the opportunity for advancement within the agency or state service, to increase proficiency and productivity, and to improve work performance.

Costs of training or educational courses, including tuition and fees, may be paid for, within budgetary constraints, by the agency or reimbursed to the employee in accordance with agency policy.

An employee who leaves employment with the state agency within two years of receiving the tuition must repay the tuition received on a prorated basis.

History: Effective July 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 54-44.3-12
Law Implemented: NDCC 54-06-33, 54-44.3-12

TITLE 10

ATTORNEY GENERAL

JULY 2010

CHAPTER 10-16-01

10-16-01-03. Debt setoff of prize. In applying subsection 7 of North Dakota Century Code section 53-12.1-12, if two or more persons or state agencies make ~~a claim~~ adverse claims to part or all of a player's prize amount and one of the claims is for child support, the lottery shall transfer the amount claimed for child support directly to the state disbursement unit of the department of human services, may transfer any remaining prize amount up to the amount of the other ~~claim~~ claims to Burleigh County district court, and then make a payment of any remaining prize amount to the player. However, if none of the claims is for child support, the lottery ~~shall~~ may transfer the total amount of the claims to Burleigh County district court and make a payment of any remaining prize amount to the player. The lottery shall notify each of the affected state agencies or persons of the amount transferred to district court. The lottery shall notify the player in writing of the proposed debt setoff and the player's recourse. If the player disputes the child support claim, the player shall pursue remedial action according to subsection 2 of North Dakota Century Code section 50-09-14. If the player disputes a claim unrelated to child support, the player may pursue remedial action through district court.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; July 1, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-12, 53-12.1-13

CHAPTER 10-16-02

10-16-02-07. Sales commission and bonus.

1. The lottery shall credit a retailer's account for:

   a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer;

   b. A sales commission of five percent of the amount of an initial or renewal subscription sale that is transacted through the lottery on a subscription application form that is issued by the retailer's terminal or procured from the retailer with the retailer's license number on it. The retailer must be currently licensed when the subscription application form is processed by the lottery. There is no sales commission on the value of a prize on a winning subscription play that automatically extends a subscription period according to subdivision a of subsection 10 of section 10-16-03-08.1; and

   c. A sales bonus for selling a ticket with a winning play, or for an initial or renewal subscription sale described by subdivision b, including an extended subscription period, that has a winning play, for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play of a ticket or when the winning subscription play is validated. If the winning play for POWERBALL® has the power play option, or the winning play for MEGA MILLIONS® has the Megaplier® option, or the winning play for HOT LOTTO® has the triple sizzler option, the retailer's account must also be credited for an additional bonus as stated below:

Prize	Bonus	Additional Bonus
POWERBALL®		
Grand prize	$50,000	Additional $50,000 with power play
$200,000	$2,500	Additional $2,500 with power play
$10,000	$500	Additional $500 with power play
MEGA MILLIONS®		
Grand prize	$50,000	Additional $50,000 with Megaplier®
$250,000	$2,500	Additional $2,500 with Megaplier®
$10,000	$500	Additional $500 with Megaplier®
HOT LOTTO®		

Grand prize	$5,000	Additional $5,000 with triple sizzler
$10,000	$500	Additional $500 with triple sizzler
WILD CARD 2®		
Grand prize	$2,000	
$5,000	$250	
2BY2®		
Grand prize		
$22,000	$500	
$44,000*	$1,000	

*Tuesday draw double grand prize winning play on a qualifying multi-draw ticket.

2. The lottery may credit a retailer's account for a fixed or graduated sales commission or bonus for a special promotion, including power play, Megaplier®, and triple sizzler, that the lottery conducts for a certain period of time based on parameters set by the lottery.

History: Effective February 1, 2004; amended effective January 1, 2006; January 3, 2008; January 31, 2010.
General Authority: NDCC, 53-12.1-13
Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

CHAPTER 10-16-03

10-16-03-01. Games authorized. The lottery may conduct online games of POWERBALL®, MEGA MILLIONS®, HOT LOTTO®, WILD CARD 2®, and 2BY2®.

History: Effective February 1, 2004; amended effective November 8, 2005; July 1, 2008; January 31, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-03-08. Claim of a prize. A prize for a validated winning ticket must be claimed as follows:

1. No prize may be awarded nor is the lottery liable for a ticket not submitted for validation or for an announcement or dissemination by the lottery or any other person of an incorrect number, letter, or symbol drawn.

2. A ticket bought or used to claim a prize in violation of federal or state law, or bought in violation of the lottery law or rules, is void and may not be used to claim a prize.

3. A ticket for a prize must be actually received or, if mailed, postmarked, within one hundred eighty days after the date of a draw for the game for which the ticket was issued. If the final day of the claim period is a Saturday, Sunday, or state holiday, the claim period is extended to the next business day. An unclaimed prize is forfeited and retained by the lottery. However, if the grand prize for the game of POWERBALL®, MEGA MILLIONS®, HOT LOTTO®, or WILD CARD 2® is unclaimed, the MUSL shall administer the grand prize money.

4. A person who owns or redeems a winning ticket:

   a. Agrees to be bound by the lottery law, rules, procedure, policy, validation requirements, dispute resolution, and game group game rules related to the game for which the ticket was issued; and

   b. Agrees that the state, lottery, the MUSL, game group, and their officers, employees, agents, representatives, and contractor are discharged from any liability upon payment of a prize on a ticket.

5. The owner of a winning ticket may win only one prize per play for the winning numbers, letters, or symbols drawn and is entitled only to the prize won by those numbers in the highest matching prize category.

6. A retailer may redeem a ticket only at the business address listed on the license. The retailer may pay a prize in cash or by business check, certified or cashier's check, money order, or combination of methods.

7. A person may redeem a winning ticket for a prize only during the normal business hours of a retailer provided that the lottery's online computer system is operating and a ticket may be validated. If the retailer is normally open for business before or after the hours when the lottery's on-line computer system operates, the retailer shall post the hours at the site when a person may redeem a ticket.

8. To claim a prize for an apparent winning ticket of less than six hundred dollars, a player may:

   a. Present the ticket to a retailer, regardless of which retailer sold the ticket; or

   b. Complete the back side of the ticket by entering the person's full name and address and signing the ticket, and present or mail the ticket to the lottery's office.

9. If a ticket has a prize value of less than six hundred dollars, is owned by one person, and is presented to a retailer, the retailer may redeem the ticket and pay the prize to the person who physically possesses an unsigned ticket or to the person whose signature is shown on the ticket. If a person desires to redeem a winning ticket that is signed, the retailer shall request evidential proof of identity from the player before the retailer may validate or pay the prize. If the player does not provide proof of identity, the retailer may not validate the ticket or pay the player a prize and shall return the ticket to the player. For an unsigned ticket or a signed ticket in which the ticket holder is the identified owner, the retailer shall validate the ticket and, for a winning ticket, pay the prize to the player. If the retailer is unable to validate a ticket, the retailer shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery.

10. If an apparent winning ticket has a total prize value of all plays of six hundred dollars or more and one person signed or claims ownership of the ticket, a retailer may not redeem the ticket and shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery. The ticket holder shall complete and sign the form and back side of the ticket and present or mail the form and ticket to the lottery. For a validated winning ticket, the lottery shall present or mail a check to the player for the amount of the prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. The lottery shall pay the prize to the person whose name is on the ticket, notwithstanding the name on the claim form. For a nonwinning ticket, the lottery shall deny the claim, notify the claimant, and return the ticket.

11. If more than one person signed or claims ownership of an apparent winning ticket, the retailer shall provide the claimant with a prize claim

form and instruct the claimant how to file a claim with the lottery, as follows:

a. Each person who claims part ownership of the ticket must complete and sign the prize claim form and designate the person's percentage of ownership and, if subdivision d applies, the one authorized payee;

b. At least one of the people who claim ownership must sign the ticket and that signature must be on the prize claim form;

c. The prize claim form and ticket must be presented or mailed to the lottery;

d. For a validated ticket, if the amount of the prize allocated to each claimant is six hundred dollars or more, the lottery shall present or mail a separate prize check to each claimant. The lottery shall present or mail a check to each claimant for the amount of each player's prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. If the prize allocated to each claimant is less than six hundred dollars, the lottery shall issue a single prize check to the person designated and authorized on the prize claim form to receive payment of the prize on behalf of all the claimants; and

e. Notwithstanding subdivision d, if the claimants desire to designate one person in whose name the entire claim may be made and list the persons to whom the winnings are taxable, the claimants may file, along with a claim prize form, internal revenue service form 5754 (statement by person(s) receiving gambling winnings) with the lottery.

12. The lottery shall pay a prize to a player within a reasonable time after the player's winning ticket is validated by the lottery.

13. Except as provided by rule, if two or more plays win the grand prize, the prize money must be divided equally among the players whose tickets won. Except as provided by rule, for a set prize, each player wins the set amount of a prize regardless of whether two or more players have winning tickets for the prize.

14. The lottery is not liable for a ticket not delivered to the correct address of the lottery or a delay in delivery of a ticket or damage to a ticket while being delivered to the lottery.

15. A player who redeems a winning ticket is solely responsible for any federal or state income tax liability related to the prize.

16. A person's right to a prize is assignable and payment of a prize may be made to a person pursuant to an appropriate judicial order.

17. A prize may not be payable to a trust until after the lottery conducts a debt setoff on the beneficiaries of the trust.

18. If a player redeems an original multi-draw ticket before the ticket's last draw and a retailer returns the original ticket, rather than an issued exchange ticket, to the player, the lottery may not pay another prize on the original ticket until after the exchange ticket expires and has not been redeemed.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; January 31, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

10-16-03-08.1. Subscription.

1. A player may procure a subscription application form from a retailer, lottery's office, or lottery's website.

2. A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for thirteen, twenty-six, or fifty-two weeks. A subscription is not refundable or cancelable by a player unless the game group makes a matrix change to the game at which time, at the player's option, the cost of the subscription would be prorated based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased plus the value of an extension.

3. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery. A player may apply for a subscription on the lottery's website or by mail, by telephone, or in person. A player may use cash, check, automated clearinghouse, debit card, or authorized credit card to pay for a subscription.

4. A person must be at least eighteen years of age.

5. A person must have a mailing address within the state of North Dakota when the original or renewal subscription application form was submitted to the lottery.

6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and

MUSL security and integrity committee. All data on a subscriber is confidential.

7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery. However, the lottery may, based on the owner's request, split a prize among two or more persons provided that the share of each person's prize is equal to or more than six hundred dollars.

8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation card to the subscriber. The confirmation card is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation card must include:

   a. Name and address of the subscriber;

   b. Assigned subscriber number;

   c. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option. For the game of MEGA MILLIONS®, indication of whether the play has the Megaplier® option. For the game of HOT LOTTO®, indication whether the play has the triple sizzler option;

   d. Number of and starting and ending dates of the draws;

   e. Numbers, letters, or symbols of the play;

   f. Notice that the subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and

   g. Explanation of how a prize will be awarded.

9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified on the confirmation card. The effective date of a new subscription play cannot be sooner than fourteen days from the original date of subscription. The effective date of a renewal subscription play can begin with the next draw following the end of the current subscription.

10. If the value of a prize on a winning subscription play for a draw is:

    a. Five dollars or less, the lottery shall automatically extend the subscription period by the number of draws equal to the value of the winning play;

b. Equal to or more than six dollars and less than six hundred dollars, the lottery shall send the player a check for the prize; or

c. Equal to or more than six hundred dollars, the lottery shall contact the player to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.

11. If the owner of a subscription changes the owner's name or address, the owner shall provide the lottery with a notarized letter of the change. If the owner of a subscription dies, the lawful representative of the owner's estate shall provide the lottery with a notarized statement of the death and the lottery shall change the ownership of the subscription to "The Estate of" the owner.

History: Effective November 8, 2005; amended effective January 3, 2008; November 1, 2008; July 1, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-01, 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

CHAPTER 10-16-08
MEGA MILLIONS® GAME

Section	
10-16-08-01	Game Description
10-16-08-02	Expected Prize Pool Percentages and Odds
10-16-08-03	Prize Pool and Payment
10-16-08-04	Megaplier® Option

10-16-08-01. Game description. To play MEGA MILLIONS®, a player selects five different white numbers, between one and fifty-six, and one additional gold number (Mega Ball®) between one and forty-six. The additional number may be the same as one of the first five numbers selected. The price of a play is one dollar. A grand prize is paid, at the election of a winning player or by a default election made according to these rules, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a pari-mutuel basis. A set prize (cash prize of two hundred fifty thousand dollars or less) is paid on a single-payment cash basis. Draws are held every Tuesday and Friday.

History: Effective January 31, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-08-02. Expected prize pool percentages and odds. The minimum grand prize is twelve million dollars and is paid on a pari-mutuel basis. Except as provided by rule, a set prize must be paid according to these matches per play and prize amounts with these expected prize payout percentages:

Matches Per Play	Prize	Prize Pool Percentage Allocated to Prize	Odds***
5 white + 1 gold	Grand prize*	63.60%	1:175,711,536
5 white + 0 gold	$250,000**	12.80%	1:3,904,701
4 white + 1 gold	$10,000**	2.90%	1:689,065
4 white + 0 gold	$150**	1.96%	1:15,313
3 white + 1 gold	$150**	2.18%	1:13,781
2 white + 1 gold	$10	2.38%	1:844
3 white + 0 gold	$7	4.58%	1:306
1 white + 1 gold	$3	4.26%	1:141
0 white + 1 gold	$2	5.34%	1:75

Overall odds of winning a prize on a one dollar play are 1:39.89.

* The grand prize is pari-mutuel and will be divided equally by the number of jackpot prize winners.

** For any drawing, if prize liability exceeds the lesser of 300% of MEGA MILLIONS® sales or 50% of draw sales plus $50,000,000, then these prizes become pari-mutuel.

*** Reflects the odds of winning and probable distribution of winning tickets in and among each prize tier, based on the total number of possible combinations.

History: Effective January 31, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-08-03. Prize pool and payment.

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize reserve account is funded.

2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw.

3. If there are multiple grand prize winning plays during a draw, each player selecting the annuitized option prize, then a winning play's share of the annuitized grand prize must be determined by dividing the annuitized grand prize by the number of winning plays.

4. A grand prize must be paid, at the election of the winning player made within sixty days after the player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made by the player within sixty days after the player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a player may be changed to a cash payment at the election of the player until the expiration of sixty days after the player becomes entitled to the prize. Otherwise, the payment election is final. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning plays of the grand prize. A player who elects a cash payment must be paid the share in a single cash payment. A player who elects an annuitized prize must be paid annually in twenty-six payments with the initial payment being made in cash, followed by twenty-five payments by the best available rate obtained through a competitive bid of qualified bidders. Annual payments after the initial payment must be made by the lottery within seven days of

the anniversary date on which the bonds were purchased to fund the annuity.

5. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

6. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

History: Effective January 31, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-08-04. Megaplier® option.

1. The Megaplier® option is a limited extension of the MEGA MILLIONS® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply the amount of a set prize.

2. A qualifying play is a single MEGA MILLIONS® play for which the player pays an extra one dollar for the Megaplier® option. Megaplier® does not apply to the grand prize.

3. A qualifying play which wins one of the eight set prizes will be multiplied by the number selected, two through four, in a separate random Megaplier® drawing.

4. A single number from a series of twenty-one numbers is selected according to the following frequency: two number 2s, seven number 3s, and twelve number 4s. The game group may change one or more of the multiplier numbers for a special promotion.

5. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying Megaplier® will pay the amounts shown below when matched with the Megaplier® number drawn:

MEGA MILLIONS® Pays Instead

Matches per Play	Prize Amount	4X	3X	2X
5 white + 0 gold	$250,000	$1,000,000	$750,000	$500,000
4 white + 1 gold	$10,000	$40,000	$30,000	$20,000
4 white + 0 gold	$150	$600	$450	$300
3 white + 1 gold	$150	$600	$450	$300

2 white + 1 gold	$10	$40	$30	$20
3 white + 0 gold	$7	$28	$21	$14
1 white + 1 gold	$3	$12	$9	$6
0 white + 1 gold	$2	$8	$6	$4

Rarely, a set prize amount may be less than the amount shown. In that case, a Megaplier® prize will be a multiple of the new set prize amount. For example, if the match 5 set prize amount of two hundred fifty thousand dollars becomes one hundred fifty thousand dollars under the game group's rules, a Megaplier® player winning that prize amount when a "4" has been drawn would win six hundred thousand dollars ($150,000 x 4).

6. The following table reflects the probability of the Megaplier® numbers being drawn:

Megaplier®	Probability of Prize Increase
4X - Prize won times 4	12 in 21
3X - Prize won times 3	7 in 21
2X - Prize won times 2	2 in 21

History: Effective January 31, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

TITLE 33

STATE DEPARTMENT OF HEALTH

JULY 2010

CHAPTER 33-11-01.1

33-11-01.1-01. Definitions. Words defined in North Dakota Century Code chapter 23-27 shall have the same meaning in this chapter. For purposes of this chapter:

1. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the skills adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.

2. "Department" means the state department of health as defined in chapter 23-01 of the North Dakota Century Code.

3. "Driver" means an individual who operates a quick response unit vehicle.

4. "Driver's license" means the license as required under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.

5. "Emergency medical responder" means a person who is certified as an emergency medical responder by the department.

6. "Emergency medical technician" means a person who is licensed as an emergency medical technician by the department.

~~6.~~ 7. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.

8. "Patient care provider" means a qualified individual on the quick response unit crew responsible for the care of the patient.

~~7.~~ 9. "Personnel" means qualified ~~primary~~ patient care providers, or drivers, or both, within a quick response unit service.

~~8. "Primary care provider" means a qualified individual on the quick response unit crew responsible for the care of the patient.~~

~~9.~~ 10. "Quick response unit run" means the response of a quick response unit vehicle and personnel to an emergency or nonemergency for the purpose of rendering medical care to someone sick or incapacitated, including canceled calls, no transports, and standby events where medical care may be rendered.

~~10.~~ 11. "State health council" means the council as defined in title 23 of the North Dakota Century Code.

12. "State radio" means the North Dakota department of emergency services division of state radio located at Fraine barracks in Bismarck, North Dakota.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.1-02. License required.

1. ~~Quick response unit licensure, as defined in chapter 23-27 of the North Dakota Century Code, is optional.~~

~~2.~~ The license shall expire midnight on June thirtieth of the odd year following issuance. License renewal shall be on a biennial basis.

~~3.~~ 2. A license is valid only for the service for which it is issued. A license may not be sold, assigned, or transferred.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-02
Law Implemented: NDCC 23-27-02

33-11-01.1-05. Availability of quick response unit. ~~A quick response unit shall be available twenty-four hours per day and seven days per week, except as exempted through waiver by the department.~~ Repealed effective July 1, 2010.

History: ~~Effective January 1, 2008.~~
General Authority: ~~NDCC 23-27-04~~
Law Implemented: ~~NDCC 23-27-04~~

33-11-01.1-07. Number of personnel required. The minimum personnel required on each quick response unit run shall be one ~~primary~~ patient care provider

who may function as the driver and is certified as ~~a first~~ an emergency medical responder or its equivalent.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.1-09. Other requirements.

1. Personnel must be able to identify and locate all equipment items required to be carried in a quick response unit.

2. All licensed quick response unit agencies shall keep the quick response unit vehicle and other equipment clean and in proper working order.

3. All linens, airways, oxygen masks, nasal cannulas, and other equipment coming in direct contact with the patient must be either a single-use disposable type or cleaned, laundered, or disinfected after each use.

4. All licensed quick response units must either be affiliated with a licensed ambulance service, as defined in chapter 33-11-02.1, that provides medical oversight for the quick response unit, or upon approval by the department, have their own medical director not affiliated with an ambulance service.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.1-11. Transporting of patients.

1. Except as otherwise provided in subsection 2, quick response units may not transport patients.

2. Notwithstanding subsection 1, quick response units may transport patients during a major catastrophe or mass casualty incident if all of the following conditions are met:

   a. An incident command system has been established and the incident commander has authorized the use of quick response units to transport patients.

   b. The ambulance services that normally provide service or mutual aid in the area of the catastrophe or mass casualty incident are insufficient or unavailable to transport.

   ~~b.~~ c. The primary care provider on the quick response unit must be an emergency medical technician or its equivalent.

~~e.~~ d. The quick response unit must rendezvous with a licensed ambulance service if one becomes available during transport.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.1-12. Communications. To ensure responder safety and a seamless integration with the broader public safety response system, quick response units must have the following elements to their communications system:

1. They must have a radio call sign issued by state radio.

2. They must be dispatched directly from a public safety answering point by radio or pager.

3. They must have a radio capable of transmitting and receiving voice communications with the local public safety answering point, law enforcement responders, fire responders, and other public safety agencies on radio frequencies determined by state radio.

History: Effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

CHAPTER 33-11-01.2

33-11-01.2-01. Definitions. Words defined in chapter 23-27 of the North Dakota Century Code shall have the same meaning in this chapter. For purposes of this chapter:

1. "Advanced first-aid ambulance attendant" means a person who meets the requirements of the advanced first-aid ambulance attendant program and is certified by the department.

2. "Advanced life support ambulance service" means an emergency medical services operation licensed under and meeting all requirements of chapter 33-11-03.

3. "Ambulance driver" means an individual who operates an ambulance vehicle.

4. "Ambulance run" means the response of an ambulance vehicle and personnel to an emergency or nonemergency for the purpose of rendering medical care or transportation, or both, to someone sick or incapacitated, including canceled calls, no transports, and standby events where medical care may be rendered.

5. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the skills adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.

6. "Commission on accreditation of ambulance services" means the commission on accreditation of ambulance services located in Glenview, Illinois.

7. "Department" means the state department of health as defined in chapter 23-01 of the North Dakota Century Code.

8. "Designated trauma center" means a licensed hospital with a trauma designation as defined in section 33-38-01-06.

9. <u>"Dispatch center" means an ambulance's own dispatching service that operates on a continual basis with dedicated personnel and receives ambulance run requests from a public safety answering point and radio dispatches ambulances.</u>

10. "Driver's license" means the license as required under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.

~~10.~~ 11. "Emergency medical technician" means a person who is licensed as an emergency medical technician by the department.

~~11.~~ 12. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.

~~12.~~ 13. "Headquarters ambulance service" means the base of operations for an ambulance service that operates subordinate substation ambulances.

~~13.~~ 14. "Industrial site ambulance service" means an ambulance service that primarily serves an organization and may or may not offer service to the general public.

~~14.~~ 15. "Licensed health care facilities" means facilities licensed under chapter 23-16 of the North Dakota Century Code.

~~15.~~ 16. "Major trauma patient" means any patient that fits the trauma triage algorithm as defined in chapter 33-38-01.

~~16.~~ 17. "Nonemergency health transportation" means health care transportation not provided by a licensed ambulance service that takes place on a scheduled basis by licensed health care facilities to their own patients or residents whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or emergency medical treatment upon arrival at the final destination.

~~17.~~ 18. "Paramedic" means a person who is certified as an emergency medical technician-paramedic by the national registry of emergency medical technicians and licensed by the department.

~~18.~~ 19. "Paramedic with additional training" means evidence of successful completion of additional training and appropriate periodic skills verification in such topics as management of patients on ventilators, twelve-lead electrocardiograms or other critical care monitoring devices, drug infusion pumps, and cardiac or other critical care medications, or any other specialized procedures or devices determined at the discretion of the paramedic's medical director.

~~19.~~ 20. "Personnel" means qualified primary care providers, or drivers, or both, within an ambulance service.

~~20.~~ 21. "Primary care provider" means a qualified individual on the ambulance crew responsible for the care of the patient and supervision of all ambulance personnel while on the ambulance run.

22. "Public safety answering point" means a government-operated call center that receives 911 calls from the public and dispatches public safety resources.

~~21.~~ 23. "Scheduled basic life support transfer" means transfers provided on a scheduled basis by an advanced life support service to patients who need no advanced life support procedures en route.

~~22.~~ 24. "Specialty care transport" means interfacility transportation, including transfers from a hospital to an aeromedical intercept site, of a critically injured or ill patient by a ground ambulance vehicle, including medically necessary supplies and services, at a level of service beyond the scope of the emergency medical technician-paramedic.

~~23.~~ 25. "State health council" means the council as defined in title 23 of the North Dakota Century Code.

26. "State radio" means the North Dakota department of emergency services division of state radio located at Fraine barracks in Bismarck, North Dakota.

~~24.~~ 27. "Substation ambulance service" means a subordinate operation of a headquarters ambulance service located in a separate municipality.

~~25.~~ 28. "System status management" means strategically positioning ambulances in geographic locations during various times of the day based on historical data that can aid in predicting operational demands.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-03. Application for license.

1. Application for the license shall be made in the manner prescribed by the department.

2. The application must be for a headquarters ambulance service or substation ambulance service at either the basic life support level as defined in chapter 33-11-02.2, or for the advanced life support level as defined in chapter 33-11-02.3.

3. New operators applying for an ambulance service license for an operation that will be based in a city already served by a licensed advanced life support ambulance service must apply for advanced life support ambulance licensure. In addition, new operators must also provide service to the same geographic response area and be able to

meet the response time performance standards commensurate with the existing licenseholder.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-04. Issuance and renewal of licenses.

1. The department or its authorized agent may inspect the service. If minimum standards for either basic life support ground ambulance services or advanced life support ground ambulance services are met, the department shall issue a license.

2. A service may request that the department consider it in compliance with this chapter if it is fully accredited by the commission on accreditation of ambulance services or its equivalent.

3. Services requesting their compliance with this chapter to be verified through an accrediting agency shall submit to the department a copy of the entire accrediting agency survey report. Subsequent accreditation or revisit documentation must be submitted prior to license renewal.

4. ~~If minimum standards for either basic life support ambulance services or advanced life support ambulance services are not met, the department will allow the ambulance service thirty days to comply with the standards. The department will work with the ambulance service to obtain compliance.~~

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-09. Number of personnel required. The minimum personnel required on each ambulance run shall be one driver and one primary care provider. Basic life support ambulance services must maintain a file that identifies at least two qualified ambulance service personnel on a written call schedule. Advanced life support ambulances must maintain a file that identifies at least two qualified ambulance service personnel on a written call schedule for each staffed ambulance as required in section 33-11-03-05.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-12. Specialty care transport.

1. Specialty care transport is necessary when a patient's condition requires ongoing care that must be provided by one or more health care professionals in an appropriate specialty area, for example, nursing, emergency medicine, respiratory care, cardiovascular care, or paramedic with additional training.

2. Qualifying interventions for specialty care transports are patients with:

   a. One of the following:

      (1) Intravenous infusions;

      (2) Vasopressors;

      (3) Vasoactive compounds;

      (4) Antiarrhythmics;

      (5) Fibrinolytics;

      (6) Paralytics; or

      (7) Any other pharmaceutical unique to the patient's special health care needs; and

   b. One or more of the following special monitors or procedures:

      (1) Mechanical ventilation;

      (2) Multiple monitors;

      (3) Infusion pumps;

      (4) Cardiac balloon pump;

      (5) External cardiac support such as a ventricular assist device;

      (6) Rapid sequence intubation;

      (7) Surgical airways; or

      (8) Any other specialized devices or procedures unique to the patient's health care needs.

3. Minimum required staffing shall be one emergency medical technician or its equivalent and at least one of the following critical care providers: physician, physician assistant, nurse practitioner, registered nurse with

special knowledge of the patient's needs, paramedic with additional training, respiratory therapist, or any licensed health care professional designated by the transferring physician.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-14. Transporting of patients. Ambulance services must transport patients to the nearest appropriate licensed health care facility according to their hospital transport plan except for:

1. Interfacility transports shall be made in accordance with the referring or accepting physician's orders.

2. In the following specific instances transport must be made to a licensed health care facility with specific capabilities or designations. This may result in bypassing a closer licensed health care facility for another located farther away. An ambulance service may deviate from these rules contained in this section on a case-by-case basis if online medical control is consulted and concurs.

   a. Major trauma patients must be transported to a designated trauma center as per article 33-38.

   b. A patient suffering acute chest pain that is believed to be cardiac in nature or an acute myocardial infarction determined by a twelve-lead electrocardiograph must be transported to a licensed health care facility capable of performing primary percutaneous catheter insertion or ~~thrombolytic~~ fibrinolytic therapy.

   c. In cities with multiple hospitals an ambulance service may bypass one hospital to go to another hospital with equal or greater services if the additional transport time does not exceed ten minutes.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-15. Required advanced life support care. When it would not delay transport time, basic life support ambulance services must call for a rendezvous with an advanced life support ground ambulance, or an advanced life support or critical care air ambulance if the basic life support ambulance is unable to provide the advanced life support interventions needed to fully treat a patient exhibiting:

1. ~~Major trauma.~~ Traumatic injuries that meet the trauma code activation criteria as defined in section 33-38-01-03.

2. Cardiac chest pain or acute myocardial infarction.

3. Cardiac arrest.

4. Severe respiratory distress or respiratory arrest.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-16. Communications. To ensure responder safety and a seamless integration with the broader public safety response system, ground ambulance services must have the following elements to their communications system:

1. They must have a radio call sign issued by state radio.

2. They must be dispatched directly from a public safety answering point by radio or pager.

3. They must have a radio capable of transmitting and receiving voice communications with the local public safety answering point, law enforcement responders, fire responders, and other public safety agencies on radio frequencies determined by state radio.

4. During the response and transport phases of an emergency ambulance run, an ambulance must notify its dispatch center or public safety answering point when it:

   a. Is en route to the scene.

   b. Has arrived at the scene.

   c. Has left the scene.

   d. Has arrived at the transport destination.

   e. Is available for the next ambulance run.

5. An ambulance may respond to the scene of an emergency with a fragmented crew if:

   a. Any crewmember that is responding to the scene separately from the ambulance has a hand-held radio capable of transmitting and receiving radio traffic on frequencies designated for ambulances by state radio.

b. The crewmembers communicate with each other by radio to ensure that a full crew will ultimately arrive at the scene of an emergency and be able to treat and transport patients.

6. During the transport phase of an emergency ambulance run, the ambulance must give a report on the patient's condition to the receiving hospital as soon as it is practical. Early notification to the receiving hospital will allow the hospital more time to prepare for the patient's arrival.

History: Effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-17. Response times.

1. Ground ambulances must meet the following response time standards ninety percent of the time:

   a. The time of dispatch to the time that the ambulance is en route must not exceed ten minutes.

   b. Within the city limits of Bismarck, Fargo, Grand Forks, and Minot, the time from dispatch to the arrival on scene must not exceed nine minutes.

   c. In rural areas as defined by the United States census and frontier area ambulance services that respond to interstate 94, interstate 29, United States highway 2, or United States highway 83 between Bismarck and Minot, the time from dispatch to the arrival on scene must not exceed twenty minutes.

   d. In frontier areas as defined by the United States census, the time from dispatch to the arrival on scene must not exceed thirty minutes.

2. Failure to meet response time standards when calculated in the two-year licensure period will require the ambulance service to develop a comprehensive plan of correction approved by the department which would include:

   a. An analysis of the barriers to achieving the response time standard.

   b. A plan to remove or minimize all barriers that have been identified.

c. Placing a notice in the official county newspaper notifying the public of the ambulance service's response time deficiency in the format determined by the department.

History: Effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-18. Strike team designation. No ambulance service licensed under this chapter may hold itself out as an ambulance strike team unless it is so designated by the department.

History: Effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-19. Mutual aid agreements. Each licensed ambulance service must have at least one mutual aid agreement with a neighboring licensed ambulance service that can assist when its operational capacity is exceeded. A copy of each mutual aid agreement shall be maintained in the files of each licensee.

History: Effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-20. Disaster plan. Each licensed ambulance service must complete the disaster plan template as published by the department with appropriate local information. A copy of the completed disaster plan must be placed in each ambulance and one copy must be sent to the department. The disaster plan may include specialized equipment or supplies as required in the state emergency medical services disaster plan as published by the department.

History: Effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-01.2-21. Sanctions. Failure to meet standards outlined in article 33-11 may result in sanctions based on the severity of the noncompliance with standards. Based on each individual case, the department may impose the following sanctions on licensed ambulance services:

1. Require the ambulance service to submit a detailed plan of correction that identifies the deficiencies and outlines the steps needed to become fully compliant with standards.

2. Require the ambulance service to place a public notice in the official county newspaper in each county in which the ambulance service operates outlining the operational deficiencies of the ambulance

service. The notice must be approved by the department prior to its publication.

3. Require the ambulance service to host a public meeting with stakeholders of the local emergency medical services system to discuss the operational deficiencies and develop a plan of correction and submit that plan to the department. Stakeholders must be notified at least thirty days prior to the meeting. The following groups must be invited to attend:

   a. The general public. An invitation to the meeting must be made in the official county newspaper in each county to which the ambulance service provides service.

   b. City and county government officials. An invitation letter must be mailed to each city and county government leaders within the ambulance service's normal service area.

   c. All neighboring emergency medical service agencies. An invitation letter must be mailed to each quick response unit within the ambulance service's area and to each bordering ambulance service.

   d. Hospital officials. An invitation letter must be sent to the hospitals to which the ambulance service routinely transports patients.

   e. Medical director. An invitation letter must be sent to the ambulance service's medical director.

   f. Regional trauma committee. An invitation letter must be sent to the regional trauma committee as defined in article 33-38.

   g. The department. An invitation letter must be sent to the North Dakota department of health division of emergency medical services and trauma.

History: Effective July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

CHAPTER 33-11-02

33-11-02-01. Training standards for ambulance driver. ~~The~~ By July 1, 2011, drivers must have successfully completed an emergency vehicle operations course as defined in chapter 33-36-01. After July 1, 2011, new drivers must complete the emergency vehicle operations course within one year of joining the ambulance service. In addition, the driver shall have a current cardiopulmonary resuscitation certification, unless there are two primary care providers as defined in section 33-11-02-02 or one primary care provider plus one other person with a current cardiopulmonary resuscitation certification providing care to the patient.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 2003; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-02-03. Minimum equipment requirements. In addition to a vehicle as described in section 33-11-01-15, the ambulance shall have the following:

1. Mounted ambulance cot with retaining straps.

2. Stretchers with retaining straps. Vehicle design dictates quantity.

3. Piped oxygen system - with appropriate regulator and flow meter, or two "E" size bottles for minimum oxygen supply with regulator and flowmeter.

4. Portable oxygen unit with carrying case. To include one "D" size bottle with another "D" bottle in reserve.

5. Three nasal cannulas, three nonrebreather oxygen masks in adult and pediatric sizes, and three sets of oxygen supply tubing.

6. Suction - wall-mounted and portable - capable of achieving 400 mmhg/4 seconds or less with one rigid tonsil tip suction catheter, one flexible suction catheter between size six and ten french, and one flexible suction catheter between twelve and sixteen french.

7. Bag valve mask resuscitation units in infant child and adult sizes with ~~appropriate-sized~~ face masks ~~or pocket masks with oxygen inlet in pediatric and adult~~ in adult, child, infant, and neonate sizes.

8. Spine boards - one ~~full-size~~ adult long backboard and one seated spinal immobilization device, with retaining straps. In addition, by July 1, 2011, each ambulance shall have one pediatric long backboard.

9. Commercial fracture splints usable for open and closed fractures, or padded boards usable for pediatric and adult patients.

10. Cold packs - four minimum.

11. Fire extinguisher - dry chemical, mounted, five pound [2.27 kilogram] minimum.

12. Head-to-board immobilization ~~device~~ devices in adult and pediatric sizes.

13. Obstetrical kit - disposable or sterilizable that includes an infant bulb suction device and a receiving blanket with head cover.

14. Activated charcoal.

15. Two sterile burn sheets or equivalent.

16. Three triangular bandages or commercial slings.

17. Two trauma dressings - approximately ten inches [25.4 centimeters] by thirty-six inches [91.44 centimeters].

18. Twenty-five sterile gauze pads - four inches [10.16 centimeters] by four inches [10.16 centimeters].

19. Twelve soft roller self-adhering type bandages - five yards [4.57 meters] long.

20. One set of nasopharyngeal airways in adult and child sizes.

21. One set of oropharyngeal airways in adult, child, and infant sizes.

22. Two sterile occlusive dressings approximately three inches [76.2 millimeters] by nine inches [228.6 millimeters].

23. Four rolls of tape - assorted sizes.

24. Shears - blunt - two minimum.

25. Bedpan, emesis basin, urinal.

26. One gallon [3.79 liters] of distilled water or saline solution.

27. Intravenous fluid holder - cot mounted or ceiling hooks.

28. Flashlights - two minimum.

29. One sharps container less than half full.

30. Three red biohazard bags.

31. Cervical collars in adult, child, and infant sizes.

32. Two blankets, four sheets, two pillows, four towels.

33. Phenol disinfectant product, such as lystophene or amphyl.

34. Reflectorized flares for securing scene - set of three minimum.

35. Automatic defibrillator.

36. Blood pressure manometer, cuff in child, adult, and large adult sizes, and stethoscope.

37. ~~Lower~~ One adult lower extremity traction splint. In addition, by July 1, 2011, each ambulance shall have one pediatric lower extremity traction splint.

38. Radio with the capability of meeting state emergency medical services standards as determined by the department.

39. Glutose or glucose - one dose for oral use.

40. Disposable gloves - one box each of small, medium, and large sizes.

41. Four disposable hot packs.

42. Personal protection equipment ~~such as mask~~ including fitted masks, nonabsorbent ~~gown~~ gowns, and protective eyeware - minimum of four.

43. Biological fluid cleanup kit.

44. Twenty-five triage tags.

45. Pulse oximeter.

46. Appropriate pediatric reference material or pediatric weight-based and length-based equipment sizing and drug dosage chart or tape.

47. Reflective vests - minimum of two.

History: 33-11-01-11; redesignated effective March 1, 1985; amended effective February 1, 1989; August 1, 1994; August 1, 2003; January 1, 2006; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-02-04. Medical ~~director~~ direction.

1. Each ground ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who

shall serve as official medical director and whose duties include establishing written medical protocols, recommending optional equipment, oversight of a quality assurance program, and maintaining current training requirements for personnel.

2. Each ambulance service must have written treatment protocols for adult and pediatric medical conditions approved by the medical director and available for reference when providing patient care.

3. Ambulance services must have a written process for accessing adult and pediatric online medical control that includes contacting a medical practitioner at a hospital that has continual in-house emergency room coverage or having the ability to directly contact the on-call emergency room medical practitioner while the practitioner is not at the hospital.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

CHAPTER 33-11-03

33-11-03-01. Minimum standards for personnel.

1. ~~The driver must be a licensed emergency medical technician or its equivalent.~~ The minimum staffing requirement for an advanced life support licensed ground ambulance must consist of a paramedic or equivalent and an emergency medical technician or equivalent. If the crew consists of three or more personnel, the paramedic and emergency medical technician crew may have a CPR-trained driver. By July 1, 2011, drivers must have successfully completed an emergency vehicle operations course as defined in chapter 33-36-01. After July 1, 2011, new drivers must complete the emergency vehicle operations course within one year of joining the ambulance service.

2. The primary care provider, whose duties include an assessment of each patient, must be a licensed paramedic or its equivalent, or be a licensed registered nurse currently licensed as an emergency medical technician or its equivalent who has a current American heart association advanced cardiac life support certification or its equivalent, with the following exceptions:

   a. If, based on the paramedic's, or its equivalent's, assessment findings, a patient's condition requires only basic life support, an emergency medical technician or its equivalent may assume primary care of the patient.

   b. For scheduled basic life support transfers with a crew of two personnel, the driver and the primary care provider must be at least licensed emergency medical technicians or its equivalent.

   c. For scheduled basic life support transfers with a crew of three or more personnel, the crew may have a CPR-trained driver.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-03-02. Minimum equipment standards. The ambulance must contain all the equipment requirements as found in section 33-11-02-03, except oral glutose or glucose, plus the following:

1. Manual cardiac monitor defibrillator with transcutaneous pacer and pediatric capabilities.

2. Portable radio. Rechargeable battery operated capable of reaching law enforcement and hospitals.

3. Nebulizer with tubing.

4. Endotracheal airway equipment in pediatric and adult sizes.

5. Laryngoscope with straight blade sizes zero, one, two, and three or four. Also curved blade sizes two and three or four.

6. Stylettes, one pediatric and one adult.

7. Meconium aspirator adaptor.

8. Magill forceps, one pediatric and one adult.

9. Intravenous therapy equipment. Catheters, intraosseouss needles, tubing solutions, for both pediatric and adult patients as approved by medical director.

~~6.~~ 10. Glucose measuring device.

~~7.~~ 11. Syringes and needles.

~~8.~~ 12. Alcohol swabs. Betadine swabs.

~~9.~~ 13. Electrocardiogram supplies. Rolls of electrocardiogram paper, monitor electrodes and defibrillator pads.

~~10.~~ 14. Pediatric weight and length based drug dosage chart or tape.

History: Effective March 1, 1985; amended effective August 1, 1994; August 1, 2003; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-03-04. Medical ~~director~~ direction.

1. Each ground ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include establishing written medical protocols, recommending optional equipment, oversight of a quality assurance program, and maintaining current training requirements for personnel.

2. Each ambulance service must have written treatment protocols for adult and pediatric medical conditions approved by the medical director and available for reference when providing patient care.

3. Ambulance services must have a written process for accessing adult and pediatric online medical control that includes contacting a medical practitioner at a hospital that has continual in-house emergency room

coverage or having the ability to directly contact the on-call emergency room medical practitioner while the practitioner is not at the hospital.

History: Effective March 1, 1985; amended effective August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

33-11-03-05. Number of ambulances staffed. Unless the advanced life support ambulance service has a system status management program as defined in this chapter in place that is approved by the department, the number of advanced life support ambulances staffed, either by on call or in-house staff, by the licensed ambulance service is dependent upon the population of the city in which the ambulance is based.

1. For cities with a population less than fifteen thousand, one advanced life support ambulance must be staffed. Additional ambulances may be required to meet the response time standards as defined in section 33-11-01.2-17 and may be staffed and equipped at the basic life support level.

2. For cities with populations between fifteen thousand one and fifty-five thousand, two advanced life support ambulances must be staffed. Additional ambulances may be required to meet the response time standards as defined in section 33-11-01.2-17 and may be staffed and equipped at the basic life support level.

3. For cities with populations greater than fifty-five thousand, three advanced life support ambulances must be staffed. Additional ambulances may be required to meet the response time standards as defined in section 33-11-01.2-17 and may be staffed and equipped at the basic life support level.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

CHAPTER 33-11-04

33-11-04-14. Medical ~~director~~ direction.

1. Each air ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include establishing written medical protocols, recommending optional equipment, oversight of a quality assurance program, and maintaining current training requirements for personnel.

2. Each air ambulance service must have written treatment protocols for adult and pediatric medical conditions approved by the medical director and available for reference when providing patient care.

3. Air ambulance services must have a written process for accessing adult and pediatric online medical control.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

CHAPTER 33-11-07

33-11-07-01. Training standards for care providers.

1. Both care ~~providers' training~~ providers shall be ~~consistent with the definition of specialty care transport~~ critical care providers as listed in subsection 3 of section 33-11-01.2-12.

2. Notwithstanding subsection 1, elective transports for patients that are in stable condition who do not require specialized interventions or equipment as described in section 33-11-01.2-12 may be staffed at a lesser level that meets the patient's care requirements and is at least at the level of basic life support air ambulance defined in section 33-11-05-01.

History: Effective January 1, 2006; amended effective April 1, 2009; July 1, 2010.
General Authority: NDCC 23-27-04
Law Implemented: NDCC 23-27-04

CHAPTER 33-16-02.1

33-16-02.1-09. Surface water classifications, mixing zones, and numeric standards.

1. **Classifications.** Procedures for the classifications of streams and lakes of the state shall follow this subsection. Classifications of streams and lakes are listed in appendix I and appendix II, respectively.

   a. Class I streams. The quality of the waters in this class shall be suitable for the propagation or protection, or both, of resident fish species and other aquatic biota and for swimming, boating, and other water recreation. The quality of the waters shall be suitable for irrigation, stock watering, and wildlife without injurious effects. After treatment consisting of coagulation, settling, filtration, and chlorination, or equivalent treatment processes, the water quality shall meet the bacteriological, physical, and chemical requirements of the department for municipal or domestic use.

   b. Class IA streams. The quality of the waters in this class shall be the same as the quality of class I streams, except that ~~treatment for municipal use may also require softening to meet~~ where natural conditions exceed class I criteria for municipal and domestic use, the availability of softening or other treatment methods may be considered in determining whether ambient water quality meets the drinking water requirements of the department.

      The Sheyenne River from its headwaters to one-tenth mile downstream from Baldhill Dam is not classified for municipal or domestic use.

   c. Class II streams. The quality of the waters in this class shall be the same as the quality of class I streams, except that additional treatment may be required to meet the drinking water requirements of the department. Streams in this classification may be intermittent in nature which would make these waters of limited value for beneficial uses such as municipal water, fish life, irrigation, bathing, or swimming.

   d. Class III streams. The quality of the waters in this class shall be suitable for agricultural and industrial uses. Streams in this class generally have low average flows with prolonged periods of no flow. During periods of no flow, they are of limited value for recreation and fish and aquatic biota. The quality of these waters must be maintained to protect secondary contact recreation uses (e.g., wading), fish and aquatic biota, and wildlife uses.

e. Wetlands. These water bodies, including isolated ponds, sloughs, and marshes, are to be considered waters of the state and will be protected under section 33-16-02-08.

f. Lakes and reservoirs. The type of fishery a lake or reservoir may be capable of supporting is based on the lake's or reservoir's geophysical characteristics. The capability of a lake or reservoir to support a fishery may be affected by seasonal or climatic variability or other natural occurrences which may alter the physical and chemical characteristics of the lake or reservoir.

Class	Characteristics
1	Cold water fishery. Waters capable of supporting growth of cold water fish species (e.g., salmonids) and associated aquatic biota.
2	Cool water fishery. Waters capable of supporting natural reproduction and growth of cool water fishes (e.g., northern pike and walleye) and associated aquatic biota. These waters are also capable of supporting the growth and marginal survival of cold water species and associated biota.
3	Warm water fishery. Waters capable of supporting natural reproduction and growth of warm water fishes (e.g., largemouth bass and bluegill) and associated aquatic biota. Some cool water species may also be present.
4	Marginal fishery. Waters capable of supporting a fishery on a short-term or seasonal basis (generally a "put and take" fishery).
5	Not capable of supporting a fishery due to high salinity.

2. **Mixing zones.** North Dakota mixing zone and dilution policy is contained in appendix III.

3. **Numeric standards.**

a. Class I streams. Unless stated otherwise, maximum limits for class I streams are listed in table 1 and table 2.

b. Class IA streams. The physical and chemical criteria shall be those for class I, with the following exceptions:

Substance or Characteristic	Maximum Limit
Chlorides (total)	175 mg/l (30-day arithmetic average)

Sodium	60% of total cations as mEq/l
Sulfate (total)	450 mg/l (30-day arithmetic average)

Site-Specific Sulfate (total) Standard

The following site-specific standard applies to the Sheyenne River from its headwaters to one-tenth mile downstream from Baldhill Dam.

Sulfate (total)	750 mg/l

131.10(b) requirement

The water quality standards for the Red River and the portions of the Sheyenne River located downstream from the segment of the Sheyenne River to which the site-specific sulfate standard applies must continue to be maintained. The Sheyenne River from 0.1 mile downstream from Baldhill Dam to the confluence with the Red River shall not exceed 450 mg/l sulfate (total) 30-day arithmetic average and the Red River shall not exceed 250 mg/l sulfate (total 30-day arithmetic average after mixing, downstream from the confluence of the Sheyenne River. Regulated pollution control efforts must be developed to achieve compliance with these water quality standards.

c. Class II streams. The physical and chemical criteria shall be those for class IA, with the following exceptions:

Substance or Characteristic	Maximum Limit
Chlorides (total)	250 mg/l (30-day arithmetic average)
pH	6.0-9.0 (up to 10% of representative samples collected during any 3-year period may exceed this range provided that lethal conditions are avoided)

d. Class III streams. The physical and chemical criteria shall be those for class II, with the following exceptions:

Substance or Characteristic	Maximum Limit
Sulfate (total)	750 mg/l (30-day arithmetic average)

e. Lakes and reservoirs.

(1) The beneficial uses and parameter limitations designated for class I streams shall apply to all classified lakes or reservoirs, except that reservoirs located on class IA, class II, or class III streams shall have the parameter limitations for that class stream. However, specific background studies and information may require that the department revise a standard for any specific parameter.

(2) In addition, these nutrient parameters are guidelines for use as goals in any lake or reservoir improvement or maintenance program:

Parameter	Limit
NO_3 as N	.25 mg/l
PO_4 as P	.02 mg/l

(3) The temperature standard for class I streams does not apply to Nelson Lake in Oliver County. The temperature of any discharge to Nelson Lake shall not have an adverse effect on fish, aquatic biota, recreation, and wildlife.

(4) A numeric temperature standard of not greater than fifty-nine degrees Fahrenheit [15 degrees Celsius] shall be maintained in the hypolimnion of class I lakes and reservoirs during periods of thermal stratification.

(5) The numeric dissolved oxygen standard of five mg/l as a daily minimum does not apply to the hypolimnion of class III and IV lakes and reservoirs during periods of thermal stratification.

(6) Lake Sakakawea must maintain a minimum volume of water of five hundred thousand-acre feet [61674-hectare meters] that has a temperature of fifty-nine degrees Fahrenheit [15 degrees Celsius] or less and a dissolved oxygen concentration of not less than five mg/l.

History: Effective June 1, 2001; amended effective October 1, 2006; July 1, 2010.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 23-33, 61-28

TABLE 1

MAXIMUM LIMITS FOR SUBSTANCES IN
OR CHARACTERISTICS OF CLASS I STREAMS

CAS No.	Substance or Characteristic	Maximum Limit
		Acute Standard
7429905	Aluminum	750 ug/l
		Chronic Standard
		87 ug/l Where the pH is equal to or greater than 7.0, and the hardness is equal to or greater than 50 mg/l as $CaCO_3$ in the receiving water after mixing, the 87 ug/l chronic total recoverable aluminum criterion will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute total recoverable aluminum criterion.
		Acute Standard
7446-41-7	Ammonia (Total as N)	The one-hour average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula: $\frac{0.411}{1 + 10^{7.204-pH}} + \frac{58.4}{1+10^{pH-7.204}}$, where salmonids are absent; or $\frac{0.275}{1 + 10^{7.204-pH}} + \frac{39.0}{1 + 10^{pH-7.204}}$, where salmonids are present.
		Chronic Standard
		The 30-day average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula; and the highest 4-day average concentration of total ammonia within the 30-day averaging period does not exceed 2.5 times the numerical value given by the following formula: $= \left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \bullet CV;$ where CV = 2.85, when T ≤ 14° C; or

CAS No.	Substance or Characteristic	Maximum Limit
		$CV = 1.45 \times 10^{0.028 \cdot (25-T)}$, when $T > 14°$ C.
		Site-Specific Chronic Standard
		The following site-specific standard applies to the Red River of the North beginning at the 12th Avenue North bridge in Fargo, North Dakota, and extending approximately 32 miles downstream to its confluence with the Buffalo River, Minnesota. This site-specific standard applies only during the months of October, November, December, January, and February. During the months of March through September, the statewide chronic ammonia standard applies.
		The 30-day average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula; and the highest 4-day average concentration of total ammonia within the 30-day averaging period does not exceed 2.5 times the numerical value given by the following formula:
		$= \left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \bullet CV;$
		where $CV = 4.63$, when $T \leq 7°$ C; or $CV = 1.45 \times 10^{0.028 \cdot (25-T)}$, when $T > 7°$ C.
7440-39-3	Barium (Total)	1.0 mg/l (one-day arithmetic average)
	Boron (Total)	.75 mg/l (30-day arithmetic average)
16887-00-6	Chlorides (Total)	100 mg/l (30-day arithmetic average)
7.782-50-5	Chlorine Residual (Total)	Acute .019 mg/l Chronic .011 mg/l
7782-44-7	Dissolved Oxygen	5 mg/l as a daily minimum (up to 10% of representative samples collected during any 3-year period may be less than this value provided that lethal conditions are avoided)

CAS No.	Substance or Characteristic	Maximum Limit
	~~Fecal Coliform[2]~~	~~Not to exceed 200 organisms per 100 ml as a geometric mean of representative samples collected during any 30-day consecutive period, nor shall more than 10 percent of samples collected during any 30-day consecutive period individually exceed 400 organisms per 100 ml. For assessment purposes, the 30-day consecutive period shall follow the calendar month. This standard shall apply only during the recreation season May 1 to September 30.~~
	E. coli[2]	Not to exceed 126 organisms per 100 ml as a geometric mean of representative samples collected during any 30-day consecutive period, nor shall more than 10 percent of samples collected during any 30-day consecutive period individually exceed 409 organisms per 100 ml. For assessment purposes, the 30-day consecutive period shall follow the calendar month. This standard shall apply only during the recreation season May 1 to September 30.
14797-55-8	Nitrates (N) (Diss.)[1]	1.0 mg/l (up to 10% of samples may exceed)
	pH	7.0-9.0 (up to 10% of representative samples collected during any three-year period may exceed this range, provided that lethal conditions are avoided)
32730	Phenols (Total)	0.3 mg/l (organoleptic criterion) (one-day arithmetic average)
	Sodium	50 percent of total cations as mEq/l
	Sulfates (Total as SO_4)	250 mg/l (30-day arithmetic average)
	Temperature	Eighty-five degrees Fahrenheit [29.44 degrees Celsius]. The maximum increase shall not be greater than five degrees Fahrenheit [2.78 degrees Celsius] above natural background conditions.

CAS No.	Substance or Characteristic	Maximum Limit
	Combined radium 226 and radium 228 (Total)	5 pCi/l (30-day arithmetic average)
	Gross alpha particle activity, including radium 226, but excluding radon and uranium	15 pCi/l (30-day arithmetic average)

1 The standard for nitrates (N) is intended as an interim guideline limit. Since each stream or lake has unique characteristics which determine the ~~levels~~ concentration of ~~these constituents~~ this constituent that will cause excessive plant growth (eutrophication), the department reserves the right to review this standard after additional study and to set specific limitations on any waters of the state. However, in no case shall the concentration for nitrate plus nitrite N exceed 10 mg/l for any waters used as a municipal or domestic drinking water supply.

2 Where the ~~fecal coliform or~~ E. coli criteria~~, or both,~~ are exceeded and there are natural sources, the criteria may be considered attained, provided there is reasonable basis for concluding that the indicator bacteria density attributable to anthropogenic sources is consistent with the level of water quality required by the criteria. This may be the situation, for example, in headwater streams that are minimally affected by anthropogenic activities.

TABLE 2

WATER QUALITY CRITERIA[1]
(MICROGRAMS PER LITER)

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II[2]	Class III[3]
83-32-9	Acenaphthene			670	990
107-02-8	Acrolein			~~190~~ 6	~~290~~ 9
107-13-1	Acrylonitrile[4]			0.051	0.25
71-43-2	Benzene[4]			2.2	51
92-87-5	Benzidine[4]			0.000086	0.00020
56-23-5	Carbon tetrachloride[4] (Tetrachloromethane)			0.23	1.6
108-90-7	Chlorobenzene (Monochlorobenzene)			100[7]	1,600
2921-88-2	Chlorpyrifos	0.083	0.041		
120-82-1	1,2,4-Trichlorobenzene			35	70
118-74-1	Hexachlorobenzene[4]			0.00028	0.00029
107-06-2	1,2-Dichloroethane[4]			0.38	37
71-55-6	1,1,1-Trichloroethane			200[7]	
67-72-1	Hexachloroethane[4]			1.4	3.3
79-00-5	1,1,2-Trichloroethane[4]			0.59	16
79-34-5	1,1,2,2-Tetrachloroethane[4]			0.17	4.0
111-44-4	Bis(2-chloroethyl) ether[4]			0.030	0.53
91-58-7	2-Chloronaphthalene			1,000	1,600
88-06-2	2,4,6-Trichlorophenol[4]			1.4	2.4
59-50-7	p-Chloro-m-cresol (4-Chloro-3-methylphenol)			3000	
67-66-3	Chloroform (HM)[4] (Trichloromethane)			5.7	470
95-57-8	2-Chlorophenol			81	150
95-50-1	1,2-Dichlorobenzene[7]			420	1,300
541-73-1	1,3-Dichlorobenzene			320	960
106-46-7	1,4-Dichlorobenzene[7]			63	190
91-94-1	3,3'-Dichlorobenzidine[4]			0.021	0.028
75-35-4	1,1-Dichloroethylene[4]			7[7]	7,100
156-60-5	1,2-trans-Dichloroethylene[7]			100[7]	10,000
120-83-2	2,4-Dichlorophenol			77	290
542-75-6	1,3-Dichloropropylene (1,3-Dichloropropene) (cis and trans isomers)			0.34	21
78-87-5	1,2-Dichloropropane			0.50	15
105-67-9	2,4-Dimethylphenol			380	850

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III Acute	Aquatic Life Value Classes I, IA, II, III Chronic	Human Health Value Classes I, IA, II[2]	Human Health Value Class III[3]
121-14-2	2,4-Dinitrotoluene[4]			0.11	3.4
122-66-7	1,2-Diphenylhydrazine[4]			0.036	0.20
160-41-4	Ethylbenzene[7]			530	2,100
206-44-0	Fluoranthene			130	140
39638-32-9	Bis(2-chloroisopropyl) ether			1400	65,000
75-09-2	Methylene chloride (HM)[4] (Dichloromethane)			4.6	590
74-83-9	Methyl bromide (HM) (Bromomethane)			47	1,500
75-25-2	Bromoform (HM)[5] (Tribromomethane)			4.3	140
75-27-4	Dichlorobromomethane (HM)[5]			0.55	17
124-48-1	Chlorodibromomethane (HM)[5]			0.40	13
87-68-3	Hexachlorobutadiene[4]			0.44	18
77-47-4	Hexachlorocyclopentadiene			40	1,100
78-59-1	Isophorone[4]			35	960
98-95-3	Nitrobenzene			17	690
51-28-5	2,4-Dinitrophenol			69	5,300
534-52-1	4,6-Dinitro-o-cresol (4,6-Dinitro-2-methylphenol)			13	280
62-75-9	N-Nitrosodimethylamine[4]			0.00069	3.0
86-30-6	N-Nitrosodiphenylamine[4]			3.3	6.0
621-64-7	N-Nitrosodi-n-propylamine[4]			0.005	0.51
87-86-5	Pentachlorophenol	19[9]	15[9]	0.27	3.0
108-95-2	Phenol			~~21000~~ 10,000	~~1,700,000~~ 860,000
117-81-7	Bis(2-ethylhexyl)phthalate[4]			1.2	2.2
85-68-7	Butyl benzyl phthalate			1,500	1,900
84-74-2	Di-n-butyl phthalate			2,000	4,500
84-66-2	Diethyl phthalate			17,000	44,000
131-11-3	Dimethyl phthalate			270,000	1,100,000
56-55-3	Benzo(a)anthracene (PAH)[4] (1,2-Benzanthracene)			0.0038	0.018
50-32-8	Benzo(a)pyrene (PAH)[4] (3,4-Benzopyrene)			0.0038	0.018
205-99-2	Benzo(b)fluoranthene (PAH)[4] (3,4-Benzofluoranthene)			0.0038	0.018
207-08-9	Benzo(k)fluoranthene (PAH)[4] (11,12-Benzofluoranthene)			0.0038	0.018
218-01-9	Chrysene (PAH)[4]			0.0038	0.018
120-12-7	Anthracene (PAH)[5]			8,300	40,000
86-73-7	Fluorene (PAH)[5]			1,100	5,300

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III Acute	Chronic	Human Health Value Classes I, IA, II[2]	Class III[3]
53-70-1	Dibenzo(a,h)anthracene (PAH)[4] (1,2,5,6-Dibenzanthracene)			0.0038	0.018
193-39-5	Indeno(1,2,3-cd)pyrene (PAH)[4]			0.0038	0.018
129-00-0	Pyrene (PAH)[5]			830	4,000
127-18-4	Tetrachloroethylene[4]			0.69	3.3
108-88-3	Toluene			1,000[7]	15,000
79-01-6	Trichloroethylene[4]			2.5	30
75-01-4	Vinyl chloride[4] (Cloroethylene)			0.025	2.4
309-00-2	Aldrin[4]	1.5		0.000049	0.000050
60-57-1	Dieldrin[4]	0.24	0.056	0.000052	0.000054
57-74-9	Chlordane[4]	1.2	0.0043	0.00080	0.00081
80-29-3	4,4'-DDT[4]	0.55[13]	0.001[13]	0.00022	0.00022
75-55-9	4,4'-DDE[4]			0.00022	0.00022
72-54-8	4,4'-DDD[4]			0.00031	0.00031
115-29-7	alpha-Endosulfan	0.11[12]	0.056[12]	62	89
115-29-7	beta-Endosulfan	0.11[12]	0.056[12]	62	89
1031-07-8	Endosulfan sulfate			62	89
72-20-8	Endrin	0.09	0.036	0.059	0.060
7421-93-4	Endrin aldehyde			0.29	0.30
76-44-8	Heptachlor[4]	0.26	0.0038	0.000079	0.000079
1024-57-3	Heptachlor epoxide[4]	0.26	0.0038	0.000039	0.000039
319-84-6	alpha-BHC[4] (Hexachlorocyclohexane-alpha)			0.0026	0.0049
319-85-7	beta-BHC[4] (Hexachlorocyclohexane-beta)			0.0091	0.017
58-89-9	gamma-BHC (Lindane)[4] (Hexachlorocyclohexane-gamma)	0.95		0.2[7]	1.8
319-86-8	delta-BHC[4] (Hexachlorocyclohexane-delta)				
1336-36-3	PCB 1242 (Arochlor 1242)[4]		0.014[11]	0.000064[11]	0.000064[11]
1336-36-3	PCB-1254 (Arochlor 1254)[4]		0.014[11]	0.000064[11]	0.000064[11]
1336-36-3	PCB-1221 (Arochlor 1221)[4]		0.014[11]	0.000064[11]	0.000064[11]
1336-36-3	PCB-1232 (Arochlor 1232)[4]		0.014[11]	0.000064[11]	0.000064[11]
1336-36-3	PCB-1248 (Arochlor 1248)[4]		0.014[11]	0.000064[11]	0.000064[11]
1336-36-3	PCB-1260 (Arochlor 1260)[4]		0.014[11]	0.000064[11]	0.000064[11]
1336-36-3	PCB-1016 (Arochlor 1016)[4]		0.014[11]	0.000064[11]	0.000064[11]
8001-35-2	Toxaphene[4]	0.73	0.0002	0.00028	0.00028
7440-36-0	Antimony			5.6	640
7440-38-2	Arsenic[7]	340[10]	150[10]	10[7]	

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III Acute	Chronic	Human Health Value Classes I, IA, II[2]	Class III[3]
1332-21-4	Asbestos[4 7]			7,000,000 f/l	7000000 f/l
7440-41-7	Beryllium[4]			4[7]	
7440-43-9	Cadmium	2.1[6]	0.27[6]	5[7]	
7440-47-3	Chromium (III)	1800[6]	86[6]	100(total)[7]	
	Chromium (VI)	16	11	100(total)[7]	
7440-50-8	Copper	14.0[6]	9.3[6]	1000	
57-12-5	Cyanide (total)	22	5.2	140	140
7439-92-1	Lead	82[6]	3.2[6]	15[7]	
7439-97-6	Mercury	1.7	0.012	0.050	0.051
7440-02-0	Nickel	470[6]	52[6]	100[7]	4,200
7782-49-2	Selenium	20	5	50[7]	
7440-22-4	Silver	3.8[6]			
7440-28-0	Thallium			0.24	0.47
7440-66-6	Zinc	120[6]	120[6]	7,400	26,000
56-39-9	Tributyltin	0.46	0.072		
1746-01-6	Dioxin (2,3,7,8-TCDD)[4]			5.0E-9	5.1E-9
15972-60-8	Alachlor			2[7]	
1912-24-9	Atrazine			3[7]	
56-38-2	Parathion	0.065	0.013		
1563-66-2	Carbofuran			40[7]	
94-75-7	2,4-D			70[7]	
75-99-0	Dalapon			200[7]	
103-23-1	Di(2-ethylhexyl)adipate			400[7]	
333-41-5	Diazinon	0.17	0.17		
84852-15-3	Nonylphenol (Isomer mixture)[14]	28	6.6		
~~96-12-8~~ *67708-83-2	Dibromochloropropane			0.2[7]	
156-59-2	Dichloroethylene (cis-1,2-)			70[7]	
88-85-7	Dinoseb			7[7]	
85-00-7	Diquat			20[7]	
145-73-3	Endothall			100[7]	
106-93-4	Ethylene dibromide (EDB)			0.05[7]	
107-83-6	Glyphosate			700[7]	
72-43-5	Methoxychlor			40[7]	
23135-22-0	Oxamyl (Vydate)			200[7]	
1918-02-1	Picloram			500[7]	
122-34-9	Simazine			4[7]	
100-42-5	Styrene			100[7]	

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III Acute	Chronic	Human Health Value Classes I, IA, II[2]	Class III[3]
1330-20-7	Xylenes			10,000[7]	
7782-41-4	Fluoride			4,000[7]	
14797-65-0	Nitrite			1,000[7]	
12587-47-2	Beta/photon emitters			4 mrem/yr[7]	
7440-61-1	Uranium			30[7]	
15541-45-4	Bromate			10[7]	
	Chlorite			1,000[7]	
	Halocetic acids[15]			60[7]	

CAS No. Chemical Abstracts Service Registry Number

1 Except for the aquatic life values for metals, the values given in this appendix refer to the total (dissolved plus suspended) amount of each substance. For the aquatic life values for metals, the values refer to the total recoverable method for ambient metals analyses.

2 Based on two routes of exposure - ingestion of contaminated aquatic organisms and drinking water.

3 Based on one route of exposure - ingestion of contaminated aquatic organisms only.

4 Substance classified as a carcinogen, with the value based on an incremental risk of one additional instance of cancer in one million persons.

5 Chemicals which are not individually classified as carcinogens but which are contained within a class of chemicals, with carcinogenicity as the basis for the criteria derivation for that class of chemicals; an individual carcinogenicity assessment for these chemicals is pending.

6 Hardness dependent criteria. Value given is an example only and is based on a $CaCO_3$ hardness of 100 mg/l. Criteria for each case must be calculated using the following formula:

CMC = exp (ma [ln (hardness)] + ba)

	ma	ba
Cadmium	1.0166	-3.924
Copper	0.9422	-1.700
Chromium (III)	0.8190	3.7256
Lead	1.273	-1.460
Nickel	0.8460	2.255
Silver	1.72	-6.59
Zinc	0.8473	0.884

CMC = Criterion Continuous Concentration (acute exposure value)
The threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the one-hour concentration does not exceed that CMC value more than once every three years on the average.

CCC = exp (mc [ln (hardness)] + bc)

	mc	bc
Cadmium	0.7409	-4.719
Copper	0.8545	-1.702
Chromium	0.8190	0.6848

Lead	1.273	-4.705
Nickel	0.8460	0.0584
Silver	—	—
Zinc	0.8473	0.884

CCC = Criterion Continuous Concentration (chronic exposure value)
The threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the four-day concentration does not exceed that CCC value more than once every three years on the average.

7 Safe Drinking Water Act (MCL).

8 Note 8 intentionally omitted.

9 Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH. Values displayed in the table correspond to a pH of 7.8 and are calculated as follows:

CMC = exp [1.005 (pH) - 4.869] CCC = exp [1.005 (pH) - 5.134]

10 This criterion applies to total arsenic.

11 This criterion applies to total PCBs (i.e., the sum of all congener or all isomer or homolog or Arochlor analyses).

12 This criterion applies to the sum of alpha-endosulfan and beta-endosulfan.

13 This criterion applies to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).

14 The nonylphenol criteria address CAS numbers 84852-15-3 and 25154-52-3.

15 The criterion is for a total measurement of 5 haloacetic acids, dichloroacetic acid, trichloroacetic acid, monochloroacetic acid, bromoacetic acid, and dibromoacetic acid.

16 Hardness values shall be no greater than 400 mg/l. For waters with hardness levels greater than 400 mg/l. The actual ambient hardness may be used where a site-specific water effect ratio has been determined consistent with the environmental protection agency's water effect ratio procedure.

33-16-02.1-11. Discharge of wastes. On-surface discharges. The following are general requirements for all waste discharges or chemical additions:

1. No untreated domestic sewage shall be discharged into the waters of the state.

2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the water quality of water usage shall be discharged into the waters of the state.

3. The department must be notified at least twenty days prior to the application of any herbicide or pesticide to surface waters of the state for control of aquatic pests. Only certified applicators are allowed to apply chemicals. The notification must include the following information:

   a. Chemical name and composition.

   b. Map which identifies the area of application and aerial extent (e.g., acres or square feet).

c. A list of target species of aquatic biota the applicant desires to control.

d. The calculated concentration of the active ingredient in surface waters immediately after application.

e. Name, address, and telephone number of the certified applicator.

4. Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible (701-328-5210) or the North Dakota hazardous materials emergency assistance and spill reporting number (1-800-472-2121) and provide all relevant information about the spill. Depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:

   a. Take immediate remedial measures;

   b. Determine the extent of pollution to waters of the state;

   c. Provide alternate water sources to water users impacted by the spill or accidental discharge; or

   d. Any other actions necessary to comply with this chapter.

History: Effective June 1, 2001; amended effective October 1, 2006; July 1, 2010.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 23-33, 61-28

APPENDIX I

STREAM CLASSIFICATIONS

The following intrastate and interstate streams are classified as the class of water quality which is to be maintained in the specified stream or segments noted. There are a number of minor or intermittently flowing watercourses, unnamed creeks, or draws, etc., which are not listed. All tributaries not specifically mentioned are classified as Class III streams.

RIVER BASINS, SUBBASINS, AND TRIBUTARIES	CLASSIFICATION
Missouri River, including Lake Sakakawea and Oahe Reservoir	I
Yellowstone	I
Little Muddy Creek near Williston	II
White Earth River	II
Little Missouri River	II
Knife River	II
Spring Creek	IA
Square Butte Creek below Nelson Lake	IA
Heart River	IA
Green River	IA
Antelope Creek	II
Muddy Creek	II
Apple Creek	II
Cannonball River	II
Cedar Creek	II
Beaver Creek near Linton	II
Grand River	IA
Spring Creek	II
Souris River	IA

RIVER BASINS, SUBBASINS, AND TRIBUTARIES	CLASSIFICATION
Des Lacs River	II
Willow Creek	II
Deep River	III
Mauvais Coulee	I
James River	IA
Pipestem	IA
Cottonwood Creek	II
Beaver Creek	II
Elm River	II
Maple River	II
Bois de Sioux	I
Red River	I
Wild Rice River	II
Antelope Creek	III
Sheyenne River (except as noted below)	IA
Baldhill Creek	II
Maple River	II
Rush River	III
Elm River	II
Goose River	IA
Turtle River	II
Forest River	II
North Branch	III
Park River	II
North Branch	III

RIVER BASINS, SUBBASINS, AND TRIBUTARIES	CLASSIFICATION
South Branch	II
Middle Branch	III
Cart Creek	III
Pembina River	IA
Tongue River	II

The Sheyenne River from its headwaters to 0.1 mile downstream from Baldhill Dam is not classified for municipal or domestic use.

APPENDIX II

LAKE AND RESERVOIR CLASSIFICATION

Lakes and reservoirs are classified according to the water characteristics which are to be maintained in the specified lakes and reservoirs. The beneficial water uses and parameter limitations designated for Class I streams shall apply to all classified lakes and reservoirs. For lakes not listed, the following default classification applies: Class 4.

COUNTY	LAKE	CLASSIFICATION
Adams	Mirror Lake	3
Adams	N. Lemmon Lake	1
Barnes	Lake Ashtabula	3
Barnes	Moon Lake	2
Barnes	Clausen Springs	3
Benson	Wood Lake	2
Benson	Graves	3
Benson	Reeves	3
Bottineau	Lake Metigoshe	2
Bottineau	Long Lake	2
Bottineau	Pelican Lake	3
Bottineau	Carbury Dam	2
Bottineau	Cassidy Lake	4
Bottineau	Strawberry Lake	2
Bowman	Bowman-Haley Dam	3

COUNTY	LAKE	CLASSIFICATION
Bowman	Gascoyne Lake	3
Bowman	Kalina Dam	3
Bowman	Lutz Dam	2
Bowman	Spring Lake	3
Burke	Powers Lake	3
Burke	Short Creek Dam	2
Burke	Smishek Dam	2
Burke	Northgate Dam	2
Burleigh	McDowell Dam	3
Burleigh	Mitchell Lake	3
Burleigh	New Johns Lake	2
Cass	Casselton Reservoir	3
Cass	Brewer Lake	2
Cavalier	Mt. Carmel Dam	2
Dickey	Moores Lake	3
Dickey	Pheasant Lake	3
Dickey	Wilson Dam	3
Divide	Baukol-Noonan Dam	2
Divide	Baukol-Noonan East Mine Pond	2

COUNTY	LAKE	CLASSIFICATION
Divide	Skjermo Dam	2
Dunn	Lake Ilo	3
Eddy	Battle Lake	3
Eddy	Warsing Dam	3
Emmons	Braddock Dam	3
Emmons	Nieuwsma Dam	2
Emmons	Rice Lake	3
Foster	Juanita Lake	3
Golden Valley	Camel Hump Dam	1
Golden Valley	Odland Dam	3
Grand Forks	Fordville Dam	2
Grand Forks	Kolding Dam	3
Grand Forks	Larimore Dam	2
Grant	Heart Butte Dam (Lake Tschida)	2
Grant	Niagara Dam	3
Grant	Raleigh Reservoir	2
Grant	Sheep Creek Dam	2
Griggs	Carlson-Tande Dam	3
Griggs	Red Willow Lake	2

COUNTY	LAKE	CLASSIFICATION
Hettinger	Blickensderfer Dam	2
Hettinger	Castle Rock Dam	4
Hettinger	Indian Creek	2
Hettinger	Larson Lake	3
Hettinger	Mott Watershed Dam	3
Kidder	Alkaline Lake	2
Kidder	Cherry Lake	3
Kidder	Crystal Springs	3
Kidder	Frettum Lake	2
Kidder	George Lake	5
Kidder	Horsehead Lake	2
Kidder	Lake Isabel	3
Kidder	Lake Josephine	2
Kidder	Lake Williams	3
Kidder	Round Lake	2
LaMoure	Heinrich-Martin Dam	3
LaMoure	Kalmbach Lake	3
LaMoure	Kulm-Edgeley Dam	3
LaMoure	Lake LaMoure	3
LaMoure	Lehr Dam	3

COUNTY	LAKE	CLASSIFICATION
LaMoure	Limesand-Seefeldt Dam	3
LaMoure	Schlecht-Thom Dam	3
LaMoure	Schlecht-Weix Dam	3
Logan	Beaver Lake	3
Logan	Mundt Lake	3
Logan	Rudolph Lake	3
McHenry	Cottonwood Lake	3
McHenry	George Lake	3
McHenry	Round Lake	3
McHenry	Buffalo Lodge Lake	3
McIntosh	Blumhardt Dam	2
McIntosh	Clear Lake	3
McIntosh	Coldwater Lake	3
McIntosh	Dry Lake	2
McIntosh	Green Lake	2
McIntosh	Lake Hoskins	3
McKenzie	Arnegard Dam	4
McKenzie	Leland Dam	2
McKenzie	Sather Dam	2

COUNTY	LAKE	CLASSIFICATION
McLean	Brush Lake	3
McLean	Crooked Lake	3
McLean	Custer Mine Pond	2
McLean	East Park Lake	2
McLean	Lake Audubon	2
McLean	Lake Brekken	2
McLean	Lake Holmes	2
McLean	Lightning Lake	1
McLean	Long Lake	4
McLean	Riverdale Spillway Lake	1
McLean	Strawberry Lake	3
McLean	West Park Lake	2
Mercer	Harmony Lake	3
Morton	Crown Butte Dam	3
Morton	Danzig Dam	3
Morton	Fish Creek Dam	1
Morton	Nygren Dam	2
Morton	Sweetbriar Dam	2
Mountrail	Clearwater Lake	3
Mountrail	Stanley City Pond	3

COUNTY	LAKE	CLASSIFICATION
Mountrail	Stanley Reservoir	3
Mountrail	White Earth Dam	2
Nelson	McVille Dam	2
Nelson	Tolna Dam	2
Nelson	Whitman Dam	2
Oliver	East Arroda Lake	2
Oliver	Nelson Lake	3
Oliver	West Arroda Lake	2
Pembina	Renwick Dam	3
Pierce	Balta Dam	3
Pierce	Buffalo Lake	3
Ramsey	Cavanaugh Lake	3
Ramsey	Devils Lake	2
Ransom	Dead Colt Creek Dam	3
Renville	Lake Darling	2
Richland	Lake Elsie	3
Richland	Mooreton Pond	3
Rolette	Belcourt Lake	2
Rolette	Carpenter Lake	2

COUNTY	LAKE	CLASSIFICATION
Rolette	Dion Lake	2
Rolette	Gordon Lake	2
Rolette	Gravel Lake	2
Rolette	Hooker Lake	2
Rolette	Island Lake	3
Rolette	Jensen Lake	3
Rolette	School Section Lake	2
Rolette	Upsilon Lake	2
Rolette	Shutte Lake	2
Sargent	Alkali Lake	3
Sargent	Buffalo Lake	3
Sargent	Lake Tewaukon	3
Sargent	Silver Lake	3
Sargent	Sprague Lake	3
Sheridan	Hecker Lake	2
Sheridan	South McClusky Lake (Hoffer Lake)	2
Sioux	Froelich Dam	2
Slope	Cedar Lake	3
Slope	Davis Dam	2

COUNTY	LAKE	CLASSIFICATION
Slope	Stewart Lake	3
Stark	Belfield Pond	1
Stark	Dickinson Dike	1
Stark	Patterson Lake	3
Steele	North Golden Lake	3
Steele	North Tobiason Lake	3
Steele	South Golden Lake	3
Stutsman	Arrowwood Lake	4
Stutsman	Bader Lake	3
Stutsman	Barnes Lake	3
Stutsman	Clark Lake	3
Stutsman	Crystal Springs	3
Stutsman	Hehn-Schaffer Lake	3
Stutsman	Jamestown Reservoir	3
Stutsman	Jim Lake	4
Stutsman	Spiritwood Lake	3
Stutsman	Pipestem Reservoir	3
Towner	Armourdale Dam	2
Towner	Bisbee Dam	2
Walsh	Bylin Dam	3

COUNTY	LAKE	CLASSIFICATION
Walsh	Homme Dam	3
Walsh	Matejcek Dam	3
Ward	Hiddenwood Lake	3
Ward	Makoti Lake	4
Ward	North-Carlson Lake	3
Ward	Rice Lake	3
Ward	Velva Sportsmans Pond	1
Wells	Harvey Dam	3
Wells	Lake Hiawatha (Sykeston Dam)	4
Williams	Blacktail Dam	3
Williams	Cottonwood Lake	3
Williams	East Spring Lake Pond	3
Williams	Epping-Springbrook Dam	3
Williams	Iverson Dam	2
Williams	Kettle Lake	2
Williams	Kota-Ray Dam	1
Williams	McCleod (Ray) Reservoir	3
Williams	McGregor Dam	1

COUNTY	LAKE	CLASSIFICATION
Williams	Tioga Dam	3
Williams	Trenton Lake	2
Williams	West Spring Lake Pond	3
	Lake Oahe	1
	Lake Sakakawea	1

APPENDIX III

MIXING ZONE AND DILUTION POLICY AND IMPLEMENTATION PROCEDURE

PURPOSE

This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

MIXING ZONES

Where dilution is available and the discharge does not mix at a near instantaneous and complete rate with the receiving water (incomplete mixing), an appropriate mixing zone may be designated. In addition, a mixing zone may only be designated if it is not possible to achieve chemical-specific standards and whole effluent toxicity objectives at the end-of-pipe with no allowance for dilution. The size and shape of a mixing zone will be determined on a case-by-case basis. At a maximum, mixing zones for streams and rivers shall not exceed one-half the cross-sectional area or a length 10 times the stream width at critical low flows, whichever is more limiting. Also, at a maximum, mixing zones in lakes shall not exceed 5 percent of lake surface area or 200 feet in radius, whichever is more limiting. Individual mixing zones may be limited or denied in consideration of designated beneficial uses or presence of the following concerns in the area affected by the discharge:

1) There is the potential for bioaccumulation in fish tissues or wildlife.
2) The area is biologically important, such as fish spawning/nursery areas.
3) The pollutant of concern exhibits a low acute to chronic ratio.
4) There is a potential for human exposure to pollutants resulting from drinking water use or recreational activities.
5) The effluent and resultant mixing zone results in an attraction of aquatic life to the effluent plume.
6) The pollutant of concern is extremely toxic and persistent in the environment.
7) The mixing zone would prohibit a zone of passage for migrating fish or other species (including access to tributaries).
8) There are cumulative effects of multiple discharges and their mixing zones.

Within the mixing zone designated for a particular pollutant, certain numeric water quality criteria for that substance may not apply. However, all mixing zones shall

meet the general conditions set forth in Section 33-16-02-08 of the State Water Quality Standards.

While exceedences of acute chemical specific numeric standards are not allowed within the entire mixing zone, a portion of the mixing zone (the zone of initial dilution or ZID) may exceed acute chemical-specific numeric standards established for the protection of aquatic life. The ZID shall be determined on a case-by-case basis where the statement of basis for the discharge permit includes a rationale for concluding that a zone of initial dilution poses no unacceptable risks to aquatic life. Acute whole effluent toxicity (WET) limits shall be achieved at the end-of-pipe with no allowance for a ZID.

DILUTION ALLOWANCES

An appropriate dilution allowance may be provided in calculating chemical-specific acute and chronic and WET discharge limitations where: 1) the discharge is to a river or stream, 2) dilution is available at low-flow conditions, and 3) available information is sufficient to reasonably conclude that there is near instantaneous and complete mixing of the discharge with the receiving water (complete mixing). The basis for concluding that such near instantaneous and complete mixing is occurring shall be documented in the statement of basis for the NDPDES permit. In the case of field studies, the dilution allowance for continuous dischargers shall be based on the critical low flow (or some portion of the critical low flow). The requirements and environmental concerns identified in the paragraphs above may be considered in deciding the portion of the critical low flow to provide as dilution. The following critical low flows shall be used for streams and effluents:

Stream Flows	
Aquatic life, chronic	4-day, 3-year flow (biologically based*)**
Aquatic life, acute	1-day, 3-year flow (biologically based)
Human health (carcinogens)	harmonic mean flow
Human health (non-carcinogens)	4-day, 3-year flow (biologically based) or 1-day, 3-year flow (biologically based)

Effluent Flows	
Aquatic life, chronic	Mean daily flow
Aquatic life, acute	Maximum daily flow
Human health (all)	Mean daily flow

* Biologically based refers to the biologically based design flow method developed by EPA. It differs from the hydrologically based design flow method in that it directly uses the averaging periods and frequencies specified in the aquatic life water quality criteria for individual pollutants and whole effluents for determining design flows.

** A 30-day, 10-year flow (biologically based) can be used for ammonia or other chronic standard with a 30-day averaging period.

For chemical-specific and chronic WET limits, an appropriate dilution allowance may also be provided for certain minor publicly owned treatment works (POTWs) where allowing such dilution will pose insignificant environmental risks. For acute WET limits, an allowance for dilution is authorized only where dilution is available and mixing is complete.

For controlled discharges, such as lagoon facilities that discharge during high ambient flows, the stream flow to be used in the mixing zone analysis should be the lowest statistical flow expected to occur during the period of discharge.

Where a discharger has installed a diffuser in the receiving water, all or a portion of the critical low stream flow may be provided as a dilution allowance. The determination shall depend on the diffuser design and on the requirements and potential environmental concerns identified in the above paragraphs. Where a diffuser is installed across the entire river/stream width (at critical low flow), it will generally be presumed that near instantaneous and complete mixing is achieved and that providing the entire critical low flow as dilution is appropriate.

OTHER CONSIDERATIONS

Where dilution flow is not available at critical conditions (i.e., the water body is dry), the discharge limits will be based on achieving applicable water quality criteria (i.e., narrative and numeric, chronic and acute) at the end-of-pipe; neither a mixing zone or an allowance for dilution will be provided.

All mixing zone dilution assumptions are subject to review and revision as information on the nature and impacts of the discharge becomes available (e.g., chemical or biological monitoring at the mixing zone boundary). At a minimum, mixing zone and dilution decisions are subject to review and revision, along with all other aspects of the discharge permit upon expiration of the permit.

For certain pollutants (e.g., ammonia, dissolved oxygen, metals) that may exhibit increased toxicity or other effects on water quality after dilution and complete mixing is achieved, the waste load allocation shall address such effects on water quality, as necessary, to fully protect designated and existing uses. In other words, the point of compliance may be something other than the mixing zone boundary or the point where complete mixing is achieved.

The discharge will be consistent with the Antidegradation Procedure.

IMPLEMENTATION PROCEDURE

This procedure describes how dilution and mixing of point source discharges with receiving waters will be addressed in developing discharge limitations for point source discharges. For the purposes of this procedure, a mixing zone is defined as a designated area or volume of water surrounding or downstream of a point

source discharge where the discharge is progressively diluted by the receiving water and numerical water quality criteria may not apply. Based on site-specific considerations, such a mixing zone may be designated in the context of an individual permit decision. Discharges may also be provided an allowance for dilution where it is determined that the discharge mixes with the receiving water in near instantaneous and complete fashion. Such mixing zones and allowances for dilution will be granted on a parameter-by-parameter and criterion-by-criterion basis as necessary to fully protect existing and designated uses.

The procedure to be followed is composed of six individual elements or steps. The relationship of the six steps and an overview of the mixing zone/dilution procedure is shown in Figure 1.

Step 1 - No Dilution Available During Critical Conditions

Where dilution flow is not available at critical low flow conditions, discharge limitations will be based on achieving applicable narrative and numeric water quality criteria at the end-of-pipe.

Step 2 - Dilution Categorically Prohibited for Wetland Discharges

Permit limitations for discharges to a wetland shall be based on achieving all applicable water quality criteria (i.e., narrative and numeric, chronic and acute) at end-of-pipe.

Step 3 - Procedure for Certain Minor POTWs

Minor POTWs that discharge to a lake or to a river/stream at a dilution greater than 50:1 qualify for this procedure. Minor POTWs with dilution ratios less than 50:1 may also qualify (at the discretion of the permit writer) where it can be adequately demonstrated that this procedure poses insignificant environmental risks. For the purposes of this procedure, the river/stream dilution ratio is defined as the chronic low flow of the segment upstream of the POTW discharge divided by the mean daily flow of the POTW. For controlled discharges from lagoon facilities (discharging during high flows), the river/stream dilution ratio is defined as the lowest upstream flow expected during the period of discharge divided by the mean daily flow of the discharge.

For minor POTWs that qualify for this procedure and discharge to lakes, the allowance for dilution for chemical-specific and chronic WET limits will be determined on a case-by-case basis. Dilution up to 19:1 (5 percent effluent) may be provided.

For minor POTWs that qualify for this procedure and discharge to a river/stream segment, dilution up to the full chronic aquatic life, acute aquatic life, and human health critical flows may be provided.

Step 4 - Site-Specific Risk Considerations

Where allowing a mixing zone or a dilution allowance would pose unacceptable environmental risks, the discharge limitations will be based on achieving applicable narrative and numeric water quality criteria at the end-of-pipe. The existence of environmental risks may also be the basis for a site-specific mixing zone or dilution allowance. Such risk determinations will be made on a case-by-case and parameter-by-parameter basis. These decisions will take into account the designated and existing uses and all relevant site-specific environmental concerns, including the following:

1. Bioaccummulation in fish tissues or wildlife
2. Biologically important areas such as fish spawning areas
3. Low acute to chronic ratio
4. Potential human exposure to pollutants resulting from drinking water or recreational areas
5. Attraction of aquatic life to the effluent plume
6. Toxicity/persistence of the substance discharged
7. Zone of passage for migrating fish or other species (including access to tributaries)
8. Cumulative effects of multiple discharges and mixing zones

Step 5 - Complete Mix Procedures

For point source discharges to rivers/streams where available data are adequate to support a conclusion that there is near instantaneous and complete mixing of the discharge with the receiving water (complete mix) the full critical low flow or a portion thereof may be provided as dilution for chemical-specific and WET limitations. Such determinations of complete mixing will be made on a case-by-case basis using best professional judgement. Presence of an effluent diffuser that covers the entire river/stream width at critical low flow will generally be assumed to provide complete mixing. Also, where the mean daily flow of the discharge exceeds the chronic low stream flow of the receiving water, complete mixing will generally be assumed. In addition, where the mean daily flow of the discharge is less than or equal to the chronic low flow of the receiving water, it will generally be assumed that complete mixing does not occur unless otherwise demonstrated by the permittee. Demonstrations for complete mixing should be consistent with the study plan developed in cooperation with the states/tribes and EPA Region VIII. Near instantaneous and complete mixing is defined as no more than a 10 percent difference in bank-to-bank concentrations within a longitudinal distance not greater than two river/stream widths. For controlled discharges (lagoon facilities), the test of near instantaneous and complete mixing will be made using the expected rate of effluent discharge and the lowest upstream flow expected to occur during the period of discharge.

The following critical low flows shall be applied for streams and effluents:

Stream Flows

Aquatic life, chronic	4-day, 3-year flow (biologically based*)**
Aquatic life, acute	1-day, 3-year flow (biologically based)
Human health (carcinogens)	Harmonic mean flow
Human health (non-carcinogens)	4-day, 3-year flow (biologically based) or 1-day, 3-year flow (biologically based)

Effluent Flows

Aquatic life, chronic	Mean daily flow
Aquatic life, acute	Maximum daily flow
Human health (all)	Mean daily flow

* Biologically based refers to the biologically based design flow method developed by EPA. It differs from the hydrologically based design flow method in that it directly uses the averaging periods and frequencies specified in the aquatic life water quality criteria for individual pollutants and whole effluents for determining design flows.

** A 30-day, 10-year flow (biologically based) can be used for ammonia or other chronic standard with a 30-day averaging period.

Where complete mixing can be concluded and the environmental concerns identified in step 4 do not justify denying dilution, but are nevertheless significant, some portion of the critical low flows identified above may be provided as dilution. Such decisions will take site-specific environmental concerns into account as necessary to ensure adequate protection of designated and existing uses.

Step 6 - Incomplete Mix Procedures

This step addresses point source discharges that exhibit incomplete mixing. Because acute WET limits are achieved at the end-of-pipe in incomplete mix situations, this step provides mixing zone procedures for chronic aquatic life, human health, and WET limits, and ZID procedures for acute chemical-specific limits. Where a ZID is allowed for chemical limits, the size of the ZID shall be limited as follows:

Lakes:	The ZID volume shall not exceed 10 percent of the volume of the chronic mixing zone.
Rivers and Streams:	The ZID shall not exceed 10 percent of the chronic mixing zone volume or flow, nor shall the ZID exceed a maximum downstream length of 100 feet, whichever is more restrictive.

The following provides guidelines for determining the amount of dilution available for dischargers that exhibit incomplete mixing.

Default Method

This method addresses situations where information needed for modeling is not available or there are concerns about potential environmental impacts of allowing a mixing zone. The default method provides a conservative dilution allowance.

Stream/River Dischargers: Dilution calculation which uses up to 10 percent of the critical low flow for chronic aquatic life limits or human health limits. However, this allowance may be adjusted downward on a case-by-case basis depending upon relevant site-specific information, designed and existing uses of the segment, and especially the uses of the segment portion affected by the discharge.

Lake/Reservoir Dischargers: Dilution up to 4:1 ratio (20 percent effluent) may be provided for chronic aquatic life analyses or human health analyses. However, this allowance may be adjusted downward on a case-by-case basis depending upon discharge flow, lake size, lake flushing potential, designated and existing uses of the lake, and uses of the lake portion affected by the discharge.

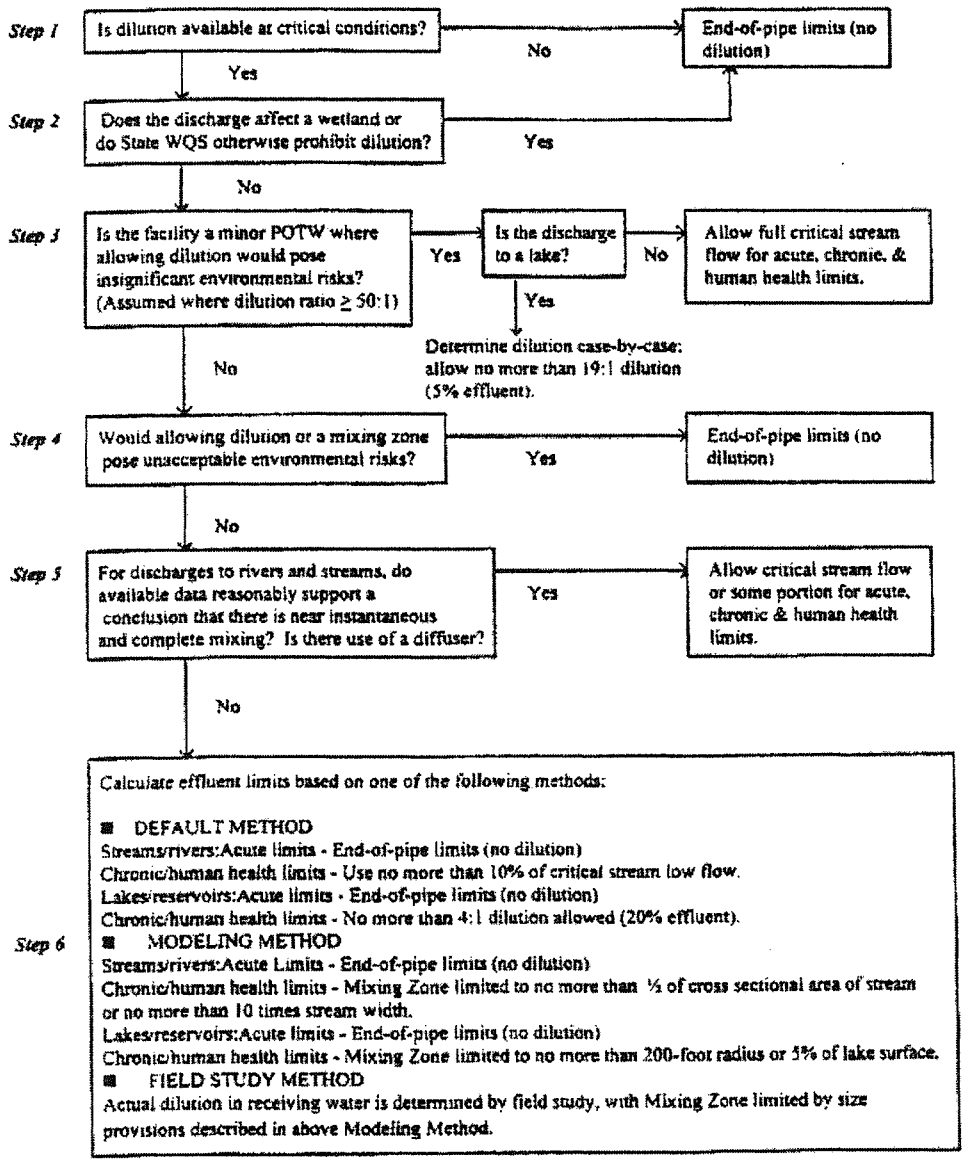
Modeling Method

An appropriate mixing zone model is used to calculate the dilution flow that will allow mixing zone limits to be achieved at the critical low flow. Prior to initiating modeling studies, it should be determined that compliance with criteria at the end-of-pipe is not practicable.

Field Study Method

Field studies which document the actual mixing characteristics in the receiving water are used to determine the dilution flow that will allow mixing zone size limits to be achieved at the critical low flow. For the purposes of field studies, "near instantaneous and complete mixing" is operationally defined as no more than a 10 percent difference in bank-to-bank concentrations within a longitudinal distance not greater than two stream/river widths.

FIGURE 1
NORTH DAKOTA MODEL MIXING ZONE/DILUTION PROCEDURE*



* This procedure is applied to both chemical-specific and WET limits. In the case of complex discharges, the dilution or mixing zone may vary parameter-by-parameter.

APPENDIX IV

NORTH DAKOTA ANTIDEGRADATION PROCEDURE

I. INTRODUCTION

This antidegradation implementation procedure delineates the process that will be followed by the North Dakota State Department of Health for implementing the antidegradation policy found in the Standards of Water Quality for the State of North Dakota, Rule 33-16-02.

Under this implementation procedure, all waters of the state are afforded one of three different levels of antidegradation protection. All existing uses, and the water quality necessary for those uses, shall be maintained and protected. Antidegradation requirements are necessary whenever a regulated activity is proposed that may have some effect on water quality. Regulated actions include permits issued under Section 402 (NDPDES) and 404 (Dredge and Fill) of the Clean Water Act (CWA), and any other activity requiring Section 401 water quality certification. Nonpoint sources of pollution are not included. When reviewing 404 nationwide permits, the department will issue 401 certifications only where it determines that the conditions imposed by such permits are expected to result in attainment of the applicable water quality standards, including the antidegradation requirements. However, it is anticipated that the department will exclude certain nationwide permits from the antidegradation procedures for Category 1 waters on the basis that the category of activities covered by the permit is not expected to have significant permanent effects on the quality and beneficial uses of those waters, or the effects will be appropriately minimized and temporary.

II. EXISTING USE PROTECTION FOR CATEGORY 1, 2, AND 3 WATERS

Existing use means a use that was actually attained in the water body on or after 1967, whether or not it is included in the water quality standards. This procedure presumes that attainment of the criteria assigned to protect the current water body classification will serve to maintain and protect all existing uses. However, where an existing use has water quality requirements that are clearly defined, but are not addressed by the current classification and criteria, the department will ensure that such existing uses are protected fully, based on implementation of appropriate numeric or narrative water quality criteria or criteria guidance. In some cases, water quality may have improved in the segment since the classification was assigned, resulting in attainment of a higher use. In other cases, the classification may have been assigned based on inadequate information, resulting in a classification that does not describe or adequately protect actual uses of the segment. In such cases, the department will develop

requirements necessary to protect the existing uses and, where appropriate, recommend reclassification of the segment.

III. ANTIDEGRADATION REVIEW PROCEDURE

The department will complete an antidegradation review for all proposed regulated activities. The findings of these reviews will be summarized using an antidegradation worksheet. A statement of basis for all conclusions will be attached to the completed worksheet. The level of detail of the review will depend upon the antidegradation protection applicable to the various classes of water.

In conducting an antidegradation review, the Division of Water Quality will sequentially apply the following steps:

A. Determine which level of antidegradation applies.

B. Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

C. Review existing water quality data and other information submitted by the project applicant.

D. Determine if additional information or assessment is necessary to make a decision.

E. A preliminary decision is made by the department and subsequently distributed for public participation and intergovernmental coordination.

- The content of public notices will be determined case by case. In preparing a public notice, the department may address: a) the department's preliminary antidegradation review conclusions; b) a request for public input on particular aspects of the antidegradation review that might be improved based on public input (e.g., existing uses of a segment that needs to be protected); c) notice of the availability of the antidegradation review worksheet; d) notice of the availability of general information regarding the state antidegradation program; and e) a reference to the state antidegradation policy.

- The antidegradation review findings will be available for public comment; however, publication of a separate notice for purposes of antidegradation is not necessary. For example, the antidegradation preliminary findings may be included in the public notice issued for purposes of an NDPDES permit or CWA § 401 certification.

The department will ensure appropriate intergovernmental coordination on all antidegradation reviews. At a minimum, the department will provide copies of the completed antidegradation review worksheet and/or the public notice to appropriate local, state, and federal government agencies, along with a written request to provide comments by the public comment deadline.

F. Comments are considered.

G. The department determines if the change in quality is necessary to accommodate important economic or social development.

H. The department makes a final decision.

The level of antidegradation protection afforded each water body in the state is consistent with beneficial uses of those water bodies. Appendix I and Appendix II of the Standards of Water Quality for the State of North Dakota identify rivers, streams, and lakes in the state with their classification. The classification shall be consistent with the following categories:

Category 1: Very high level of protection that automatically applies to Class I and Class IA streams and Class I, II, and III lakes, and wetlands that are functioning at their optimal level. In addition, Category 1 is presumed to apply to Class II and Class III streams. Particular Class II and Class III streams may be excluded from Category 1 if, at the time of the antidegradation review, it is determined that one or both of the following criteria are applicable: 1) there is no remaining assimilative capacity for any of the parameters that may potentially be affected by the proposed regulated activity in the segment in question, or 2) an evaluation submitted by the project applicant demonstrates (based on adequate and representative chemical, physical, and biological data) that aquatic life and primary contact recreation uses are not currently being attained because of stressors that will require a long-term effort to remedy. Evaluations in response to Criterion #2 must include more than an identification of current water quality levels. They must include evidence of the current status of the aquatic life and primary contact recreation uses of the segment.

Category 2: Class IV and Class V lakes and particular wetlands after antidegradation review. In addition, Class II and Class III streams or wetlands meeting one of the criteria identified above at the time of the antidegradation review shall be included in Category 2.

Category 3: Highest level of protection; Outstanding State Resource Waters.

Procedures for Category 1 Waters

Regulated activities that result in a new or expanded source of pollutants to this category of water are subject to the review process, unless the source would have no significant permanent effect on the quality and beneficial uses of those waters, or if the effects will be appropriately minimized and temporary.

- Proposed activities that would lower the ambient quality in a water body of any parameter by more than 15 percent, reduce the available assimilative capacity by more than 15 percent, or increase permitted pollutant loadings to a water body by more than 15 percent will be deemed to have significant effects.

- The department will identify and eliminate from further review those proposed activities that will have no significant effect on water quality or beneficial uses. Category 1 reviews will be conducted where significant effects are projected for one or more water quality parameters. Findings of significant effects may be based on the following factors: a) percent change in ambient concentrations predicted at the appropriate conditions; b) percent change in loadings for the individual discharge or to the segment from all discharges; c) reduction in available assimilative capacity; d) nature, persistence, and potential effects of the parameter; e) potential for cumulative effects; f) predicted impacts to aquatic biota; and g) degree of confidence in any modeling techniques utilized.

- The applicant may be required to provide available monitoring data or other information about the affected water body and/or proposed activity to help determine the significance of the proposed degradation for specific parameters. The information includes recent ambient chemical, physical, or biological monitoring data sufficient to characterize, during the appropriate conditions, the spatial and temporal variability of existing background quality of the segment for the parameters that would be affected by the proposed activity. The information would also describe the water quality that would result if the proposed activity were authorized.

The project applicant is required to provide an evaluation of the water quality effects of the project. This evaluation may consist of the following components:

1. Pollution prevention measures.

2. Reduction in scale of the project.

3. Water recycle or reuse.

4. Process changes.

5. Alternative treatment technology.

6. Advanced treatment technology.

7. Seasonal or controlled discharge options to avoid critical water quality periods.

8. Improved operation and maintenance of existing facilities.

9. Alternative discharge locations.

The primary emphasis of the Category 1 reviews will be to determine whether reasonable nondegrading or less-degrading alternatives to the proposed degradation are available. The department will first evaluate any alternatives analysis submitted by the applicant for adherence to the minimum requirements described below. If an acceptable analysis of alternatives was completed and submitted to the department as part of the initial project proposal, no further evaluation of alternatives will be required of the applicant. If an acceptable alternatives analysis has not been completed, the department will work with the project applicant to ensure that an acceptable alternatives analysis is developed.

Once the department has determined that feasible alternatives to allowing the degradation have been adequately evaluated, the department shall make a preliminary determination regarding whether reasonable nondegrading or less-degrading alternatives are available. This determination will be based primarily on the alternatives analysis developed by the project applicant, but may be supplemented with other information or data. As a rule-of-thumb, nondegrading or less-degrading pollution control alternatives with costs that are similar to the costs of the applicant's favored alternative shall be considered reasonable. If the department determines that reasonable alternatives to allowing the degradation do not exist, the department shall continue with the antidegradation review and document the basis for the preliminary determination.

If the department makes a preliminary determination that one or more reasonable alternatives exist, the department will work with the applicant to revise the project design. If a mutually acceptable resolution cannot be reached, the department will document the alternative analysis findings and provide public notice of a preliminary decision to deny the activity.

Although it is recognized that any activity resulting in a discharge to surface waters may have positive and negative aspects, the applicant must show that any discharge or increased discharge will be of economic or social importance in the area. Where there are existing regulated sources located in the area, the department will assure that those sources are complying with applicable requirements prior to authorizing the proposed regulated activity. New sources of a particular parameter will not be allowed where there are existing unresolved compliance problems (involving the same

parameter) in the zone of influence of the proposed activity. The "zone of influence" is determined as appropriate for the parameter of concern, the characteristics of the receiving water body (e.g., lake versus river, etc.), and other relevant factors. Where available, a Total Maximum Daily Load analysis or other watershed-scale plan will be the basis for identifying the appropriate zone of influence. The department may conclude that such compliance has not been achieved where existing sources are violating their NPDES permit limits. However, the existence of a compliance schedule in the NPDES permit may be taken into consideration in such cases. Required controls on existing regulated sources need not be finally achieved prior to authorizing a proposed activity provided there is reasonable assurance of future compliance.

Procedures for Category 2 Waters

Regulated activities that result in a permanent or temporary, new or expanded source of pollution to this category of water are permitted if the following conditions are met:

1. The classified uses of the water would be maintained.

2. The assimilative capacity of the water is available for the parameters that would be affected by the regulated activity, and existing uses would be protected as discussed in Section II.

A decision will be made on a case-by-case basis, using available data and best professional judgment. The applicant may be required to provide additional information necessary for the department to characterize or otherwise predict changes to the physical, chemical, and/or biological condition of the water.

Procedures for Category 3 Waters

Outstanding State Resource Waters - Eligibility. Outstanding state resource waters may be designated Category 3 waters only after they have been determined to have exceptional value for present or prospective future use for public water supplies, propagation of fish or aquatic life, wildlife, recreational purposes, or agricultural, industrial, or other legitimate beneficial uses. The factors that may be considered in determining whether a water body is eligible for inclusion in Category 3 include the following: a) location, b) previous special designations, c) existing water quality, d) physical characteristics, e) ecological value, and f) recreational value.

Nomination. Any person may nominate any waters of the state for designation as outstanding state resource waters. The nomination must be made in writing to the department, must describe its specific location and present uses, and must state the reasons why the resource has exceptional value for present or prospective future beneficial use.

Review Process. The department with cooperation of the State Water Commission shall review any nomination to determine whether the nominated waters of the state are eligible, clearly defined, and identify beneficial uses of exceptional value for present or prospective future use. The State Department of Health with cooperation of the State Water Commission shall provide as a part of its assessment: 1) a verification of the uses, properties, and attributes that define the proposed "exceptional" value; 2) an evaluation of the current and historical condition of the water with respect to the proposed value using the best data available; and 3) an estimate of likely regulatory measures needed to achieve the desired level of protection. If the identified waters of the state are eligible, clearly defined, and appear to identify beneficial uses of exceptional value for present or prospective future use, the Water Pollution Control Board, the department, and the State Water Commission will solicit public comment and/or hold a public hearing regarding the nomination. The Water Pollution Control Board will review the application record and the public comments, and make a recommendation to the department. After reviewing the board's recommendation, the department jointly with the State Water Commission will make a decision on whether to designate the defined water body as an Outstanding State Water Resource. If both the department and the State Water Commission agree that the defined water body should be designated as an Outstanding State Water Resource, the department shall submit the recommendation to the State Health Council as part of the water quality standard revision process. The designation, if made, may be reviewed on a periodic basis.

Implementation Process. Effects on Category 3 waters resulting from regulated activity will be determined by appropriate evaluation and assessment techniques and best professional judgment. Any proposed regulated activity that would result in a new or expanded source of pollutants to a segment located in or upstream of a Category 3 segment will be allowed only if there are appropriate restrictions to maintain and protect existing water quality. Reductions in water quality may be allowed only if they are temporary and negligible. Factors that may be considered in judging whether the quality of a Category 3 water would be affected include: a) percent change in ambient concentrations predicted at the appropriate critical conditions; b) percent change in loadings; c) percent reduction in available assimilative capacity; d) nature, persistence, and potential effects of the parameter; e) potential for cumulative effects; and f) degree of confidence in any modeling techniques utilized.

CHAPTER 33-36-01

33-36-01-01. Definitions. Words defined in North Dakota Century Code chapter 23-27 have the same meaning in this chapter.

1. "Accrediting agency" means the commission on accreditation on allied health education programs or its equivalent.

2. "Cardiopulmonary resuscitation", initial and refresher, means the American heart association health care provider standards or its equivalent which includes the following skills: adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.

~~2.~~ 3. "Certification scope enhancement programs" means those certification programs which add additional skills to or refresh existing skills obtained from the primary certification programs.

4. "Continuing education coordinator" means an individual who is licensed to conduct limited courses including continuing education courses, refresher courses, and scope enhancement courses.

~~3.~~ 5. "Department" means the state department of health.

6. "Emergency medical services instructor" means an individual who is licensed to conduct the full scope of courses including continuing education courses, refresher courses, and scope enhancement courses, as well as initial primary education courses that include emergency medical responder, emergency medical technician, emergency medical technician-intermediate/85, advanced emergency medical technician, emergency medical technician-intermediate/99, and paramedic.

~~4.~~ 7. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.

~~5.~~ 8. "Field internship preceptor" means a qualified person designated by an emergency medical services instructor to supervise a student during field internship training.

~~6.~~ 9. "National registry" means the national registry of emergency medical technicians located in Columbus, Ohio.

10. "On call" means that an individual is expected to be available for emergency response when called by radio or pager and report after notification.

~~7.~~ 11. "Prehospital emergency medical services personnel" are those persons certified or licensed under the programs defined in this chapter.

~~8.~~ 12. "Primary certification programs" means those certification programs which integrate a broad base of skills necessary to perform within a level of the emergency medical services system as determined by the department.

History: Effective April 1, 1992; amended effective August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

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

1. Primary certification courses:

   a. ~~First~~ Emergency medical responder;

   b. Emergency medical technician;

   c. Emergency medical technician-intermediate/85;

   d. Emergency medical technician-intermediate/99;

   e. Advanced emergency medical technician;

   f. Advanced first-aid ambulance attendant;

   ~~f.~~ g. Emergency vehicle operations;

   ~~g.~~ h. Emergency medical dispatch; and

   ~~h.~~ i. Automobile extrication.

2. Certification scope enhancement courses:

   a. ~~Manual defibrillation;~~

   ~~b.~~ Intravenous maintenance;

   ~~c.~~ b. Automobile extrication instructor;

   ~~d.~~ c. Emergency medical services instructor;

   ~~e.~~ d. Epinephrine administration;

~~f.~~ e. Dextrose administration;

~~g.~~ f. Bronchodilator/nebulizer administration;

~~h.~~ g. Limited advanced airway insertion; ~~and~~

~~i.~~ h. Emergency vehicle operations instructor; and

i. Continuing education coordinator.

3. Certification refresher courses:

a. ~~First~~ Emergency medical responder-refresher;

b. Emergency medical technician-basic refresher;

c. Emergency medical technician-intermediate/85 refresher;

d. Emergency medical technician-intermediate/99 refresher; ~~and~~

e. Advanced emergency medical technician refresher; and

f. Paramedic refresher.

History: Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004; January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-01-03. Training, testing, certification, and licensure standards for primary certification courses. The department shall authorize the conduct of courses, the testing of students, and the certification or licensure of personnel when application has been made on forms requested from and provided by the department prior to conducting the course and in the manner specified by the department contingent on the following requirements:

1. ~~First~~ Emergency medical responder:

a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

b. Textbooks. The department shall approve textbooks.

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor

and must be currently certified as ~~a first~~ an emergency medical responder or its equivalent.

d. ~~A first~~ An emergency medical responder student may practice all of the skills defined in the core scope of practice for ~~first~~ emergency medical responder while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as ~~a first~~ an emergency medical responder student.

e. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department or the national registry cognitive knowledge examination and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.

f. Initial certification. The department shall issue initial certification to persons who meet the physical requirements described in the functional job analysis for ~~first~~ emergency medical responder as published by the national highway traffic safety administration and are over the age of sixteen who have completed an authorized course and passed the testing process, or are certified as ~~a first~~ an emergency medical responder by the national registry. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year, or ninety days past their national registry expiration date if they are nationally registered. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year, or ninety days past their national registry expiration date if they are nationally registered.

g. Recertification. The department shall recertify for a two-year period expiring on June thirtieth, or ninety days past their national registry expiration date if they are nationally registered, to those persons that meet the physical requirements described in the functional job analysis for ~~first~~ emergency medical responder as published by the national highway traffic safety administration and who have met one of the following requirements:

(1) Completion of ~~a sixteen-hour~~ an approved North Dakota ~~first~~ emergency medical responder refresher course.

(2) Completion of a twenty-four-hour emergency medical ~~technician-basic~~ technician refresher course.

2. Emergency medical technician:

a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

b. Textbooks. The department shall approve textbooks.

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician or its equivalent.

d. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician or its equivalent.

e. An emergency medical technician student may practice all of the skills defined in the core scope of practice for emergency medical technician while in the classroom and during field internship while under direct supervision of an instructor or the field internship preceptor and if registered with the department as an emergency medical technician student.

f. Testing. Students must pass the national registry cognitive knowledge examination and a practical examination specified by the department which meets the national registry's standards or its equivalent in order to be eligible for licensure. The content of the practical examination must be determined by the department, and the department shall establish policies regarding retesting of failed written and practical examinations.

g. Emergency medical technician initial licensure. The department shall issue initial licensure as an emergency medical technician to persons that meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and are over the age of sixteen who have completed an authorized course and passed the testing process or those who have requested reciprocity from another state with equivalent training. Persons passing the testing process between January first and June thirtieth shall be licensed until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be licensed until June thirtieth of the third year.

h. Relicensure of emergency medical technicians. The department shall relicense for a two-year period expiring June thirtieth those persons that meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who have met the following requirements:

(1) Completion of a twenty-four hour emergency medical technician-basic refresher course which includes a cardiopulmonary resuscitation health care provider refresher, answering correctly at least seventy percent of the questions on a written examination specified by the department and passing a local practical examination meeting the department's requirements; and

(2) Completion of forty-eight hours of continuing education as approved by the department or the national registry; or

(3) If currently licensed as an emergency medical technician, successful completion of the practical examination for emergency medical technician as established by the department. The practical examination must be administered by a licensed emergency medical services training institution in accordance with section 33-36-02-10 or by the department.

3. Emergency medical technician-intermediate/85:

a. Student prerequisite certification. Students must be licensed as an emergency medical technician or its equivalent prior to testing.

b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

c. Textbooks. The department shall approve textbooks.

d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent.

e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent.

f. An emergency medical technician-intermediate/85 student may practice all of the skills defined in the core scope of practice for emergency medical technician-intermediate/85 while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as an emergency medical technician-intermediate/85 student.

g. Testing. Students must pass the cognitive knowledge and practical examinations as provided by the national registry and approved by the department in order to be eligible for licensure.

h. Emergency medical technician-intermediate/85 initial licensure. A person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.

i. Relicensure of emergency medical technician-intermediate/85. Emergency medical technician-intermediate/85 must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.

j. Transition to new licensure level. When the national registry discontinues certifying personnel at the emergency medical technician-intermediate/85 level, personnel currently licensed as an emergency medical technician-intermediate/85 must transition to a new licensure level. To remain licensed as an emergency medical services provider, each person must do one of the following options:

(1) Complete a state-authorized transition course for emergency medical technician-intermediate/85 to advanced emergency medical technician and license as an advanced emergency medical technician as described in subsection 4.

(2) Complete a state-authorized transition course for emergency medical technician-intermediate/85 to advanced emergency medical technician, as well as completing all of the

certification requirements of the national registry for advanced emergency medical technician and license as an advanced emergency medical technician as described in subsection 4.

(3) Complete the national registry requirements for emergency medical technician and license as an emergency medical technician as described in subsection 2.

4. Advanced emergency medical technician:

a. Student prerequisite certification. Students must be licensed as an emergency medical technician or its equivalent prior to testing.

b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

c. Textbooks. The department shall approve textbooks.

d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an advanced emergency medical technician or its equivalent.

e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an advanced emergency medical technician or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an advanced emergency medical technician or its equivalent.

f. An advanced emergency medical technician student may practice all of the skills defined in the core scope of practice for advanced emergency medical technician while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as an advanced emergency medical technician student.

g. Testing. Students must pass the cognitive knowledge and practical examinations as provided by the national registry and approved by the department in order to be eligible for licensure.

h. Advanced emergency medical technician initial licensure. Except as otherwise provided under subdivision j of subsection 3, a person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety

administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.

i. Relicensure of advanced emergency medical technician. Except as otherwise provided under subdivision j of subsection 3, an advanced emergency medical technician must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.

j. Transitioning from emergency medical technician-intermediate/85. Notwithstanding subdivisions h and i of subsection 3, an emergency medical technician-intermediate/85 licensee may be licensed or relicensed as an advanced emergency medical technician without obtaining national registry certification if the requirements in subsection 3 have been met as well as maintaining compliance with chapter 50-03-03.

~~4.~~ 5. Emergency medical technician-intermediate/99:

a. Student prerequisite certification or license. A student must be licensed as an emergency medical technician or its equivalent prior to testing.

b. Curriculum. The course curriculum shall be that issued by the United States department of transportation, national highway traffic safety administration, in the addition specified by the department.

c. Textbooks. The department shall approve textbooks.

d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent.

e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course.

Secondary instructors must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent.

f. An emergency medical technician-intermediate/99 student may practice all of the skills defined in the core scope of practice for emergency medical technician-intermediate/99 while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as an emergency medical technician-intermediate/99 student.

g. Testing. Students must pass the cognitive knowledge and practical examinations as provided by the national registry and approved by the department in order to be eligible for licensure.

h. Emergency medical technician-intermediate/99 initial licensure. A person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.

i. Relicensure of emergency medical technician-intermediate/99. An emergency medical technician-intermediate/99 must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.

~~5.~~ 6. Paramedic:

a. Student prerequisite certification. Students must be certified or licensed as an emergency medical technician or its equivalent prior to testing.

b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

c. Textbooks. The department shall approve textbooks.

d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as a paramedic or its equivalent. Course coordinators that are not affiliated with a licensed training institution must have their paramedic course accredited by an accrediting agency by January 1, 2012.

e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as a paramedic or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as a paramedic or its equivalent.

f. A paramedic student may practice all of the skills defined in the core scope of practice for paramedic while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as a paramedic student.

g. Field internship. Courses must provide field internship experience based on the curriculum requirements for patient contacts with a paramedic preceptor.

h. Testing. A student must pass the cognitive knowledge and practical examinations as provided by the national registry and approved by the department in order to be eligible for licensure.

i. Paramedic initial licensure. A person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.

j. Relicensure of paramedic. A paramedic must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.

~~6.~~ 7. Advanced first aid ambulance attendant:

a. Advanced first aid ambulance attendant initial certification. The department shall issue initial certification to persons currently certified in American national red cross advanced first aid and who demonstrate a minimum of two years experience with a North Dakota licensed ambulance service as evidenced by North Dakota ambulance service license application personnel rosters.

b. Recertification of advanced first aid ambulance attendants. The department shall recertify for a three-year period, expiring on June thirtieth, those persons who meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and have completed a twenty-four-hour emergency medical technician-basic refresher course, which includes a cardiopulmonary resuscitation refresher, answering correctly at least seventy percent of the questions on a written examination specified by the department and passing a local practical examination meeting the department's requirements.

~~7.~~ 8. Emergency vehicle operations:

a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

b. Course coordinator. The course coordinator must be certified by the department as an emergency vehicle operation instructor.

c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.

d. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.

~~8.~~ 9. Emergency medical dispatch:

a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

b. Course coordinator. The course coordinator must be approved by the department as an emergency medical dispatch instructor.

c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department.

d. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.

~~9.~~ 10. Automobile extrication:

a. Curriculum. The course curriculum must be approved by the department.

b. Course coordinator. The course coordinator must be certified by the department as an automobile extrication instructor.

c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department.

d. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.

History: Effective April 1, 1992; amended effective August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-01-03.2. Continuing education. Continuing education means ongoing professional education that is based on current emergency medical services textbooks, emergency medical services educational principles, or topics that expand the professional knowledge to stay up to date with emergency medical services standards. An entity or individual that offers continuing education must:

1. Have the course approved as continuing education by:

a. The department;

b. An emergency medical services training institution licensed in accordance with chapter 33-36-02;

c. The continuing education coordinating board for emergency medical services located in Dallas, Texas;

d. A licensed continuing education coordinator in consultation with a licensed physician;

e. A licensed instructor in consultation with a licensed physician; or

f. A licensed physician.

2. Maintain the continuing education course records for at least two years.

3. Issue certificates to attendees that list the title of the course, date, number of hours awarded rounded to the nearest half hour, location, name of instructor, and the name of the person or entity that approved the course.

History: Effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

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

1. ~~Manual defibrillation:~~

~~a. Student prerequisite certification. A student must be licensed as an emergency medical technician or its equivalent.~~

~~b. Curriculum. The course curriculum must be that issued by the department entitled "Manual Defibrillator/Monitor Curriculum".~~

~~c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently certified by the American heart association in advanced cardiac life support or its equivalent.~~

~~d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of the manual defibrillation of a simulated cardiac arrest patient and correctly identify eleven out of thirteen static cardiac strips.~~

~~e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.~~

~~2.~~ Intravenous therapy maintenance:

a. Student prerequisite certification. A student must be licensed as an emergency medical technician or its equivalent.

b. Curriculum. The course curriculum must be that issued by the department entitled "EMT IV Maintenance Module".

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator, and currently certified in intravenous therapy maintenance, or its equivalent.

d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of performing intravenous maintenance skills on a mannequin.

e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.

~~3.~~ 2. Automobile extrication instructor:

a. Curriculum. The course curriculum must be approved by the department.

b. Student prerequisite. The candidate for this course must be currently certified in automobile extrication with at least two years of certified automobile extrication experience.

c. Course coordinator. The department shall designate the course coordinator.

d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department.

e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.

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

~~4.~~ 3. Emergency medical services instructor:

a. Student prerequisite. An individual must be at least eighteen years of age and certified or licensed for at least two years as a patient care provider at the level the individual will instruct at, in order to be licensed.

b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department or its equivalent.

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor.

d. Initial licensure. The department shall issue initial licensure to persons who have completed an authorized course. Persons completing the course between January first and June thirtieth shall be licensed until June thirtieth of the second year. Persons completing the course between July first and December thirty-first shall be licensed until June thirtieth of the third year.

e. Relicensure. The department shall relicense for a two-year period those persons who have participated in at least one initial training course as a course coordinator or primary instructor, and:

(1) Completed the department's eight-hour relicensure course;

(2) Those persons that are employed or affiliated with a licensed training institution, may submit documentation of eight

hours of adult education training to satisfy the relicensure requirements;

(3) Within the current two-year licensure period the instructor has had at least a seventy percent pass rate in both cognitive and practical examinations for the following primary certification courses; emergency medical technician, emergency medical technician-intermediate/85, emergency medical technician-intermediate/99, or paramedic; and

(4) In addition, failure to achieve a seventy percent pass rate for these courses would require the instructor to retake the entire initial licensure process for emergency medical services instructor or require the instructor to be affiliated with a licensed training institution for a period of two years.

4. Continuing education coordinator:

a. Student prerequisite. An individual must be at least eighteen years of age and certified or licensed for at least two years as a patient care provider at the level at which the individual will instruct.

b. Curriculum. The course curriculum must be that issued by the division of emergency medical services and trauma.

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor.

d. Initial licensure. The department shall issue initial licensure to persons who have completed an authorized course. Persons completing the course between January first and June thirtieth shall be licensed until June thirtieth of the second year. Persons completing the course between July first and December thirty-first shall be licensed until June thirtieth of the third year.

e. Relicensure. The department shall relicense for a two-year period those persons:

(1) Who have completed the department's relicensure course; or

(2) Who are employed or affiliated with a licensed training institution, upon submission of documentation of continued affiliation with a licensed training institution.

5. Epinephrine administration:

a. Student prerequisite certification. A student must be certified as ~~a first~~ an emergency medical responder or its equivalent.

b. Curriculum. The course curriculum must be that issued by the department entitled " Epinephrine Administration Module".

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently certified in epinephrine administration or its equivalent.

d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of performing subcutaneous injection of epinephrine with the use of a preloaded, self-injecting device such as the epipen trainer.

e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.

6. Dextrose administration:

a. Student prerequisite licensure. A student must be licensed as an emergency medical technician-intermediate or its equivalent.

b. Curriculum. The course curriculum must be that issued by the department entitled "EMT-I – 50% Dextrose Administration Module".

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be licensed as a paramedic or its equivalent.

d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of administration of the drug by aseptic injection into intravenous administration tubing.

e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the

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

7. Bronchodilator/nebulizer administration:

   a. Student prerequisite licensure. A student must be licensed as an emergency medical technician or its equivalent.

   b. Curriculum. The course curriculum must be the general pharmacology and the respiratory emergencies sections of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department, or its equivalent.

   c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor <u>or continuing education coordinator</u> and be licensed as a paramedic or its equivalent.

   d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.

   e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.

8. Limited advanced airway insertion:

   a. Student prerequisite licensure. A student must be licensed as an emergency medical technician or its equivalent.

   b. Curriculum. The course curriculum must be that issued by the department entitled "Limited Advanced Airway Module".

   c. Course coordinator. The course coordinator must be licensed as an emergency medical services instructor <u>or continuing education coordinator</u> and must be currently licensed as a paramedic or its equivalent.

d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.

e. Certification. The department shall issue a certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.

9. Emergency vehicle operations instructor:

a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

b. Course instructor. The department shall designate the course instructor.

c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.

d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.

e. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an emergency vehicle operations course or have audited eight hours of an emergency vehicle operator's course.

History: Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004; January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-01-04.1. Training, testing, and certification standards for certification refresher courses. The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms requested from and provided by the department prior to

conducting the course and in the manner specified by the department contingent on the following requirements:

1. ~~First~~ Emergency medical responder refresher:

   a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

   b. Textbooks. The department shall approve textbooks.

   c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently certified as ~~a first~~ an emergency medical responder or its equivalent.

   d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.

2. Emergency medical technician refresher:

   a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.

   b. Textbooks. The department shall approve textbooks.

   c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently licensed as an emergency medical technician or its equivalent.

   d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all stations of a practical examination conducted by the course coordinator.

3. Emergency medical technician-intermediate/85 refresher:

   a. Curriculum. The course coordinator shall select topics consistent with the reregistration requirements of the national registry.

   b. Textbooks. The department shall approve textbooks.

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent.

4. Emergency medical technician-intermediate/99 refresher:

a. Curriculum. The course coordinator shall select topics consistent with the reregistration requirements of the national registry.

b. Textbooks. The department shall approve textbooks.

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent.

5. Paramedic refresher:

a. Curriculum. The course curriculum must be consistent with the reregistration requirements of the national registry.

b. Textbooks. The department shall approve textbooks.

c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor or continuing education coordinator and must be currently licensed as a paramedic or its equivalent.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-01-05. Denial, suspension, or revocation of certification or licensure. The department may deny, suspend, or revoke the certification or licensure for a period of time determined by the department of a person who:

1. Has misrepresented to others that the person is a physician, nurse, or health care provider other than the highest level for which they are certified or licensed.

2. Is incapable of properly performing the skills for which the individual has been certified or licensed.

3. Performs a skill which exceeds those allowed by the individual's level of certification or licensure.

4. ~~Has been charged or~~ Is under indictment for or has been convicted of a felony which has a direct bearing upon the person's ability to serve the public in a capacity certified or licensed by this chapter, or has been convicted of a crime that requires the person to register as a sex offender in any state. Persons certified or licensed who ~~have been charged~~ are under indictment for or have been convicted of a felony or required to register as a sex offender in any state must report the information to the department.

5. Has been found by a court of law to be mentally incompetent.

6. Failure to follow examination policies as a student, instructor, or course coordinator.

7. Diversion of drugs for personal or unauthorized use.

8. Performance of care in a manner inconsistent with acceptable standards or protocols.

9. Has attempted to obtain by fraud or deceit a certification or license or has submitted to the department any information that is fraudulent, deceitful, or false.

10. Has had the person's national registry or other health care certification or license encumbered for any reason. Persons certified or licensed as described in this chapter must report any encumbrance of their national registry or other health care certification or licensure to the department.

11. Has misrepresented to others that the person is an employee, volunteer, or agent of an ambulance service, quick response unit, or rescue squad to offer emergency medical services.

12. Unprofessional conduct, which may give a negative impression of the emergency medical services system to the public, as determined by the department.

13. As an instructor has failed to have emergency medical services training authorized as required in section 33-36-01-03, 33-36-01-04, or 33-36-01-04.1.

14. Providing emergency medical services without authorization from a physician.

15. Has been found to be under the influence of alcohol or mind-altering drugs while on call or during an emergency medical response or interfacility transfer.

16. Failing to respond to an emergency while on call. The failure to respond must be caused by the individual's willful disregard and not caused by

a good-faith error or circumstances beyond the individual's control as determined by the department.

History: Effective April 1, 1992; amended effective August 1, 2003; January 1, 2006; January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-01-08. Waivers. Based on each individual case, the department may waive any provisions of this chapter that may result in unreasonable hardship upon the individual or the individual's emergency medical service agency, provided such a waiver does not adversely affect the health and safety of patients. The department will consider waivers for the following situations and conditions:

1. A person had completed all the requirements for recertification or relicensure and a good-faith effort was made by that person to recertify with the national registry and by no fault of the person recertification was not granted.

2. A person who was current in the person's certification or license was called to active duty in the United States armed forces and deployed to an area without the resources to maintain the person's certification or license resulting in a lapse of the person's certification or license.

3. Other reason as determined by the department.

4. A waiver may be granted for a specific period of time not to exceed one year and shall expire on June thirtieth of each year.

History: Effective January 1, 2006; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

CHAPTER 33-36-02

33-36-02-01. Definitions. Words defined in North Dakota Century Code chapter 23-27 have the same meaning in this chapter.

1. "Acceptable criminal background requirements" means that a student's criminal background is acceptable by the department and the national registry for entry into the profession.

2. "Accrediting agency" means the commission on accreditation on allied health education programs or its equivalent.

3. "Candidate" means a person that has completed a primary training course and is in the testing process.

4. "Certifying examination" means a national registry test.

5. "Department" means the North Dakota state department of health.

6. "Emergency medical services equipment" means automated external defibrillator, long back board, Kendrick extrication device, oxygen delivery equipment, rigid splints, traction splint, suction equipment, bandages, and other equipment needed to accomplish training.

7. "National registry" means the national registry of emergency medical technicians located in Columbus, Ohio.

8. "Physician" means a person licensed by the North Dakota board of medical examiners to practice medicine.

9. "Primary education course" means the initial or refresher training course for emergency medical responder, emergency medical technician, emergency medical technician-intermediate, and paramedic.

10. "Student" means a person that is actively in a primary training course and has not yet completed the course.

History: Effective January 1, 2006; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-02-07. Course instructors. Primary course instructors must be licensed as an instructor coordinator as defined in section 33-36-01-04 and hold a certificate or license in or above the discipline that they are teaching ~~and teach at~~

~~least fifty percent of the course content. The remaining fifty percent may be taught by guest lecturers approved by the training institution director or medical director~~.

History: Effective January 1, 2006; amended effective January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-02-08. Training institution policies, records, and quality assurance. North Dakota licensed emergency medical services training institutions must:

1. Publish a student handbook which includes at least the following information:

   a. The full name and address of the school;

   b. Names of owners and officers, including governing boards;

   c. A description of each educational service offered, including tuition, fees, and length of courses;

   d. Enrollment procedures and entrance requirements, including late enrollment if permitted;

   e. A description of the institution's tuition assistance. If no assistance is offered, the institution must state this fact;

   f. Attendance policy, including minimum attendance requirements;

   g. A policy explaining satisfactory student progress which includes:

      (1) How progress is measured and evaluated, including an explanation of any system of grading used;

      (2) The conditions under which the student may be readmitted if terminated for unsatisfactory progress; and

      (3) Explanation of any probation policy;

   h. A description of the system used to make progress reports to students; and

   i. An explanation of the refund policy which also includes the training agency's method of determining the official date of termination.

2. Maintain as a minimum, the following records for emergency medical services courses taught:

a. Student records ~~that~~ must be maintained for five years and include:

(1) Name and address for each student enrolled in an emergency medical services course;

(2) Grades for each written examination;

(3) Copies of each student's documentation of entrance requirements to each course, including a copy of the individual's cardiopulmonary resuscitation certification and criminal history statement; and

(4) Field internship student evaluation forms from each field or clinical internship session. The form must include the evaluator's printed name, contact information, and signature.

~~Student records must be maintained for five years.~~

b. Instructor and course records that include:

(1) Names and qualifications of the primary instructors;

(2) Names and qualification of guest instructors;

(3) Instructor evaluation records completed by students and training institution personnel; and

(4) Names of the practical examination evaluators.

3. Have at least seventy percent of the candidates who successfully complete a primary training course certified or licensed by the department or certified by the national registry within two years of course completion.

4. Develop and implement a quality assurance program for instruction. The quality assurance program must:

a. Establish and implement policies and procedures for periodic evaluation of all instructors, field internship sites, equipment, and other training resources;

b. Establish and implement a mentoring program for each new instructor. Each new instructor will be assigned a mentor who has a background in the course being taught or in teaching. The assigned mentor will complete an evaluation of the assignee at least once;

c. Establish and have completed student evaluations during and after each course taught; and

d. Establish and implement a remediation plan for all noted instructor deficiencies. Documentation of remediation shall be maintained for five years.

History: Effective January 1, 2006; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-02-09. Other training institution requirements. North Dakota licensed emergency medical services training institutions must:

1. Have adequate classroom and laboratory space to conduct emergency medical services training.

2. Have appropriate dedicated emergency medical services equipment for training.

3. Determine the eligibility of prospective students in regard to age, minimum prior training requirements, and acceptable criminal background requirements.

4. Maintain a written agreement with a licensed medical facility and licensed ambulance service designating a field internship site.

5. After each primary training class is complete, notify the department of the starting date and number of students initially enrolled and the number of students fully completing the course.

6. Provide proof of liability insurance that covers the training institution and primary instructors.

7. Notify the department prior to conducting primary education courses in a format determined by the department.

History: Effective January 1, 2006; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-02-10. Practical examination administration. A licensed training institution may conduct practical examinations under the following conditions:

1. The institution must be designated by the department to conduct practical examinations.

2. The facility must have adequate room to accommodate a test. Each test station must be well away from others so that the privacy of the candidate and the security of the test are maintained. There must be a separate monitored room for candidates to wait. The designated

department representative may shut down or cancel a test because of inadequate facilities.

3. Test site dates must be approved by the department. For an advanced life support test site, the test site coordinator must notify the department eight weeks prior to the test date and submit a roster of probable candidates for the practical test. For a basic life support test site, the test site coordinator must notify the department two weeks prior to the test date and submit a roster of probable candidates for the practical test. The test site coordinator may accept candidates from other licensed training institutions or department-authorized courses or qualified candidates from other states if the test site coordinator has verified the eligibility of the candidate.

4. The test site coordinator is responsible for all logistics of the test site. The test site coordinator must remain at the test site for the duration of the test.

5. A national registry representative approved by the department or a designated department representative must oversee the test site. The national registry or department representative's only duties are to ensure the integrity of the test site and submit results to the national registry or the department. The designated department representative may not have an affiliation with the training institution.

6. The training institution must provide an adequate number of qualified evaluators for the number of students to be tested. For every eight candidates there must be at least one evaluator. The evaluators may not evaluate a candidate in a practical station for which the evaluator had been a guest lecturer, or had been the training institution coordinator or the primary instructors of the candidates. Evaluators must use and adhere to the department's testing evaluation forms.

7. An emergency medical technician candidate must pass all stations of a practical test site within two years of course completion. The required practical stations are:

   a. Patient assessment management - trauma;

   b. Patient assessment management - medical;

   c. Cardiac arrest management/automated external defibrillator;

   d. Spinal immobilization, seated or supine;

   e. Bag valve mask, apneic patient with a pulse; and

   f. One of the following random skills chosen by the department:

(1) Long bone immobilization;

(2) Joint dislocation immobilization;

(3) Traction splinting;

(4) Bleeding control and shock management;

(5) Upper airway adjuncts and suction; or

(6) ~~Mouth to mask with supplemental oxygen; or~~

~~(7)~~ Supplemental oxygen administration.

8. A candidate may fail no more than three stations at any one test site. The candidate may retest those failed stations one time on the same day at the discretion of the test site coordinator. If a candidate fails four or more stations, the candidate must retest all stations at a later date.

9. All emergency medical technician practical test results must be reported to the department within one week of the practical test by the department representative. The department will determine the eligibility of the candidates to retest according to department policy.

10. Retesting candidates that have failed all or part of the emergency medical technician practical test will be done in accordance with department policy. The number of times a candidate may retest all or part of the emergency medical technician practical test is determined by department policy.

11. An advanced level practical test site must be approved by the department and comply with national registry rules and policies.

History: Effective January 1, 2006; amended effective January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-02-11. Continuing education. ~~Continuing education courses for emergency medical services personnel must be approved by the department, licensed training institution, the national registry, or physician medical director. A licensed training institution may conduct continuing education courses, utilizing appropriate instructors, under the following conditions:~~ Repealed effective July 1, 2010.

~~1. A number is assigned for each continuing education course. The numbering system must be approved by the department;~~

~~2. Continuing education units will be awarded for actual time rounded to the nearest quarter hour;~~

~~3. A certificate must be awarded or available upon request by the participant or the department. The certificate must list the title of the course, course number, date, hours awarded, location, instructor, and training institution name; and~~

~~4. The licensed training institution must keep records of the continuing education for two years. The records must include the course name, number, date, hours awarded, location, instructor, attendees, and attendee's state-issued license numbers.~~

History: ~~Effective January 1, 2006.~~
General Authority: ~~NDCC 23-27-04.3~~
Law Implemented: ~~NDCC 23-27-04.3~~

33-36-02-12. ~~**Revocation**~~ **Denial, suspension, or revocation of licensure.** The department may deny, suspend, or revoke the license of a training institution or license of an individual to instruct or practice under the following circumstances:

1. Negligence in performing or instructing emergency medical care.

2. Fraud, forgery, or misrepresentation of facts in procuring or attempting to procure licensure as an emergency medical service training institution.

3. Violation of this chapter promulgated to regulate emergency medical services training institutions.

4. Falsely passing candidates or discrimination of candidates at a practical test site.

5. Grossly immoral or dishonorable conduct.

6. Diversion of drugs for personal or unauthorized use.

7. The licensed training institution receives adverse accreditation action from a national accrediting agency.

8. Failing to submit required course documentation to the department either prior to the conduct of the course, for those courses that require prior authorization, or within a reasonable amount of time after the

course is complete, for those courses that require course completion documentation submission.

History: Effective January 1, 2006; amended effective January 1, 2008; July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-02-13. ~~Revocation~~ Suspension or revocation process. The department may suspend or revoke a training institution's or individual's license after making a diligent effort to:

1. Inform the training institution or individual ~~by the department~~ of the allegations.

2. Inform the training institution or individual of the department's investigation results.

3. Inform the training institution or individual of the department's intent to suspend or revoke and provide a notice of right to request hearing.

4. Provide the training institution or individual opportunity to request a hearing and rebut the allegations.

History: Effective January 1, 2006; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

CHAPTER 33-36-03

33-36-03-01. Definitions. Words defined in chapter 23-27 of the North Dakota Century Code have the same meaning in this chapter. For purposes of this chapter:

1. "Advanced first-aid ambulance attendant" means a person that has fulfilled the training, testing, and certification process for advanced first-aid ambulance attendant as required in chapter 33-36-01.

2. "Airway adjuncts" means oxygen and oxygen delivery equipment, oropharyngeal airways, nasopharyngeal airways, bag-valve-mask ventilator, or any other mechanical ventilator or respiratory care equipment.

3. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the skills adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.

4. "Driver" means a person that is registered with the department as an uncertified crew member of a basic life support ambulance.

5. "~~First~~ Emergency medical responder" means a person that has fulfilled the training, testing, and certification process for ~~first~~ emergency medical responder as required in chapter 33-36-01.

6. "Primary care provider" means a qualified individual responsible for the care of the patient and supervision of all ambulance personnel while on the ambulance run.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-03-02. Scopes of practice. Each level of emergency medical services provider has a scope of practice that includes the scopes of practice of all subordinate emergency medical services providers. The hierarchy of emergency medical services providers is listed sequentially in this section.

1. **Driver.**

   a. Scope. The driver's minimum scope of practice primarily focuses on driving the basic life support ambulance and assisting the other emergency medical services personnel on the ambulance crew with nonpatient care issues. The driver's maximum scope

of practice is limited to providing cardiopulmonary resuscitation without mechanical resuscitation equipment or airway adjuncts but including the use of an automated external defibrillator if the driver is certified in cardiopulmonary resuscitation. A major difference between the layperson and the driver is the "duty to act" as part of an organized emergency medical services response.

b. Curriculum. The driver must hold a valid operator's license under chapter 39-06 of the North Dakota Century Code.

c. Occupational setting. Drivers may only participate in the emergency medical services system as part of a crew of a basic life support ambulance service or quick response unit. At no time may a driver respond without other higher level emergency medical services personnel.

d. Medical oversight. Because transport is an important part of the patient care continuum, a driver functions with physician oversight through protocol.

e. Supervision. A driver is supervised by the primary care provider.

2. ~~First~~ **Emergency medical responder.**

a. Scope. The ~~first responder's~~ emergency medical responder core scope of practice includes simple, noninvasive skills focused on lifesaving interventions for critical patients based on assessment findings. The ~~first~~ emergency medical responder renders onscene emergency care while awaiting additional emergency medical services response and may serve as part of the transporting crew, but not as the primary care provider. ~~A first~~ An emergency medical responder is not prepared to make decisions independently regarding the appropriate disposition of patients. ~~A first~~ An emergency medical responder must function with an emergency medical technician or higher level personnel during the transportation of patients. The ~~first~~ emergency medical responder's scope includes all of the skills included in the driver's scope. A major difference between a driver and ~~a first~~ an emergency medical responder is the training and skills to provide immediate lifesaving interventions.

b. Curriculum. The educational requirements include successful completion of a state-authorized ~~first~~ emergency medical responder training program and continued educational requirements as defined in chapter 33-36-01.

c. Scope enhancements. ~~First~~ Emergency medical responders may provide enhanced treatments beyond the core scope if they have successfully completed training as defined in section 33-36-01-04

and have authorization to perform those skills from their medical director.

d. Skills. Specific skills for the ~~first~~ emergency medical responder are defined by the department. Local medical directors may limit the specific skills that ~~a first~~ an emergency medical responder may provide and they may not exceed those specific skills defined by the department.

e. Occupational setting. ~~First~~ Emergency medical responders may participate in the emergency medical services system as a sole responder in a quick response unit or as part of the crew of a basic life support ambulance service but not as the primary care provider. ~~First~~ Emergency medical responders may also provide services to a private company or organization as part of a response team that is not offered to the public.

f. Medical oversight. ~~A first~~ An emergency medical responder provides medical care with physician oversight. A physician credentials the ~~first~~ emergency medical responder and establishes patient care standards through protocol.

g. Supervision. ~~A first~~ An emergency medical responder may be the highest trained person on a quick response unit and may supervise other ~~first~~ emergency medical responders or drivers. As part of a basic life support ambulance crew, ~~a first~~ an emergency medical responder is supervised by the primary care provider.

3. **Advanced first-aid ambulance attendant.**

a. Scope. The advanced first-aid ambulance attendant's scope of practice is equal to the emergency medical technician's as defined in section 33-36-04-02.1. The advanced first-aid ambulance attendant's scope includes the skills in the first responder's scope and the driver's scope. The major difference between an advanced first-aid ambulance attendant and first responder is the knowledge and skills necessary to provide medical transportation of emergency patients.

b. Curriculum. The curriculum for advanced first-aid ambulance attendant is no longer supported. Therefore, no new advanced first-aid ambulance attendants can be trained. Continued educational requirements are defined in chapter 33-36-01.

c. Scope enhancements. Advanced first-aid ambulance attendants may provide enhanced treatments beyond the core scope if they have completed training as defined in section 33-36-01-04 and have the authorization to perform those skills from their medical director.

d. Skills. Specific skills for the advanced first-aid ambulance attendant are defined by the department. Local medical directors may limit the specific skills that an advanced first-aid ambulance attendant may provide and they may not exceed those specific skills defined by the department.

e. Occupational setting. Advanced first-aid ambulance attendants may participate in the emergency medical services system as a sole responder in a quick response unit or as a primary care provider on a basic life support ambulance service. Advanced first-aid ambulance attendants may also provide services to a private company or organization as part of a response team that is not offered to the public.

f. Medical oversight. An advanced first-aid ambulance attendant provides medical care with physician oversight. A physician credentials the advanced first-aid ambulance attendant and establishes patient care standards through protocol.

g. Supervision. An advanced first-aid ambulance attendant may be the primary care provider on a quick response unit or basic life support ambulance and may supervise other advanced first-aid ambulance attendants, first responders, or drivers.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

CHAPTER 33-36-04

33-36-04-01. Definitions. Words defined in chapter 23-27 of the North Dakota Century Code have the same meaning in this chapter. For purposes of this chapter:

1. "Advanced emergency medical technician" means a person that has fulfilled the training, testing, certification, and licensure process for advanced emergency medical technician as required in chapter 33-36-01.

2. "Emergency medical technician" means a person that has fulfilled the training, testing, certification, and licensure process for emergency medical technician as required in chapter 33-36-01.

~~2.~~ 3. "Emergency medical technician-intermediate/85" means a person that has fulfilled the training, testing, certification, and licensure process for emergency medical technician-intermediate/85 as required in chapter 33-36-01.

~~3.~~ 4. "Emergency medical technician-intermediate/99" means a person that has fulfilled the training, testing, certification, and licensure process for emergency medical technician-intermediate/99 as required in chapter 33-36-01.

~~4.~~ 5. "Paramedic" means a person that has fulfilled the training, testing, certification, and licensure process for paramedic as required in chapter 33-36-01.

~~5.~~ 6. "Primary care provider" means a qualified individual responsible for the care of the patient and supervision of all ambulance personnel while on the ambulance run.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

33-36-04-02. Scopes of practice. Each level of emergency medical services professional has a scope of practice that includes the scopes of practice of all subordinate emergency medical services professionals and the scopes of all emergency medical services providers listed in chapter 33-36-03. The hierarchy of emergency medical services professionals is listed sequentially in this section.

1. **Emergency medical technician.**

   a. Scope. The emergency medical technician's core scope of practice includes basic, noninvasive interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and traumatic emergencies. Emergency care is based on assessment

findings. An emergency medical technician is not prepared to make decisions independently regarding the appropriate disposition of patients. The emergency medical technician may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an acute care facility. The primary differences between an advanced first-aid ambulance attendant and emergency medical technician are the educational and testing requirements required for licensure as an emergency medical technician.

b. Curriculum. The educational requirements include successful completion of a state-authorized emergency medical technician training program and continued educational requirements as defined in chapter 33-36-01.

c. Scope enhancements. Emergency medical technicians may provide enhanced treatments beyond the core scope if they have completed training as defined in section 33-36-01-04 and have authorization to perform those skills from their medical director.

d. Skills. Specific skills for the emergency medical technician are defined by the department. Local medical directors may limit the specific skills that an emergency medical technician may provide and they may not exceed those specific skills defined by the department.

e. Occupational setting. Emergency medical technicians may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, or as part of the crew of an advanced life support air or ground ambulance service. Emergency medical technicians may also provide services to a private company or organization as part of a response team that is not offered to the general public.

f. Medical oversight. An emergency medical technician provides medical care with physician oversight. A physician credentials the emergency medical technician and establishes patient care standards through protocol.

g. Supervision. An emergency medical technician may be the highest trained person on a quick response unit and as the primary care provider may supervise other emergency medical technicians, ~~first~~ emergency medical responders, or drivers. As part of a basic life support ambulance crew, an emergency medical technician may supervise subordinate emergency medical services personnel. As part of an advanced life support ambulance service, an emergency medical technician is supervised by a paramedic.

2. **Emergency medical technician-intermediate/85.**

a. Scope. The scope of practice of an emergency medical technician-intermediate/85 includes basic, limited advanced interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and traumatic emergencies. Emergency care is based on assessment findings. An emergency medical technician-intermediate/85 is not prepared to make decisions independently regarding the appropriate disposition of patients. The emergency medical technician-intermediate/85 may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an acute care facility. The primary differences between an emergency medical technician and emergency medical technician-intermediate/85 are the basic, limited advanced interventions that an emergency medical technician-intermediate/85 may provide.

b. Curriculum. The core educational requirements include successful completion of a state-authorized emergency medical technician-intermediate/85 training program and continued educational requirements as defined in chapter 33-36-01.

c. Scope enhancements. Emergency medical technicians-intermediate/85 may provide enhanced treatments beyond the core scope if they have completed training as defined in section 33-36-01-04 and have the authorization to perform those skills from their medical director.

d. Skills. Specific skills for the emergency medical technician-intermediate/85 are defined by department policy. Local medical directors, or hospitals if working in the hospital setting may limit the specific skills that an emergency medical technician-intermediate/85 may provide. They may not exceed those specific skills defined by department policy.

e. Occupational setting. Emergency medical technicians-intermediate/85 may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, or as part of the crew of an advanced life support air or ground ambulance service. Emergency medical technicians-intermediate/85 may work for a hospital in a nonemergency setting or provide services to a private company or organization as part of a response team that is not offered to the general public.

f. Medical oversight. An emergency medical technician-intermediate/85 working in a prehospital

setting provides medical care with physician oversight. In this circumstance a physician credentials the emergency medical technician-intermediate/85 and establishes patient care standards through protocol. An emergency medical technician-intermediate/85 working in a hospital setting is credentialed by the hospital.

g. Supervision. An emergency medical technician-intermediate/85 may be the highest trained person on a quick response unit and as the primary care provider may supervise other emergency medical technicians-intermediate/85, emergency medical technicians, first responders, or drivers. As part of a basic life support ambulance crew, an emergency medical technician-intermediate/85 may supervise subordinate emergency medical services personnel. As part of an advanced life support ambulance service an emergency medical technician-intermediate/85 is supervised by a paramedic. Emergency medical technicians-intermediate/85 working in a hospital setting are supervised by nursing staff.

3. **Advanced emergency medical technician.**

a. Scope. The advanced emergency medical technician's scope of practice includes basic, limited advanced interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and traumatic emergencies. Emergency care is based on assessment findings. An advanced emergency medical technician is not prepared to make decisions independently regarding the appropriate disposition of patients. The advanced emergency medical technician may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an acute care facility. The primary differences between an emergency medical technician and advanced emergency medical technician are the basic, limited advanced interventions that an advanced emergency medical technician may provide.

b. Curriculum. The core educational requirements include successful completion of a state-authorized advanced emergency medical technician training program and continued educational requirements as defined in chapter 33-36-01.

c. Skills. Specific skills for the advanced emergency medical technician are defined by department policy. Local medical directors, or hospitals if working in the hospital setting, may limit the specific skills that an advanced emergency medical technician may provide. They may not exceed those specific skills defined by department policy.

d. Occupational setting. Advanced emergency medical technicians may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, or as part of the crew of an advanced life support air or ground ambulance service. Advanced emergency medical technicians may work for a hospital in a nonemergency setting or provide services to a private company or organization as part of a response team that is not offered to the general public.

e. Medical oversight. An advanced emergency medical technician working in a prehospital setting provides medical care with physician oversight. In this circumstance, a physician credentials the advanced emergency medical technician and establishes patient care standards through protocol. An advanced emergency medical technician working in a hospital setting is credentialed by the hospital.

f. Supervision. An advanced emergency medical technician may be the highest trained person on a quick response unit and as the primary care provider may supervise other advanced emergency medical technicians, emergency medical technicians, first responders, or drivers. As part of a basic life support ambulance crew, an advanced emergency medical technician may supervise subordinate emergency medical services personnel. As part of an advanced life support ambulance service an advanced emergency medical technician is supervised by a paramedic. Emergency medical technicians working in a hospital setting are supervised by nursing staff.

4. **Emergency medical technician-intermediate/99.**

a. Scope. The scope of practice of an emergency medical technician-intermediate/99 includes basic, limited advanced and pharmacological interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and traumatic emergencies. Emergency care is based on assessment findings. An emergency medical technician-intermediate/99 is not prepared to make decisions independently regarding the appropriate disposition of patients. The emergency medical technician-intermediate/99 may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an acute care facility. The primary differences between an emergency medical technician-intermediate/85 and emergency medical technician-intermediate/99 are the limited pharmacological interventions that an emergency medical technician-intermediate/99 may provide.

b. Curriculum. The core educational requirements include successful completion of a state-authorized emergency medical technician-intermediate/99 training program and continued educational requirements as defined in chapter 33-36-01.

c. Scope enhancements. Emergency medical technicians-intermediate/99 may provide enhanced treatments beyond the core scope if they have completed training as defined in section 33-36-01-04 and have the authorization to perform those skills from their medical director.

d. Skills. Specific skills for the emergency medical technician-intermediate/99 are defined by department policy. Local medical directors, or hospitals if working in the hospital setting, may limit the specific skills that an emergency medical technician-intermediate/99 may provide. They may not exceed those specific skills defined by department policy.

e. Occupational setting. Emergency medical technicians-intermediate/99 may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, or as part of the crew of an advanced life support air or ground ambulance service. Emergency medical technicians-intermediate/99 may work for a hospital in a nonemergency setting or provide services to a private company or organization as part of a response team that is not offered to the general public.

f. Medical oversight. An emergency medical technician-intermediate/99 working in a prehospital setting provides medical care with physician oversight. In this circumstance a physician credentials the emergency medical technician-intermediate/99 and establishes patient care standards through protocol. An emergency medical technician-intermediate/99 working in a hospital setting is credentialed by the hospital.

g. Supervision. An emergency medical technician-intermediate '99 may be the highest trained person on a quick response unit and as the primary care provider may supervise other emergency medical technicians-intermediate/99, emergency medical technicians-intermediate/85, emergency medical technicians, ~~first~~ emergency medical responders, or drivers. As part of a basic life support ambulance crew, an emergency medical technician-intermediate/99 may supervise subordinate emergency medical services personnel. As part of an advanced life support ambulance service an emergency medical technician-intermediate/99 is supervised by a paramedic.

Emergency medical technicians-intermediate/99 working in a hospital setting are supervised by nursing staff.

~~4.~~ 5. **Paramedic.**

a. Scope. The paramedic's scope of practice includes invasive and pharmacological interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and traumatic emergencies. Emergency care is based on an advanced assessment and the formulation of a field impression. The paramedic may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an acute care facility. The major difference between the paramedic and the emergency medical technician-intermediate/99 is the ability to perform a broader range of advanced skills. These skills carry a greater risk for the patient if improperly or inappropriately performed, are more difficult to attain and maintain competency in, and require significant background knowledge in basic and applied sciences.

b. Curriculum. The core educational requirements include successful completion of a state-authorized paramedic training program and continued educational requirements as defined in chapter 33-36-01.

c. Skills. Specific skills for the paramedic are defined by department policy. Local medical directors, or hospitals if working in the hospital setting, may limit the specific skills that a paramedic may provide and they may not exceed those specific skills defined by department policy.

d. Occupational setting. Paramedics may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, as the primary care provider of an advanced life support air or ground ambulance service, or as the primary care provider of a critical care air ambulance service. Paramedics may work for a hospital in an emergency or nonemergency setting or provide services to a private company or organization as part of a response team that is not offered to the general public.

e. Medical oversight. A paramedic working in a prehospital setting provides medical care with physician oversight. In this circumstance a physician credentials the paramedic and establishes patient care standards through protocol. A paramedic employed by and working in a hospital setting is credentialed by the hospital.

f. Supervision. A paramedic may supervise all subordinate levels of emergency medical services personnel. Paramedics working in a hospital setting are supervised by the hospital's nurse executive.

History: Effective January 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 23-27-04.3
Law Implemented: NDCC 23-27-04.3

CHAPTER 33-38-01

33-38-01-01. Definitions. Words defined in North Dakota Century Code chapter 23-01.2 have the same meaning in this chapter. As used in this chapter:

1. ~~"Advanced prehospital trauma life support" means the most current edition of the course as developed by the national association of emergency medical technicians in cooperation with the American college of surgeons - committee on trauma, or its equivalent, as determined by the department.~~

~~2.~~ "Advanced trauma life support" means the most current edition of the course as developed by the American college of surgeons - committee on trauma, or its equivalent, as determined by the department.

~~3.~~ 2. "Department" means the state department of health.

~~4.~~ 3. "Emergency medical services" means the system of personnel who provide medical care from the time of injury to hospital admission.

~~5.~~ 4. "Local emergency medical services transport plans" means plans developed by emergency medical services, medical directors, and hospital officials which establish the most efficient method to transport trauma patients.

~~6.~~ 5. "Major trauma patient" means any patient that ~~fits the trauma triage algorithm adopted by~~ meets the criteria in step one or two of the field triage decision scheme provided by the American college of surgeons, committee on trauma, as published by the most current edition of the Resources for Optimal Care of the Injured Patient~~: 1999, page 14~~.

6. "Online medical control" consists of directions given over the telephone or by radio directly from the medical director or designated physician.

7. "Provisional designation" means a state process of designating a facility as a ~~level I, II, or III~~ trauma center based on American college of surgeons or department standards for a period ~~of up to twenty-four months,~~ determined by the department and the state trauma committee or until an American college of surgeons verification visit or state designation visit is completed.

8. "Trauma" means tissue damage caused by the transfer of thermal, mechanical, electrical, or chemical energy, or by the absence of heat or oxygen.

9. "Trauma center" means a facility that has made a commitment to serve the trauma patient, has met the standards of the trauma system, and has obtained designation as a trauma center.

10. "Trauma code" includes the activation and assembly of the trauma team to provide care to the major trauma patient.

11. ~~"Trauma nursing core course" means the most current edition of the course as developed by the emergency nurses association, or its equivalent, as determined by the department.~~

~~12.~~ "Trauma quality improvement program" means a system of evaluating the prehospital, trauma center, and rehabilitative care of trauma patients.

~~13.~~ 12. "Trauma registry" includes the collection and analysis of trauma data from the trauma system.

~~14.~~ 13. "Trauma team" includes a group of health care professionals organized to provide care to the trauma patient.

History: Effective July 1, 1997; amended effective June 1, 2001; July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-02. Trauma system. A statewide trauma system shall be adopted by the state health council. The trauma system shall consist of the following:

1. Standardized definition of major trauma patient.

2. Trauma code activation protocols.

3. Local emergency medical services transport plans.

4. Trauma center designation process.

5. Revocation of trauma center designation process.

6. Statewide trauma registry.

7. Quality improvement process.

8. State trauma committee.

9. Four regional trauma committees.

10. Injury prevention.

History: Effective July 1, 1997; amended effective July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-03. Activation of trauma codes for ~~major~~ trauma patients. Emergency medical services and trauma centers shall assess patients and activate a trauma code ~~if the patient meets the major trauma definition~~.

1. Emergency medical services must activate a trauma code if the trauma patient meets one or more of the criteria in step one, two, or three of the field triage decision scheme, provided by the current edition of the American college of surgeons Resources for Optimal Care of the Injured Patient. Step four of the field triage scheme may be used as discretionary criteria for activating trauma code. The field triage scheme is used as a minimal standard and additional activation criteria may be added.

2. A level I, level II, or level III trauma center must follow the minimum criteria for highest level of activation set by the American college of surgeons committee on trauma.

3. A level IV and level V trauma center must activate a trauma code if the trauma patient meets one or more of the criteria in step one, two, or three of the field triage decision scheme, provided by the current edition of the American college of surgeons Resources for Optimal Care of the Injured Patient. Step four of the field triage scheme may be used as discretionary criteria for activating trauma code. The field triage scheme is used as a minimal standard and additional activation criteria may be added.

History: Effective July 1, 1997; amended effective July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-05. Local emergency medical services transport plans. Emergency medical services shall develop local emergency medical services transport plans for the transport of ~~major~~ trauma patients meeting the criteria in step one, two, three, or four of the field triage decision scheme, provided by the current edition of the American college of surgeons Resources for Optimal Care of the Injured Patient by appropriate means to the nearest designated trauma center. ~~Emergency medical services may bypass the nearest designated trauma center for a higher level trauma center provided that it does not result in an additional thirty minutes or more of transport time. If there are multiple trauma centers in the community, the major trauma patient meeting the criteria in steps one or two of the field triage decision scheme, provided by the American college of surgeons Resources for Optimal Care of the Injured Patient: 1999, page 14, should be taken to the trauma center with the highest level of designation. The plans are subject to approval by all the participating health care entities named in the plan, then submitted for review and approval to the regional trauma committee. Following approval, the local emergency medical services transport plans must be filed with the department and distributed to participating dispatch centers.~~

~~After activation of a trauma code, a dispatch center shall notify the necessary facilities and the emergency medical service unit shall transport the patient according to its local emergency medical services transport plan.~~

1. Emergency medical services may bypass the nearest designated trauma center for a higher level trauma center provided that it does not result in an additional thirty minutes or more of transport time. If the additional transport time would be greater than thirty minutes, the transporting emergency medical services personnel must contact online medical direction for permission to bypass or as defined in the transport protocol.

2. If there are multiple trauma centers in the community, the major trauma patient meeting one or more of the criteria in step one or two of the field triage decision scheme provided by the current edition of the American college of surgeons Resources for Optimal Care of the Injured Patient should be taken to a trauma center per local emergency medical trauma transport plans approved by the department and state trauma committee.

History: Effective July 1, 1997; amended effective June 1, 2001; July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-06. Trauma center designation.

1. Five levels of hospital designation must be established.

2. Hospitals applying for level I, level II, or level III designation shall present evidence of having current trauma center verification from the American college of surgeons. The department shall issue designation with an expiration date consistent with the American college of surgeons verification expiration date.

3. Hospitals applying for level IV and level V trauma center designation must submit an application to the department. Once the application is approved by the department, an onsite verification visit shall be conducted by the department or its designee. The verification team shall compile a report. The application and report will be reviewed by the state trauma committee. If approved, the department shall issue the designation for up to three years to the facility.

4. Hospitals without trauma center designation ~~applying~~ or currently designated as a level IV or level V trauma center planning to apply for a level I, level II, or level III trauma center designation may apply for a provisional designation ~~must submit~~ by submitting an application to the department. Once the application is approved by the department, an onsite visit shall be conducted by a team designated by the state trauma committee. The team shall compile a report. The application

and report will be reviewed by the state trauma committee. If approved, the department shall issue a provisional designation for a maximum of twenty-four months. During these twenty-four months, the facility must complete an American college of surgeons verification visit.

5. Provisional trauma center designations for level I, level II, or level III trauma centers may be issued by the department to hospitals with deficiencies identified by the American college of surgeons and that are partially compliant with the trauma center standards. Hospitals must submit a plan of correction within one month after notification for deficiencies that are identified by the verification team. The plan of correction will be reviewed by the state trauma committee. If approved, the department may issue a provisional designation to the hospital for up to eighteen months or until another American college of surgeons verification visit is completed.

6. Provisional trauma center designations for level IV and level V trauma centers may be issued by the department to hospitals with deficiencies identified by the site survey team and reviewed by the state trauma committee and are partially compliant with the trauma center standards. Hospitals must submit a plan of correction within one month after notification for deficiencies that are identified by the site survey team. The plan of correction will be reviewed by the state trauma committee. If approved, the department may issue a provisional designation for up to twelve months to the hospital or until another state designation visit is completed.

7. The health council, in establishing a comprehensive trauma system, may designate an out-of-state hospital as a trauma center within fifty miles of any border of ~~this state~~ North Dakota.

History: Effective July 1, 1997; amended effective June 1, 2001; July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-07. Trauma center revocation of designation. The department may revoke designation of a trauma center if evidence exists that the facility does not meet the required trauma center standards. The department or its designee may inspect any trauma center or applicant for trauma center designation at any time for compliance with the standards. Designation must be revoked if a facility denies or refuses inspection.

~~A trauma center that fails to maintain the standards, or voluntarily relinquishes its designation, may submit a plan for correction. Once the plan is approved by the department, the trauma center may be reinstated as a designated trauma center.~~ Failure to follow an approved plan of correction ~~results~~ or maintain trauma center designation standards will result in ~~revocation~~:

1. Revocation of the trauma center's designation.

2. Notification to the division of health facilities regarding the failure to comply with state law.

3. Placement of a public notice in the newspapers in the area which the hospital is located to notify the public of the enforcement action to be imposed and the effective dates. The department shall notify the hospital in writing of the impending notice fifteen days prior to the publication of the notice.

History: Effective July 1, 1997; amended effective July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-08. State trauma registry. The department shall establish a trauma registry including the minimum data elements. All hospitals must report the minimum data elements to the department ~~for patients who have an international classification of diseases, ninth revision (ICD-9) code of 800-959.9 and one of the following criteria:~~.

~~1. Trauma deaths.~~

~~2. Hospital admission greater than forty-eight hours.~~

~~3. Patients admitted that go to the intensive care unit or operating room.~~

~~4. Patients transferred into or out of the hospital.~~

Reporting ~~may~~ shall occur ~~electronically by downloading computer files or through completion of the North Dakota transfer form or other form~~ by a method approved by the department. Information may not be released from the state trauma registry except as permitted by North Dakota Century Code sections 23-01-15 and 23-01-02.1.

History: Effective July 1, 1997; amended effective June 1, 2001; July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-09. Quality improvement process. A quality improvement process shall be established by the state trauma committee. The process must include evaluation criteria that will provide guidelines for acceptable standards of care, address system issues, and monitor patient outcomes.

The regional committees shall evaluate the trauma system within their regions based upon the evaluation criteria. The regional trauma committee shall

make recommendations to emergency medical services and trauma centers in the development of plans to improve the system.

History: Effective July 1, 1997; amended effective July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-10. State trauma committee membership. The state trauma committee membership must include the following:

1. One member from the North Dakota committee on trauma - American college of surgeons, appointed by the committee.

2. One member from the American college of emergency physicians - North Dakota chapter, appointed by the chapter.

3. One member from the North Dakota health care association, appointed by the association.

4. One member from the North Dakota medical association, appointed by the association.

5. One member from the North Dakota EMS association - basic life support, appointed by the association.

6. One member from the North Dakota EMS association - advanced life support, appointed by the association.

7. One member from the North Dakota nurses association, appointed by the association.

8. One member on the faculty of the university of North Dakota school of medicine and health sciences, appointed by the dean of the medical school.

9. One member from the North Dakota emergency nurses association, appointed by the association.

10. One member from Indian health service, appointed by the Aberdeen area director of the service.

11. One member from accredited trauma rehabilitation facilities, appointed by the state health council.

12. One member who is a hospital trauma coordinator, appointed by the trauma coordinators committee.

13. The medical director of the division of emergency ~~health~~ medical services and trauma of the department.

14. The regional trauma committee chair from each region, if not representing an association.

15. One member representing injury prevention, appointed by the health council.

16. One member representing the public appointed by the health council.

17. One member representing the legislative assembly selected by the health council.

18. One member representing emergency preparedness and response appointed by the department.

19. One member representing pediatric physicians appointed by the North Dakota American academy of pediatrics.

20. Four additional ad hoc members, appointed by the ~~state~~ health council.

History: Effective July 1, 1997; amended effective June 1, 2001; July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-11. Trauma regions - Regional trauma committee. The state trauma committee shall establish four trauma regions. The regions must be designated northwest, northeast, southeast, and southwest. An emergency medical service or trauma center that is located within fifteen miles [24.14 kilometers] of a regional boundary may request to function within another region. This request shall be reviewed and is subject to approval by the state trauma committee.

The state trauma committee shall appoint a regional trauma committee to serve each trauma region. The regional committees may consist of members representing the following:

1. North Dakota committee on trauma - American college of surgeons.

2. North Dakota chapter of American college of emergency physicians.

3. Physician of a level IV and level V trauma center.

4. Level IV or level V hospital representative.

5. ~~Hospital~~ All hospital trauma ~~coordinator~~ coordinators within the region.

6. Accredited rehabilitation facility representative.

7. Indian health service or tribal government representative.

8. North Dakota EMS association.

9. Other members, chosen by the state trauma committee.

History: Effective July 1, 1997; amended effective June 1, 2001; July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-13. Level IV trauma center designation standards. The following standards must be met to achieve level IV designation:

1. Trauma team activation plan.

2. Trauma team leader must be a ~~current~~ physician currently certified in advanced trauma life support ~~certified physician,~~ who is on call and available within twenty minutes ~~and has experience in resuscitation and care of trauma patients~~. If the trauma team leader is not current in advanced trauma life support, the facility must provide a backup physician that is current in advanced trauma life support to assess and evaluate the trauma patients meeting step one, two, or three of the field triage decision scheme, provided by the current edition of the American college of surgeons Resources for Optimal Care of the Injured Patient when the noncertified physician is on call. If backup cannot be provided, the facility must go on diversion and notify the surrounding emergency medical services and the department.

3. ~~Transfer agreements as the transferring facility to a level II trauma center for major trauma care, burn care, rehabilitation service for long-term care, acute spinal cord and head injury management, and pediatric trauma management.~~ The facility must have transfer agreements with facilities capable of caring for major trauma patients, burn care, pediatric trauma management, acute spinal cord and traumatic brain injury management, and rehabilitation services for long-term care.

4. Equipment for resuscitation and life support ~~of all ages must include:~~ as determined by the department and state trauma committee.

   ~~a. Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, including pediatrics, bag mask resuscitator, pocket masks, and oxygen.~~

   ~~b. Pulse oximetry.~~

   ~~c. End tidal CO_2 determination.~~

   ~~d. Suction devices.~~

   ~~e. Electrocardiograph, oscilloscope, and defibrillator.~~

~~f. Standard intravenous fluids and administration devices, including large bore intravenous catheters.~~

~~g. Sterile surgical sets for airway control, cricothyrotomy, vascular access, and chest decompression.~~

~~h. Gastric decompression.~~

~~i. Drugs necessary for emergency care.~~

~~j. Communication with emergency medical services vehicles.~~

~~k. Spinal stabilization equipment.~~

~~l. Thermal control equipment for patients.~~

~~m. Broselow tape.~~

5. Quality improvement programs, to include:

   a. Focused audit of selected ~~filters~~ criteria.

   b. Trauma registry in accordance with section 33-38-01-08.

   c. Focused audit for all trauma deaths.

   d. Morbidity and mortality review.

   e. Medical nursing audit, utilization review, and ~~tissue~~ issue review.

6. Trauma transfer protocol to ~~include:~~ identify trauma patients whose condition may require care which exceeds current resources available.

   ~~a. Triage decision scheme.~~

   ~~b. Trauma transport plan.~~

History: Effective June 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

33-38-01-14. Level V trauma designation standards. The following standards must be met to achieve level V designation:

1. Trauma team activation plan.

2. Trauma team leader must be on call and available within twenty minutes~~, who has experience in resuscitation and care of trauma patients~~. The trauma team leader must be one of the following:

   a. A physician who is current in advanced trauma life support.

   b. A physician assistant, whose supervising physician has delegated to the physician assistant the authority to provide care to trauma patients and ~~who has taken the trauma nursing core course, and~~ is current in advanced ~~prehospital trauma life support and advanced~~ trauma life support.

   c. A nurse practitioner whose scope of practice entails the care of trauma patients, ~~has taken the trauma nursing core course, is current in advanced prehospital trauma life support and~~ is current in advanced trauma life support, and whose scope of practice is approved by the ~~North Dakota~~ state board of nursing.

   d. If the trauma team leader is not current in advanced trauma life support, the facility must provide a backup team leader that is current in advanced trauma life support to assess and evaluate the trauma patients meeting step one, two, or three of the field triage decision scheme, provided by the current edition of the American college of surgeons Resources for Optimal Care of the Injured Patient when the noncertified provider is on call. If backup cannot be provided, the facility must go on diversion and notify the surrounding emergency medical services and the department.

3. ~~Transfer agreements as the transferring facility to a level II trauma center for major trauma care, burn care, rehabilitation service for long-term care, acute spinal cord and head injury management, and pediatric trauma management.~~ The facility must have transfer agreements with facilities capable of caring for major trauma patients, burn care, pediatric trauma management, acute spinal cord and traumatic brain injury management, and rehabilitation services for long-term care.

4. Equipment for resuscitation and life support ~~of all ages must include:~~ as determined by the department.

   ~~a. Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, including pediatrics, bag mask resuscitator, pocket masks, and oxygen.~~

   ~~b. Pulse oximetry.~~

   ~~c. End tidal CO_2 determination.~~

   ~~d. Suction devices.~~

~~e. Electrocardiograph, oscilloscope, and defibrillator.~~

~~f. Standard intravenous fluids and administration devices, including large bore intravenous catheters.~~

~~g. Sterile surgical sets for airway control, cricothyrotomy, vascular access, and chest decompression.~~

~~h. Gastric decompression.~~

~~i. Drugs necessary for emergency care.~~

~~j. Communication with emergency medical services vehicles.~~

~~k. Spinal stabilization equipment.~~

~~l. Thermal control equipment for patients.~~

~~m. Broselow tape.~~

5. Quality improvement programs to include:

   a. Focused audit of selected ~~filters~~ criteria.

   b. Trauma registry in accordance with section 33-38-01-08.

   c. Focused audit for all trauma deaths.

   d. Morbidity and mortality review.

   e. Medical nursing audit, utilization review, and ~~tissue~~ issue review.

   f. Current advanced trauma life support certified physician review of all trauma codes managed by a physician assistant or ~~advanced~~ nurse practitioner within ~~forty-eight~~ seventy-two hours. This may be either the consulting or transfer receiving physician.

6. Trauma transfer ~~protocol to include:~~ protocols to identify trauma patients whose condition may require care which exceeds current resources available.

   ~~a. Triage decision scheme.~~

   ~~b. Trauma transport plan.~~

   ~~c. Call schedule for physician, if available.~~

~~d. Immediate telephone contact with a level II trauma center.~~

History: Effective June 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 23-01.2-01
Law Implemented: NDCC 23-01.2-01

TITLE 49

STATE BOARD OF MASSAGE

JULY 2010

CHAPTER 49-01-02

49-01-02-01. Fees. The board charges the following fees:

1. To receive a license, one hundred ~~and~~ fifty dollars.

2. To renew an annual license, ~~fifty~~ one hundred dollars. This fee must be paid on or before January first of each year. To renew an annual license after January first, one hundred dollars and, in addition, the licensee may be subjected to disciplinary action.

3. To retake an examination within six months of the initial failure to pass the board's examination, fifty dollars.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010.
General Authority: NDCC 43-25-07, 43-25-08, 43-25-09
Law Implemented: NDCC 43-25-07, 43-25-08, 43-25-09

49-01-02-02. License applications. To receive a license as a massage therapist, the applicant must complete an application provided by the board and must include the following additional information:

1. Sufficient proof to the board that the applicant has satisfied the education requirements in article 49-02.

2. A copy of the applicant's high school diploma or proof of equivalent education.

3. A statement from a licensed physician, written in the last year, that the applicant is free of signs or symptoms of contagious diseases or that the applicant has been trained in taking sufficient precautions to prevent the spread of communicable diseases.

4. Passport size photo.

The application and additional information must be postmarked or actually received by the secretary-treasurer at least thirty days before the examination date in order for the applicant to take the examination.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-25-07, 43-25-09

49-01-02-03. Expired licenses.

1. A license as a massage therapist is issued on an annual basis. A license expires on January first if the required renewal fee has not been paid on or by that date.

2. Practicing massage after a massage therapist's license has expired constitutes the unauthorized practice of massage. Practicing massage under an expired license is a violation of North Dakota Century Code section 43-25-03 and is grounds for the board to refuse to renew the person's license under subsection 3.

3. A license that has expired may be renewed within one year from the date of expiration upon payment of the required renewal fee and submitting current continuing education hours. The fee will not be prorated for any period during which the license was expired.

4. An application for renewal of a license more than one year after the license expired will be considered an application for initial licensure. This requirement includes passing the current licensing examination and meeting all other licensing requirements.

5. A licenseholder shall notify the board of any change in the licenseholder's name or mailing address, or of any change in the physical address of one of the licenseholder's places of business, within sixty days after the change occurs. Failure to notify the board may result in disciplinary action.

History: Effective January 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-25-03, 43-25-09

49-01-02-04. Grounds for discipline. A licensed massage therapist may be subject to disciplinary action by the board for any of the grounds authorized in North Dakota Century Code chapter 43-25, including:

1. Failure by the licensee to identify himself or herself before beginning the massage and failure to provide sufficient supervision of massage by students; or

2. Commission of one or more acts which indicate the licensee lacks good moral character and is therefore ineligible to be licensed by the board, including:

   a. Engaging in criminal conduct involving the client as a victim; ~~and~~

   b. Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current massage client of the licensee, even if the client attempts to sexualize the relationship; and

   c. Consuming alcohol while providing massage services or with a client in a professional setting, including a massage establishment. A professional setting means an area where the environment is set up with equipment and supplies for providing massage.

History: Effective January 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-25-07, 43-25-10

49-01-02-05. Continuing education.

1. To renew a license as a massage therapist, the licenseholder must submit sufficient proof to the board of completion of ~~at least eighteen hours of~~ continuing education ~~within the last year~~ every two years, including the date, time, and location of the instruction, the name of the program or course, the instructor or instructors, and the provider of the program or course.

2. To qualify as continuing education under this section, the instruction must be offered by a qualified instructor and be directly related to the practice of massage therapy. The course of instruction must be approved in advance by the board. The licenseholder or provider must identify the instructor of the course and describe the qualifications of the instructor, the topics covered during the course, and the total hours for which the licenseholder seeks approval. Any continuing education is required to be preapproved by the board. When deciding whether to approve continuing education, the board will consider the quality and reputation of the provider and instructor, including consideration whether the provider or instructor is nationally recognized or accredited in the field of education of massage therapy or the specific subject being taught, and whether the instructor has the education and other requirements to teach the subject for credit as contained in section 49-02-02-02. Further, the board must determine whether the content of the course is appropriate for continuing education of massage therapy.

3. Continuing education ~~of up to six hours per year~~ may be obtained by remote means such as telephone, internet, correspondence course, or videotape. Any remote continuing education is required to be

preapproved by the board. When deciding whether to approve remote continuing education, the board will consider the quality and reputation of the provider and instructor, including consideration whether the provider or instructor is nationally recognized or accredited in the field of education of massage therapy or the specific subject being taught, and whether the instructor has the education and other requirements to teach the subject for credit as contained in section 49-02-02-02. Further, the board must determine whether the content of the course is appropriate for continuing education of massage therapy and whether the topic is suitable for training by remote means, such as ethics or business practices. The board may also consider whether the provider has adopted a procedure or method to determine that the licenseholder has actually reviewed the materials, such as by testing or other methods.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010.
General Authority: NDCC 43-25-09
Law Implemented: NDCC 43-25-09

CHAPTER 49-02-01

49-02-01-01. Hours of instruction.

1. To be eligible for a license as a massage therapist, an applicant must present a diploma or credentials issued by one or more schools of massage which indicate a cumulative total of seven hundred ~~and~~ fifty hours of supervised instruction as determined under this article~~, or a total of five hundred hours for students who were enrolled in a school of massage on or before April 8, 1999~~.

2. As used in this article, a "clock-hour" or hour of classroom or practical instruction means a sixty-minute block of time consisting of a minimum of fifty minutes of instruction with appropriate breaks.

3. ~~The instruction received by the applicant must cover the elements of massage therapy, technique, and practice which include gliding strokes, kneading, direct pressure, deep friction, superficial warming techniques, percussion, compression (pumping), vibration, jostling, shaking, and rocking.~~

4. ~~The instruction received by the applicant must include elements of contraindications, benefits of massage, universal precautions, body mechanics, business, history, ethics, legalities of massage, and professional standards regarding draping and modesty.~~

5. ~~This article does not apply to applicants who were enrolled in a school of massage on the effective date of this article.~~

History: Effective January 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

49-02-01-04. Liaison. Each massage school in the state of North Dakota shall designate one full-time massage therapist faculty person in the state, who shall be the liaison to the board. Out-of-state schools may select to have a liaison to the board. The individual selected must have the authority to maintain curriculum in compliance with North Dakota law.

History: Effective July 1, 2010.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

CHAPTER 49-02-02

49-02-02-01. Hours of classroom instruction. The required seven hundred fifty total hours of supervised instruction required under this article must include at least four hundred fifty ~~hours of classroom instruction as determined under this chapter. "Hours of classroom instruction" means actual hours in attendance in class under supervised instruction in the presence of an instructor~~ required hours of classroom instruction as stated under section 49-02-02-03. "Required hours of classroom instruction" means actual hours in attendance in class under supervised instruction in the presence of an instructor, including synchronous or live remote education. Other classes may be through asynchronous remote education.

History: Effective January 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

49-02-02-02. Eligible classroom instruction.

1. Except as otherwise provided in this section or waived by the board for good cause, classroom instruction under this chapter must be provided by a licensed massage therapist at a recognized and approved school of massage and credit may not be given for prior educational instruction. In order to teach in North Dakota, the ~~licensed~~ massage therapist must have at least three years of ~~licensed,~~ hands-on experience as a massage therapist, hold a current North Dakota license, and be in good standing with the board.

2. An instructor of anatomy, physiology, ~~neurology,~~ or pathology is not required to be a licensed massage therapist, but must have earned a recognized ~~postgraduate degree in the field of study in which the instructor is providing instruction~~ master's degree or higher, in an appropriate field of study. Instructors of first aid, hygiene, CPR, business practice, or ethics must have appropriate credentials, but need not be licensed massage therapists.

3. A school of massage may give a student credit for prior educational instruction which was provided by a postsecondary institution. To receive credit, the prior instruction must have been provided by a qualified instructor within the five-year period immediately preceding the date of the application for licensure. The maximum credit for prior instruction which may be given under this subsection is provided in subsection 4 of section 49-02-02-03.

4. Correspondence courses are not recognized by the board under this section.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

49-02-02-03. Required curriculum.

1. The supervised required hours of classroom instruction received by an applicant must satisfy the following curriculum requirements:

   a. At least one hundred fifty hours of anatomy~~,~~ and physiology~~, and neurology, including sixty hours of anatomy, sixty hours of physiology, and thirty hours of neurology~~.

   b. At least forty-five hours of pathology.

   c. At least ninety hours of kinesiology, including origin, insertion, action, and innervation.

   d. At least, but not more than, ten hours of first aid, hygiene, and CPR. At the time of graduation, the applicant must hold a valid current CPR card certified by a nationally recognized organization to provide ~~first aid and~~ CPR instruction.

   e. At least thirty hours of business practices and thirty hours of professional ethics.

2. Each hour of instruction may be applied to only one of the above categories.

3. To be counted under this section, the instruction must reflect current scientific knowledge and standards.

4. The number of classroom hours specified in subdivisions a through c of subsection 1 also is the maximum amount of prior education credits in each subject which may be given under section 49-02-02-02. The remaining ~~ninety-five~~ one hundred twenty-five hours must include ~~a majority of hours in massage therapy, technique, indications, and~~ elements of contraindications, benefits of massage, universal precautions, body mechanics, business, history, ethics, legalities of massage, and professional standards regarding draping and modesty.

5. Hours of instruction for programs which measure their instruction in credit hours per semester or per quarter shall be determined as follows:

a. For semester credits, fifteen clock-hours of lecture equals one credit hour and thirty clock-hours of practical instruction (clinical or lab) equals one credit hour.

b. For quarter credits, ten clock-hours of lecture equals one credit hour and twenty clock-hours of practical instruction (clinical or lab) equals one credit hour.

History: Effective January 1, 2001; amended effective January 1, 2005; July 1, 2010.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

CHAPTER 49-02-03

49-02-03-02. Direct supervision of students. As used in this chapter and in North Dakota Century Code chapter 43-25, "direct supervision of a licensed massage therapist" has the following meaning:

1. For a student receiving practical instruction in the classroom setting, the supervising massage therapist must be in the same room as the student at all times during the massage. A massage therapist may supervise up to eight massages at a time (sixteen students) under this subsection.

2. For a student receiving practical instruction through field experience or a student clinic, the supervising massage therapist must be present on the premises at all times during the massage, which means the instructors are readily accessible to the students at all times. A massage therapist may supervise up to six massages at a time under this subsection.

3. Notwithstanding any other provision in this section, a supervising massage therapist must exercise an appropriate degree of supervision at all times. Failure to do so is grounds for disciplinary action by the board.

4. Any student practicing outside of the school under a field experience or internship in North Dakota must be supervised by a licensed massage therapist, must meet the requirements of subsection 2 of section 49-02-03-03, and the student's school must register the pertinent facts with the board.

History: Effective January 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-04, 43-25-07

49-02-03-03. Required curriculum.

1. The instruction received by the applicant must include the elements of massage therapy, technique, and practice which includes gliding strokes, kneading, direct pressure, deep friction, superficial warming techniques, percussion, compression (pumping), vibration, jostling, shaking, and rocking.

2. Before ~~providing a massage~~ applying massage techniques to a member of the public, as a part of the student's education, a student must have completed, or received prior education credit for, at least two hundred twenty-five hours of classroom instruction and at least one hundred fifty hours of practical instruction in the classroom setting.

History: Effective January 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

CHAPTER 49-03-01

49-03-01-01. Sanitation, location, and conditions.

1. The portion of a massage establishment in which a massage is provided, and any waiting room and hallway leading to that area, must be in a clean and sanitary condition at all times. This subsection does not apply when the massage is provided to a person in the person's own home, or when the massage is provided as a public demonstration in a location other than the massage therapist's usual establishment.

2. If the massage establishment is also the residence of the massage therapist providing the massage, ~~the massage may not be provided in a bedroom~~ the room must be set up as a professional setting.

3. Any mirrors or windows in the massage establishment will be located and covered in a manner to maintain the privacy of the person receiving the massage at all times during the massage and while the client is dressing and undressing.

4. A therapist must provide draping and treatment in a way that ensures the personal safety, comfort, and privacy of the client.

5. The therapist is responsible for maintaining all equipment and supplies in good working order and in accordance with any manufacturer's instruction.

6. It is unlawful for a massage therapist to provide alcohol to a client in the portion of a massage establishment in which a massage is provided.

History: Effective January 1, 2001; amended effective July 1, 2010.
General Authority: NDCC 28-32-02, 43-25-03
Law Implemented: NDCC 43-25-03

TITLE 55

STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

JULY 2010

CHAPTER 55-02-01

55-02-01-05. Duties of board of officers.

1. The chairperson shall preside at all meetings of the board, and shall sign all official documents of the board.

2. In the absence of the chairperson, the vice chairperson shall preside at meetings, and perform all duties usually performed by the chairperson.

3. The secretary-treasurer shall keep a full and complete record of the minutes of the meetings, maintain records pertaining to licensees and registrants, maintain financial records approved by the board and the fiscal authorities of the state, and make payments with the approval of the board. Any functions of the secretary-treasurer may be delegated by the board to the executive ~~secretary~~ director.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 2002; July 1, 2010.
General Authority: NDCC 43-34-07, 43-34-09
Law Implemented: NDCC 43-34-07, 43-34-09

55-02-01-07. Requirements for initial licensure. A person applying for initial licensure must meet the following requirements:

1. The person is at least eighteen years of age ~~and of good moral character~~.

2. The person has a baccalaureate degree from an accredited college or university, or has an associate degree from an accredited college or university and has practiced as a licensed nursing home administrator in any jurisdiction for at least five of the last six years.

3. The person has completed a board-approved administrator-in-training program, practiced as a licensed nursing home administrator in any jurisdiction for at least two years preceding the application, or is certified

by the American college of health care administrators as a nursing home administrator.

4. The person ~~has~~ passed ~~or passes~~ the ~~required examination within one year of making an application~~ examinations required by section 55-02-01-10.

History: Amended effective July 1, 1979; February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; July 1, 2010.
General Authority: NDCC 43-34-03, 43-34-04, 43-34-08, 43-34-09
Law Implemented: NDCC 43-34-03, 43-34-09, 43-34-12

55-02-01-08. Application for initial licensure. An applicant for initial licensure as a nursing home administrator must make application in writing on forms provided by the board, furnish evidence satisfactory to the board that the applicant meets the licensure requirements as provided for in section 55-02-01-07, pay ~~an application~~ a fee of ~~one~~ two hundred fifty dollars, ~~and~~ pay the cost charged by the national association of boards of examiners of long-term care administrators for the examination, and submit to a statewide and nationwide criminal history record check. All costs associated with the criminal history record check are the responsibility of the applicant. An applicant for initial licensure must submit two references from individuals engaged in business, professional, or religious work.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; July 1, 2010.
General Authority: NDCC 43-34-03, 43-34-04, 43-34-05, 43-34-09
Law Implemented: NDCC 43-34-03, 43-34-03.2, 43-34-05, 43-34-09

55-02-01-10. ~~Examination~~ Examinations.

1. Each person applying for licensure as a nursing home administrator, except a person applying for emergency licensure or licensure by endorsement, is required to pass an examination provided by the national association of boards of examiners of long-term care administrators.

2. Each person applying for licensure as a nursing home administrator, except a person applying for emergency licensure, is required to pass a state laws and rules examination administered by the board.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; July 1, 2010.
General Authority: NDCC 43-34-03, 43-34-04, 43-34-09
Law Implemented: NDCC 43-34-03, 43-34-09

55-02-01-11. Grading examinations.

1. A passing score for ~~a written~~ the examination required by subsection 1 of section 55-02-01-10 shall be the passing score established by

the national association of boards of examiners of long-term care administrators.

2. A passing score for the examination required by subsection 2 of section 55-02-01-10 shall be the passing score established by the board.

History: Amended effective July 1, 1981; June 1, 1983; February 1, 1993; June 1, 1996; December 1, 2002; July 1, 2010.
General Authority: NDCC 43-34-03, 43-34-04, 43-34-09
Law Implemented: NDCC 43-34-03, 43-34-09

55-02-01-15. Licensure by endorsement. Upon application, the board may issue a license by endorsement to any person who:

1. Pays ~~an application~~ a fee of ~~one~~ two hundred fifty dollars.

2. Holds a current license in good standing from another jurisdiction that imposes requirements for obtaining a license which are at least ~~as stringent as~~ substantially equivalent to the requirements imposed in this state at the time of application.

3. Passes the examination required by subsection 2 of section 55-02-01-10.

4. Submits to a statewide and nationwide criminal history record check. All costs associated with the criminal history record check are the responsibility of the applicant.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; July 1, 2010.
General Authority: NDCC 43-34-03, 43-34-04, 43-34-09
Law Implemented: NDCC 43-34-03, 43-34-03.2, 43-34-05, 43-34-09, 43-34-12

55-02-01-15.1. Emergency license. Upon application, the board may issue an emergency license to any person who:

1. Pays ~~an application~~ a fee of ~~one~~ two hundred fifty dollars.

2. Meets the requirements of subsection 1 of section 55-02-01-07.

3. Submits to a statewide and nationwide criminal history record check. All costs associated with the criminal history record check are the responsibility of the applicant.

4. Will be supervised by a preceptor at the expense of the nursing home. Supervision requires communication between the preceptor and the licensee at least twice in each week and at least one visit in each month by the preceptor to the nursing home where the licensee is employed. The preceptor shall make monthly written reports to the board.

~~4.~~ 5. Meets any other requirements that the board finds necessary.

History: Effective December 1, 2002; amended effective July 1, 2010.
General Authority: NDCC 43-34-04, 43-34-05, 43-34-09
Law Implemented: NDCC 43-34-03.2, 43-34-05, 43-34-09, 43-34-11

55-02-01-16. Registration and renewal of licenses.

1. Any person who holds a license issued by the board shall be registered with the board. The license expires on the thirty-first day of December in the year of its issuance and is renewable annually upon payment of the license fee. The board shall transmit renewal forms to all licensees whose licenses expire on December thirty-first.

2. The licensee shall pay an annual renewal fee of ~~one~~ two hundred ~~fifty~~ dollars.

3. An applicant for renewal shall provide documentation of completion of the continuing education required by section 55-02-01-12.

4. The board shall maintain a register of all licensed nursing home administrators. The board shall maintain a complete file of such pertinent information as may be deemed necessary.

5. A licensee who does not meet the requirement for renewal by December thirty-first may renew the license by meeting the requirements and paying a late renewal fee in the amount of twenty-five dollars per month for each month following December thirty-first. If the requirements for renewal are not met within six months of expiration, the license shall not be renewed. If the license is not renewed, the individual must apply for and meet the requirements for initial licensure, including passing the examinations required by section 55-02-01-10 within one year of making the application.

History: Amended effective February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; November 1, 2005; July 1, 2010.
General Authority: NDCC 43-34-04, 43-34-05, 43-34-09
Law Implemented: NDCC 43-34-05, 43-34-09, 43-34-10

55-02-01-23. Duplicate licenses. Repealed effective July 1, 2010. ~~The board may issue, for a fee, a duplicate license upon written request by the licensee.~~

History: ~~Amended effective February 1, 1993.~~
General Authority: ~~NDCC 43-34-09~~
Law Implemented: ~~NDCC 43-34-09~~

TITLE 67.1

EDUCATION STANDARDS AND PRACTICES BOARD

JULY 2010

CHAPTER 67.1-02-01

67.1-02-01-05. Program approval standards. The education standards and practices board shall adopt a set of North Dakota teacher education program approval standards.

1. The standards will be the criteria used to evaluate undergraduate and graduate education programs leading to North Dakota educational licensure.

2. The standards must be reviewed and revised at least every five years with input from the state-approved institutions and ~~kindergarten~~ prekindergarten through grade twelve educators and with consideration of recommendations from professional organizations. Public hearings must be provided in accordance with North Dakota Century Code chapter 28-32.

3. New standards become mandatory two years after their publication by the office of the legislative council in accordance with North Dakota Century Code section 28-32-19. During the two-year transition period following publication, institutions may elect to be reviewed either under the previously published standards or the newly published standards.

4. Full text of the North Dakota standards for program approval may be reviewed in North Dakota Administrative Code title 67.1 or at the office of the education standards and practices board.

5. Graduates successfully completing all the requirements of programs approved by the education standards and practices board must have completed the criminal background investigation including the bureau of criminal investigation and the federal bureau of investigation and be recommended by their degree granting institution for North Dakota licensure on that basis. Graduates of programs other than those approved by the North Dakota education standards and practices

board are subject to meeting the same standards criteria through the review of official transcripts.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-08, 15.1-13-10

CHAPTER 67.1-02-02

67.1-02-02-01. Life certificates.

1. First grade and second grade professional life certificates issued prior to July 1, 1976, are valid for life. However, it is recommended that teachers show professional gain by college attendance, workshops, conferences, travel, and other professional activities.

2. A life license will be issued to those teachers who have been licensed to teach in North Dakota for a period of thirty years. The application for the life license must be accompanied by ~~a fee~~ all requirements and fees as pursuant to the five-year renewal fee in section 67.1-02-02-04. The application for the thirty-year life license may be submitted six months prior to the expiration of the current license or as soon as the teacher qualifies for the thirty-year life license. Documentation of the thirty years of certification or licensure must be submitted with the application.

History: Effective July 1, 1995; amended effective August 1, 2002; April 1, 2006; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-12.1

67.1-02-02-02. Initial licenses.

1. Initial teacher licensure for in-state graduates or graduates of out-of-state programs requires a minimum of a four-year bachelor's degree from a state agency-approved teacher education program. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in this section and the North Dakota standards for teacher education program approval:

   a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.

   b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific kindergarten through grade twelve majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcripted by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of coursework specific to the major beyond the

introductory level. All official transcripts from all institutions of higher education must be submitted to the education standards and practices board.

(1) The secondary content-specific major must include a minimum of four semester hours in special methods of teaching at the secondary level and special methods of teaching in the specific content area. Effective July 1, 2008, all initial secondary licensure applicants grades seven through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the praxis II as set by the education standards and practices board. Effective July 1, 2010, all initial secondary licensure applicants grades seven through twelve in the core and non-core academic areas will need to meet or exceed the cut scores for the praxis II principles of teaching and learning test as set by the education standards and practices board. For purposes of this section, English, reading and language arts, mathematics, science, foreign languages, music, visual arts, history, civics and government, geography, and economics are considered core academic areas. All other areas are considered non-core academic areas.

(2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas at the middle level, and twenty-four semester hours of content coursework in one of the content areas of English and language arts, social studies, science, or mathematics meeting the teacher education program approval standards, and special methods of teaching at the middle level. Study of these areas must total a minimum of thirty-two semester hours, which includes at least two semester hours of special methods of teaching at the middle level and middle level classroom field experience. Effective July 1, 2008, all initial middle level licensure applicants grades five through eight in the core and non-core academic areas will need to meet or exceed the cut scores for the praxis II as set by the education standards and practices board.

(3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school mathematics, science, social studies, reading, and language arts. Effective July 1, 2006, all initial elementary licensure applicants grades one through six or grades one through eight restricted license will need to meet or exceed the cut scores for the praxis II elementary test 10011 and the praxis II principles of learning and teaching test 30522. For the school year 2005-06 and beyond, all elementary teachers new to

the profession, but previously licensed, will need to complete the praxis II elementary test 10011 and praxis II principles of learning and teaching test 30522 during the school year. Classroom teaching experience will be accepted from all other states toward the requirements of this paragraph.

(4) Prekindergarten through grade twelve preparation programs in special education, foreign language, art, music, physical education, business education, technology education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of kindergarten through grade twelve, special methods of teaching in the specific content area, and student teaching in elementary and secondary schools, grades prekindergarten through grade twelve. Effective July 1, 2006, all applicants in foreign language, art, and music will need to meet or exceed the cut scores for the praxis II tests as set by the education standards and practices board.

(5) The early childhood major must include study of child development, birth through age eight, and include special methods of teaching at the early childhood level.

(6) The special education major for regular licensure meeting or exceeding the teacher education program approval standards must include a second major in early childhood, elementary, middle level, or secondary education. Effective July 1, 2008, all applicants in special education majors or endorsements must meet or exceed the praxis II test cut scores as set by the education standards and practices board.

c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels. The professional education component, including student teaching, must be completed under the supervision of a teacher training institution approved by the education standards and practices board in North Dakota or the appropriate state, provincial, or similar jurisdictional authority for out-of-state institutions.

d. Student teaching exception - Internship. An applicant who graduated from a state-approved teacher education program prior to January 1, 1988, which did not include a minimum of ten weeks of full-time student teaching may qualify under one of the two options under this subdivision. These options are available only if the applicant has met all other requirements for licensure of the education standards and practices board and North Dakota Century Code sections 15.1-18-02 and 15.1-18-03, except the requirement of ten weeks of student teaching.

(1) The applicant must document a minimum of eight full weeks of student teaching at the appropriate level in the major field of study under the supervision of a state-approved teacher education program and document five years of successful teaching within the last ten years; or

(2) An applicant who can document a minimum of eight weeks of successful student teaching but cannot document a minimum of five years of successful teaching experience must either complete the additional student teaching hours or may choose to complete an internship under the supervision of a state-approved college of teacher education to fulfill the additional hours.

(a) The internship contact hours in the classroom must consist of classroom time blocks not less than one-half day and when added to the applicant's existing student teaching hours total a minimum of ten weeks of full-time equivalent student teaching and supervised internship experience.

(b) The internship must occur in a regular kindergarten through grade twelve classroom setting and allow the intern to experience the full range of curriculum and classroom operations.

(c) The internship must be approved by the education standards and practices board and transcripted through a state-approved teacher education institution.

e. Teaching minors. A teaching minor may only be earned or added to a teaching major. An individual may not be licensed or change grade levels of licensure with only a teaching minor.

A teaching minor is defined as a minimum of sixteen semester or twenty-four quarter credit hours in a single designated academic area and the methods of teaching the content area. These sixteen semester or twenty-four quarter credit hours must be in courses for

which the institution gives credit toward graduation in the major and be included in the teacher education program approval process.

2. An applicant must have a minimum overall grade point average of 2.50. The education standards and practices board will use the college-figured grade point average if all previous college coursework is on the transcript. If the student has transferred from another institution, and the grade point average calculated by the institution granting the degree is only for those credits at that institution, the education standards and practices board will refigure the grade point average using all previous college coursework.

3. An applicant shall provide three positive recommendations that include consideration of the applicant's character, adequate educational preparation, and general fitness to teach. Two of the recommendations must be secured from the most recent employing board or the applicant's credentialed principal or superintendent. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from a principal or superintendent, the recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. All recommendations or letters of recommendation must be dated within six months of submitting the application for licensure.

4. Verification of eligibility for home state licensure may be requested.

5. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.

6. Application form.

   a. An application fee of thirty dollars must accompany a request for an initial application form.

   b. The original completed application form, including the original signature of the applicant, original signatures of the recommenders or original college placement file, and recommendation by the state-approved teacher education program will be considered for licensure by the education standards and practices board.

   c. A fee of seventy dollars must accompany the application for initial licensure for in-state and out-of-state graduates. An additional fee of one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the licensure application.

d. The application will be kept on file at the education standards and practices board office for six months. Upon expiration of the six-month period, applicable fees will be refunded to the applicant if the license has not been issued.

7. All initial licenses are valid for at least two consecutive years and will expire on the applicant's birthdate.

8. Fingerprinting. In addition to completing the licensure application process outlined in this section, an applicant applying for licensure in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14.

   a. An applicant graduating from a North Dakota teacher preparation program may obtain the fingerprinting materials from college officials. Previous graduates and out-of-state graduates must contact the education standards and practices board directly for the fingerprinting materials. Fingerprint screening reports from other agencies are not available to the education standards and practices board. Applicants must complete the process with cards and release forms designating the education standards and practices board as the agency to receive the report.

   b. The applicant must have the fingerprinting done by an authorized law enforcement agency such as a sheriff's office, police department, or campus police. Both cards are to be completed with a ten-finger check. The criminal record inquiry authorization form must also be completed, including an original signature. The fingerprint cards and authorization form must be returned directly to the education standards and practices board office.

   c. Unofficial, incomplete, altered, or damaged cards and forms will not be accepted.

   d. The applicant is responsible for all local, state, and federal law enforcement agency fees related to the fingerprint background check.

   e. The applicant is advised to allow a minimum of eight weeks for the fingerprint screening process. An applicant must hold a valid North Dakota license to be employed or permitted to teach in North Dakota. Individuals who have completed all requirements for the professional educator's license except final completion of the fingerprint background check may obtain a provisional license under section 67.1-02-04-04.

f. Fingerprint screening reports must be recent and may only be used for licensure for eighteen months from the date the report is received by the education standards and practices board.

9. Reeducation for initial licensure. Applicants who hold nonteaching degrees in content areas taught in public schools may receive initial licensure by completing the professional education requirements at a state-approved program authorized through program approval to recommend applicants for licensure in the approved program area. This reeducation may be completed at the undergraduate or graduate level. The institution with the approved program must document that the applicant's specialty area degree is equivalent to its approved program's specialty area requirements in subdivisions b and c of subsection 1, and recommend the applicant for licensure. Applicants applying under this section must file a completed application form as other initial applicants, comply with the fingerprint background check in subsection 9, complete all tests, and pay all applicable fees.

10. Preprofessional skills test. On July 1, 2002, all initial applicants for licensure will be required to submit their test scores for the PPST in reading, writing, and mathematics. Beginning July 1, 2003, all applicants for initial licensure will need to submit their test scores for the PPST in reading, writing, and mathematics which meet or exceed the state cut score or composite score. Documentation of the ETS PPST scores must be submitted with the application form.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12, 15.1-13-14

67.1-02-02-04. Two-year and five-year renewals.

1. **Two-year renewal license.**

a. A two-year renewal license will be issued to applicants with less than eighteen months of successful contracted teaching in North Dakota who pay the required fee of fifty dollars and submit the same recommendations as are required by paragraph 3 of subdivision a of subsection 2. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years after the applicant's birthdate.

b. A two-year reentry license will be issued to an applicant reentering the profession after an absence of five years. Prior to applying for the reentry license, the applicant must submit to a fingerprint screening for criminal records in accordance with North Dakota

Century Code section 15.1-13-14. An applicant reentering the profession must complete eight semester hours of reeducation credit during the applicant's first two years of contracted employment as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is seventy dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.

c. A two-year reentry license will be issued to an applicant from out of state who has had an absence from the profession of more than five years, or to an applicant who cannot submit four semester hours of credit taken during each of the past two five-year periods if employed in education out of state. Such an applicant must meet the requirements of North Dakota initial licensure as stated in section 67.1-02-02-02 and must also complete the requirements for reentry education as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is seventy dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.

d. A two-year renewal license will be issued for substitute teaching. A substitute teacher must maintain a valid teaching license using the two-year renewal cycle, but is not required to submit reeducation hours unless the person signs a contract. The fee for this two-year renewal is fifty dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.

e. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

2. **Five-year renewal license.**

a. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota license. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of five years on the applicant's birthdate.

(1) All five-year license applications must be accompanied by a fee of one hundred twenty-five dollars.

(2) Succeeding five-year renewals require evidence of thirty teaching days of contracted service and completion of a minimum of four semester hours of reeducation credit to

avoid reverting to entry status. As licenses are renewed, after July 1, 2011, six semester hours of reeducation credit will be required for the new five-year period. All reeducation credit must be documented by college transcripts.

(3) Three recommendations are required. Two of the recommendations must be secured from the most recent employing board and the applicant's credentialed principal and superintendent. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from credentialed principals or superintendents, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. Signatures on recommendations must be within a six-month period of the submission of the application for renewal.

b. A renewal applicant who has completed the four semester hours of credit but has not been contracted for at least thirty days under the five-year license will revert to the two-year renewal cycle.

c. Probationary license. An applicant who has failed to complete the four semester hours of reeducation credit, whether the application has been contracted or not, will either not be renewed, or may agree to be placed on a two-year probationary license. Eight semester hours of reeducation semester credit must be supplied as a condition of the two-year probationary license. A second probationary license will not be issued.

d. If recommendations are not adequate to issue a five-year license, the education standards and practices board shall provide a hearing following North Dakota Century Code chapter 28-32. Following the hearing procedure, the education standards and practices board shall make a determination whether to issue a renewal to the applicant or deny relicensure.

e. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

f. Once the requirements have been met for the probationary license, a two-year renewal license will be issued.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-09, 15.1-13-10, 15.1-13-11

67.1-02-02-05. Professional development for license renewal. ~~The succeeding renewal of the five-year license requires verification of a minimum of four semester hours or six quarter hours of college or university credit.~~ All professional development relicensure credit must meet the professional development requirements approved by the education standards and practices board.

1. **Licensure renewal course credits.** The following minimum requirements must be approved by the education standards and practices board or through the institutional program review process.

   a. Instructor of record. The instructor of record must hold an advanced degree (master's or above) and provide a vita/resume that includes name; current title; current address; telephone, facsimile, and electronic mail, as appropriate; highest degree earned and field of study; related professional or work experience; topics to be addressed; and any other relevant information.

   b. Instructor's role. The instructor of record's role is to ensure submission of the proposal form to include all identified components as described in the proposal form subdivision below; a copy of the assessment tool and an identified process for keeping attendance using the criteria identified in the evaluation plan criteria subdivision below; and issue final grades.

   c. Multispeaker event. The instructor of record is responsible for upholding quality for a multispeaker event by ensuring that at least seventy-five percent of the total instructional time must be provided by individuals with a master's degree or higher. See about presenters below. The instructor of record is responsible for completing the matrix of presenters for these events. See proposal form below.

   d. About presenters. The presenters are expected to provide quality graduate education experiences for participants. Presenters are encouraged to possess a master's degree or higher. A multispeaker event must have seventy-five percent of instructional time provided by individuals with a master's degree or higher. However, a bachelor's degree may be accepted based on level of experience, accomplishments, and subject matter expertise. Each presenter is required to complete a short biography or resume to provide the presenter's educational credentials and experience or training in relation to the presenter's presentation topic.

   e. Proposal from. The proposal form must include conference or course description; objectives and learner outcomes; conference or course topical outline; all requirements and expectations (e.g., participation, attendance, assignments) for earning the credit; textbooks or other resources to be used; and evaluation plan

of learner outcomes. In addition, for multispeaker events an electronic copy of the program is required; a document that includes session descriptions; and completion of the matrix of presenters specifying their educational credentials, topics to be addressed, and the length in hours and minutes of each presenter's presentations.

f. Credit requirements. The following requirements must be communicated to the participants prior to the start of the event.

(1) Participants must hold a minimum of a bachelor's degree to be eligible to receive graduate credit.

(2) Participants must attend a minimum of fifteen hours of graduate level activity per credit hour.

(3) Participants must complete all credit requirements of the event.

(4) Participants must complete a product or an application of learning.

g. Evaluation plan criteria. One copy of the evaluation plan for determining the participant's grade must be submitted with this proposal. The evaluation plan may be formatted a number of ways but must, at a minimum, include participant verification of attendance, documenting the required fifteen clock-hours per credit (e.g., session sign-in sheet, session summary) and an assignment designed to elicit from the participants their ability to apply concepts and knowledge learned at the conference in their own teaching and work situations (e.g., lesson plan, summary paper, group project/paper). An assessment rubric is required for letter grading but not for satisfactory or unsatisfactory grading. Criteria will need to be developed.

2. Five-year licensure renewal. As licenses are renewed, after July 1, 2011, six semester hours of reeducation credit will be required for the new five-year period, as documented by college transcripts, earned within the dates of the license, contracted teaching of a minimum of thirty days, and three recommendations as outlined in subsection 2 of section 67.1-02-02-04. Applicants not meeting these requirements will be processed as indicated under that section.

a. Professional development coursework submitted for renewal may be either undergraduate or graduate credit and must be either in professional education or applicable to the applicant's licensed major, minor, or endorsement areas as indicated above.

b. Applicants who are working toward an added degree or endorsement may use coursework applicable to that expanded area of study for renewal. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-09, 15.1-13-10

67.1-02-02-07. ~~Multicultural education and Native American studies~~ Human relations and cultural diversity. North Dakota education standards and practices board licensure requires ~~a minimum of two semester hours in multicultural education, including~~ coursework in Native American studies, cultural diversity, strategies for creating learning environments that contribute to positive human relationships, and strategies for teaching and assessing diverse learners (e.g., universal design for learning, response to intervention, early intervention, positive behavior interventions and supports).

1. North Dakota graduates applying for licensure meet these requirements through completion of education standards and practices board-approved programs ~~that include coursework addressing the multicultural education and Native American studies standard~~. Teacher preparation programs may meet these requirements through general education, specific content major, professional education requirements, or a combination thereof.

2. Out-of-state applicants must provide evidence documenting successful completion of the requirement to the education standards and practices board within the interim reciprocal licensure requirements in chapter 67.1-02-04.

3. Substitute teachers may defer completion of the requirement until a contracted position is accepted.

4. Individuals who graduate prior to September 1, 1980, are exempt from muticultural requirements under North Dakota Century Code section 15.1-13-10.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002; July 1, 2004; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-10

CHAPTER 67.1-02-03

67.1-02-03-06. Minor equivalency endorsement.

1. Nothing in this section may be interpreted to affect the validity of minor equivalencies issued by the department of public instruction prior to September 1, 1998.

2. The applicant wishing to apply under the minor equivalency endorsement option must be licensed by the education standards and practices board to teach under North Dakota Century Code section 15.1-18-02 or 15.1-18-03. The minor equivalency endorsement will be issued for the same grade levels as the individual's primary licensure, the same as for minors transcripted by colleges of teacher education. Those whose primary licensure is secondary may use the endorsement to teach the new content area in grades seven through twelve. Those whose primary licensure is elementary (grades one through six or one through eight) or middle school (grades five through eight) may use the endorsement for additional content expertise at those levels but may not use it to teach at the high school level without a complete secondary endorsement. The minor equivalency endorsement in core academic areas will no longer be available at the secondary level (grades nine through twelve) effective July 1, 2006.

3. The applicant must request a minor equivalency endorsement form from the education standards and practices board, complete it, and return it to the education standards and practices board with official transcripts and the review fee of seventy-five dollars.

4. Once the transcripts have been reviewed, if all requirements have been met, the minor equivalency endorsement will be added to the teaching license. A new teaching license will be issued.

5. If the requirements have not been met, the education standards and practices board will return the minor equivalency endorsement form listing the additional requirements to be completed. No additional fee will be charged when the requirements have been met and the minor equivalency endorsement is added to the teaching license.

6. Two levels of content area endorsements are available to be added to the existing North Dakota professional educator's license. A listing of all the minor equivalency endorsement content areas available and specific areas of study required within each equivalency can be obtained by contacting the office of the education standards and practices board.

    a. The ME16 requires a minimum of sixteen semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices

board. The ME16 will be reviewed when the applicant applies for renewal licensure. The coursework for the ME24 must be completed within five years of the application date for the ME16. If the ME24 coursework is not completed within five years, the ME16 will be removed from the license.

b. The ME24 requires a minimum of twenty-four semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices board. The ME24 also must include the special methods of teaching in the content area. The ME24 is considered equivalent to a full teaching minor.

7. All coursework for the minor equivalency endorsement must be beyond the introductory level general studies courses as defined in section 67.1-02-02-02 and be transcripted by an approved teacher education program.

8. All coursework must be transcripted by a state-approved college of teacher education program.

9. The minor equivalency endorsement must be completed prior to contracted teaching in the content area.

10. Effective July 1, 2006, minor equivalencies will continue to be available in the noncore academic areas. If a teacher chooses to complete a minor equivalency in the core academic areas, the teacher will need to complete the praxis II content-based test in addition to the minor equivalency to be eligible to teach in grades nine through twelve.

11. The following coursework and requirements must be completed for the specific minor equivalency:

a. Agriculture (01005) - A total of sixteen semester hours, including three semester hours each in agriculture economics, agriculture management, animal science, plant science, and elective; six semester hours in agriculture leadership, community development, or philosophy of career and technical education; and special methods of teaching agriculture education.

b. Art (02005) - A total of sixteen semester hours, including art history, design, drawing, painting, ceramics, and special methods of teaching art.

c. Biology (13010) - A total of sixteen semester hours, including biology I and II, botany, zoology, genetics, general chemistry I and II, and special methods of teaching biology or science.

d. Business (03020) - A total of sixteen semester hours, including three semester hours in keyboarding, six semester hours in accounting, three semester hours in computer technology, general business, business communication, and special methods of teaching business.

e. Chemistry (13020) - A total of sixteen semester hours, including general chemistry I and II with labs, organic chemistry I and II with labs, analytic chemistry, and special methods of teaching chemistry or science.

f. Composite science (13047) - A total of twenty-four semester hours with eight semester hours with labs in biology, chemistry, physics, and earth science, and special methods of teaching science.

g. Computer science (23000) - A total of sixteen semester hours, including six semester hours a year-long sequence of structured language, two semester hours in advanced assembler language, eight semester hours in computer-related coursework, microcomputing, data structures and algorithms, operating systems, and special methods of teaching computer science.

h. CTE health careers (07000) - Available through the department of career and technical education.

i. CTE trade, industry, and technical (17000) - Available through the department of career and technical education.

j. CTE diversified occupations (25000) - Coordinating techniques.

k. CTE resource educator (26000) - Philosophy and practices of career and technical education, vocational assessment, career development, competency-based career and technical education, cooperative education, special needs teaching methods, introduction to exceptional children, mental retardation, learning disabilities, or emotional disturbance, working with at-risk students, behavior problems, classroom strategies, and other courses or workshops as approved by the career and technical education supervisor.

l. CTE information technology (27000) - Available through the department of career and technical education.

m. CTE basic skills educator (28000) - Philosophy and practices of career and technical education, vocational assessment, career development, competency-based career and technical education, cooperative education, special needs teaching methods, introduction to exceptional children, mental retardation, learning disabilities, or emotional disturbance, working with at-risk

students, behavior problems, remedial mathematics, remedial reading, and other courses or workshops as approved by the career and technical education supervisor.

n. CTE teacher student mentor (29000) - Available through the department of career and technical education.

o. CTE career clusters (37000) - Available through the department of career and technical education.

p. Drama or theater (05015) - Sixteen semester hours of drama or theater coursework.

q. Driver education (21005) - ~~Prior to August 1, 2008 - Valid operator's license not suspended or revoked, complete abstract of applicant's driving record for past thirty-six months from a state driver licensing office evidencing a satisfactory driving record free from any conviction that would constitute the basis for suspension or revocation on the instructor's operator's license, and not more than three moving traffic violations, six semester hours consisting of at least one course each in classroom driver and traffic education and in-car instruction. Ten semester hours with no more than three semester hours in any one area: first aid - one semester hour (required); drug education - two semester hours (required); safety education, motorcycle education, traffic law, multicar driving ranges, crash prevention, driver training for the handicapped, defensive driving, and field experiences in safety education - three semester hours; equipment training, driving simulator use or educational technology - two semester hours; classroom management - three semester hours; adolescent psychology - three semester hours; auto mechanics - three semester hours; or state or national conferences held by a recognized state or national driver education association - two semester hours.~~ Effective August 1, 2008, requirement: ~~Valid~~ valid operator's license not suspended or revoked. Provide by January first of each year a complete abstract of the applicant's driving record for the past thirty-six months from a state driver's licensing office evidencing a satisfactory driving record free from any conviction that would constitute the basis for suspension or revocation on the instructor's operator's license, and not more than three moving traffic violations. Ten semester hours consisting of at least one course each in classroom driver and traffic education, in-car instruction, beginning driver problems, and organization and administration of safety education. Fourteen semester hours with no more than three semester hours in any one area: first aid; substance abuse education; equipment training, which may include simulator use and educational technology; classroom management; developmental psychology covering adolescent psychology; stress management; curriculum, planning,

and assessment; teaching diverse learners; and educational psychology. Field experience required for elementary or middle school teachers provided by a driver's education mentor with a minimum of three years' experience in driver's education must include three clock-hours of in-car observation and three clock-hours of in-car instruction. This field experience must be documented with a letter from the school principal and driver education mentor. The renewal of the driver's education endorsement requires two semester hours every five years of driver and traffic safety coursework. It is the responsibility of the instructor to notify the education standards and practices board of any driving offense, suspension, revocation, or cancellation of the driving license.

r. Earth science (13035) - A total of sixteen semester hours, including general chemistry I and II with labs, physical geology, historical geology, astronomy, meteorology, and special methods of teaching science.

s. Economics (15010) - A total of sixteen semester hours, including principles of macroeconomics I and II, money and banking, computer applications in economics, and methods of teaching economics or social science.

t. English (05020) - A total of sixteen semester hours, including three semester hours of grammar and usage, six semester hours of composition, three semester hours of speech, three semester hours of developmental reading, literary analysis and criticism, nine semester hours of American and English literature, media, and special methods of teaching English.

u. Family and consumer science (09040) - A total of sixteen semester hours, including child development and family science, consumer education and resource management, food and nutrition, health and wellness, apparel and textiles, housing issues and interior design, and the special methods of teaching family and consumer science.

v. Foreign languages (French 06010, German 06015, Greek 06020, Latin 06025, Spanish 06035) - Sixteen semester hours specific to the foreign language, including composition and conversational structure of the language, culture, customs, and civilization relative to the language, introduction to literature in the language, and the special methods of teaching foreign language.

w. Geography (15015) - A total of sixteen semester hours, including physical geography, cultural geography, world geography, North American geography, and the special methods of teaching geography or social science.

x. Government and political science (15007) - A total of sixteen semester hours, including American government, political thought, international or global politics, and the special methods of teaching social science.

y. Health (18015) - Twenty-four semester hours in first aid, cardiopulmonary resuscitation, and safety, nutrition, exercise physiology or fitness, personal and community health, current issues in health education, and the special methods and curriculum in school health education.

z. History (15020) - A total of sixteen semester hours, including United States history I and II, western civilization I and II or world history I and II, and the special methods of teaching.

aa. Library science (50065) - Twenty-four semester hours in introduction to the role of the librarian in the school library, reference, selection of materials and collection development, classification and cataloging of library materials, library administration, conducting research following state and national library standards, current issues in school librarianship, a study of children's literature, young adult literature, and reading methods.

bb. Marketing (04006) - A total of sixteen semester hours, including marketing, sales promotion, management, student organizations, methods of teaching marketing or business education, philosophy of career and technical education, coordinating techniques, and nine credits in any of the following: accounting, advertising, business, technology, economics, finance, promotion, and selling.

cc. Mathematics (11010) - A total of sixteen semester hours, including calculus, abstract algebra, geometry (axiomatic), calculus I and II, linear algebra, abstract algebra, probability and statistics, and methods of teaching mathematics.

dd. Music composite (12010) - Twenty-four semester hours in music theory (six semester hours), music history or literature, ear training or sight singing, conducting, keyboard proficiency, and methods of elementary and secondary music teaching.

ee. Instrumental music (12005) - A total of sixteen semester hours, including music theory, ear training or sight singing, conducting, and eight semester hours of coursework in instrumental music, keyboard proficiency, and methods of elementary and secondary music teaching.

ff. Choral or vocal music (12015) - A total of sixteen semester hours, including music theory, ear training or sight singing, conducting,

and eight semester hours of coursework in vocal music, keyboard proficiency, and methods of elementary and secondary music teaching.

gg. Physics (13050) - A total of sixteen semester hours, including general physics I and II, modern physics, electronics, mechanics, and methods of teaching science.

hh. Physical education (08025) - A total of sixteen semester hours, including organization and administration of physical education and health, first aid and cardiopulmonary resuscitation, prevention and care of athletic injuries, health issues, physiology of exercise, foundations or curriculum of physical education, human physiology or anatomy, physical education for exceptional children, band, and methods of teaching sports activities, games, and dance.

ii. Physical science (13045) - A total of sixteen semester hours, including eight semester hours each in general chemistry I and II with labs, general physics I and II, and methods of teaching science.

jj. Psychology (15030) - A total of sixteen semester hours, including introduction to psychology, development psychology, abnormal psychology, personality theory, social psychology, and methods of teaching psychology or social science.

kk. Social studies composite (15035) - Twenty-four semester hours in United States history, world civilization, world history, American government, world geography, physical geography, introduction to sociology, economics, psychology, and methods of teaching social science.

ll. Sociology (15040) - A total of sixteen semester hours, including introduction to sociology, introduction to anthropology, social psychology, and methods of teaching social science.

mm. Speech (05045) - Sixteen semester hours of speech or communication coursework.

nn. Technology education (10007) - Coursework must include sixteen semester hours from the following list: principles or foundations of technology, technology and society, impacts of technology, history of technology, engineering design, design process, troubleshooting, invention and innovation, research and development, technology systems, modeling, i.e., three-dimensional modeling and prototyping, technology resources, and intelligent machines or robotics or automated systems. Coursework must include six semester hours from the following list: medical technology, agriculture and related

biotechnologies, energy and power technologies, information and communication technologies, transportation technology, manufacturing technology, and construction technology. A minimum of three semester hours in study of methods of teaching technology education that must include curriculum and methods in standards-based instruction.

History: Effective March 1, 2000; amended effective August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-18-03

67.1-02-03-12. Special education endorsements. The applicant must request the appropriate endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

1. **Early childhood special education endorsement.** The applicant wishing to apply for the early childhood special education endorsement must:

   a. Hold a valid North Dakota educator's professional regular license in early childhood or elementary education.

   b. Complete a minimum of ~~twenty-four~~ twenty-two semester hours primarily at the graduate level in the following core coursework: ~~exceptional children and youth; assessment of preschool children with disabilities; child development; home and school relations or parents, the school, and community; characteristics of preschool children with disabilities; methods and materials in education of preschool children with disabilities; an additional course in education of preschool children with disabilities; and a practicum working with preschool children with disabilities~~ children with exceptional learning needs, assessment of students with disabilities or special needs or assessment of young children, behavior management of students with disabilities, legal aspects of special education, and consultation and collaboration. Early childhood special education coursework, including characteristics and introduction of young children, methods and materials of young children with disabilities, assessment of young children, development of young children, including the domains of social, emotional cognition, language and literacy, and physical and adaptive must also be completed. A two semester hour early childhood special education practicum or internship must be completed.

   c. The early childhood special education endorsement enables the applicant to teach early childhood special education birth through grade three.

d. A plan on file (formerly tutor in training) for the early childhood special education endorsement may be requested and must be completed within three years of assignment to teach early childhood special education. The plan on file request must include a letter requesting the endorsement from the administrator, identification of the special education mentor, transcripted documentation of three semester hours of completed coursework in special education, and documentation of enrollment in an institution of higher education in two additional courses specific to the early childhood special education regardless of how many hours already transcripted in special education. Transcript review will be done yearly to document progress toward completion of the plan. The applicant shall file a plan with the education standards and practices board upon becoming employed as an early childhood special education teacher, outlining how the endorsement will be completed within the three-year period.

2. **Emotional disturbance special education endorsement.** The applicant wishing to apply for the emotional disturbance special education endorsement must:

a. Hold a valid North Dakota educator's professional regular license in early childhood, elementary, middle, or secondary education;

b. Complete a minimum of twenty-four semester hours primarily at the graduate level in the following core coursework: exceptional children and youth~~; introduction to the area of emotional disturbance, which includes psychopathology of childhood and adolescence, methods of teaching children with emotional disturbance, developmental psychology, behavior management, assessment, and test interpretation of children and youth with disabilities; methods and materials in specific learning disabilities; interdisciplinary and community resources and consultation skills; family or home school relations; guidance or educational alternatives; and a practicum working with children with emotional disabilities~~, assessment of students with disabilities, behavior management of students with disabilities, legal aspects of special education, and consultation and collaboration. Coursework specific to emotional disturbance must also be completed, including characteristics and introduction of emotional disturbance, methods and materials of emotional disturbance, transition, inclusive settings, and assistive technology. A two semester hour practicum or internship in emotional disturbance must also be completed. Secondary prepared teachers must also complete methods in elementary reading and elementary mathematics.

c. Have completed coursework in reading methods and mathematics methods, if prepared as a secondary teacher.

d. A plan on file (formerly tutor in training) for the emotional disturbance special education endorsement may be requested by the administrator and must be completed within three years of assignment to teach emotional disturbance special education. The plan on file request must include a letter requesting the endorsement from the administrator, identification of the special education mentor, transcripted documentation of three semester hours of completed coursework in special education, and documentation of enrollment in an institution of higher education in two additional courses specific to the emotional disturbance regardless of how many hours already transcripted in special education. Transcript review will be done yearly to document progress toward completion of the plan. The applicant shall file a plan with the education standards and practices board upon becoming employed as an emotional disturbance special education teacher, outlining how the endorsement will be completed within the three-year period. ~~To qualify for the emotional disturbance plan on file, the applicant must have:~~

~~(1) Documented two years of successful teaching in general education with a letter from the administrator.~~

~~(2) Have completed eight semester hours of coursework in the area of the emotional disturbance special education endorsement as outlined in subdivision b to be eligible for the plan on file (formerly tutor in training).~~

~~(3) Documented supervision by an emotional disturbance special education teacher.~~

e. As an elementary licensed grades one through eight or grades one through six teacher with a special education endorsement in emotional disturbance, the teacher would be qualified to:

(1) Teach in an elementary classroom;

(2) Teach or provide direct instruction to all ~~emotional disturbance~~ elementary students with emotional disturbance;

(3) Teach or provide direct instruction to middle or high school ~~emotional disturbance~~ students with emotional disturbance who are alternately assessed; or

(4) Consult kindergarten through grade twelve ~~emotional disturbance~~ students with emotional disturbance.

f. As a middle level licensed grades five through eight teacher in English, science, mathematics, or social studies with a special

education endorsement in emotional disturbance, the teacher would be qualified to:

(1) Teach in a middle level classroom in the specific area of licensure;

(2) Teach or provide direct instruction to ~~emotional disturbance~~ middle level students with emotional disturbance in the specific area of licensure;

(3) Teach or provide direct instruction to elementary, middle, or high school ~~emotional disturbance~~ students ~~that~~ with emotional disturbance who are alternately assessed; or

(4) Consult kindergarten through grade twelve ~~emotional disturbance~~ students with emotional disturbance.

g. As a secondary licensed grades seven through twelve or grades nine through twelve teacher in one of the No Child Left Behind Act of 2001 core subjects of English and language arts, mathematics, science, or social studies with a special education endorsement in emotional disturbance, the teacher would be qualified to:

(1) Teach in a secondary level classroom in the specific area of licensure;

(2) Teach or provide direct instruction to ~~emotional disturbance~~ secondary level students with emotional disturbance in the specific area of licensure;

(3) Teach or provide direct instruction in the specific area of licensure to middle or high school ~~emotional disturbance~~ students with emotional disturbance who are alternately assessed; or

(4) Consult kindergarten through grade twelve ~~emotional disturbance~~ students with emotional disturbance.

3. **Mental retardation special education endorsement.** The applicant wishing to apply for the mental retardation special education endorsement must:

a. Hold a valid North Dakota educator's professional regular license in early childhood, elementary, middle, or secondary education.

b. Complete a minimum of twenty semester hours at the undergraduate or graduate level in the following core coursework: exceptional children and youth, ~~mental hygiene or psychology of adjustment or personality theory or abnormal psychology,~~

~~methods and materials in mental retardation, practicum in mental retardation, characteristics or assessment of specific learning disabilities, transition to adult life, and music or art methods, corrective reading, behavior management, or consultation and collaboration~~ assessment of students with disabilities, behavior management of students with disabilities, legal aspects of special education, and consultation and collaboration. Coursework specific to mental retardation must also be completed, including characteristics and introduction of mental retardation, methods and materials of mental retardation, transition, mental hygiene or psychology of adjustment or personality theory or abnormal psychology, and corrective reading. A two semester hour practicum or internship in mental retardation must also be completed. Secondary prepared teachers must also complete methods in elementary reading and elementary mathematics.

c. A plan on file (formerly tutor in training) for the mental retardation special education endorsement may be requested by the administrator and must be completed within three years of assignment to teach mentally handicapped special education. The plan on file request must include a letter requesting the endorsement from the administrator, identification of the special education mentor, transcripted documentation of three semester hours of completed coursework in special education, and documentation of enrollment in an institution of higher education in two additional courses specific to the mental retardation regardless of how many hours already transcripted in special education. Transcript review will be done yearly to document progress toward completion of the plan. The applicant shall file a plan with the education standards and practices board upon becoming employed as a mental retardation special education teacher, outlining how the endorsement will be completed within the three-year period. ~~To qualify for the mental retardation plan on file, the applicant must have:~~

~~(1) Documented two years of successful teaching in general education with a letter from the administrator.~~

~~(2) Have completed eight semester hours of coursework in the area of the mental retardation special education endorsement as outlined in subdivision b to be eligible for the plan on file (formerly tutor in training).~~

~~(3) Documented supervision by a mental retardation special education teacher.~~

d. Elementary licensed grades one through eight or grades one through six teacher with a special education endorsement in mental retardation, the teacher would be qualified to:

(1) Teach in an elementary classroom.

(2) Teach or provide direct instruction to all ~~mental retardation~~ elementary students with mental retardation (developmental or cognitive disabilities).

(3) Teach or provide direct instruction to middle or high school ~~mental retardation~~ students with mental retardation (developmental or cognitive disabilities) who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~mental retardation~~ students with mental retardation (developmental or cognitive disabilities).

e. Middle level licensed grades five through eight in English, science, mathematics, or social studies with a special education endorsement in mental retardation, the teacher would be qualified to:

(1) Teach in a middle level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to ~~mental retardation~~ middle level students with mental retardation (developmental or cognitive disabilities) in the specific area of licensure.

(3) Teach or provide direct instruction to middle school or high school ~~mental retardation~~ students with mental retardation (developmental or cognitive disabilities) who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~mental retardation~~ students with mental retardation (developmental or cognitive disabilities).

f. Secondary licensed grades seven through twelve or grades nine through twelve in one of the No Child Left Behind Act of 2001 core subjects of English or language arts, mathematics, science, or social studies with a special education endorsement in mental retardation, the teacher would be qualified to:

(1) Teach in a secondary level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to ~~mental retardation~~ secondary level students with mental retardation (developmental or cognitive disabilities) in the specific area of licensure.

(3) Teach or provide direct instruction in the specific area of licensure to middle school or high school ~~mental retardation~~ students with mental retardation (developmental or cognitive disabilities) who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~mental retardation~~ students with mental retardation (developmental or cognitive disabilities).

4. **Specific learning disabilities special education endorsement.** The applicant wishing to apply for the learning disabilities special education endorsement must:

a. Hold a valid North Dakota educator's professional regular license in early childhood, elementary, middle, or secondary education.

b. Complete a minimum of twenty-four semester hours primarily at the graduate level in the following core coursework: exceptional children and youth, ~~characteristics of specific learning disabilities, assessment and interpretation of children with disabilities, methods and materials in specific learning disabilities, developmental psychology or language development and disorders, behavior management, corrective reading, and practicum working with children with specific learning disabilities~~ assessment of students with disabilities, behavior management of students with disabilities, legal aspects of special education, and consultation and collaboration. Coursework specific to specific learning disabilities must also be completed, including characteristics and introduction of specific learning disabilities, methods and materials of specific learning disabilities, transition, inclusive settings, corrective reading methods, and assistive technology. A two semester hour practicum or internship in specific learning disabilities must also be completed. Secondary prepared teachers must also complete methods in elementary reading and elementary mathematics.

c. Have completed coursework in reading methods and mathematics methods, if prepared as a secondary teacher.

d. A plan on file (formerly tutor in training) for the specific learning disabilities special education endorsement may be requested by a letter from the administrator and must be completed within three years of assignment to teach specific learning disabilities special education. The plan on file request must include a letter requesting the endorsement from the administrator, identification of the special education mentor, transcripted documentation of three semester hours of completed coursework in special education, and documentation of enrollment in an institution of higher education in two additional courses specific to the specific learning disabilities regardless of how many hours already transcripted in special

education. Transcript review will be done yearly to document progress toward completion of the plan. The applicant shall file a plan with the education standards and practices board upon becoming employed as a specific learning disabilities special education teacher, outlining how the endorsement will be completed within the three-year period. ~~To qualify for the specific learning disabilities plan on file, the applicant must have:~~

~~(1) Documented two years of successful teaching in general education with a letter from the administrator.~~

~~(2) Have completed eight semester hours of coursework in the area of the specific learning disabilities special education endorsement as outlined in subdivision b to be eligible for the plan on file (formerly tutor in training).~~

~~(3) Documented supervision by a specific learning disabilities special education teacher.~~

e. Elementary licensed grades one through eight or grades one through six teacher with a special education endorsement in specific learning disabilities, the teacher would be qualified to:

(1) Teach in an elementary classroom.

(2) Teach or provide direct instruction to all ~~specific learning disabilities~~ elementary students with specific learning disabilities.

(3) Teach or provide direct instruction to middle or high school ~~specific learning disabilities~~ students ~~that~~ with specific learning disabilities who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~specific learning disabilities~~ students with specific learning disabilities.

f. Middle level licensed grades five through eight teacher in English, science, mathematics, or social studies with a special education endorsement in specific learning disabilities, the teacher would be qualified to:

(1) Teach in a middle level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to ~~specific learning disabilities~~ middle level students with specific learning disabilities in the specific area of licensure.

(3) Teach or provide direct instruction to elementary, middle, or high school ~~specific learning disabilities~~ students ~~that~~ with specific learning disabilities who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~specific learning disabilities~~ students with specific learning disabilities.

g. Secondary licensed grades seven through twelve or grades nine through twelve teacher in one of the No Child Left Behind Act of 2001 core subjects of English or language arts, mathematics, science, or social studies with a special education endorsement in specific learning disabilities:

(1) Teach in a secondary level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to ~~specific learning disabilities~~ secondary level students with specific learning disabilities in the specific area of licensure.

(3) Teach or provide direct instruction in the specific area of licensure to middle or high school ~~specific learning disabilities~~ students ~~that~~ with specific learning disabilities who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~specific learning disabilities~~ students with specific learning disabilities.

5. **Special education strategist endorsement.** The applicant wishing to apply for the special education strategist endorsement must:

a. Hold a valid North Dakota educator's professional regular license in early childhood, elementary, middle, or secondary education.

b. Complete a minimum of thirty semester hours primarily at the graduate level in the following core coursework: exceptional children and youth~~; transition to adult life; assessment, program planning, and special needs students; introduction to learning and behavior problems; practicum in school problems; or special education; inclusive methods; behavior management for special needs students; collaborative relationships; special education law; assistive technology; and advanced assessment~~, assessment of students with disabilities, behavior management of students with disabilities, legal aspects of special education, and consultation and collaboration. Coursework specific to special education strategist must also be completed, including characteristics and introduction of specific learning disabilities, mental retardation, and emotional disturbance; methods and materials of mental retardation, specific learning disabilities, and

emotional disturbance; transition, inclusive settings, corrective reading methods, and assistive technology. Separate practicum or internship in each of specific learning disabilities, mental retardation, and emotional disturbance must also be completed. Secondary prepared teachers must also complete methods in elementary reading and elementary mathematics.

~~Each candidate for an endorsement must also fulfill each of the following areas within the thirty semester hours in this subdivision:~~

~~(1) Specific learning disabilities - advanced methods of specific learning disabilities and practicum of specific learning disabilities, which must be taken after other qualifications are completed.~~

~~(2) Emotional disturbance - advanced methods of emotional disturbance and practicum of emotional disturbance, which must be taken after other qualifications are completed.~~

~~(3) Mental retardation - advanced methods of mental retardation and practicum of mental retardation, which must be taken after other qualifications are completed.~~

c. Have completed coursework in reading methods and mathematics methods, if prepared as a secondary teacher.

d. A plan on file (formerly tutor in training) for the special education strategist endorsement may be requested by the administrator and must be completed within three years of assignment to teach. The plan on file request must include a letter requesting the endorsement from the administrator, identification of the special education mentor, transcripted documentation of three semester hours of completed coursework in special education, and documentation of enrollment in an institution of higher education in two additional courses specific to the education strategist regardless of how many hours already transcripted in special education. Transcript review will be done yearly to document progress toward completion of the plan. The applicant shall file a plan with the education standards and practices board upon becoming employed as a special education strategist teacher, outlining how the endorsement will be completed within the three-year period. ~~To qualify for the strategist plan on file, the applicant must have:~~

~~(1) Documented two years of successful teaching in general education with a letter from the administrator.~~

~~(2) Have completed eight semester hours of coursework in the area of the special education strategist endorsement as~~

~~outlined in subdivision b to be eligible for the plan on file (formerly tutor in training).~~

~~(3) Documented supervision by a special education strategist teacher.~~

e. Elementary licensed grades one through eight or grades one through six teacher with a special education strategist endorsement in mental retardation, specific learning disabilities, and emotional disturbance:

(1) Teach in an elementary classroom.

(2) Teach or provide direct instruction to all ~~mental retardation, emotional disturbance, or specific learning disabilities~~ elementary students with mental retardation (developmental or cognitive disabilities), emotional disturbance, or specific learning disabilities.

(3) Teach or provide direct instruction to middle or high school ~~mental retardation, emotional disturbance, or specific learning disabilities~~ students ~~that~~ with mental retardation (developmental or cognitive disabilities), emotional disturbance, or specific learning disabilities who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~mental retardation, emotional disturbance, or specific learning disabilities~~ students with mental retardation (developmental or cognitive disabilities), emotional disturbance, or specific learning disabilities.

f. Middle level licensed grades five through eight teacher with a special education strategist endorsement in mental retardation, specific learning disabilities, and emotional disturbance:

(1) Teach in an elementary or a middle level classroom.

(2) Teach or provide direct instruction to all ~~mental retardation, emotional disturbance, or specific learning disabilities~~ elementary or middle level students with mental retardation (developmental or cognitive disabilities), emotional disturbance, or specific learning disabilities.

(3) Teach or provide direct instruction to elementary, middle, or high school ~~mental retardation, emotional disturbance, or specific learning disabilities~~ students with mental retardation (developmental or cognitive disabilities),

emotional disturbance, or specific learning disabilities who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~mental retardation, emotional disturbance, or specific learning disabilities~~ students with mental retardation (developmental or cognitive disabilities), emotional disturbance, or specific learning disabilities.

g. Secondary licensed grades seven through twelve or grades nine through twelve teacher in one of the No Child Left Behind Act of 2001 core subjects of English or language arts, mathematics, science, or social studies with a special education strategist endorsement in mental retardation, specific learning disabilities, and emotional disturbance:

(1) Teach in a secondary level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to all ~~mental retardation, emotional disturbance, or specific learning disabilities~~ elementary students with mental retardation (developmental or cognitive disabilities), emotional disturbance, or specific learning disabilities.

(3) Teach or provide direct instruction in the specific area of licensure to middle or high school ~~mental retardation, emotional disturbance, or specific learning disabilities~~ students with mental retardation (developmental or cognitive disabilities), emotional disturbance, or specific learning disabilities who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~mental retardation, emotional disturbance, or specific learning disabilities~~ students with mental retardation (developmental or cognitive disabilities), emotional disturbance, or specific learning disabilities.

6. **Gifted and talented endorsement.**

a. The applicant wishing to apply for the gifted and talented endorsement must:

(1) Hold a valid North Dakota educator's professional regular license in early childhood, elementary, middle, or secondary education.

(2) Document one year of successful teaching in general education with a letter from the employing board.

(3) Complete a minimum of ~~nine~~ seventeen semester hours at the graduate level in the following coursework: children with exceptional learning needs, assessment, consultation and collaboration, characteristics and introduction of education of gifted students, methods and materials of gifted education ~~curriculum~~, and ~~student teaching~~ two semester hours in gifted education practicum or internship.

(4) A plan on file (formerly tutor in training) for the gifted and talented endorsement may be requested by the administrator and must be completed within three years of assignment to teach. The plan on file request must include a letter requesting the endorsement from the administrator, identification of the special education mentor, transcripted documentation of three semester hours of completed coursework in special education, and documentation of enrollment in an institution of higher education in two additional courses specific to the gifted and talented endorsement regardless of how many hours already transcripted in special education. Transcript review will be done yearly to document progress toward completion of the plan. The applicant shall file a plan with the education standards and practices board upon becoming employed as a special education gifted and talented teacher, outlining how the endorsement will be completed within the three-year period.

b. Elementary, middle, or secondary prepared teacher with an endorsement in gifted and talented education:

(1) Teach in the specific area of licensure.

(2) Consult in gifted and talented programs kindergarten through grade twelve.

7. **Physical disabilities special education endorsement.**

a. The applicant wishing to apply for the physical disabilities special education endorsement must:

(1) Hold a valid, North Dakota educator's professional regular physical education license.

(2) Complete a minimum of fifteen semester hours at the undergraduate or graduate level in the following coursework: exceptional children and youth, introduction to physical disabilities or orthopedics for teachers, methods and materials in teaching students with physical disabilities, at

least one full course in another area of exceptionality, and student teaching in the area of physical disabilities.

b. Elementary, middle, or secondary prepared teacher with a special education endorsement in physically handicapped:

(1) Teach in the specific area of licensure.

(2) Consult in physically handicapped kindergarten through grade twelve programs.

8. **Visually impaired special education endorsement.**

a. The applicant wishing to apply for the visually impaired special education endorsement must:

(1) Hold a valid North Dakota educator's professional regular license in early childhood, elementary, middle, or secondary education.

(2) Complete a minimum of ~~twenty~~ twenty-two semester hours at the undergraduate or graduate level in the following core coursework: ~~education of the exceptional student, method in the education of the visually impaired, introduction to orientation and mobility of the visually impaired, communication with visually impaired students, educational and medical implications of visual impairment, student teaching of the visually impaired, and education of the exceptional student or a composite of courses related to exceptionalities other than visual handicaps~~ exceptional children and youth, assessment of students with disabilities, behavior management of students with disabilities, legal aspects of special education, and consultation and collaboration. Coursework specific to visual impairment disabilities must also be completed, including characteristics and introduction of visual impairment disabilities, methods and materials of visual impairment disabilities, assessment of students with visual impairment, orientation and mobility, communication and media with students with visual impairment, and Braille instruction. A two semester hour practicum or internship must also be completed.

(3) A plan on file (formerly tutor in training) for the visually impaired endorsement may be requested by the administrator and must be completed within three years of assignment to teach. The plan on file request must include a letter requesting the endorsement from the administrator, identification of the special education mentor, transcripted documentation of three semester

hours of completed coursework in special education, and documentation of enrollment in an institution of higher education in two additional courses specific to the visual impairment endorsement regardless of how many hours already transcripted in special education. Transcript review will be done yearly to document progress toward completion of the plan. The applicant shall file a plan with the education standards and practices board upon becoming employed as a special education teacher, outlining how the endorsement will be completed within the three-year period.

b. Elementary licensed with a double major in elementary education and visually impaired or elementary licensed grades one through eight or grades one through six teacher with a special education endorsement in visually impaired:

(1) Teach in an elementary classroom.

(2) Teach or provide direct instruction to all ~~visually impaired~~ elementary students with visual impairment.

(3) Teach or provide direct instruction to middle or high school ~~visually impaired~~ students ~~that~~ with visual impairment who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~visually impaired~~ students with visual impairment.

c. Middle level licensed grades five through eight in English, science, mathematics, or social studies teacher with a special education endorsement in visually impaired:

(1) Teach in a middle level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to ~~visually impaired~~ middle level students with visual impairment in the specific area of licensure.

(3) Teach or provide direct instruction to elementary, middle, or high school ~~visually impaired~~ students with visual impairment who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~visually impaired~~ students with visual impairment.

d. Secondary licensed grades seven through twelve or grades nine through twelve in one of the No Child Left Behind Act of 2001 core subjects of English or language arts, mathematics, science,

or social studies with a special education endorsement in visually impaired:

(1) Teach in a secondary level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to ~~visually impaired~~ secondary level students with visual impairment in the specific area of licensure.

(3) Teach or provide direct instruction in the specific area of licensure to middle or high school ~~visually impaired~~ students with visual impairment who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~visually impaired~~ students with visual impairment.

9. **Hearing-impaired (including deafness) special education endorsement.**

a. The applicant wishing to apply for the hearing-impaired (including deafness) special education endorsement must:

(1) Hold a valid North Dakota educator's professional regular license in early childhood, elementary, middle, or secondary education.

(2) Complete a minimum of ~~twenty~~ twenty-eight semester hours at the undergraduate or graduate level in the following core coursework: ~~theory and methods of teaching speech to children who are hearing-impaired (including deafness) (four semester hours); theory and methods of teaching language to children who are hearing-impaired (including deafness) (four semester hours); methods of teaching reading and academic subjects to children who are hearing-impaired (including deafness) (four semester hours); sign language (two semester hours); history, guidance, and education of the hearing-impaired (including deafness) (two semester hours); auditory and speech mechanisms (two semester hours); auditory assessment and training (two semester hours); observation and student teaching (eight semester hours); child growth and development (two semester hours); and psychology or education of exceptional children (two semester hours)~~ exceptional children and youth, assessment of students with disabilities, behavior management of students with disabilities, legal aspects of special education, and consultation and collaboration. Coursework specific to deaf or hard of hearing must also be completed, including assessment of students with deaf and hard of hearing,

transition, methods of teaching speech to deaf and hard of hearing children, methods of teaching language to deaf and hard of hearing children, methods of teaching reading and academic subject to deaf and hard of hearing children, characteristics of students with deaf and hard of hearing, audiology and oral rehabilitation, sign language. A two semester hour practicum or internship with children from birth to twenty-one must be completed.

(3) The hearing-impaired (including deafness) special education endorsement may be attached to a regular education license.

(4) A plan on file (formerly tutor in training) for the deaf or hard of hearing endorsement may be requested by the administrator and must be completed within three years of assignment to teach. The plan on file request must include a letter requesting the endorsement from the administrator, identification of the special education mentor, transcripted documentation of three semester hours of completed coursework in special education, and documentation of enrollment in an institution of higher education in two additional courses specific to the deaf and hard of hearing endorsement regardless of how many hours already transcripted in special education. Transcript review will be done yearly to document progress toward completion of the plan. The applicant shall file a plan with the education standards and practices board upon becoming employed as a special education deaf or hard of hearing teacher, outlining how the endorsement will be completed within the three-year period.

b. Elementary licensed with a double major in elementary education and hearing-impaired or elementary licensed grades one through eight or grades one through six teacher with a special education endorsement in hearing-impaired:

(1) Teach in an elementary classroom.

(2) Teach or provide direct instruction to all ~~hearing-impaired~~ elementary students with hearing impairment.

(3) Teach or provide direct instruction to middle or high school ~~hearing-impaired~~ students with hearing impairment who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~hearing-impaired~~ students with hearing impairment.

c. Middle level licensed grades five through eight in English, science, mathematics, or social studies teacher with a special education endorsement in hearing-impaired:

(1) Teach in a middle level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to ~~hearing-impaired~~ middle level students with hearing impairment in the specific area of licensure.

(3) Teach or provide direct instruction to elementary, middle, or high school ~~hearing-impaired~~ students with hearing impairment who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~hearing-impaired~~ students with hearing impairment.

d. Secondary licensed grades seven through twelve or grades nine through twelve in one of the No Child Left Behind Act of 2001 core subjects of English or language arts, mathematics, science, or social studies teacher with a special education endorsement in hearing-impaired:

(1) Teach in a secondary level classroom in the specific area of licensure.

(2) Teach or provide direct instruction to ~~hearing-impaired~~ secondary level students with hearing impairment in the specific area of licensure.

(3) Teach or provide direct instruction in the specific area of licensure to middle or high school ~~hearing-impaired~~ students with hearing impairment who are alternately assessed.

(4) Consult kindergarten through grade twelve ~~hearing-impaired~~ students with hearing impairment.

10. **Resource room endorsement plan on file.**

a. The applicant wishing to apply for the resource room special education endorsement must:

(1) Hold a valid North Dakota educator's professional regular license in elementary, middle, or secondary education.

(2) Hold a special education endorsement in either specific learning disabilities or mental retardation.

(3) Submit a letter from the administrator requesting the resource room endorsement plan on file.

(4) Submit a plan to complete the following required coursework within three years of assignment in the resource room:

(a) A teacher with the mental retardation endorsement would need to complete three additional courses in education of children with specific learning disabilities: assessment for special education and methods and materials for specific learning disabilities.

(b) A teacher with the specific learning disabilities endorsement would need to complete two additional courses in introduction to mental retardation and methods and materials for mental retardation.

b. The resource room teacher should not have more than six students in the special classroom at any one time and must have time for consultation with general education teachers. If a greater number of students from one area of exceptionality than the other are enrolled, the teacher should hold the endorsement in the largest area of exceptionality.

11. **Restricted emotional disturbance or restricted specific learning disabilities special education endorsement one-year plan on file.**

a. The applicant wishing to apply for the restricted emotional disturbance or restricted specific learning disabilities special education endorsement must:

(1) Hold a valid restricted North Dakota educator's professional regular license in either specific learning disabilities or emotional disturbance.

(2) Submit a request for the restricted emotional disturbance or restricted specific learning disabilities from the local administrator.

(3) Document a plan to complete within one year the two additional graduate level courses in either emotional disturbance or specific learning disabilities, whichever is applicable to the applicant's transcripted undergraduate major. Courses must be a minimum of two graduate semester hours each in one seminar course and one practicum course in the appropriate area of special education (emotional disturbance or specific learning disabilities).

(4) The restricted emotional disturbance or restricted specific learning disabilities will only be issued once.

b. Reeducation for the special education endorsement must be completed prior to assignment to teach in the special education area. An official transcript documenting the coursework must be attached to the endorsement form. Effective July 1, 2009, all applicants for a special education endorsement must complete the praxis II test in the special education areas meeting or exceeding the cut scores set by the education standards and practices board.

History: Effective July 1, 2008; amended effective July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

CHAPTER 67.1-02-04

67.1-02-04-01. Alternative access licenses for teacher shortages. Alternative access licenses will be issued under the following conditions:

1. Consideration for alternative access licenses will not be granted until after August first in any year.

2. Alternative access licenses may be issued only in areas where documented shortages of regularly licensed teachers exist as determined by the education standards and practices board. Shortage areas must be determined by the education standards and practices board based upon the ratio of regularly licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting alternative access licensure. In cases where near shortages exist, the board must give additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly licensed teachers.

3. The request for an alternative access license must be initiated by a school. The school board or administration must make the request in writing to the education standards and practices board for consideration of an alternative access license, indicating intent to offer a contract if licensure can be arranged. The request must document that a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means.

4. The candidate must write a letter indicating willingness to accept the position if offered <u>and complete all of the application requirements and fees prior to receiving the alternative access license</u>.

5. Complete official transcripts of all college work must be sent to the education standards and practices board.

6. The applicant must have proficiency and hold minimum qualifications of a content area bachelor's degree in the content area to be assigned. If an applicant already qualifies for teacher licensure in another content area, alternative access licensure may not be used to teach in a new content area while obtaining new content area requirements.

7. Renewal of alternative access licenses will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced

by documented efforts to obtain a licensed person for the position. The alternate access license will be issued only once to complete all testing requirements for regular licensure.

8. Renewal of the alternative access license, if permitted, is contingent upon presentation of at least one-third completion of the requirements for regular licensure as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.

9. The fee for the alternative access license is one hundred fifty dollars for each year the license is issued.

10. Alternative access licensure is to address documented shortage areas only. Alternative access licensure may not be issued to applicants who have failed to meet the deadlines or conditions of their regular licensure renewal.

11. Initial applicants for alternative access licensure must also submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02.

12. Upon completion of all of the requirements for regular licensure stated in section 67.1-02-02-02, an individual holding an alternative access license may apply for a regular two-year initial license and begin accruing the eighteen months of successful teaching time required to move into the five-year cycle according to sections 67.1-02-02-02 and 67.1-02-02-04.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-04-02. Interim licenses for substitute teachers. Interim licensure may be granted for substitute teachers who meet the initial requirements as outlined in subsections 1 through 6 and subsection 10 of section 67.1-02-04-01 when a shortage of regularly licensed substitutes exists. The applicant must complete all of the application requirements and fees prior to receiving the interim substitute license. The interim license fee for substitute teachers is forty dollars for one year. Renewal is contingent upon continued request from the school employing the substitute. Individuals who hold an interim substitute licensure and wish to accept a full-time or part-time contract must do so under the reentry requirements in sections 67.1-02-02-04 and 67.1-02-02-09, including reeducation

hours. The interim license is valid for a minimum of one year and will expire on the applicant's birthdate.

History: Effective October 16, 1998-April 14, 1999; amended effective June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-10, 15.1-13-11

67.1-02-04-03. Interim school counselor. School counselor monitoring under the seven-year option provided in North Dakota Century Code section 15.1-13-23, which took effect August 1, 1997, will be conducted as follows:

1. An applicant wishing to apply under the seven-year option provided in North Dakota Century Code section 15.1-13-23 must first contact the guidance and counseling office at the department of public instruction to confirm that the counseling degree the applicant currently holds is eligible. The department of public instruction counseling office will forward a letter confirming its decision to the education standards and practices board.

2. Eligible counselors entering through the seven-year program must complete all of the application requirements, fee, and be fingerprinted at the beginning of the process and clear the background check under section 67.1-02-02-02 in the same manner as other initial licensure applicants.

3. An applicant must show documentation that the applicant has been formally admitted both:

   a. To a college or university with a state-approved teacher education program; and

   b. To the approved teacher education program at that institution.

4. Once formally admitted, an applicant must file with the education standards and practices board:

   a. The applicant's approved teacher education program plan; and

   b. A timeline showing how the applicant will complete at least one-seventh of that program each year.

5. A counselor entering through the seven-year option must complete the requirements within seven years of the counselor's first entrance into the program. A counselor in this program must submit an annual progress report to the education standards and practices board with transcripts verifying that the counselor has completed the agreed-upon one-seventh of the program requirements.

6. An applicant entering under the seven-year program must receive a letter of approval granting the applicant permission for employment while working toward full licensure and must make a satisfactory annual progress report to the education standards and practices board.

7. An applicant cannot be employed or permitted to perform the duties of a licensed school counselor until the education standards and practices board formally approves the applicant's program and timeline and issues the letter.

8. Individuals performing the duties of a school counselor under an education standards and practices board letter of approval must be under the supervision of a licensed teacher since they do not yet hold a regular teaching license.

History: Effective March 1, 2000; amended effective August 1, 2002; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10, 15.1-13-23
Law Implemented: NDCC 15.1-13-10, 15.1-13-14, 15.1-13-23

67.1-02-04-04. Forty-day provisional licenses. Provisional licenses will be issued for a period of forty days under the following conditions:

1. Consideration for provisional licenses will not be granted until after August fifteenth in any year.

2. Provisional licenses can only be issued to those individuals who have met all of the other requirements for a license except:

   a. For the final clearance of the bureau of criminal investigation and the federal bureau of investigation;

   b. Pending the receipt of official transcripts or other original, signed, or certified documents; or

   c. The awarding of the degree and the official transcripts as documented by the institution of higher education registrar.

3. The school wishing to hire the individual has submitted to the education standards and practices board a letter of need and intent to hire.

4. The individual has submitted the completed application packet and a letter to the education standards and practices board indicating no criminal background and the intent to accept the position.

5. The provisional license is issued for forty days but may be renewed at the discretion of the education standards and practices board and continued request of the school.

6. There is a one-time fee for the provisional license of twenty-five dollars.

7. Once the criminal background investigation has been completed and all official transcripts or other original, signed, or certified documents received, the education standards and practices board may issue the license for which the individual is qualified with its respective fees and conditions.

History: Effective March 1, 2000; amended effective July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-13, 15.1-13-14

67.1-02-04-05. Out-of-state reciprocal licensure. North Dakota has conditional reciprocity with other states. To receive out-of-state reciprocal licensure, an applicant must first hold a valid, current regular teaching certificate or license from another state, province, or similar jurisdiction or have completed a state-approved teacher education program and submit a completed application packet.

1. **Out-of-state reciprocal entrance requirements.** Those who apply to the education standards and practices board, meet the minimum reciprocity requirements, and submit a satisfactory plan for completing the remaining North Dakota requirements will be issued a two-year out-of-state reciprocal license which has a fee of seventy dollars. The minimum reciprocity qualifications are:

   a. A four-year bachelor's degree that includes a major that meets the issuing jurisdiction's requirements in elementary education, middle level education, or a content area taught in public high school;

   b. Completion of a professional education sequence from a state-approved teacher education program, including supervised student teaching;

   c. Fingerprint background check as required of all initial applicants; and

   d. Submission and education standards and practices board approval of a plan to complete all remaining requirements for full North Dakota licensure as stated in section 67.1-02-02-02. That plan will include the successful completion of the praxis II content test in the transcripted major area of early childhood, elementary, middle level, or the core academic areas. The praxis II test must be completed within the first two-year license period.

2. **Remaining North Dakota requirements.** An applicant will be notified of remaining requirements for full North Dakota licensure by the education standards and practices board. All out-of-state applicants shall submit transcripts for review by the same criteria as North Dakota applicants. The applicant must provide official copies of transcripts

from all the institutions of higher education the applicant has attended. The nonrefundable fee for the transcript review process is one hundred seventy-five dollars.

a. The transcript review fee may be deferred for the two-year substitute license. The fee is due upon application for the initial license and signing a North Dakota teaching contract.

b. The school district where the applicant will be a substitute must apply in writing for the deferment.

3. **Renewals.** The out-of-state reciprocal license is valid for two years and is renewable once, provided adequate progress toward completing the remaining requirements is documented and approved by the education standards and practices board. The interim reciprocal license will expire on the applicant's birthdate.

History: Effective March 1, 2000; amended effective August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14, 15.1-13-20, 15.1-13-21

CHAPTER 67.1-02-05

67.1-02-05-04. Endorsements, added degrees, and restrictions. The North Dakota educator's professional license is issued as described in section 67.1-02-02-02. This license qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. Degrees and endorsements in content areas of elementary, middle level, or secondary schools, educational pedagogy, or educational leadership must be obtained through regional or state-approved teacher education programs and meet North Dakota program approval standards for the content area.

1. **Endorsements.** An individual holding a valid North Dakota teaching license may request endorsements in early childhood, kindergarten, elementary, middle school, bilingual, secondary, or content area minor equivalency endorsements or any other endorsement issued by the education standards and practices board. Specific requirements appear in chapter 67.1-02-03, regarding reeducation. A one-time, nonrefundable review fee of seventy-five dollars must accompany the request to add an endorsement.

2. **New degrees.** A newly acquired major, minor, or new degree may be added between renewal periods by submitting official transcripts, a complete application form, including part six, completed by the college or university, and paying the regular renewal fee for those renewing two-year licenses or five-year licenses. An additional two-year or five-year extension, respectively, is added to the license expiration date at the time of the addition of the new major, minor, or degree.

3. **Added qualifications on life certificates.** An individual who holds a life certificate under section 67.1-02-02-01 may add degrees or endorsements to the education standards and practices board licensure records by submitting official transcripts and paying the review fee pursuant to subsection 2. An official duplicate of the life certificate showing the added degree will be issued to the life certificate holder at the time of the addition.

   Official duplicate copies of lost life certificates or renewable licenses will be provided at a cost to the holder of twenty dollars.

4. **Restricted licenses.** Programs that include a specialized rather than a regular professional education core are issued <u>initial two-year</u> licenses that restrict the holder to teaching in that specialty area. Applicants must submit the completed application form, original transcripts, fees, and fingerprint cards to the education standards and practices board prior to licensure.

   a. Restricted licenses are issued to applicants with master's degrees in:

(1) School psychology. The prekindergarten through grade twelve school psychology restricted license will be issued to those applicants who have:

(a) Obtained a master's degree in school psychology from a national association of school psychology-accredited institution; or

(b) Achieved the national certification of school psychologist certification. To qualify for the national certification of school psychologist license, the candidate must have successfully met the standards for training and field placement programs in school psychology, standards for the credentialing of school psychologist, standards for the provision of school psychological services, and principles of professional ethics.

(2) Speech-language pathology. The prekindergarten through grade twelve speech-language pathology restricted license will be issued to those applicants who have a master's degree in speech-language pathology or communication disorders, one hundred hours of school-based practicum, and have graduated from a program accredited by the council on academic accreditation of the American speech and hearing association. Applications for renewal of the bachelor level speech-language pathology license will be denied after July 1, 2010.

(3) School counseling. The prekindergarten through grade twelve professional school counseling restricted license will be issued to those applicants who have professional education coursework in educational psychology; instructional planning, methods, and assessment; classroom management; and school-based field experience or practicum and completed one of the following master's programs from a state-approved counselor education program:

(a) Master's degree in school counseling;

(b) Master's degree in counseling with emphasis in school counseling;

(c) Master's degree and graduate coursework equivalent to a master's degree in school counseling; or

(d) Master's degree in counseling and a program of study from an approved school counselor education program

to complete the coursework requirements for the equivalent of a master's degree in school counseling, educational coursework in educational psychology, instructional planning, methods, and assessment, classroom management, and the school-based field experience or practicum within four years. Two 2-year licenses will be issued to those applicants while the requirements are being completed.

b. Restricted licenses are issued to applicants with baccalaureate degrees in the following areas who do not also meet qualifications for regular early childhood, elementary, middle level, secondary, or kindergarten through grade twelve licenses as stated in section 67.1-02-02-02:

(1) Mental retardation education. The mental retardation prekindergarten through grade twelve restricted license will be issued to those people qualifying for a valid North Dakota teaching license in special education who hold a bachelor of science degree major in mental retardation. The applicant will only provide consultative services.

(2) Hearing-impaired education. The hearing-impaired prekindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree major in education of the deaf with thirty-two hours of hearing-impaired qualifying coursework. The applicant will only provide consultative services.

(3) Visually impaired education. The visually impaired prekindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree with a major in visually impaired and twenty-one through twenty-three semester hours in qualifying visually impaired coursework. The applicant will only provide consultative services.

(4) Early childhood special education. The early childhood special education restricted license birth through grade three will be issued to those applicants who have a baccalaureate degree in early childhood special education. The applicant will only provide consultative services.

(5) All other special education categories require regular elementary or secondary qualifications.

(6) Career and technical education. The trade, industry, technical, and health occupations restricted license will be issued to applicants holding a baccalaureate level degree

in career and technical education if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02, and is restricted to teaching in grades seven through grade twelve.

(7) Reserve officers training corps. The reserve officers training corps license will be issued pursuant to section 67.1-02-05-03.

(8) Native American language instruction. The Native American language restricted license will be issued to those applicants holding a baccalaureate level degree in Native American language if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02.

c. Restricted licenses are issued to those nondegreed applicants in:

(1) Career and technical education. Restricted licenses are issued for trade, industry, technical, and health occupations in accordance with section 67.1-02-04-06 and are restricted to teaching in grades nine through twelve.

(2) North Dakota American Indian language instructors as pursuant to North Dakota Century Code section 15.1-13-22.

d. Teachers with restricted licenses may teach or substitute teach only in the restricted specified area.

5. **National board certification.**

a. Definitions:

(1) "Board" means the education standards and practices board.

(2) "Certification" means national board certification as provided by the national board.

(3) "National board" means the national board for professional teaching standards.

b. Board duties. Based upon receiving state dollars, the board shall:

(1) Inform teachers of the national board certification program and the scholarships and services the national board provides to teachers seeking certification.

(2) Collect and review in the order received scholarship applications from individuals who are licensed to teach by the board or approved to teach by the board.

(3) (a) Approve no more than seventeen state-funded applications per year;

(b) During each year of the biennium, reserve three of the available scholarships until October first for individuals teaching at low-performing schools. At that time, the three slots, if not filled, become available to other applicants;

(c) Require the recipient to serve during the school year as a full-time classroom teacher in a public or nonpublic school; and

(d) Require the recipient to participate in mentoring developed and implemented in the employing school or district.

(4) Ensure that all scholarship recipients receive adequate information regarding level of commitment required to acquire certification.

(5) If any individual who receives a scholarship under this section does not complete the certification process within the time allotted by the board, the individual must reimburse the state an amount equal to one-half of the amount awarded to the individual as a scholarship.

(6) Recertification process. Collect and review in the order received scholarship applications for national board recertification from individuals who are licensed to teach by the board or approved to teach by the board and:

(a) Approve no more than three scholarship applications per year under this subsection;

(b) Require each recipient for a scholarship under this subsection serve during the school year as a full-time classroom teacher in a public or nonpublic school in this state; and

(c) If available, require each recipient to participate for a scholarship under this subsection to participate in mentoring programs developed and implemented in the employing school or school district.

c. The board shall pay to any individual who received national board certification before July 1, 2007, one thousand dollars for each year the individual has maintained and continues to maintain national board certification, provided the individual continues to be employed by a school district in this state. An individual may not receive more than four thousand dollars under this subsection.

d. At the conclusion of each school year after the individual received national board certification, the board shall pay to an individual an additional one thousand state dollars for the life of the national board certificate if:

(1) The individual was employed during the school year as a full-time classroom teacher by a school district in this state.

(2) If available, require the participant for a scholarship under this section to participate in any efforts of the employing school district to develop and implement teacher mentoring programs.

(3) The payment provided for in this subsection is available beginning with the 2007-08 school year.

e. As a prerequisite, the applicant must:

(1) Have acquired a baccalaureate degree from a state-approved or accredited teacher education program;

(2) Hold a valid North Dakota educator's professional license;

(3) Have successfully completed three years of teaching at one or more elementary, middle, or secondary schools in North Dakota; and

(4) Currently be a North Dakota kindergarten through grade twelve public or nonpublic classroom instructor.

f. The applicant may apply:

(1) For the guide to national board certification, which includes the application process by contacting the education standards and practices board; and

(2) For one-half of the application fee by submitting the completed application to the education standards and practices board by December first. Based upon availability of state funds, applications will be accepted and funded on a first-come, first-served basis. One-half of the application fee will be matched with federal dollars.

g. Upon documented successful completion:

(1) The national board for professional teaching standards certification may be added between renewal periods for a fee as pursuant to the five-year renewal fee in section 67.1-02-02-04; and

(2) Additional years equivalent to the number of years left of national certification is also added to the license expiration date at the time of the addition of national board for professional teaching standards certification.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12.1, 15.1-13-22, 15.1-18-02, 15.1-18-03; S.L. 2001, ch. 173, § 16

TITLE 70

REAL ESTATE COMMISSION

JULY 2010

CHAPTER 70-02-01

70-02-01-05. Inactive licenses.

1. A qualified licensed salesperson desiring to place the salesperson's license on an inactive status may do so by having the broker with whom the salesperson is associated surrender the salesperson's license to the commission, with a written request from the salesperson that the salesperson's license be placed on an inactive status. The salesperson may keep the salesperson's license on an inactive status for an indefinite period from the date the license is surrendered. The salesperson placing the salesperson's license on inactive status shall pay the required fee for such salesperson's license each year. A salesperson whose license is in an inactive status shall not engage in any manner in any of the activities described under North Dakota Century Code chapters 43-23 and 43-23.1, until the salesperson shall first request that the salesperson's license be reactivated by the commission. During the time that a salesperson's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.

2. A qualified licensed broker who withdraws from the real estate business entirely and who desires to place the broker's license on an inactive status may do so by surrendering the broker's license to the commission, with a written request that the license be placed on an inactive status. The broker may keep the broker's license on an inactive status for an indefinite period from the date of expiration of the license surrendered. The broker placing the broker's license on inactive status shall pay the required fee for such broker's license each year. During the time that a broker's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.

3. While a license is on inactive status it is not necessary, in the case of a broker, to maintain an active trust account.

4. ~~Applicable education requirements for the reactivation of a license shall consist of eight hours for each year of inactive status, but not to exceed sixteen hours~~ To reactivate an inactive license, a licensee must meet the continuing education hours as required by ~~North Dakota Century Code~~ section ~~43-23-08.2~~ 70-02-04-02 for each continuing education period the licensee's license was inactive, not to exceed the number of hours required for the three continuing education periods prior to reactivation. The requirements of ~~North Dakota Century Code~~ section ~~43-23-08.2~~ 70-02-04-02 must have been fulfilled within the ~~two~~ three years immediately preceding the return to active status.

History: Amended effective May 1, 1986; January 1, 1992; February 1, 2004; July 1, 2010.
General Authority: NDCC 28-32-02, ~~43-23-08(7)~~ 43-23-08(6)
Law Implemented: NDCC 43-23-08, 43-23-08.2

70-02-01-15. Trust account requirements - Handling of funds - Records.

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in an authorized financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.

   a. Definitions. The term "authorized financial institution" means a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation.

   b. Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".

   c. Notification. Each broker shall notify the commission of the name of the institution in which the trust account or accounts are maintained and also the name of the accounts on forms provided therefore. A trust account card shall be filed with the commission by each new applicant for a real estate broker's license. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever including, but not limited to, change of depository, change of account number, change of business name, or change of method of doing business.

The form shall be filed with the commission within ten days after the aforementioned change takes place.

d. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.

e. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds which sum shall be specifically identified and deposited to cover service charges relating to the trust account.

f. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.

g. Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesperson in the trust account within twenty-four hours of receipt of the money by the broker or the salesperson unless otherwise provided in the purchase contract. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository.

h. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.

i. Interest-bearing accounts. All trust accounts must be interest-bearing and the interest earned must be disbursed only as provided by law, unless all persons having an interest in the funds have otherwise agreed in writing and a copy of the agreement is maintained by the broker for inspection by the commission.

2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salespersons.

a. Personal payments. No payments of personal indebtedness of the broker shall be made from the separate account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the separate account.

b. Withdrawals. Money held in the separate account which is due and payable to the broker should be withdrawn promptly.

c. Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a separate written provision, approved by all parties including the broker, for any division of moneys taken in earnest, when the transaction is not consummated and such moneys are retained as forfeiture payment.

3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:

a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.

b. Bank statements. Monthly bank statements are to be retained and kept on file.

c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".

d. Journal. A permanently bound record book called a journal which shows the chronological sequence in which funds are received and disbursed:

(1) For funds received, the journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount.

(2) For disbursements, the journal must include the date, the payee, and the amount.

(3) For interest earned and withdrawn, the journal must include the amount, the date earned or withdrawn, and the payee.

(4) A running balance must be shown after each entry (receipt or disbursement).

e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as between buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates, and the amounts

received. When disbursing funds, the date, payee, and amount must be shown.

f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.

g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from the date of receipt of any such funds or property.

History: Amended effective August 1, 1981; January 1, 1992; April 1, 1992; December 1, 1999; July 1, 2010.
General Authority: NDCC 43-23-14.1, 43-23.4-06(2)
Law Implemented: NDCC 43-23-11.1(1)

70-02-01-21. Responsibilities of designated broker. The designated broker must have a written company policy that identifies and describes the types of real estate agency relationships in which the agency may engage. In addition, any agency that offers representation to both buyers and sellers must also address in the policy manual the agency's procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the agency, the arrangement of agency office space, and the personal relationships of agents who are representing clients with adverse interests.

History: Effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-23-12.1

CHAPTER 70-02-03

70-02-03-17. Designated broker - Appointed agent.

1. ~~**Responsibilities of designated broker.** The designated broker must have a written company policy that identifies and describes the types of real estate agency relationships in which the agency may engage. In addition, any agency that offers representation to both buyers and sellers must also address in the policy manual the agency's procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the agency, the arrangement of agency office space, and the personal relationships of appointed agents who are representing clients with adverse interests.~~

~~2.~~ **Appointed agent procedures and disclosure.**

a. A designated broker appointing a licensee to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.

b. An appointed agent may reveal to the agency's designated broker confidential information of a client for seeking advice or assistance for the benefit of the client about a possible transaction. The designated broker shall treat confidential information as such and may not disclose such information unless otherwise requested or permitted by the client who originally disclosed the confidential information.

~~3.~~ 2. **Appointed agent - Written disclosure.**

a. An appointed agent shall disclose in writing such appointment to the client before entering into a brokerage agreement and shall include, at a minimum, the following provisions:

(1) The name of the appointed agent;

(2) A statement that the appointed agent will be the client's agent and will owe the client fiduciary duties, which among other things, include the obligation not to reveal confidential information obtained from the client to other licensees, except to the designated broker for seeking advice or assistance for the benefit of the client;

(3) A statement that the agency may be representing both the seller and the buyer in connection with the sale or purchase of real estate;

(4) A statement that other licensees may be appointed during the term of the brokerage agreement should the appointed agent

not be able to fulfill the terms of the brokerage agreement or as by agreement between the designated broker and client. An appointment of another agent as a new or additional agent does not relieve the first appointed agent of any of the fiduciary duties owed to the client. At the time of the appointment of the new or additional agents, the designated broker must comply with the provisions of this section; and

(5) A section for the client to consent or not consent, in writing, to the appointment.

~~4.~~ 3. **Appointed agent's duty to the designated broker.** In any appointed agent transaction, the appointed agent shall keep the designated broker fully informed of all activities conducted by the appointed agent during the transaction and shall notify the designated broker of any other activities that might affect the responsibility of the designated broker.

History: Effective April 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-23-12.3

CHAPTER 70-02-04

70-02-04-02. Hours required. To qualify for the renewal of a real estate license, each broker or salesperson must complete ~~sixteen~~ nine hours of continuing education in approved courses ~~before January 1, 2002, and every two years thereafter. A minimum of six of the required sixteen hours of~~ every continuing education ~~must be completed in the first year of each two-year~~ period. The continuing education period is one calendar year. The commission may require that ~~up to six hours of the total completed each two-year period~~ a portion or all of the continuing education hours must be in one or more specific areas. Such areas may include the following:

1. Fair housing and antitrust.
2. Environmental issues.
3. License law and ethics.
4. Agency law and principles.
5. Contracts.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999; July 1, 2010.
General Authority: NDCC ~~43-23-08.2~~ 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-08.2

70-02-04-13. Substantively identical offerings. Courses may not be taken for continuing education more than once during any ~~two-year~~ continuing education period, unless material has been significantly changed, or updated, or both.

History: Effective August 1, 1981; amended effective December 1, 1999; July 1, 2010.
General Authority: NDCC ~~43-23-08.2~~ 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-08.2

70-02-04-15. Exemptions from continuing education requirement. Any salesperson applicant, upon successful completion of the required postlicensing education requirement, evidence of which has been furnished to the commission by the salesperson applicant's broker, is exempt from the continuing education requirement for only the ~~two-year~~ continuing education period during which the salesperson applicant successfully completed the postlicensing education. Any broker applicant, upon successful completion of the real estate licensing examination is exempt from the continuing education requirement for only

the ~~two-year~~ continuing education period during which the broker applicant successfully completed said examination.

History: Effective August 1, 1981; amended effective January 1, 1992; December 1, 1999; January 1, 2006; July 1, 2010.
General Authority: NDCC ~~43-23-08.2~~ 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-08.2

70-02-04-16. Service as a lecturer, discussion leader, or speaker. For those persons who serve as a lecturer, discussion leader, or speaker regarding a real estate continuing education program, the commission will grant one-hour credit for every hour of service as an instructor or speaker. Requests for credit must be accompanied by an outline of the instruction, discussion, or speech. No credit shall be given for the teaching of a course which is the same or substantially the same as one taught for credit within the same ~~two-year~~ continuing education period. The maximum credit given for service as a lecturer, discussion leader, or speaker will not exceed fifty percent of the continuing education requirement for any ~~two-year~~ continuing education period.

History: Effective August 1, 1981; amended effective December 1, 1999; July 1, 2010.
General Authority: NDCC ~~43-23-08.2~~ 28-32-02, 43-23-08(6)
Law Implemented: NDCC 43-23-08.2

TITLE 71

PUBLIC EMPLOYEES RETIREMENT SYSTEM

JULY 2010

CHAPTER 71-01-02

71-01-02-03. Candidate eligibility.

1. Any active ~~employee~~ participating member, members of the defined contribution retirement plan, the highway patrol retirement system, and the job service retirement plan are eligible to serve as an elected member of the board in accordance with subsection 4 of North Dakota Century Code section 54-52-03, may become a candidate for election to the board. A department or political subdivision may not be represented by more than one elected member. Employees who have terminated their employment for whatever reason are not eligible to serve as an active elected member of the board.

2. Any person, as of April fifteenth of the election year, who has accepted a retirement allowance or who is eligible to receive deferred vested retirement benefits, may become a candidate for the retiree member to the board.

History: Effective April 1, 1992; amended effective July 1, 1994; July 1, 2000; April 1, 2008; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52-17(5)
Law Implemented: NDCC 54-52-03

71-01-02-09. Canvassing rules.

1. Ballot counting by election committee members or their authorized representatives will commence at nine a.m. on the third Monday of June and will continue until complete.

2. Each candidate may have one overseer present at the canvassing who may examine each ballot as to its sufficiency after the canvassers have completed the canvassing of all ballots. No overseer may possess a pen, pencil, or other device which could be considered capable of altering a ballot in any manner.

3. A candidate may act as his or her overseer. If a candidate wishes to designate a representative to act as his or her overseer, that candidate must provide a written authorization, duly witnessed, to the election committee at the canvassing. An overseer may act on behalf of more than one candidate; however, each person must show the required authorization from each candidate represented.

4. The overseer may question the decision of the canvassers regarding a ballot after completion of the canvassing. If questioned, the comments of an overseer will be heard. The canvassers will then vote regarding the acceptability of the ballot with the majority vote ruling.

5. A ballot is not valid where the number of votes on the ballot exceeds the number of vacancies in the election. A ballot that does not, in the opinion of a majority of the canvassers, show a clear indication of the voter's intention, may not be counted.

6. If the percentage of votes received by the candidate receiving the highest number of votes is less than one percent more than the votes received by the candidate receiving the next highest number of votes, the board shall order a recount.

7. Tie votes will be determined by a coin toss. If this procedure is necessary, the election committee will establish and notify the tied candidates of the procedure and location for resolving the tie.

8. If the committee should determine that the outcome of the election has been compromised for any reason, the committee may determine the election to be invalid. If the election is determined to be invalid, the committee shall call for a new election with a new election schedule.

History: Effective April 1, 1992; amended effective April 1, 2008; July 1, 2010.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-03

CHAPTER 71-02-01

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:

   a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.

   b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.

   c. The member's mandatory contributions made after July 1, 1977.

   d. The member's vested employer contributions made after January 1, 2000, pursuant to North Dakota Century Code section 54-52-11.1.

   e. The interest on the sums determined under subdivisions a, b, c, and d, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.

   f. The sum of any employee purchase or repurchase payments.

2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board.

3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.

4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.

5. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.

6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.

7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.

8. "Contribution" means the payment into the fund as a percentage of the salary of a member.

9. "Correctional officer" means a person who has completed a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation and is employed by a correctional facility as defined in North Dakota Century Code chapter 12-44.1.

10. "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county judge, county justice, or judge of county court prior to the general election in 1982, who meets all the eligibility requirements established under North Dakota Century Code chapter 54-52.

11. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application in accordance with the Uniformed Services Employment and Reemployment Rights Act.

12. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years, or indefinitely if the leave of absence is due to interruption of employment.

13. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.

14. "Normal retirement age", except for members of the national guard and law enforcement, means age sixty-five ~~except as~~ unless otherwise provided. For members of the national guard and law enforcement, normal retirement age means age fifty-five, unless otherwise provided.

15. "Office" means the administrative office of the public employees retirement system.

16. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system. For confidentiality purposes, "participating employer" means the person or group of persons with the ultimate authority over personnel decisions within the agency or political subdivision with which the member is employed or the person's or group's official designee.

17. "Pay status" means a member is receiving a retirement allowance from the fund.

18. "Permanent and total disability" for members of the main retirement system and the national guard/law enforcement retirement plan means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. For members of the judge's retirement plan, "permanent and total disability" is determined pursuant to subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code.

19. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.

20. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.

21. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.

22. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.

23. "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.

24. "Retirement allowance" means a reoccurring, periodic benefit from an eligible employer-sponsored retirement plan as approved by the board.

25. "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.

26. "Substantial gainful activity" is to be based upon the totality of the circumstances including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.

27. "Termination of employment" means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.

28. "Termination of participation" means termination of eligibility to participate in the retirement plan.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52

71-02-03-02.2. Payment. The total dollar amount for the purchase or repurchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.

2. The installment schedule may extend ~~for as long as~~ while the employee is employed by a participating employer but for no longer than a fifteen-year time period.

3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the member to initiate and terminate the payroll deduction.

4. Payments may only be received until the fifteenth of the month following the month of the member's termination date with a participating employer.

5. Payments are due by the fifteenth of the month to be credited for the month.

6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of principal, and an amount necessary to complete the payment contract within the fifteen-year time period.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010.
General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4
Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.4. Crediting purchased or repurchased service. Service purchased or repurchased will be credited in the following manner:

1. ~~The member's record must be updated with the additional service credit once the account is paid in full.~~ For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.

2. ~~If the member takes a refund, retires, or the member's account is closed due to delinquency, service credit must be granted by taking the months of service credit being purchased times the percentage~~

~~paid. The percentage is determined by taking the total payments made toward the purchase divided by the total amount to be paid over the term of the purchase. Service credit equal to a fraction is deemed to be a whole month of service credit.~~

~~3.~~ For members converting service under the public employees retirement system to service under the judge's retirement system, each month of county judge service under the public employees retirement system will be converted to one month of judicial service credit. The account balance from the public employees retirement system will be transferred to the judges' retirement system account once the contract is paid in full or closed.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2010.
General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4
Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-07. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees, the employer must create a program and an employer must document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.

2. The program meets all applicable federal requirements.

3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.

4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.

5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.

6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than

the fifteenth day of the month following the month of the employee's ~~retirement~~ termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.

7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.

8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.

9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

10. The employer agrees to provide information and policies relating to an employer purchase program pursuant to North Dakota Century Code section 54-52-26.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4, 54-52-29

CHAPTER 71-02-04

71-02-04-02. Special retirement options - Application.

1. A member may elect a retirement option by filing an application with the office no less than thirty days prior to the beginning date of benefit payments. An application may be filed later than thirty days if approved by the executive director upon receiving sufficient evidence that the application was delayed by the member's employer.

2. A member may revoke the election of an optional benefit as provided in subsection 1 and make a new election, if such revocation is received in writing before the first retirement check is cashed but no later than fifteen days after the first retirement check has been issued. If the member changes the member's election less than fifteen days prior to the named beginning date of benefits, the first retirement payment may be delayed up to two months. Any delayed payment must be adjusted to include any deferred retirement payments. If the member's first retirement payment is paid by direct deposit and the member wishes to revoke the election of the benefit, then the member must immediately notify the public employees retirement system of the member's election. The benefit will only be revoked if the public employees retirement system is able to reverse the direct deposit paid to the bank within the bank reversal window.

3. A member may not revoke the elected benefit after receiving and cashing the first benefit check or if paid by direct deposit, after the bank reversal window has expired, unless, the member can provide sufficient evidence to the executive director that the factual basis by which the election was made later proved to be incorrect and such was due in part to representation or misrepresentations made by the employer or the office.

History: Amended effective November 1, 1990; May 1, 2004; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-03. Payment date - Retirement benefits. Except for retirement options provided in section 71-02-04-02, a member's retirement benefit shall commence on the first day of the month which follows the member's eligibility for the benefit and which is at least thirty days after the date on which the member filed an application with the office. Notwithstanding any other provision in this article, benefits must begin no later than April first of the calendar year after the calendar year in which the member retires or attains the age of seventy and one-half years, whichever is later. If the member is employed but ineligible for active participation in the retirement plan, the member's benefits must begin no later than April first of the calendar year after the calendar year in which the member attains the age of seventy and one-half years. In the absence of a retirement application, benefits shall be paid based on a single life, or normal retirement for judges, payment

option. Benefits must be sent to the member's last-known address. If the benefit checks are returned with no forwarding information, the benefits will remain in the fund, and will be distributed in a lump sum retroactive to the required beginning date upon location of the member.

History: Amended effective November 1, 1990; July 1, 1994; July 1, 2000; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-04. Optional benefits. A member may elect, as provided in section 71-02-04-02, to receive one of the following optional benefits in lieu of the regular single life, or normal for judges, retirement benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse shall be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits shall terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option shall be canceled and the member's benefit shall be returned to the single life amount. Payment of the single life amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse shall be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits shall terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option shall be canceled and the member's benefit shall be returned to the single life amount. Payment of the single life amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

3. ~~**Level social security option.** A member who retires prior to receiving social security benefits may elect the level social security option. Under this option, the member's monthly benefit is adjusted so the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent based on an age no earlier than sixty-two and no later than full retirement age as specified by the social security administration as chosen in writing by the member.~~

   ~~A member is not eligible for the level social security option if it results in a benefit payment of less than one hundred dollars per month.~~

   ~~A member shall submit an estimated benefit from social security that was computed no more than six months before commencement of retirement benefits.~~

~~4.~~ **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

~~5.~~ ~~**Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the single life annuity option. The member is permitted to choose one of the optional forms of payment, excluding the level social security income option, for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.~~

~~6.~~ ~~**Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The ongoing benefits will be actuarially increased to reflect the lump sum.~~

History: Amended effective September 1, 1982; November 1, 1990; July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-04.1. Benefit modifications. A member may elect as provided in section 71-02-04-02 to receive one of the following benefit modifications:

1. **Level social security option.** A member who retires prior to receiving social security benefits may elect the level social security option. Under this option, the member's monthly benefit is adjusted so the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent based on an age no earlier than sixty-two and no later than full retirement age as specified by the social security administration as chosen in writing by the member. A member shall submit an estimated benefit from social security that was computed no more than six months before commencement of retirement benefits. A member may only select this option if the member has selected to receive a single life/normal retirement option.

2. **Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the single life annuity option. The member is permitted to choose one of the optional forms of payment as defined in section 71-02-04-04 for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.

3. **Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The member is permitted to choose one of the optional forms of payment as defined in section 71-02-04-04. The ongoing benefits will be actuarially increased to reflect the lump sum.

4. **Graduated benefit option.** The graduated benefit option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The member is permitted to choose one of the optional forms of payment for ongoing benefits as defined in section 71-02-04-04. The ongoing benefits will be actuarially reduced to reflect the election of the graduated benefit option.

History: Effective July 1, 2010.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-07. Amount of early retirement benefit.

1. Except for members of the national guard, the early retirement benefit shall be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than the age at which the member would be at the member's normal retirement date on the date of the member's early retirement benefit ~~commences~~ effective date.

2. For members of the national guard, the early retirement benefit must be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than age fifty-five on the date of the member's early retirement benefit ~~commences~~ effective date.

History: Amended effective September 1, 1982; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

71-02-04-10. Erroneous payment of benefits - Overpayments.

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.

2. A person who receives an overpayment is liable to refund those payments upon receiving a written explanation and request for the amount to be refunded. All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.

3. If the overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written ~~request for refund~~ notice of overpayment with the minimum repayment amount no less than fifty dollars per month ~~with the total repayment period not to exceed thirty-six months~~. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the ~~individual's~~ benefit payment period.

4. If the overpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings, from the time the erroneous benefit was paid through the time it has been refunded in full~~, plus applicable interest~~. Recovered funds are first applied to interest and, if any amount is left over, that amount is applied to principal. The recipient may make repayment arrangements, subject to the executive director's approval, within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month ~~with the total repayment period not to exceed thirty-six months~~. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the ~~individual's~~ benefit payment period.

5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

History: Effective June 1, 1996; amended effective April 1, 2002; July 1, 2006; April 1, 2008; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 39-03.1-25, 54-52-17

CHAPTER 71-02-05

71-02-05-07.1. Judges' retirement plan optional benefits. For the judges' retirement plan, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

1. **One hundred percent joint survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the ~~single life~~ normal retirement amount. Payment of the normal retirement amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17

71-02-05-09. Interest accrual on accumulated contributions for disabled annuitants. Effective January 1, 1998, interest must accrue on accumulated contributions as defined in article 71-02 until the disabled annuitant reaches that person's normal retirement ~~date~~ age, cancels the benefit in

accordance with section 71-02-05-03, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998; amended effective May 1, 2004; July 1, 2006; July 1, 2010.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17

CHAPTER 71-02-06

71-02-06-01. Conditions for return.

1. The accumulated contributions of a member who terminates permanent employment:

   a. Before accumulating three years of service credit and whose account balance is less than one thousand dollars shall be automatically refunded unless the member elects to remain in an inactive status.

   b. After accumulating three years of service credit shall be refunded upon application filed with the executive director.

   c. The termination date for purposes of processing an application for refund or rollover must be the last date for which a member receives salary except for a member who is on an approved leave of absence. For members who are paid salary in any month following actual separation from employment if the salary is received after the normal processing date, the termination date for purposes of processing the application must be the same date as the date that the last paycheck was issued as salary.

2. Retirement contributions must be returned if a membership enrollment application form has not been filed with the office. Contributions will be returned until proper membership enrollment forms have been filed.

History: Amended effective November 1, 1990; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; July 1, 2010.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-06, 54-52-17

CHAPTER 71-02-07

71-02-07-02. Return to service - Retired member. The benefits of a retired member who returns to permanent employment shall be suspended without interest accruing on the suspended account, except as provided in subsection 1 of North Dakota Century Code section 54-52-05. Upon subsequent termination, the member's benefit shall be recalculated as follows:

1. ~~If the period of subsequent employment is less than two years, the member may elect:~~

   ~~a. A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at subsequent termination and for benefit payments received prior to reemployment; or~~

   ~~b. A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.~~

~~2.~~ ~~If the period of subsequent employment is more than two years, the~~ The member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's ~~age~~ and spouse's ages, salary earned during the period of reemployment ~~together with~~, and total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.

~~3.~~ 2. If a member dies during subsequent employment, the member's initial retirement benefit option election will apply. ~~If a benefit election was an optional benefit under subsection 1 or 2 of section 71-02-04-04, then the member's benefit must be recalculated based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at death, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.~~ The member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's and spouse's ages, salary earned during the period of reemployment, and total service credits

earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment.

History: Amended effective November 1, 1990; July 1, 1998; May 1, 2004; July 1, 2006; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52-17
Law Implemented: NDCC 54-52-17

CHAPTER 71-02-11

71-02-11-04. Payment. The cost for purchase of eligible military service in the North Dakota public employees retirement system and the North Dakota highway patrolmen's retirement system is as follows:

1. The cost for any required employee contributions to be paid by the member may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under subsection 1, 2, or 3 of section 71-02-03-02.2. ~~If retirement occurs before purchase is complete, service being purchased will not be credited to the account for retirement purposes until the payment is complete.~~ If no payments have been made, no credit will be awarded. To prevent any delay in issuing the employee's first retirement check, purchase must be completed at least thirty days prior to retirement date.

2. The employer cost will be assessed to the member's most recent participating employer. Upon being billed by the North Dakota public employees retirement system, the participating employer will have thirty days in which to make payment in full. If, after sixty days, the employer has not made payment in full, a civil penalty on fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

~~3. If the employer contributions are paid and the member becomes delinquent for required employee contributions, then the public employees retirement system will prorate the credit the employee contributions have paid for by the member and this credit will be added to the member's file.~~

History: Effective September 1, 1991; amended effective May 1, 2004; July 1, 2006; July 1, 2010.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52-17.4(5), 54-52-17.14

CHAPTER 71-03-03

71-03-03-01. Enrollment. An eligible employee is entitled to coverage the first of the month following the month of employment, ~~provided~~ if the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health insurance plan.

2. ~~Addition of a spouse~~ Marriage. An employee who previously waived coverage ~~is also eligible to~~ must enroll for coverage at the time the employee's spouse is enrolled.

3. Addition of a dependent as a result of birth, adoption, placement for adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage ~~is also eligible to~~ must enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2010.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

CHAPTER 71-03-04

71-03-04-01. Employer contribution. Each agency shall pay to the board the full amount of the employer contribution by the fifteenth of each month. The agency will verify the number of eligible employees and the level of coverage for each. An employee is eligible for an employer contribution for the month following the month of employment. If an eligible employee terminates employment prior to the effective date of coverage, no employer contribution is required. The employer contribution ends the month following the month of termination of employment. When an employee transfers from one state agency to another, the new agency is responsible for the payment of the premium for the first of the month following employment.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 2010.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-06

71-03-04-05. Premium for basic term life insurance. All state departments ~~and those political subdivisions~~ that ~~elect to~~ participate in the group life insurance program must pay the board the full premium for the basic term life insurance for each of its eligible employees.

History: Effective October 1, 1986; amended effective July 1, 1994; July 1, 1998; July 1, 2010.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-01(7)

CHAPTER 71-03-05

71-03-05-05. Appeal process. If an employee's application for benefits has been denied in whole or in part by the board or its agent, the employee will be notified in writing of the denial and the reasons. Within sixty days of the date shown on the denial notice, the employee may file a petition for review. The petition must be in writing, the reasons stated for disputing the denial and be accompanied by any ~~documentary material~~ documentation. Should the employee filing a petition for review, or should the board or its agent desire information which cannot be presented satisfactorily by correspondence, the board or its designated appeals committee may schedule a hearing. The person filing the appeal will be notified in writing at least fifteen days prior to hearing of the time, date, and place.

The board or its agent will render a decision as soon as possible, but not later than one hundred twenty days after the receipt of the petition for review. The decision will be in writing.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 2010.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-08

71-03-05-08. Erroneous payment of premiums - Underpayments.

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect. Underpayment of premium is solely an error in the amount of premium billed to the individual.

2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.

3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.

4. If an underpayment is not discovered within the first month it occurs, the following will apply:

   a. If not the result of any wrongdoing, negligence, misrepresentation, or omission by the individual, then the individual must make

arrangements within sixty days of receiving written notification to either pay by lump sum or installments. The installment payment schedule is subject to approval by the executive director with the minimum repayment amount no less than fifty dollars a month ~~with the total repayment period not to exceed thirty-six months~~. If repayment arrangements are not in place within sixty days of the date of the written request for repayment, the executive director shall authorize payment to be made in three equal installments, using the same payment method the individual has authorized for paying current monthly premiums.

b. If underpayment is the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the individual, underpayments must be made in full within sixty days of written notification.

5. If an underpayment occurs and the individual no longer participates in the group insurance, any premium amounts due are immediately payable.

6. If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

7. If the individual refuses to repay the underpayment, or the underpayment is not paid in full, coverage will be canceled retroactive to the first day of the month following the month for which full premium payment was received. The public employees retirement system will provide written notice advising the individual that payment in full must be received within thirty days of the written notification to reinstate coverage retroactively to the date that coverage was canceled.

History: Effective April 1, 2002; amended effective April 1, 2008; July 1, 2010.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-08

CHAPTER 71-03-06

71-03-06-01. Enrollment.

~~1.~~ ~~New~~ An eligible ~~employees of a participating political subdivision are~~ employee is entitled to coverage the first of the month following the month of employment, if the employee submits an application for coverage within the first thirty-one days of employment, or eligibility for one of the following special enrollment periods:

~~a.~~ 1. Loss of coverage under any other health insurance plan.

~~b.~~ 2. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage ~~is also eligible to~~ must enroll for coverage at the time the employee's spouse is enrolled.

~~c.~~ 3. Addition of a dependent as a result of birth, adoption, placement for adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage ~~is also eligible to~~ must enroll for coverage at the same time that the employee's eligible dependent is enrolled.

~~2. Eligible employees of qualifying political subdivisions are entitled to individual coverage if the political subdivision for which the employee works does not offer its employees a group health insurance plan and the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the special enrollment periods as follows:~~

~~a. Loss of coverage under any other health insurance plan.~~

~~b. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage is also eligible to enroll for coverage at the time the employee's spouse is enrolled.~~

~~c. Addition of a dependent as a result of birth, adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage is also eligible to enroll for coverage at the same time that the employee's eligible dependent is enrolled.~~

History: Effective June 1, 1996; amended effective July 1, 1998; July 1, 2010.
General Authority: NDCC 54-52-04
Law Implemented: NDCC 54-52.1-03.1, 54-52.1-03.4

71-03-06-02. Late enrollment. ~~An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment and may be subject to a six-month waiting period for preexisting conditions.~~

~~Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.~~ Political subdivisions must follow the same late enrollment procedures as outlined in section 71-03-03-02.

History: Effective June 1, 1996; amended effective July 1, 1998; May 1, 2004; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.1-03.1
Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-03. ~~Open~~ Special enrollment for certain qualifying events. Political subdivisions must follow the same enrollment procedures as outlined in section 71-03-03-05.

History: Effective June 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.1-03.1
Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-05. Continuation of health benefits for dependents. ~~A dependent of an employee with family coverage may continue coverage with the group after the dependent's eligibility would ordinarily cease. An employee's dependent, including a divorced or widowed spouse or children no longer dependent on the employee, may continue with the group after the dependent's eligibility would ordinarily cease. Coverage is limited to a period of thirty-six months and must be discontinued if the payment of the premium is not made in a timely manner. Dependents must notify the retirement board within sixty days of the qualifying event and submit an application in a timely manner. An individual who fails to submit an application to the retirement board within the sixty days is not eligible for coverage.~~ Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-07.

History: Effective June 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.1-03.1
Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-08. Employee contribution. An employee who is enrolled in the group insurance plan and required by the employing agency to pay a part of the premium must pay the amount due to the employing agency in advance of the employer's payment to the public employees retirement system. ~~The employee's contribution may be paid by payroll deduction or any other method acceptable to the agency.~~

History: Effective June 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.1-03.1
Law Implemented: NDCC 54-52.1-02, 54-52.1-03.1

CHAPTER 71-03-07

71-03-07-01. Employer contribution. Each employer must submit to the board the full monthly premium amount for each eligible employee enrolled in the group insurance plan. The employer must verify the number of eligible employees and the level of coverage for each. ~~An employee's coverage must end the month after termination of employment.~~ An employee is eligible for an employer contribution for the month following the month of employment. If an eligible employee terminates employment prior to the effective date of coverage, no employer contribution is required. The employer contribution ends the month following the month of termination of employment. When an employee transfers from one ~~enrolled~~ participating employer to another, the new employer is responsible for ~~submitting~~ the payment of the premium for the first of the month following employment.

History: Effective June 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.1-03.1
Law Implemented: NDCC 54-52.1-03.1

71-03-07-02. Information to employee. Each employer shall inform ~~each eligible employee~~ employees of ~~the employee's~~ their right to group insurance and the process necessary to enroll. The employer shall provide each eligible employee such forms as necessary to enroll in the group insurance program.

History: Effective June 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.1-03.1
Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-07-03. Collecting employee contributions. Each employer shall collect any employee contribution due and submit it with ~~any~~ the employer contribution to the retirement board each month. When an employee on an approved leave of absence requests to continue in the group, the employer shall collect the full amount of the premium from the employee each month and remit it to the retirement board. The minimum employer contribution will be determined by the retirement board and must be consistently applied to all eligible employees.

History: Effective June 1, 1996; amended effective May 1, 2004; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.1-03.1
Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-07-05. Premium for basic term life insurance. ~~A~~ All political ~~subdivision~~ subdivisions that ~~elects~~ elect to participate in the group life insurance program ~~shall~~ must pay ~~to~~ the retirement board the full premium for the basic term life insurance for each of its eligible employees.

History: Effective June 1, 1996; amended effective July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.1-03.1
Law Implemented: NDCC 54-52.1-02, 54-52.1-03.1

CHAPTER 71-04-01

71-04-01-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant ~~in the participant agreement~~ to receive benefits under the plan in the event the participant dies.

2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.

3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.

4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).

5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.

6. "Participant" is any employee of a participating employer who executes a participant agreement.

7. "Participant agreement" means a written agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the participant's deferral and participation in the plan.

8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.

9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.

10. "Retirement board" <u>or "board"</u> means the seven persons described in North Dakota Century Code chapter 54-52-03.

11. "Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.

12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.

13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

CHAPTER 71-04-03

71-04-03-02. Effective date of deferrals. All deferrals are effective the payroll period ending in the month following the month in which the deferral is authorized. Deferrals cannot be requested or authorized ~~during~~ for the month in which income is being earned ~~and a deferral is being requested~~.

History: Effective April 1, 1989; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03; IRC 457(b)(4)

71-04-03-05. Unforeseeable emergency. A participant who, prior to separation from service, experiences an unforeseeable emergency as defined in section 71-04-01-01 may apply for a ~~partial~~ distribution of the participant's deferred compensation account to the extent reasonably needed to satisfy the financial need. The participant may make application by completing a financial hardship form and delivering it to the retirement board offices.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; July 1, 2010.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-03-06. Termination of participation. Participation in the plan may be terminated at any time by completion of a participant agreement indicating ~~an elimination~~ a suspension of monthly deferrals.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-04-04

71-04-04-01. Enrollment. The ~~retirement~~ board shall design and provide employees with a participant agreement to facilitate the enrollment in the plan. The participant agreement must provide for the collection of all information regarding identification of the employee, starting date of the deduction, the payroll period affected, name of the provider company, and the provider representative.

History: Effective April 1, 1989; amended effective September 1, 1997; May 1, 2004; July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-01, 54-52.2-02, 54-52.2-05

71-04-04-02. Booklets. The ~~retirement~~ board shall, upon request of the employee, make available a descriptive booklet setting forth the enrollment requirements of the plan, explanation of the deferred compensation plan under section 457 of the Internal Revenue Code, and investment options under the plan.

History: Effective April 1, 1989; amended effective September 1, 1997; May 1, 2004; July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-03. Provider agreement. The ~~retirement~~ board shall establish a written provider agreement for the authorization of companies or organizations who offer investment options to public employees. This agreement may include registration and reporting requirements, educational requirements of sales representatives, and limitations of investment options.

History: Effective April 1, 1989; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-04. Employer agreement. The ~~retirement~~ board shall establish a written agreement for all employers, other than state departments, agencies, boards, or commissions, which appoint the state to administer their deferred compensation plan. This agreement includes requirement for the employer to adopt the ~~retirement~~ board's rules, employers to make the requested payroll deductions upon proper application by the employee, remit the deductions directly to the ~~retirement~~ board along with a listing of deferred compensation deductions for all employees participating in the plan, submit all provider participant contracts to the ~~retirement~~ board, hold all participant account information as confidential, and notify the ~~retirement~~ board within thirty days of participant's termination of employment.

History: Effective April 1, 1989; amended effective April 1, 2002; July 1, 2006; July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-05. Payroll deduction authorization. The ~~retirement~~ board shall deliver to the payroll division of each employer a copy of the signed participant agreement as the payroll division's authorization to begin deductions.

History: Effective April 1, 1989; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-02

71-04-04-06. Participant accounts. The ~~retirement~~ board shall have each provider of investment services establish individual accounts to record the participant's contributions, earnings, and other account activity.

History: Effective April 1, 1989; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-04-07. Separation from service. The ~~retirement~~ board shall notify the participant, provider company, and provider representative of the employee's separation from service and eligibility for payment of benefits.

History: Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004; July 1, 2010.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-04-10. Processing deductions. The ~~retirement~~ board will process and remit employee deferred compensation deductions to the designated provider company within three business days following receipt in good order of all funds and documentation from the employer.

History: Effective July 1, 2006; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-06

71-04-06-01. Application. Those firms desiring to offer investment services for the deferred compensation plan shall first notify the ~~retirement~~ board, in writing, of the firms' willingness to become a provider.

History: Effective April 1, 1989; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-02. Administrative agreement. Firms expressing a desire to become a provider of investment services under the deferred compensation plan must agree to all provisions ~~found in~~ and sign the ~~retirement~~ board's administrative agreement. The administrative agreement sets forth the responsibilities of the provider to the plan, the ~~retirement~~ board, and the employee and stipulates that the provider abide by the plan and rules and regulations adopted by the ~~retirement~~ board for the administration of the plan.

History: Effective April 1, 1989; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-03. Sales representatives. All sales representatives of the provider approved by the ~~retirement~~ board to solicit employees must be fully trained to explain the various investment options available through the provider, be able to explain what the deferred compensation program is as found under section 457 of the Internal Revenue Code, and be licensed with the North Dakota state securities commissioner for the sale of registered or unregistered securities or the North Dakota state insurance commissioner for the sale of insurance contracts or policies, or both.

History: Effective April 1, 1989; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-06. Retirement board report. The provider shall deliver quarterly reports, in an approved electronic format, to the ~~retirement~~ board detailing the activity of each participant's account. The quarterly report must be delivered within thirty days of the end of each calendar quarter and must include an alphabetical listing of the participants, social security numbers of the participants, the provider's contract number for the participants (if any), type of account for each participant, beginning account balance forwarded from the previous reporting period, contributions made by the participants for the current reporting period, transfers and rollovers from other eligible plans during the reporting period, investment earnings or losses added to the account (if any for the reporting period), any withdrawals made during the reporting period, administrative charges assessed against the account during the reporting period, transfers and direct rollovers to other eligible plans during the reporting period, and the account balance at the end of the reporting period. The report columns must be totaled. The quarterly report

must include active, inactive, and accounts in payout status, with the exception of accounts which have been annuitized, and be for all payroll divisions for the plan.

History: Effective April 1, 1989; amended effective November 1, 1990; July 1, 1994; May 1, 2004; July 1, 2006; July 1, 2010.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-06-07. Account transfer. The provider shall allow any participant who so requests, the ability to transfer the participant's account to another provider on a tax-free basis. The request to the provider must be made in writing by the ~~retirement~~ board or its designated representative. The transfer must be made within thirty days of the provider's receipt of the transfer request.

History: Effective April 1, 1989; amended effective July 1, 1994; July 1, 2010.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03

71-04-06-08. Benefit requests. The provider shall honor all requests for benefit or refund payments made upon notification of the employee's separation from service by the ~~retirement~~ board.

History: Effective April 1, 1989; amended effective May 1, 2004; July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-09. Benefit payments. The provider shall make benefit payments to the participant ~~at~~ in the manner designated by the ~~participant's designated mailing address, or, if requested, make direct deposits of the benefits at the participant's bank, savings and loan, or credit union~~ participant.

History: Effective April 1, 1989; amended effective July 1, 2010.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-06-11. Provider reporting failure - Penalty. Should the provider fail to deliver the required report within a thirty-day period beyond the end of the reporting period, notice must be given by certified mail of the provider's failure to comply. The provider shall then have thirty days from the date of the certified letter to comply with the reporting requirement. If the provider fails to deliver the required report within the thirty-day period, the provider is in violation of the administrative agreement and shall lose active provider status as described under subsection 1 of section 71-04-04-09. If the provider has not filed the report within ninety days after the end of the reporting period, the provider shall lose provider status as described under subsection 2 of section 71-04-04-09. Loss of provider status results in all current contributions of active participants being suspended effective in the next payroll cycle. The ~~retirement~~ board will notify all participants of the company's failure to deliver the required reports. Current participants will be required to either select a new provider for future contributions, or have their

account go into a dormant status with the company losing provider status. The ~~retirement~~ board will then terminate the agreement with the provider.

History: Effective April 1, 1989; amended effective November 1, 1990; July 1, 1994; May 1, 2004; July 1, 2010.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-06-12. Provider suspension - Employee account transfers. Should the provider be in violation of the administrative agreement, employees shall have the option of transferring their individual accounts to another qualified provider. The employee shall also have the option of leaving the account with the provider~~, in a dormant status, to be dealt with by~~ until the employee ~~upon separation from service~~ is eligible for a distributable event.

History: Effective April 1, 1989; amended effective July 1, 1994; July 1, 2010.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-05-02

71-05-02-05. Interest accrued on accumulated contributions for disabled annuitants. Effective January 1, 1998, interest shall accrue on accumulated contributions as defined in article 71-01 until the disabled annuitant reaches normal retirement age ~~or dies~~, cancels the benefit in accordance with section 71-05-02-06, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998; amended effective July 1, 2010.
General Authority: NDCC 39-03.1-06, 39-03.1-11
Law Implemented: NDCC 39-03.1-11.4(d)

CHAPTER 71-05-04

71-05-04-04. Payment. The total dollar amount for repurchase or purchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.

2. The installment schedule may extend ~~for as long as~~ while the member is employed by the participating employer but for no longer than a fifteen-year time period.

3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the contributor to initiate and terminate the payroll deduction.

4. Payments are due by the fifteenth of the month to be credited for the month.

5. Payments may only be received from a contributor until the fifteenth of the month following the month of the member's termination date with a participating employer.

6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of the principal and an amount necessary to complete the payment contract within the fifteen-year time period.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010.
General Authority: NDCC 39-03.1-06, 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1
Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-06. Crediting purchased or repurchased service. ~~Service purchased or repurchased will be credited in the following manner:~~

~~1. The contributor's record must be updated with the additional service credit once the account is paid in full.~~

~~2. If the contributor or member of an alternative retirement system terminates, retires, or the contributor's account is closed due to delinquency, service credit shall be granted by taking the months of service credit being purchased times the percentage paid. The percentage is determined by taking the total payments made toward the purchase divided by the total amount to be paid over the term of~~

~~the purchase. Service credit equal to a fraction is deemed to be a whole month of service credit.~~ For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2010.
General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1
Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-09. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees the employer must create a program and document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.

2. The program meets all applicable federal requirements.

3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.

4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.

5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.

6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system. The employer also agrees that all purchases will be completed no later than the fifteenth day of the month following the month of the employee's ~~retirement~~ termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.

7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees

retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.

8. The employer agrees that for each employee certified to be eligible to have service credit purchased, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.

9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

10. The employer agrees to provide information and policies pertaining to the employer purchase program pursuant to North Dakota Century Code section 39-03.1-28.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-10.2

CHAPTER 71-05-05

71-05-05-02. Special retirement options - Application.

1. A member may elect a retirement option by filing an application with the office no less than thirty days prior to the beginning date of benefit payments. An application may be filed later than thirty days prior to the beginning date of benefit payments if approved by the plan administrator upon receiving sufficient evidence that the application was delayed by the member's employer.

2. A member may revoke the election of an optional benefit as provided in subsection 1 and make a new election if such revocation is received in writing before the first retirement check is cashed but no later than fifteen days after the first retirement check has been issued. If the member changes the member's election less than fifteen days prior to the named beginning date of benefits, the first retirement payment may be delayed up to two months. Any delayed payment must be adjusted to include any deferred retirement payments. <u>If the member's first retirement payment is paid by direct deposit and the member wishes to revoke the election of the benefit, then the member must immediately notify the public employees retirement system of the member's election. The benefit will only be revoked if the public employees retirement system is able to reverse the direct deposit paid to the bank within the bank reversal window.</u>

3. A member may not revoke the elected benefit after receiving and cashing the first benefit check <u>or if paid by direct deposit, after the bank reversal window has expired</u>, unless the member can provide sufficient evidence to the executive director that the factual basis by which the election was made later proved to be incorrect and such was due in part to representation or misrepresentations made by the employer or the retirement office.

History: Effective October 1, 1991; amended effective May 1, 2004<u>; July 1, 2010</u>.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-11

71-05-05-04. Optional benefits. A member may elect, as provided in section 71-05-05-02, to receive one of the following optional benefits in lieu of the regular early or normal retirement benefit.

1. **One hundred percent joint and survivor benefit.** A member may receive an actuarially reduced retirement benefit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. In the event the member's spouse predeceases the member or, in the event of divorce, the option shall be canceled and the member's benefit

shall be returned to the normal retirement amount. Payment of the normal retirement amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree. Should the member remarry and wish to change such designation, a new actuarial retirement benefit will be calculated.

Payments of benefits to a member's surviving spouse must be made on the first day of each month, commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate, death certificate, birth certificate verifying age, and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs.

2. **Twenty-year or ten-year term certain.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

~~3. **Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve monthly payments determined under the normal annuity option. The member is permitted to choose one of the optional forms of payment for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.~~

~~4. **Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The ongoing benefits will be actuarially increased to reflect the lump sum.~~

History: Effective October 1, 1991; amended effective July 1, 2006; April 1, 2008; July 1, 2010.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-11

71-05-05-04.1. Benefit modifications. A member may elect as provided in section 71-05-05-02 to receive one of the following benefit modifications:

1. **Partial lump sum option.** The partial lump sum option will only be available to members who retire on or after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is equal to twelve

monthly payments determined under the normal annuity option. The member is permitted to choose one of the optional forms of payment for ongoing benefits. The ongoing benefits will be actuarially reduced to reflect the partial lump sum payment.

2. **Deferred normal retirement option.** The deferred normal retirement option will only be available to members who retire after reaching their normal retirement date. This option is an irrevocable election and made at initial application for retirement. The payment is in lieu of a lump sum equal to the amount of missed payments, without interest, retroactive to the member's normal retirement date. The ongoing benefits will be actuarially increased to reflect the lump sum.

3. **Graduated benefit option.** The graduated benefit option will only be available to members who retire after reaching normal retirement date. This option is an irrevocable election and made at initial application for retirement. The member is permitted to choose one of the optional forms of payment for ongoing benefits excluding the deferred normal retirement option or partial lump sum option. The ongoing benefits will be actuarially reduced to reflect the election of the graduated benefit.

History: Effective July 1, 2010.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-11

71-05-05-07. Amount of early retirement benefit. The early retirement benefit must be an amount actuarially reduced from the normal retirement benefit by one-half of one percent for each month (six percent per year), that the member is younger than age fifty-five on the date of the member's early retirement benefit ~~commences~~ effective date.

History: Effective October 1, 1991; amended effective July 1, 2010.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-11

71-05-05-10. Erroneous payment of benefits - Overpayments.

1. An "overpayment" means a payment of money by the public employees retirement system that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.

2. A person who receives an overpayment is liable to refund those payments upon receiving an explanation and a written request for the amount to be refunded from the executive director. All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of

recovering the amount of the overpayment is estimated to exceed the overpayment, the repayment is considered to be unrecoverable.

3. If an overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written notice of overpayment with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the individual's benefit payment period.

4. If the overpayment was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings from the time the erroneous benefit was paid through the time it has been refunded in full. Recovered funds are first applied to interest, and if any amount is left over, that amount is applied to principal. The recipient may make repayment arrangements, subject to the executive director's approval, within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the ~~individual's~~ benefit payment period.

5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.

History: Effective April 1, 2002; amended effective July 1, 2006; July 1, 2010.
General Authority: NDCC 32-03-04, 39-03.1-06, 54-52-04(12), 54-52-14.2
Law Implemented: NDCC 39-03.1-25

CHAPTER 71-05-06

71-05-06-01. Return of contributions - Conditions for return. The accumulated contributions of a member who terminates permanent employment:

1. Before accumulating ten years of service credit and whose account balance is less than one thousand dollars must be automatically refunded unless the member elects to remain in an inactive status.

2. After accumulating ten years of service credit, accumulated contributions must be refunded upon application filed with the retirement office.

History: Effective October 1, 1991; amended effective July 1, 2010.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-10.1

CHAPTER 71-05-07

71-05-07-01. Return to service - Retired member. The benefits of a retired member who returns to permanent employment must be suspended. Upon final retirement, the member's benefit must be recalculated as follows:

1. ~~If the period of subsequent employment is less than two years, the member may elect:~~

   ~~a. A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at final retirement and for benefit payments received prior to reemployment; or~~

   ~~b. A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.~~

~~2.~~ ~~If the period of subsequent employment is more than two years, the~~ The member's benefit must be based on the benefit provisions in effect at final retirement and shall include the member's ~~age~~ and spouse's ages, salary earned during the period of reemployment ~~together with~~, and total service earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.

~~3.~~ 2. If a member dies during subsequent employment, the member's initial retirement benefit option election will apply. ~~If the benefit election was an optional benefit under section 71-05-02-04, then the member's benefit must be recalculated based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at death, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.~~ The member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's and spouse's ages, salary earned during the period of reemployment, and total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment.

History: Effective October 1, 1991; amended effective May 1, 2004; July 1, 2010.
General Authority: NDCC 39-03.1-06
Law Implemented: NDCC 39-03.1-11

CHAPTER 71-06-01

71-06-01-02. Calculation of retiree health insurance credit. Retiree health insurance credit will be calculated on actual years and months of service, identical to retirement benefits under North Dakota Century Code chapter 54-52.

1. Retiree health insurance credit will be subject to reduction factors in the event of early retirement.

For annuitants of the public employees retirement system defined benefit plan and North Dakota public employees retirement system judges, and for members of the defined contribution retirement plan, excluding national guard retirees, who take a periodic distribution:

Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor
64 to 65	3%	59 to 60	33%
63 to 64	9%	58 to 59	39%
62 to 63	15%	57 to 58	45%
61 to 62	21%	56 to 57	51%
60 to 61	27%	55 to 56	57%

For annuitants of the job service retirement program: This includes those who retired under a discontinued service annuity but does not include those who retired at a normal or optional date.

Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor
64 to 65	3%	59 to 60	33%	54 to 55	63%
63 to 64	9%	58 to 59	39%	53 to 54	69%
62 to 63	15%	57 to 58	45%	52 to 53	75%
61 to 62	21%	56 to 57	51%	51 to 52	81%
60 to 61	27%	55 to 56	57%	50 to 51	87%

For annuitants of the highway patrol fund and national guard security police and firefighters and national guard security police and firefighters who transferred to the defined contribution retirement plan:

Age at Retirement	Reduction Factor
54 to 55	3%
53 to 54	9%
52 to 53	15%
51 to 52	21%
50 to 51	27%

2. Disabled annuitants receiving benefits under subdivision ~~e~~ g of subsection 3 of North Dakota Century Code section 54-52-17, subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11, North Dakota Century Code section 52-11-01, or section 71-02-05-05 will be eligible for full retiree health insurance credit benefits. No age reduction factor will be applied.

3. A surviving spouse eligible to receive benefits under ~~subdivisions b and e~~ paragraph 2 of subdivision a and paragraphs 2 and 3 of subdivision b of subsection 6 of North Dakota Century Code section 54-52-17, subdivisions b and c of subsection 6 of North Dakota Century Code section 39-03.1-11, or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit based on the deceased member's years of service without any age reduction applied.

4. A surviving spouse receiving benefits under the provisions of subdivision ~~a~~ b or ~~e~~ d of subsection 9 of North Dakota Century Code section 54-52-17; subdivisions a, b, and c of subsection 5 of North Dakota Century Code section 27-17-01; subsection 9 of North Dakota Century Code section 39-03.1-11; or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit for the duration benefits are paid, based upon the original annuitant's retirement age.

History: Effective April 1, 1992; amended effective June 1, 1996; July 1, 2000; July 1, 2010.
General Authority: NDCC 54-52.1-03.2(b)
Law Implemented: NDCC 54-52.1-03.3

CHAPTER 71-08-06

71-08-06-04. Cost. The cost for purchase of eligible military service in the defined contribution plan may be paid as follows:

1. The cost for any required employee contributions to be paid by the member may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under subsection 3, 4, or 5 of section 71-02-03-02.2. If no payments have been made, no credit will be awarded.

2. ~~If the member elects to make installment payments through payroll deduction, then the employer will be required to match the member contribution month by month. Upon completion of the member contributions, the employer will be required to make a final payment of all remaining employer contributions.~~

~~3. If the member elects to make payments through any method other than payroll deductions, then upon the member completing full payment of the required member contributions, the employer cost will be assessed to the member's most recent participating employer.~~

~~4.~~ The employer cost will be assessed to the member's most recent participating employer. Upon being billed by the public employees retirement system, the participating employer will have thirty days in which to make payment in full. If, after sixty days, the employer has not made payment in full, a civil penalty of fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

History: Effective May 1, 2004; amended effective July 1, 2006; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.6-04
Law Implemented: NDCC 54-52.6-09.3, 54-52.6-09.4

CHAPTER 71-08-07

71-08-07-01. Additional employer contributions. An employer may elect to provide additional employer contributions to an employee's account in an amount not exceeding the equivalent of a purchase of up to five years of service credit for that employee and the purchase of an employee's unused sick leave that meets the requirements of section 71-08-07-02. Before offering such a program to its employees, an employer must create a program and document it in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.

2. The program meets all applicable federal requirements.

3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.

4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.

5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.

6. The employer agrees that all additional employer contributions will not exceed the equivalent of a purchase of service credit as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the fifteenth day of the month following the month of the employee's ~~retirement~~ termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.

7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member and the amount of service credit to be purchased or sick leave to be converted and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system and be the focal point for communications between the public employees retirement system, the employer, and the employee.

8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.

9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

10. The employer agrees to provide information and policies pertaining to the employer purchase program pursuant to North Dakota Century Code section 54-52-26.

When an employer files the above letter with the public employees retirement system, the employer may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.
General Authority: NDCC 54-52-04, 54-52.6-04
Law Implemented: NDCC 54-52.6-09.2