

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 384

April 2022

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

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TITLE 13
DEPARTMENT OF FINANCIAL INSTITUTIONS

APRIL 2022

ARTICLE 13-01
GENERAL ADMINISTRATION

[Repealed effective April 1, 2022]

Chapter

~~13-01-01 — Organization of Department~~

CHAPTER 13-01.1-01
GENERAL PROVISIONS

Section

13-01.1-01-01 Applicability
13-01.1-01-02 Address - Sessions [Repealed]
13-01.1-01-03 Communications [Repealed]
13-01.1-01-04 Case Title
13-01.1-01-05 Personal and Representative Appearances [Repealed]
13-01.1-01-06 Rules of Conduct
13-01.1-01-07 Parties
13-01.1-01-08 Investigation on Board's Own Motion
13-01.1-01-09 Definitions
13-01.1-01-10 Liberal Construction
13-01.1-01-11 Suspension of Rules
13-01.1-01-12 Facsimile Transmission [Repealed]
13-01.1-01-13 Ex Parte Communications
13-01.1-01-14 Duplication of Records and Digital Records

13-01.1-01-02. Address - Sessions.

Repealed effective April 1, 2022.

~~— The principal office of the board is located at 2000 Schafer street, suite g, Bismarck, North Dakota.~~

~~**History:** Effective January 1, 1980; amended effective November 1, 1994; May 1, 1996; November 1, 1997.~~

~~**General Authority:** NDCC 6-01-04, 28-32-02~~

~~**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05~~

13-01.1-01-03. Communications.

Repealed effective April 1, 2022.

~~—All correspondence and filings forwarded to the board shall be addressed to:~~

~~State Banking Board
2000 Schafer Street, Suite G
Bismarck, North Dakota 58501-1204~~

~~**History:** Effective January 1, 1980; amended effective August 1, 1991; May 1, 1996; November 1, 1997.~~

~~**General Authority:** NDCC 6-01-04, 28-32-02~~

~~**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05~~

13-01.1-01-12. Facsimile transmission.

Repealed effective April 1, 2022.

~~—Any paper may be filed with the department or board by facsimile transmission. Filing must be deemed complete at the time that the facsimile transmission is received and the filed facsimile has the same force and effect as the original. The facsimile must be legible or it will not be deemed as being received. Within five days after the department or board has received the transmission, the party filing the document shall forward the original signed document and the applicable filing fee, if any.~~

~~**History:** Effective October 1, 1991.~~

~~**General Authority:** NDCC 6-01-04, 28-32-02~~

~~**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05~~

13-01.1-01-14. Duplication of records and digital records.

1. Digital copies of facts, reports, or other records created by the commissioner or the department have the same level of confidentiality as physical records outlined in North Dakota Century Code section 6-01-07.1.
2. Facts, reports, or other records created by the commissioner or the department deemed confidential by law may not be copied or otherwise duplicated, including the redistribution of digital records, without the prior approval of the commissioner. This subsection does not apply to examined entity's duplication of the record for their own use or the use by third parties as authorized in North Dakota Century Code section 6-01-07.1.
3. Meetings and conversations involving the commissioner or the department staff discussing examination facts, reports, or other records created by the commissioner or the department may not be recorded without the prior approval of the commissioner, except as allowed by the open meeting laws of this state.

History: Effective April 1, 2022.

General Authority: NDCC 6-01-04, 6-01-07.1

Law Implemented: NDCC 6-01-07.1

ARTICLE 13-03 CREDIT UNIONS

Chapter	
13-03-01	Check Cashing Funds [Repealed]
13-03-01.1	Practice and Procedure [Repealed]
13-03-02	Limiting and Restricting the Amount That May Be Loaned on Real Property Security
13-03-03	Investment in First Lien, Public Utility, Industrial, Corporation, or Association Bonds, Notes, or Other Evidences of Debt Issued by Corporations Located in the United States of America
13-03-04	Investment in an Office Building, Furniture, and Fixtures - Application to the State Credit Union Board
13-03-05	Mergers
13-03-06	Credit Union Reserve Funds and Prompt Corrective Action
13-03-07	Liquidity Reserves for Remote Access Accounts [Repealed]
13-03-08	Administration of Negotiable or Transferable Instruments of Account
13-03-09	Usury [Repealed]
13-03-10	Acting as Trustee and Custodian of Pension Plans
13-03-11	Agricultural Loans [Repealed]
13-03-12	Business Loans [Repealed]
13-03-13	Authorizations
13-03-14	Field of Membership
13-03-15	Branching
13-03-16	Member Business Loan Limits [Repealed]
13-03-17	Excess Deposit Insurance
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13-03-19	Leasing
13-03-20	Participation Loans
13-03-21	Purchase, Sale, and Pledge of Eligible Obligations
13-03-22	Investment Activities
13-03-23	Credit Union Service Organizations
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13-03-26	Interest Rate Risk
13-03-27	Liquidity and Contingency Funding Plans
13-03-28	Loan Workouts, Loan Modifications, and Nonaccrual Policy

CHAPTER 13-03-01.1 PRACTICE AND PROCEDURE

[\[Repealed effective April 1, 2022\]](#)

Section

- ~~13-03-01.1-01—Applicability~~
- ~~13-03-01.1-02—Communications~~
- ~~13-03-01.1-03—Copies~~

CHAPTER 13-03-02

13-03-02-02. Requirements for advancement of money on security of real property.

No state-chartered credit union may advance money on security of real property until the following requirements are met:

1. The mortgage has been properly signed and recorded in the office of the county recorder where the real property is located.
2. The credit union must verify that the mortgagor ~~is the owner of~~ has the right to convey the real property ~~in fee simple~~ and the credit union must determine the order of priority of the lien established by the mortgage.
3. For real estate loans equal to or more than ~~two hundred fifty~~ one million dollars or four hundred thousand dollars for residential real estate not insured, an appraisal must be conducted by a licensed or certified appraiser if required under 12 Code of Federal Regulations part 722.
4. For real estate loans that do not meet the requirements of subsection 3, a credit union must obtain an appropriate evaluation of real property collateral for transactions if an appraisal by a licensed or certified appraiser is not obtained.
5. Regardless of the value of a real estate loan, the commissioner may issue an order requiring an appraisal by a licensed or certified appraiser when necessary to address safety and soundness concerns.
6. Adequate casualty fire and tornado insurance has been obtained and is maintained throughout the life of the loan with a mortgage clause for the benefit of the credit union.
7. A note for the amount of the loan has been signed by the mortgagor or mortgagors consistent with the terms of the mortgage.
8. The credit union may make exceptions to subsections 2, 3, and 6 of this section if the mortgage is taken as an abundance of caution as set forth in 12 CFR 722.3, and the value of the real property security is not used as part of the analysis of the borrower's credit worthiness.

History: Amended effective May 1, 1982; November 1, 1985; October 1, 1994; August 1, 1998; December 1, 2002; January 1, 2013; January 1, 2019; April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-03

13-03-03-01. Individual investment limitation - Total investment limitation.

No credit union organized and operating under the laws of North Dakota shall invest more than ten percent, in the aggregate, of the total paid in shares and deposits of the credit union in first lien, public utility, industrial, corporation, or association bonds, or notes issued by corporations located in the United States of America, unless an exemption is granted by the state credit union board. In determining whether to grant an exemption, the board shall consider the following:

1. The net worth ratio of the credit union;
2. The capital, asset quality, management, earnings, ~~and liquidity (CAMEL)~~, and sensitivity to market risk (CAMELS) rating of the credit union;
3. The experience of the credit union's management; and
4. Other factors deemed pertinent by the board.

History: Amended effective December 1, 1978; January 1, 2007; January 1, 2013; April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-04

13-03-04-01. Maximum investment in fixed assets to be determined by state credit union board.

No credit union organized and operating under the laws of North Dakota shall invest more than the greater of six percent of assets or fifty percent of net worth, but not to exceed ten percent of assets, in a credit union ~~office building, including the lot, piece, or parcel of land on which the same is located, furniture, fixtures, and equipment~~land and building and other fixed assets, without first applying for and obtaining approval from the state credit union board.

History: Amended effective June 1, 1984; January 1, 2007; January 1, 2013; January 1, 2019; April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-04-02. Procedure for investment in building.

Any state-chartered credit union planning to construct or purchase a building shall follow and comply with the following procedure:

1. The board of directors shall adopt a resolution to invest in a building, and stating the maximum funds to be invested in a lot and building.
2. If the resolution is adopted by a majority of the board of directors, and if the resolution involves an investment, ~~including the depreciated value of the building, and all furniture, fixtures, and equipment carried as an asset of the credit union, of more than six percent of assets of the credit union~~which exceeds the maximum investment established in section 13-03-04-01, the board of directors shall then make application to the North Dakota state credit union board for permission to invest in a building. If the investment ~~totals six percent or less of the assets~~is within the limit established by section 13-03-04-01, the board of directors and management will proceed with the project as approved by the board of directors.

History: Amended effective June 1, 1984; January 1, 2007; April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-04-03. Application to board to invest in building - Requirements.

When applying to the state credit union board for permission to invest in a building which, ~~when added to the depreciated value of the building and all furniture, fixtures, and equipment carried as an asset of the credit union, totals more than six percent of the credit union's assets~~ exceeds the limit established in section 13-03-04-01, the following procedures will be followed:

1. The secretary of the credit union will certify compliance with the provisions of section 13-03-04-02.
2. The treasurer will certify the amount to be invested. The credit union, by letter, will make a special request of the state credit union board and state the amount, and the percentage of assets and net worth they desire to invest in the lot, building, furniture, fixtures, and equipment.

History: Amended effective June 1, 1984; April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-05

13-03-05-01. Procedure.

Any state-chartered credit union planning to merge shall follow and comply with the following procedure:

1. The board of directors of each state-chartered credit union shall pass a resolution by a majority of the directors, in favor of the merger, stating specific terms, if any.
2. The resolution shall be submitted to the entire membership of the affected credit unions at the time of and accompanying the notice of a regular or special meeting, and must be approved by a majority of the membership of each affected credit union present at the meeting. The state credit union board, in the exercise of the board's discretion, may suspend this subsection when such suspension is in the best interests of the affected credit unions and their members. Alternatively, the commissioner, in the exercise of the commissioner's discretion, may temporarily suspend this subsection until after approval is obtained from the state credit union board, if the merging credit union is federally chartered.
3. An application to merge must be filed with the state credit union board to approve the merger by the proper officials of each of the credit unions.
4. At least thirty days prior to the date of consideration of the application by the state credit union board, the secretary of the board shall notify all credit unions within a seventy-five-mile [120.7-kilometer] radius of the continuing credit union's home office and each county in which the merging credit union maintains its principal office or a branch. The notice must specify the names and locations of both the merging credit union and the continuing credit union, and the time and place of the board meeting at which the proposed merger will be considered. Interested credit unions will be given an opportunity to comment on the proposed merger in writing and at the meeting at which the proposal is considered. The board may, when it believes it to be in the public interest, request a hearing be held. Notice of hearing on an application will, if requested, be at least thirty days prior to the hearing. Notice of the proposed merger does not have to be given or a hearing held when the continuing credit union is to receive assistance from the national credit union administration.
5. All laws and regulations of the national credit union share insurance fund applicable to merging insured credit unions must be complied with before the merger is consummated.
6. Upon approval of the merger, the continuing credit union may ~~apply~~^{elect} to assume the field of membership of the merging credit union, ~~pursuant to the requirements of chapter 13-03-14.~~

History: Amended effective February 1, 1981; August 1, 1993; January 1, 2019; [April 1, 2022](#).

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-36, 6-06-37

13-03-05-04. Considerations for approval.

In considering the application for merger, the board shall examine and consider all relevant factors including:

1. Whether proper notification has been given to all members, unless the membership meeting has been waived by the board.
2. The comments of the members of each credit union to be merged.
3. The financial condition of the continuing credit union.

In the event that a merging credit union is a failing institution under North Dakota Century Code section 6-06-08.2, the board shall have the authority to waive any application requirements or considerations for approval otherwise mandated under rule. ~~Additionally, if there is more than one potential merger partner for the failing institution, the board may give consideration to the credit union with a more similar field of membership or in closer proximity to the failing institution.~~

History: Effective August 1, 1993; amended effective January 1, 2013; [April 1, 2022](#).

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-36, 6-06-37, 6-06-08.2

CHAPTER 13-03-06

13-03-06-01. Definitions.

1. "Commercial loan" means any loan, line of credit, or letter of credit, including any unfunded commitments, and any interest a credit union obtains in such loans made by another lender, to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, agricultural, or professional purposes, but not for personal expenditure purposes. Excluded from this definition are loans made by a corporate credit union; loans made by a credit union to another credit union; loans made by a federally insured credit union to a credit union service organization; loans secured by a one-to-four family residential property, unless meeting the definition of an improved property loan; loans fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions; loans secured by a vehicle manufactured for household use; and loans that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balances plus unfunded commitments less any portion secured by shares in the credit union to a borrower or an associated borrower, are equal to less than fifty thousand dollars.
2. "Credit grading system" means the same as credit risk rating system.
3. "Credit risk rating system" means a formal process that identifies and assigns a relative credit risk score to each commercial loan in a credit union's portfolio, using ordinal ratings to represent the degree of risk. The credit risk score is determined through an evaluation of quantitative factors based on financial performance and qualitative factors based on management, operational, market, and business environmental factors.
4. "Improved property loan" means an extension of credit secured by one of the following types of real property:
 - a. Farmland, rangeland, or timberland committed to ongoing management and agricultural production;
 - b. One-to-four family residential property that is not owner-occupied;
 - c. Residential property containing five or more individual dwelling units;
 - d. Completed commercial property; or
 - e. Other income-producing property that has been completed and is available for occupancy and use, except income-producing owner-occupied one-to-four family residential property.
5. "Net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. Net worth does not include the allowance for loan and lease loss account or other comprehensive income/loss account. Additionally:
 - a. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the national credit union share insurance fund;
 - b. For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero; the acquired retained earnings must be determined at the point of acquisition under generally accepted

accounting principles; and a mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union; and

- c. The term "net worth" also includes loans to and accounts in an insured credit union established under section 208 of the Federal Credit Union Act (73 Stat. 628, 84 Stat. 944, 12 U.S.C. 1788), provided such loans and accounts:
 - (1) Have a remaining maturity of more than five years;
 - (2) Are subordinate to all other claims including those of shareholders, creditors, and the national credit union share insurance fund;
 - (3) Are not pledged as security on a loan to, or other obligation of, any party;
 - (4) Are not insured by the national credit union share insurance fund;
 - (5) Have noncumulative dividends;
 - (6) Are transferable; and
 - (7) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.
6. "Net worth ratio" means the ratio of net worth of the credit union to the total assets of the credit union.
7. "Net worth restoration plan" means a plan submitted by the credit union and approved by the commissioner outlining the actions the credit union will take and time frames for improving the credit union's capital position and becoming well-capitalized. The plan must comply with part 702 of the national credit union administration's rules and regulations.
8. "Quarterly reserve requirement" means a transfer from current quarter earnings into the regular reserve account equal to one-tenth of one percent of assets.
9. "Risk-based ~~net worth~~capital requirement" means the level of net worth necessary given the risk level of the credit union as defined in part 702 of the national credit union administration's rules and regulations.
10. "Total assets" means quarter end asset balance, average daily balance over the calendar quarter, average month-end balances over the three calendar months in the calendar quarter, or the average of quarter end balances of the current and preceding calendar quarters.
11. "Total reserves" means, for the purpose of this chapter, the sum of the following:
 - a. The retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles;
 - b. The allowance for loan and lease loss account;
 - c. Other comprehensive income or loss;
 - d. Unrealized gain or loss on available for sale securities; and
 - e. Secondary capital.
12. "Retained earnings" means undivided earnings, regular reserves, and any other appropriations designated by regulatory authorities.

History: Amended effective January 1, 1981; August 1, 1984; June 1, 2002; January 1, 2007; January 1, 2013; January 1, 2019; [April 1, 2022](#).

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-08.4, 6-06-21

13-03-06-04. Prompt corrective action.

When the credit union's net worth ratio falls below seven percent after allowing for full and fair disclosure in the allowance for loan and lease loss account, or fails to meet the risk-based ~~net worth~~capital requirements of part 702 of the national credit union administration's rules and regulations, the credit union is required to meet the prompt corrective action requirements under North Dakota Century Code section 6-06-08.4 and part 702 of the national credit union administration's rules and regulations. Any required reserves to be made under prompt corrective action will be made to the regular reserve account.

History: Effective January 1, 1981; amended effective May 1, 1981; January 1, 2007; January 1, 2013; January 1, 2019; [April 1, 2022](#).

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-08.4, 6-06-21

CHAPTER 13-03-14

13-03-14-05. Field of membership of continuing credit union in the event of merger.

In the event of a merger between credit unions with different ~~geographic~~ fields of membership, the surviving credit union may, at the election of the surviving credit union, expand its field of membership to include the ~~geographic~~ field of membership of the merged credit union.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

CHAPTER 13-03-15 BRANCHING

Section

13-03-15-01	Definitions
13-03-15-02	Establishment of a Branch
13-03-15-03	Location of Branch
13-03-15-04	Application to Establish a Branch
13-03-15-05	Waiver
13-03-15-06	Notice Regarding Closing of a Branch
<u>13-03-15-07</u>	<u>Operations During Epidemic or Emergency - Notice to Department</u>

13-03-15-04. Application to establish a branch.

1. A credit union wishing to establish a branch shall comply with the following:
 - a. Approval to establish the branch must be given by the board of directors of the credit union by a majority of that board; and
 - b. After approval by the credit union's board of directors, application must be made to the state credit union board or to the commissioner to establish the branch. The necessary forms for "application to establish a branch", including the business plan and the financial impact to the credit union, may be secured from the department of financial institutions;—
 - ~~c. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board, cause to be published a notice in the official newspaper of the county of the credit union's home office and the county in which the proposed branch expansion is to be located. The notice must specify the field of membership, and, if an open charter, the geographical boundaries; and—~~
 - ~~d. The notice must specify the time and place of the meeting of the state credit union board at which the application for establishing the branch will be acted upon. Written comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.~~
2. The state credit union board or commissioner, when considering the branching of a credit union, shall consider the following:
 - a. If the branch is for an open charter, and if the application to establish the branch is accompanied by an application to expand the field of membership, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the branch office, must be clearly spelled out;
 - b. ~~Whether serious injury would result to any other state or federally chartered credit union in North Dakota;~~
 - ~~c.~~ Whether the credit union has demonstrated the ability to succeed with the branch; and
 - ~~d.~~c. Any other factor that the state credit union board or commissioner deems pertinent.
3. If the commissioner's decision with respect to an application is unfavorable, the applicant credit union may appeal the decision to the state credit union board by filing a notice of appeal with the commissioner within twenty days after the commissioner has notified the applicant credit union of the decision.

History: Effective April 1, 1988; amended effective June 1, 2002; January 1, 2007; January 1, 2013; January 1, 2019; April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-15-05. Waiver.

The state credit union board or commissioner, in the exercise of itstheir discretion, may waive the provisions of this chapter when such waiver is in the best interests of a failing institution.

History: Effective April 1, 1988; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-15-07. Operations during epidemic or emergency - Notice to department.

A credit union that operates physical facilities in any area that is experiencing an epidemic or other emergency may adjust the credit union's operations in any manner that is reasonable to protect the credit union's members, employees, assets, or business. Under this section, a credit union may temporarily close or relocate offices, employees, or operations; restrict access to offices or services; and change the manner in which the credit union provides services. A credit union shall notify the department of financial institutions of any actions the credit union takes under the authority of this section if such action results in a closure greater than one business day. The credit union shall give the department notice promptly and in any case within three business days of the credit union's decision to adjust the credit union's operations. The notice must describe the credit union's actions and the expected duration of the credit union's adjusted operations. Unless extended by the commissioner, a credit union's authority to change the credit union's operations under this section may not exceed sixty days.

History: Effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-21

13-03-21-02. Authorizations.

1. Purchase.

- a. A credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:
 - (1) Eligible obligations of its members, originating from any source in the ~~state of North Dakota~~ United States, if either they are loans it is empowered to grant or they are refinanced with the consent of the borrowers, within sixty days after they are purchased, so that they are loans it is empowered to grant;
 - (2) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;
 - (3) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and
 - (4) Real estate-secured loans, originating from any source ~~in the state of North Dakota~~, if the purchaser is granting real estate-secured loans on an ongoing basis and loans will be sold to the secondary market in the same manner as loans to the credit union's members, and loans sold include a substantial portion of loans to the credit union's members.
 - b. A credit union may make purchases in accordance with this subsection provided:
 - (1) The board of directors or investment committee, loan committee, or credit manager approves the purchase; and
 - (2) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office; and for purchases under paragraph 2 of subdivision a, any advance written approval from the national credit union administration required by section 741.8 of national credit union administration rules and regulations is obtained before consummation of such purchase.
 - c. The aggregate of the unpaid balance of eligible obligations under this subsection cannot exceed five percent of the unimpaired capital and surplus of the purchaser. The following can be excluded in calculating this five percent limitation:
 - (1) Student loans purchased in accordance with paragraph 3 of subdivision a;
 - (2) Real estate loans purchased in accordance with paragraph 4 of subdivision a;
 - (3) Eligible obligations purchased in accordance with paragraph 1 of subdivision a that are refinanced by the purchaser so that it is a loan it is empowered to grant; and
 - (4) An indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the credit union makes the final underwriting decision and the sales or lease contract is assigned to the credit union very soon after it is signed by the member and the dealer or leasing company.
2. **Sale.** A credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph 2 of subdivision a of

subsection 1, student loans purchased in accordance with paragraph 3 of subdivision a of subsection 1, and real estate loans purchased in accordance with paragraph 4 of subdivision a of subsection 1, within the limitations of the board of directors' written sale policies, provided:

- a. The board of directors, investment committee, loan committee, or credit manager approves the sale; and
- b. A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

3. **Pledge.**

a. A credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph 2 of subdivision a of subsection 1, student loans purchased in accordance with paragraph 3 of subdivision a of subsection 1, and real estate loan purchased in accordance with paragraph 4 of subdivision a of subsection 1, within the limitations of the board of directors written pledge policies, provided:

- (1) The board of directors, investment committee, loan committee, or credit manager approves the pledge;
- (2) Copies of the original loan documents are retained; and
- (3) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

b. The pledge agreement shall identify the eligible obligations covered by the agreement.

4. **Servicing.** A credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

5. **Ten percent limitation.** The total indebtedness owing to any credit union by any person, inclusive of retained and reacquired interests, shall not exceed ten percent of its unimpaired capital and surplus.

History: Effective January 1, 2007; amended effective January 1, 2013; [April 1, 2022](#).

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-22 INVESTMENT ACTIVITIES

Section

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13-03-22-05	Prohibited Investment Activities - Adjusted Trading or Short Sales
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13-03-22-13	Valuing Securities
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13-03-22-15	Application Required
<u>13-03-22-16</u>	<u>Derivatives</u>
<u>13-03-22-17</u>	<u>Charitable Donation Accounts</u>

13-03-22-01. Definitions.

The following definitions apply to this chapter:

1. "Adjusted trading" means selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current market value.
2. "Borrowing repurchase transaction" means a transaction in which the credit union agrees to sell a security to a counterparty and to repurchase the same or identical security from the counterparty at a specified future date and at a specified price.
3. "Call" means an option that gives the holder the right to buy the underlying security at a specified price during a fixed time period.
4. "Charitable contributions and donations" means gifts provided to assist others through contributions of staff, equipment, money, or other resources through charities that are exempt from taxation under 501(c)(3) of the Internal Revenue Code.
5. "Counterparty" means a swap dealer, derivatives clearing organization, exchange, or commercial loan customers that participates as the other party in a derivatives transaction with a credit union.
6. ~~"Derivatives" means a financial instruments or other contracts whose value is based on the performance of an underlying financial asset, index, or other investment that has the three following characteristics:-~~
 - ~~a. It has one or more underlyings and one or more notional amounts or payment provisions or both that determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required;~~
 - ~~b. It requires no initial net investment or an initial net investment that is less than would be required for other types of contracts that would be expected to have a similar response to changes in market factors; and~~

- ~~c.~~ Its terms require or permit net settlement, it can readily be settled net by means outside the contract, or it provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate.
- ~~7.~~ "Derivatives clearing organization" has the meaning as defined by the commodity futures trading commission in 17 CFR 1.3 effective March 15, 2021.
- ~~8.~~ "Distribution in kind" means acceptance of remaining charitable donation account assets, upon termination of the account, in their original form instead of in cash resulting from the liquidation of assets.
- ~~9.~~ "Domestic interest rates" means interest rates derived in the United States and are United States dollar-denominated.
- ~~10.~~ "Earnings at risk" means the changes to earnings, typically in the short term, for example, twelve to thirty-six months, caused by changes in interest rates.
- ~~11.~~ "Economic effectiveness" means the extent to which a derivatives transaction results in offsetting changes in the interest rate risk that the transaction was, and is, intended to provide.
- ~~5.12.~~ "Embedded option" means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cashflows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.
- ~~6.13.~~ "Eurodollar deposit" means a United States dollar denominated deposit in a foreign branch of a United States depository institution.
- ~~7.14.~~ "European financial options contract" means an option that can be exercised only on its expiration date.
- ~~8.15.~~ "External service provider" means any entity that provides services to management in carrying out its derivatives program and the requirements of this chapter.
- ~~16.~~ "Fair value" means the amount at which an instrument could be exchanged in a current, arms-length transaction between willing parties, as opposed to a forced or liquidation sale.
- ~~9.17.~~ "Financial options contract" means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract as specified in the agreement.
- ~~10.18.~~ "Futures commission merchant" has the meaning as defined by the commodity futures trading commission in 17 CFR 1.3 effective March 15, 2021.
- ~~19.~~ "Industry-recognized information provider" means an organization that obtains compensation by providing information to investors and receives no compensation for the purchase or sale of investments.
- ~~11.20.~~ "Interest rate risk" means the current and prospective risk to a credit union's capital and earnings arising from movements in interest rates.
- ~~21.~~ "Introducing broker" means a futures brokerage firm that deals directly with the client, while the trade execution is done by a futures commission merchant.

22. "Investment repurchase transaction" means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.
- ~~42.~~23. "Margin" means the minimum amount of eligible collateral, as defined in subdivision c of subsection 3 of section 13-03-22-16, that must be deposited between parties to a derivatives transaction, as detailed in a master services agreement.
24. "Master services agreement" means a document agreed upon between two parties that sets out standard terms that apply to all transactions entered into between those parties. The most common form of a master services agreement for derivatives is an international swap dealer association master agreement.
25. "Maturity" means the date the last principal amount of a security is scheduled to come due and does not mean the call date or the weighted average life of a security.
- ~~43.~~26. "Noncleared" means transactions that do not go through a derivatives clearing organization.
27. "Put" means a financial options contract that entitles the holder to sell, entirely at the holder's option, a specified quantity of a security at a specified price at any time until the stated expiration date of the contract.
- ~~44.~~28. "Qualified charity" means a charitable organization or other nonprofit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code.
29. "Real estate mortgage investment conduit" means a mortgage passthrough security and is synonymous with the terms MBS and passthrough. The scope of the MBS market extends to structured mortgage securities such as CMOs collateralized mortgage obligations, REMICs real estate mortgage conduits, and strips, for which passthroughs are the most common form of collateral.
- ~~45.~~30. "Registered investment adviser" means an investment advisor registered with the securities and exchange committee pursuant to the Investment Advisors Act of 1940.
31. "Registered investment company" means an investment company that is registered with the securities and exchange commission under the Investment Company Act of 1940 [15 U.S.C. 80a]. Examples of registered investment companies are mutual funds and unit trust investments.
- ~~46.~~32. "Residual interest" means the remainder cashflows from collateralized mortgage obligations or real estate mortgage conduits ~~(CMOs or REMICs)~~, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.
- ~~47.~~33. "Security" means a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:
- a. Either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;
 - b. Is of a type commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
 - c. Either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

- ~~18-34.~~ "Senior executive officer" means a person who participates or has authority to participate in major policymaking and decisionmaking functions of the credit union, whether or not the officer has an official title. The chief executive officer, chief financial officer, chief credit officer, president, vice president, and controller are considered senior executive officers.
35. "Structured liability offering" means a share product created by a credit union with contractual option features, such as periodic caps and calls, similar to those found in structured securities or structured notes.
36. "Swap dealer" has the meaning as defined by the commodity futures trading commission in 17 CFR 1.3 effective March 15, 2021.
37. "Threshold amount" means an unsecured credit exposure that a party to a derivatives transaction is prepared to accept before requesting additional eligible collateral, as defined in subdivision c of subsection 3 of section 13-03-22-16, from the other party.
38. "Total return" means the actual rate of return on all investments in a charitable donation account over a given period of up to five years, including realized interest, capital gains, dividends, and distributions, but exclusive of account fees, and expenses provided they were not paid to the credit union that established the account or any of its affiliates. For the purpose of this definition, affiliate is an entity the credit union has an ownership interest in, directly or indirectly, but not an ownership interest due to funding of employee benefits.
39. "Weighted average life" means the weighted average time to the return of a dollar of principal. Calculated by multiplying each portion of principal received by the time at which it is expected to be received, based on a reasonable and supportable estimate of that time, and then summing and dividing by the total amount of principal.
- ~~19-40.~~ "Zero coupon investment" means an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-02. Permissible investments.

A credit union may invest in the following types of investments:

1. Bonds of the United States without limitation in securities issued as direct obligations of the United States government or any agency thereof and in any trust established for investing directly or collectively in such securities.
2. Bonds or evidences of debt of this state or in bonds of states of the United States.
3. Bonds or certificates of indebtedness of any county, city, or school district ~~in this state~~, issued pursuant to authority of law, subject to a limitation of thirty percent of the assets of the credit union.
4. First lien, public utility, industrial, corporation, or association bonds, notes or other evidences of debt issued by corporations located in the United States to the extent authorized under chapter 13-03-03. These investments must be rated ~~as investment grade or better by an industry-recognized information provider such as Moody's, Standard & Poors, or Fitch~~ in one of the four highest rating categories by a nationally recognized statistical rating organization

registered with the securities and exchange commission. In the case of different ratings from different rating organizations, the lower rating applies.

5. Shares of a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for state-chartered credit unions.
6. Corporate credit union shares or deposits, including paid-in or membership capital. A credit union's aggregate amount of paid-in capital and membership capital in one corporate credit union is limited to two percent of its assets measured at the time of investment or adjustment. A credit union's aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to four percent of its assets measured at the time of investment or adjustment.
7. Certificates of deposit or other deposits issued by federally insured state or national banks, mutual savings banks, trust companies, or issued by an insured financial institution located in a territory of the United States that is either insured by the federal deposit insurance corporation or by the national credit union administration. Included in these deposits are yankee dollar deposits, Eurodollar deposits, banker's acceptances, deposit notes, and bank notes with original weighted average maturities of less than five years.
8. Variable rate investments as long as the index is tied to domestic interest rates and not, for example, to foreign currencies, foreign interest rates, or domestic or foreign commodity prices, equity prices, or inflation rates. ~~For purposes of this section, the United States dollar-denominated London interbank offered rate (LIBOR) is a domestic interest rate.~~
9. A fixed rate or variable rate collateralized mortgage obligation or real estate mortgage investment conduit issued by an agency of the federal government.
10. Derivative products but only for the purposes of managing interest rate risk and subject to the limitations outlined in section 13-03-22-16.
11. Charitable donation accounts subject to the limitations outlined in section 13-03-22-17.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-03. Prohibited investments.

A credit union cannot invest in the following types of investments:

1. Any privately issued collateralized mortgage obligation or real estate mortgage investment conduit.
2. ~~Any financial derivative, such as futures, options, interest rate swaps, or forward rate agreements.~~
- ~~3.~~ Any zero coupon investment with a maturity date that is more than ten years from the settlement date.
- 4.3. Any mortgage servicing rights as an investment but may perform mortgage servicing functions as a financial service for a member as long as the mortgage loan is owned by the member.
- 5.4. Any stripped mortgage-backed securities, residual interests in collateralized mortgage obligations or real estate mortgage investment conduits, or residual interests in small business-related securities.

~~6-5.~~ Any commercial mortgage-related security that is not permitted by chapter 13-03-03.

History: Effective January 1, 2007; [amended effective April 1, 2022.](#)

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-04. Permissible investment activities.

1. Regular way settlement and delivery versus payment basis. A credit union may only contract for the purchase or sale of a security as long as the delivery of the security is by regular way settlement and the transaction is accomplished on a delivery versus payment basis.
2. Federal funds. A credit union may sell federal funds to an institution described in subsection 4 of North Dakota Century Code section 6-06-06 and credit unions, as long as the interest or other consideration received from the financial institution is at the market rate for federal funds transactions.
3. Investment repurchase transaction. A credit union may enter into an investment repurchase transaction so long as:
 - a. Any securities the credit union receives are permissible investments for state-chartered credit unions; the credit union, or its agent, either takes physical possession or control of the repurchase securities or is recorded as owner of them through the federal reserve book entry securities transfer system; the credit union, or its agent receives a daily assessment of their market value, including accrued interest; and the credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and
 - b. The credit union has entered into signed contracts with all approved counterparties.
4. Borrowing repurchase transaction. A credit union may enter into a borrowing repurchase transaction so long as:
 - a. The transaction meets the requirements of subsection 3;
 - b. Any cash the credit union receives is subject to the borrowing limit specified in North Dakota Century Code section 6-06-19 and any investments the credit union purchases with that cash are permissible for credit unions; and
 - c. The investments referenced in subdivision b mature no later than the maturity of the borrowing repurchase transaction.
5. Securities lending transaction. A credit union may enter into a securities lending transaction so long as:
 - a. The credit union receives written confirmation of the loan;
 - b. Any collateral the credit union receives is a legal investment for credit unions; the credit union, or its agent, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the federal reserve book entry securities transfer system; the credit union, or its agent, receives a daily assessment of the market value of the collateral, including accrued interest; and the credit union maintains adequate margin that reflects a risk assessment of the collateral and the term of the loan;
 - c. Any cash the credit union receives is subject to the borrowing limit specified in North Dakota Century Code section 6-06-19 and any investments the credit union purchases

with that cash are permissible for credit unions and mature no later than the maturity of the transaction; and

- d. The credit union has executed a written loan and security agreement with the borrower.
6. a. Trading securities. A credit union may trade securities which are permitted for credit unions to own, including engaging in when-issued trading and pair-off transactions, so long as the credit union can show that it has sufficient resources, knowledge, systems, and procedures to handle the risks.
 - b. A credit union must record any security it purchases or sells for trading purposes at fair value on the trade date. The trade date is the date the credit union commits, orally or in writing, to purchase or sell a security.
 - c. At least monthly, the credit union must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-06. Investment policies.

A credit union's board of directors must establish written investment policies consistent with North Dakota Century Code chapter 6-06, this part, and other applicable laws and regulations and must review this policy at least annually. These policies may be a part of a broader asset-liability management or similarly functioning policy. Written investment policies must address the following:

1. The purposes and objectives of the credit union's investment activities;
2. The characteristics of the investments the credit union may make, including the issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;
3. How the credit union will manage interest rate risk;
4. How the credit union will manage liquidity risk;
5. How the credit union will manage credit risk, including specifically listing institutions, issuers, and counterparties that may be used, or criteria for their selection, and limits on the amounts that may be invested with each;
6. How the credit union will manage concentration risk, which can result from dealing with a single issuer or related issuers, lack of geographic distribution, holding obligations with similar characteristics like maturities and indexes, holding bonds having the same trustee, and holding securitized loans having the same originator, packager, or guarantor;
7. Who has investment authority and the extent of that authority. Those with authority must be qualified by education or experience to assess the risk characteristics of investments and investment transactions. Only officials or employees of the credit union may be voting members of an investment-related committee;
8. The broker-dealers the credit union may use;
9. The safekeepers the credit union may use;

10. How the credit union will handle an investment that, after purchase, is outside of board policy or fails a requirement of this part; and
11. How the credit union will conduct investment trading activities, if applicable, including addressing:
 - a. Who has purchase and sale authority;
 - b. Limits on trading account size;
 - c. Allocation of cashflow to trading accounts;
 - d. Stop loss or sale provisions;
 - e. Dollar-size limitations of specific types, quantity, and maturity to be purchased;
 - f. Limits on the length of time an investment may be inventoried in a trading account; and
 - g. Internal controls, including segregation of duties.

History: Effective January 1, 2007; [amended effective April 1, 2022](#).

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-07. Recordkeeping and documentation requirements.

1. Credit unions ~~with assets of ten million dollars or greater~~ must comply with all generally accepted accounting principles applicable to reports or statements required to be filed with the national credit union administration. ~~Credit unions with assets less than ten million dollars are encouraged to do the same, but are not required to do so. Credit unions with assets less than ten million dollars may choose to account for their investments consistent with the national credit union administration accounting manual for federal credit unions.~~
2. A credit union must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been examined in accordance with North Dakota Century Code section 6-06-08. The documentation should include, when applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure documents or a description of the security from an industry-recognized information provider, financial data, and tests and reports required by credit union's investment policy and this chapter.
3. A credit union must maintain documentation its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been examined in accordance with North Dakota Century Code section 6-06-08.
4. A credit union must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.

History: Effective January 1, 2007; [amended effective April 1, 2022](#).

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

[13-03-22-16. Derivatives.](#)

1. [A state-chartered credit union may enter into derivatives that:](#)
 - a. [Are for the purpose of managing interest rate risk;](#)

b. Denominated in United States dollars;

c. Based on domestic interests; and

d. Not used to create structured liability offerings for members or nonmembers.

2. A state-chartered credit union may not engage in embedded options required under generally accepted accounting principles to be accounted for separately from the host contract.

3. To enter into derivative transactions, a credit union must:

a. Have an executed master services agreement with a counterparty. Such agreement must be reviewed by legal counsel with expertise in similar types of transactions to ensure the agreement reasonably protects the interest of the credit union;

b. Use only the following counterparties:

(1) For exchange-traded and cleared derivatives: swap dealers, introducing brokers, or futures commission merchants, or both, that are current registrants of the commodity futures trading commission; or

(2) For noncleared derivative transactions: swap dealers that are current registrants of the commodity futures trading commission.

(3) Commercial loan customers for the purpose of limiting the interest rate risk associated with their specific loan transactions.

c. Utilize contracted margin requirements with a maximum margin threshold amount of two hundred fifty thousand dollars; and

d. For noncleared derivative transactions, accept as eligible collateral, for margin requirements, only the following: cash (United States dollars), United States treasuries, government-sponsored enterprise debt, United States government agency debt, government-sponsored enterprise residential mortgage-backed security passthrough securities, and United States government agency residential mortgage-backed security passthrough securities.

e. Operate according to comprehensive written policies and procedures for control, measurement, and management of derivative transactions. At a minimum, the policies and procedures must address the requirements of this rule and any additional limitations imposed by the credit union's board of directors. A credit union's board of directors shall review the policies and procedures described in this section at least annually and update them when necessary.

4. A credit union engaging in derivative transactions must have sufficient reporting on the activity to include:

a. Board reporting. At least quarterly, a credit union's senior executive officers shall deliver a comprehensive derivatives report, as described in subdivision c to the credit union's board of directors.

b. Senior executive officer and asset liability or similarly functioning committee. At least monthly, credit union staff shall deliver a comprehensive derivatives report, as described in subdivision c to the credit union's senior executive officers and, if applicable, the credit union's asset liability or similarly functioning committee.

c. Comprehensive derivatives management report. At a minimum, the reports required in subdivisions a and b must include:

- (1) Identification of any areas of noncompliance with any provision of this section or the credit union's policies, and the planned remediation of such noncompliance;
- (2) An itemization of the credit union's individual transactions subject to this section, the current values of such transactions, and each individual transaction's intended use for interest rate risk mitigation; and
- (3) A comprehensive view of the credit union's risk reports, including interest rate risk calculations with details of the transactions subject to this section.

d. Prepurchase due diligence. Before executing any derivatives transaction, management shall identify and document the circumstances that lead to the decision to execute the derivatives transaction, specify the strategy management will employ, and demonstrate the economic effectiveness of the transaction.

e. Retention requirement. Reports required by this section must, at a minimum, be retained for as long as it holds the derivative and until the documentation has been examined in accordance with North Dakota Century Code section 6-06-08.

f. Management shall notify the commissioner within five days of entering its first derivatives contract.

g. Notification of noncompliance. Notification of any noncompliance as part of the derivatives management report required in paragraph 1 of subdivision c must be submitted to the commissioner and to the credit union's board of directors within thirty days.

5. Personnel and processes required to manage a derivatives program include:

a. A credit union using derivative transactions must internally possess the following experience and competencies:

(1) Before entering into the initial derivatives transaction, a credit union's board members must receive training that provides a general understanding of derivative transactions, and the knowledge required to provide strategic oversight of the credit union's derivatives program.

(2) Any person that becomes a board member after the initial derivatives transaction must receive the same training, updated if necessary, as required by paragraph 1.

b. A credit union's senior executive officers must be able to understand, approve, and provide oversight for the derivatives program. These individuals must have a comprehensive understanding of how the derivative transactions fit into the credit union's interest rate risk management process.

c. To engage in the derivative transactions, a credit union must employ staff with experience in the following areas:

(1) Staff must be qualified to understand and oversee asset/liability risk management, including the appropriate role of the transactions subject to this section. Staff must be qualified to understand and undertake or oversee the appropriate modeling and analytics related to net economic value and earnings at risk;

(2) Staff must be qualified to understand and oversee appropriate accounting and financial reporting for derivatives in accordance with generally accepted accounting principles;

(3) Staff must be qualified to undertake or oversee derivative trade executions; and

(4) Staff must be qualified to evaluate counterparty, collateral, and margin risk as described in subdivisions b and c of subsection 3.

d. To effectively manage the transactions subject to this section, management shall ensure that effective accounting, review processes, and internal controls have been established, to include:

(1) Within the first year after commencing its first derivatives transaction, management shall have an internal controls review that is focused on the integration and introduction of the program, and ensure the timely identification of weaknesses in internal controls, accounting, and all operational and oversight processes. This review must be performed by a qualified independent entity;

(2) Any credit union engaging in derivative transactions pursuant to this section must obtain an annual opinion audit and be compliant with generally accepted accounting principles for all derivatives-related accounting and reporting;

(3) Before executing its first derivative transaction, management shall establish a collateral management process that monitors the credit union's collateral and margining requirements and ensures that its transactions are collateralized in accordance with the collateral requirements of this section and the credit union's master services agreement with its counterparty;

(4) Before executing its first derivative transaction, management shall establish and document a liquidity review process to analyze and measure potential liquidity needs related to its derivatives program and the additional collateral requirements due to changes in interest rates. Management shall, as part of its liquidity risk management, calculate and track contingent liquidity needs in the event a transaction needs to be novated or terminated, and shall establish effective controls for liquidity exposures arising from both market or product liquidity and instrument cash flows; and

(5) Appropriate controls and segregation of duties.

6. A credit union using derivatives may use external service providers to support or conduct aspects of its derivative management program, provided:

a. The external service provider, including affiliates, does not:

(1) Act as a counterparty to any derivative transactions that involve the credit union;

(2) Act as a principal or agent in any derivative transactions that involve the credit union; or

(3) Have discretionary authority to execute any of the credit union's derivative transactions.

b. The credit union has the internal capacity, experience, and skills to oversee and manage any external service providers it uses;

c. Management documents the specific uses of external service providers in its policies and procedures; and

d. The credit union retains internal staff to meet the requirements of subsection 5.

7. If a credit union has violated any part of this section, is or has engaged in unsafe or unsound practices, or is in unsafe or unsound condition, the commissioner may provide written notice to the credit union prohibiting them from entering into new derivatives transactions, effective upon receipt of the notice. The commissioner may also require divesture of derivative products. The credit union can appeal this prohibition or divesture to the state credit union board, and must provide written notice of their intent to appeal to the department within twenty days of receipt of the prohibition or divesture requirement as outlined in North Dakota Century Code section 6-01-04.2.

History: Effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-22-17. Charitable donation accounts.

Credit unions may invest in charitable donation accounts provided:

1. The charitable donation account is structured as a hybrid charitable and investment vehicle used to provide charitable contributions and donations to a qualified charity.
2. The maximum book value of investment in all charitable donation accounts is limited to five percent of credit union net worth. Any credit union in violation of this limit must bring the investment into compliance with this limit within thirty days of the violation.
3. The charitable donation accounts will be held as a segregated custodial account or special purpose entity and must be specifically identified as a charitable donation account.
4. Any trust established for the charitable donation account must be regulated by a state or federal financial regulatory agency, and any trustee or persons making investment decisions for the charitable donation account must be a registered investment advisor or regulated by a state or federal agency.
5. The board of directors of the credit union has established policies governing the account consistent with the requirements of this section and safe and sound business practices.
6. The terms and conditions of the written agreement between the parties to the charitable donation account must:
 - a. Be consistent with the provisions of this section and safe and sound business practices.
 - b. Require the charitable donation account to make charitable contributions and donations only to charities named that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code.
 - c. Document the investment strategies and risk tolerances the administrator must follow.
 - d. Require all aspects of the account, including distributions and liquidations be accounted for in accordance with generally accepted accounting principles.
 - e. Identify the frequency of distributions to qualified charities.
7. The charitable donation account makes a distribution no less frequently than every five years, and distributes a minimum of fifty-one percent of the account's total return over the period since the last distribution.
8. Upon termination and liquidation of the charitable donation account, credit unions may receive a distribution in kind of remaining assets or cash if the assets are otherwise permissible investments for a credit union.

History: Effective April 1, 2022.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-24

13-03-24-02. Annual review required.

1. The board of directors of each credit union must at least annually review its fidelity and other insurance coverage to ensure that it is adequate in relation to the potential risks facing the credit union and the minimum requirements set by the state credit union board.
2. The board of directors shall review all applications for purchase or renewal of its fidelity bond coverage. The board shall pass a resolution approving the purchase or renewal of fidelity bond coverage and delegate one member of the board, who is not an employee of the credit union, to sign the purchase or renewal agreement and all attachments; provided, however, that no board members may be a signatory on consecutive purchase or renewal agreements for the same fidelity bond coverage policy.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-24-03. Acceptable bond forms.

At a minimum, the bond coverage must:

1. Be purchased in an individual policy from a company holding a certificate of authority from the secretary of the treasury.
2. Include fidelity bonds that cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members. Fidelity bond coverage may also cover activities of a credit union service organization provided the credit union owns more than fifty percent of the credit union service organization or the credit union service organization or it is organized by the credit union for the exclusive benefit of the credit union's employees.
3. Include an option for the liquidating agent to purchase coverage in the event of an involuntary liquidation that extends the discovery period for a covered loss for at least one year after liquidation.
4. In the case of a voluntary liquidation, remain in effect, or provide that the discovery period is extended, for at least four months after the final distribution of assets.
5. Be a bond form that has been approved by the national credit union administration board. ~~The following basic bonds have been approved:-~~

Credit Union Form No.	Carrier
Credit Union Blanket Bond Standard Form 23 of the Surety Association of America (revised May 1950)	Various
Extended Form 23	USFG
100	GUMIS (only approved for corporate credit union use)
200	GUMIS
300	GUMIS
400	GUMIS

Credit Union Form No.	Carrier
AIG 23	National Union Fire Insurance Co. of Pittsburgh, PA
Reliance Preferred 23	Reliance Insurance Company
Form 31	ITT Hartford
Form 24 with Credit Union Endorsement	Continental (only approved for corporate credit union use)
Form 40325	St. Paul Fire and Marine
Form F2350	Fidelity & Deposit Co. of Maryland
Form 9933 (6/97)	Progressive Casualty Insurance Co.
Credit Union Blanket Bond (1/96)	Cooperativas de Seguros Multiples de Puerto Rico

~~4. Be approved by the national credit union administration board if not in the table above.~~

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-24-04. Required minimum amount of coverage.

- The minimum required amount of fidelity bond coverage for any single loss is computed based upon a credit union's total assets.

Assets	Minimum Bond
\$0 to \$10,000	Coverage equal to the credit union's assets
\$10,001 to \$1,000,000	\$10,000 for each \$100,000 or fraction thereof
\$1,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction over \$1,000,000
\$50,000,001 to \$295,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000
Over \$295,000,000	\$5,000,000

Assets	Minimum Bond
<u>\$0 to \$4,000,000</u>	<u>Lesser of total assets or \$250,000</u>
<u>\$4,000,001 to \$50,000,000</u>	<u>\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000</u>
<u>\$50,000,001 to \$500,000,000</u>	<u>\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000, to a maximum of \$5,000,000</u>
<u>Over \$500,000,000</u>	<u>One percent of assets, rounded to the nearest hundred million, to a maximum of \$9,000,000</u>

2. This is the minimum coverage required, but a credit union's board of directors should purchase additional coverage when circumstances warrant, ~~such as cash on hand or cash in transit.~~ In making this determination, a board of directors should consider its own internal risk assessment, its fraud trends and loss experience, and factors, such as its cash on hand, cash in transit, and the nature and risks inherent in any expanded services it offers, such as wire transfer and remittance services.
3. While the above is the minimum amount of bond coverage, credit unions should maintain increased coverage equal to the greater of either of the following amounts within thirty days of discovery of the need for such increase:
 - a. The amount of the daily cash fund, i.e., daily cash plus anticipated daily money receipts on the credit union's premises; or
 - b. The total amount of the credit union's money in transit in any one shipment.
 - c. Increased coverage is not required pursuant to this subsection when the credit union temporarily increases its cash fund because of unusual events which cannot reasonably be expected to recur.
4. Any aggregate limit of liability provided for in a fidelity bond policy must be at least twice the single loss limit of liability. This requirement does not apply to optional insurance coverage.
5. Any proposal to reduce the required bond coverage must be approved in writing by the state credit union board at least twenty days in advance of the effective date of the reduction.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-24-05. Maximum allowable deductibles.

1. The maximum amount of allowable deductibles is computed based on a credit union's asset size, as follows:

Assets	Maximum Deductible
\$0 - \$100,000	No deductibles allowed
\$100,001 - \$250,000	\$1,000
\$250,001 - \$1,000,000	\$2,000
Over \$1,000,000	\$2,000 plus 1/1000 of total assets up to a maximum deductible of \$200,000; <u>for credit unions that have received a composite capital, asset quality, management, earnings, liquidity, and sensitivity to market risk rating of "1" or "2" for the last two full examinations and maintained a net worth classification of well capitalized for the six immediately preceding quarters, the maximum deductible is \$1,000,000</u>

2. The deductibles may apply to one or more insurance clauses in a policy. Any deductibles in excess of the above amounts must receive the prior written permission of the state credit union board.
3. A deductible may not exceed ten percent of a credit union's net worth.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-25

13-03-25-01. Definitions.

- ~~1.~~ ~~"Balance sheet audit" means the examination of a credit union's assets, liabilities, and equity under generally accepted auditing standards by an independent public accountant for the purpose of opining on the fairness of the presentation on the balance sheet. Credit unions required to file call reports consistent with GAAP should ensure the audited balance sheet is likewise prepared on a GAAP basis. The opinion under this type of engagement would not address the fairness of the presentation of the credit union's income statement, statement of changes in equity (including comprehensive income), or statement of cashflows.~~
- ~~2.~~ "Compensated person" means any accounting or auditing professional, excluding a credit union employee, who is compensated for performing more than one supervisory committee audit or verification of members' accounts per calendar year, or both.
- ~~3.2.~~ "Confirm" or "confirmation" refers to a written verification with a third-party person or organization pertaining to an account balance or condition. Examples of confirmation letters are bank or corporate credit union account confirmation, investment account confirmation, borrowing or line of credit confirmation, attorney letter confirmation, and member share or loan account confirmation.
3. "Financial statement audit" or "opinion audit" means an audit of the financial statements of a credit union performed in accordance with GAAS by an independent person who is licensed by the state. The objective of a financial statement audit is to express an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and the results of its operations and its cashflows in conformity with GAAP, as defined herein.
4. "GAAP" means generally accepted accounting principles, which refers to the conventions, rules, and procedures which define accepted accounting practice. GAAP includes both broad general guidelines and detailed practices and procedures, provides a standard by which to measure financial statement presentations, and encompasses not only accounting principles and practices but also the methods of applying them.
5. "GAAS" means generally accepted auditing standards, which refers to the standards approved and adopted by the American institute of certified public accountants which apply when an independent, licensed certified public accountant audits financial statements. Auditing standards differ from auditing procedures in that "procedures" address acts to be performed, whereas "standards" measure the quality of the performance of those acts and the objectives to be achieved by use of the procedures undertaken. In addition, auditing standards address the auditor's professional judgment exercised in performing the audit and in preparing the report of the audit.
6. "Independent" means the impartiality necessary for the dependability of the compensated auditor's findings. Independence requires the exercise of fairness toward credit union officials, members, creditors, and others who may rely upon the report of a supervisory committee audit report.
7. "Internal control" means the process, established by the credit union's board of directors, officers, and employees designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use, or disposition.
8. "Materiality" refers to a statement, fact, or item, which, giving full consideration to the surrounding circumstances as they exist at the time, it is of such a nature that its disclosure, or the method of treating it, would be likely to influence or to make a difference in the judgment

and conduct of a reasonable person. Materiality should take into account ending balances as well as the volume of transactions in an account. Typically, balances or transaction volume greater than five percent of the credit union's net worth should be considered material.

9. "Reportable conditions" means a matter coming to the attention of the independent, compensated auditor which in the auditor's judgment represents a significant deficiency in the design or operation of the internal control structure of the credit union which could adversely affect its ability to record, process, summarize, and report financial data consistent with the representations of management in the financial statements.

~~9.10.~~ "Review" refers to the examination of board minutes, policies and procedures, and a review of a sample portion of activities, rather than all of the activities.

11. "State-licensed person" means a certified public accountant or public accountant who is licensed by the state to perform accounting or auditing services for that credit union.

12. "Test" refers to procedures applied to the individual items that compose an account balance or class of transactions. The tests involve confirmation, inspection, or observation procedures to provide evidence about the recorded amount.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-03. Audit responsibility of the supervisory committee.

1. **Annual audit requirement.** A credit union is required to obtain an annual supervisory committee audit or financial statement audit that occurs at least once every calendar year (period of performance) and must cover the period elapsed since the last audit period (period effectively covered).

2. **Financial statement audit.** Any credit union with assets greater than twenty-five million dollars as of its previous year-end call report must obtain an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so in this state. Any credit union with assets less than twenty-five million dollars may also choose this option. Prior to obtaining a financial statement audit, the credit union will make a good-faith attempt to obtain a copy of the peer review report of the auditing firm directly from the auditing firm to ensure the firm's auditing practices and procedures are in conformance with GAAS.

3. **Supervisory committee ~~alternative to financial statement~~ audit.** Any credit union with assets less than twenty-five million dollars, if not obtaining a financial statement audit, must obtain ~~either of the following options to a financial statement auditor~~ perform a supervisory committee audit. This audit:

a. ~~Balance sheet audit. A balance sheet audit performed by a person who is licensed to do so by this state.~~ Must be completed by a qualified independent party such as a supervisory committee, board of directors, internal auditor, accounting professional, or others who can demonstrate qualifications and independence.

b. ~~Audit per supervisory committee guide. An audit performed by the supervisory committee, its internal auditor, or any other qualified person (such as a certified public accountant, public accountant, league auditor, credit union auditor consultant, former financial institutions examiner, etc.) in accordance with the procedures prescribed in the national credit union administration's supervisory committee guide. Qualified persons who are not state-licensed may not provide assurance services under this subsection.~~ Must at a minimum document a review of:

- (1) Board of director minutes to determine whether there are any material changes to the credit union's activities or condition that are relevant to the areas to be reviewed in the audit.
- (2) Test and confirm material asset and liability accounts, including:
 - (a) Loans;
 - (b) Cash on deposit;
 - (c) Investments;
 - (d) Shares; and
 - (e) Borrowings.
- (3) Test material equity, income, and expense accounts.
- (4) Test for unrecorded liabilities.
- (5) Review key internal controls, including:
 - (a) Bank reconciliation procedures;
 - (b) Cash controls;
 - (c) Dormant account controls;
 - (d) Wire and automated clearing house transfer controls;
 - (e) Loan approval and disbursement procedures;
 - (f) Controls over accounts of employees and officials;
 - (g) Other real estate owned; and
 - (h) Foreclosed and repossessed assets.
- (6) Test the mathematical accuracy of the allowance for loan and lease losses account and ensure the methodology is properly applied.
- (7) Test loan delinquency and charge-offs.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-25-05. Assistance from outside, compensated person.

1. **Unrelated to officials.** A compensated auditor who performs a supervisory committee audit on behalf of a credit union may not be related by blood or marriage to any management employee, member of either the board of directors, the supervisory committee, or the credit committee, or loan officer of that credit union.
2. **Engagement letter.** The engagement of a compensated auditor to perform all or a portion of the scope of a financial statement audit or supervisory committee audit shall be evidenced by an engagement letter. In all cases, the engagement must be contracted directly with the supervisory committee. The engagement letter must be signed by the compensated auditor

and acknowledged therein by the supervisory committee prior to commencement of the engagement.

3. **Contents of letter.** The engagement letter shall:
 - a. Specify the terms, conditions, and objections of the engagement;
 - b. Identify the basis of accounting to be used;
 - c. If a supervisory committee guide audit, include an appendix setting forth the procedures to be performed;
 - d. Specify the rate of, or total, compensation to be paid for the audit;
 - e. Provide that upon completion of the engagement letter, the auditor shall deliver to the supervisory committee a written report of the audit and notice in writing, either within the report or communicated separately, of any internal control reportable conditions or irregularities or illegal acts, if any, which come to the auditor's attention during the normal course of the audit, i.e., no notice required if none noted;
 - f. Specify a target date of delivery of the written reports, ~~such target date not to exceed one hundred twenty days from date of calendar or fiscal yearend under audit (period covered), unless the supervisory committee obtains a waiver from the commissioner of the department of financial institutions~~ with such delivery date enabling the credit union to meet its annual audit requirements;
 - g. Certify that department of financial institution staff or national credit union administration staff, or both, will be provided unconditional access to the complete set of original working papers, either at the offices of the credit union or at a mutually agreed-upon location, for purposes of inspections; and
 - h. Acknowledge that working papers shall be retained for a minimum of three years from the date of the written report.
4. **Complete scope.** If the engagement is to perform a supervisory committee guide audit intended to fully meet the requirements of subdivision b of subsection 3 of section 13-03-25-03, the engagement letter shall certify that the audit will address the complete scope of that engagement.
5. **Exclusions from scope.** If the engagement is to perform a supervisory committee guide audit which will exclude any item required by the applicable section, the engagement letter shall:
 - a. Identify the excluded items;
 - b. State that, because of the exclusions, the resulting audit will not, by itself, fulfill the scope of the supervisory committee audit; and
 - c. Caution that the supervisory committee will remain responsible for fulfilling the scope of a supervisory committee audit with respect to the excluded items.

History: Effective January 1, 2007; amended effective April 1, 2022.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-28

13-03-28-02. Loan workout policy and monitoring requirements.

1. The board and management shall adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to ensure the policy is consistently applied. These policies must:
 - a. Be commensurate with the size and complexity of the credit union;
 - b. Define eligibility requirements, under what conditions the credit union will consider a loan workout, including establishing limits on the number of times an individual loan may be modified;
 - c. Ensure credit union makes loan workout decisions based on the borrower's renewed willingness and ability to repay the loan;
 - d. Establish sound controls to ensure loan workout actions are appropriately structured;
 - e. Prohibit additional advances to finance ~~unpaid interest or credit union fees. This is also known as capitalizing interest, and must be prohibited by policy or commissions.~~ Advances to cover third party fees such as appraisals or property taxes are permissible;
 - f. Either prohibit the financing of accrued interest into the loan principal also referred to as capitalizing interest or require a policy allowing for the capitalization of interest only if it is in the best interest of both the borrower and the credit union. If capitalizing of interest is allowed, the policy must require:
 - (1) Compliance with all consumer compliance laws and regulations.
 - (2) Documentation showing the borrower's ability to repay the debt.
 - (3) Provide written and accurate disclosures consistent with consumer compliance laws.
 - (4) Appropriate accounting and reporting of the loans accrual and delinquency status.
 - (5) Consideration on how to apply modifications consistently.
 - (6) Consideration for options to allow missed payments to be made at the end of a loan to limit delinquency.
 - (7) Safeguards, such as additional board reporting to avoid masking risk in the loan portfolio.
 - (8) Procedures to avoid delaying loss recognition resulting in an inaccurate allowance for loan and lease losses account or loan valuations.
 - (9) Procedures to avoid overstating income or credit union net worth.
 - (10) Effective internal controls.
 - g. Require documentation that demonstrates the borrower is willing and able to repay the loan; and
 - g.h. Require workout loans to be accurately classified; for commercial loans be risk rated with the credit union's credit grading system; be consistent with accepted industry and regulatory guidance, including federal financial institutions examination council's uniform

retail classification and account management policy; and accurately identify loans for impairment testing consistent with generally accepted accounting principles.

2. Loan policy must require documented workout arrangements that consider and balance the best interests of both the borrower and the credit union.
3. Management and the board of directors shall implement comprehensive and effective risk management and internal controls. This must include:
 - a. Thresholds based on aggregate volume of loan workout activity which trigger enhanced reporting to the board of directors;
 - b. Monitoring of total loan classifications in relation to the credit union's total reserves;
 - c. A written charge-off policy that it is consistently applied and consistent with industry standards; and
 - d. A process capable of identifying, documenting, and aggregating any loan that is re-aged, extended, deferred, renewed, or rewritten, including the frequency and extent such action has been taken, and aggregate these loans by loan type.

History: Effective January 1, 2019; [amended effective April 1, 2022.](#)

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

TITLE 32
COSMETOLOGY, BOARD OF

APRIL 2022

CHAPTER 32-01-01

32-01-01-01. Organization of board of cosmetology.

1. **History and functions.** The 1927 legislative assembly passed a Cosmetology Practice and Training Act, codified as North Dakota Century Code chapter 43-11. This chapter requires the governor to appoint a state board of cosmetology. The board regulates and licenses all cosmetologists, manicurists, estheticians, instructors, students, schools, and salons. It is the duty of the board to protect the public health, welfare, and safety through the prevention of the creating and spreading of infectious and contagious diseases.
2. **Board membership.** The board consists of five members appointed by the governor. Each member has a three-year term, and the terms are so arranged that no more than two terms expire on June thirtieth of each year.
3. **Board officers.** Each year the board meets and elects a president and ~~secretary~~other officers from their own number. All records of the board shall be kept at the board office.
4. **Board office.** ~~The address of the board office is:~~

~~State Board of Cosmetology
4719 Shelburne Street
Suite 4
Bismarck, North Dakota 58503~~

Inquiries. Inquiries regarding the board may be addressed to:

North Dakota Board of Cosmetology
Website: ndcosmetology.com

History: Amended effective October 1, 1987; July 1, 1988; September 1, 1989; April 1, 1994; March 1, 1998; January 1, 2012; April 1, 2022.

General Authority: NDCC 28-32-02, 43-11-05

Law Implemented: NDCC 43-11-03, 43-11-04

CHAPTER 32-01-02

32-01-02-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-11, except:

1. "Clean" means the removal of visible debris and washing with soap and detergent and water. To clean means to make a nonporous item ready for disinfection.
2. "Contact time" means the amount of ~~moist~~wet contact time required for the disinfectant to be effective against the pathogens on the label.
3. "Cosmetology establishment" includes businesses, premises, and schools required to have a ~~certificate of registration~~license from the North Dakota board of cosmetology pursuant to North Dakota Century Code chapter 43-11.
4. "Cosmetology school" means any school teaching any or all of the practices of cosmetology.
5. "Disinfect" means the process of making a nonporous item safe for use. To disinfect requires the use of a chemical intended to kill or denature a pathogen. An ultraviolet light is not an acceptable form of disinfection.
6. "Disinfectant" means federal environmental protection agency registered bactericidal, virucidal, and fungicidal chemical or agent used to destroy pathogenic micro-organisms.
7. "Good repair" means that an item is soil-free with no holes, frayed wires, or tears in covering and fully operational for the purpose intended.
8. "Infectious disease" means any disease which can be transmitted, directly or indirectly, from person to person.
9. "Nonporous" means any material that has no pores and does not allow for liquids to be absorbed or passed through, such as metal, glass, silicone, and plastic.
10. "Occupation of cosmetologist" includes the practice of cosmetology, esthetics, and manicuring as defined in North Dakota Century Code section 43-11-01.
11. "Porous" means any material that allows for liquids to be absorbed or passed through. This includes all nail files and emery boards that are not made entirely of metal or glass, pumice stones, buffing blocks, orange wood sticks, cotton, sponges, toe separators, ~~and flip-flops~~, bamboo and wood items, and items with natural hair bristles.
12. "Salon" means a location where the occupation of a cosmetologist, manicurist, or esthetician is practiced. The occupation of a cosmetologist, manicurist, or esthetician is practiced in a location if the cosmetologist, manicurist, or esthetician provides services at the location on a regularly scheduled basis. The occupation of a cosmetologist, manicurist, or esthetician is not practiced in a location if the services are provided at special or educational events after notification to and approval by the board, or ~~under a homebound license~~at an assisted living residence or assisted living facility. The term salon includes independent licensee salons.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-01, 43-11-11, 43-11-27.1

CHAPTER 32-01-03

32-01-03-04. Board to determine qualifications of applicant.

The sufficiency of the qualifications of all applicants for admission to board examinations of all students and student instructors or for registration or licensing of students, student instructors, instructors, cosmetologists, estheticians, and manicurists shall be determined by the board. The board may delegate ~~such authority~~ specific tasks to ~~the secretary of the board, and anyone~~ support staff as the board chooses. Any applicant feeling aggrieved by the ~~board secretary's~~ decision may ~~in writing request a hearing before the board on the matter. The board hearing shall be conducted pursuant to the provisions of~~ appeal pursuant to North Dakota Century Code ~~chapters 43-11 and~~ chapter 28-32.

History: Amended effective July 1, 1990; December 1, 2005; January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-16, 43-11-19, 43-11-21, 43-11-22, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-35

CHAPTER 32-02-01 RULES OF CLEANING AND DISINFECTING

Section	
32-02-01-01	Rules Posted
32-02-01-02	Space Dimensions and Requirements
32-02-01-03	Lighting - Exhaust Fan - Fire Extinguishers
32-02-01-04	Cleaning and Disinfecting Premises
32-02-01-05	Water Supply and Waste Disposal
32-02-01-06	Personal Hygiene
32-02-01-07	First Aid Kit
32-02-01-08	Cleaning and Disinfecting Articles
32-02-01-09	Laundry and Storage of Cloth Items
32-02-01-10	Method of Disinfection
32-02-01-11	Particular Aspects of Disinfecting
32-02-01-12	Toilet Facilities
32-02-01-13	Pets
32-02-01-14	Infants and Children <u>[Repealed]</u>
32-02-01-15	Inspections

32-02-01-01. Rules posted.

The owner or manager of every licensed salon and school shall keep a copy of the rules of cleaning and disinfecting posted in ~~a conspicuous place~~ clear view to the public where services are being provided in each salon and school for the information and guidance of all persons employed or studying therein.

History: Amended effective March 1, 1998; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-02. Space dimensions and requirements.

1. **Salon.** To maintain adequate conditions of cleanliness and disinfection and in the interest of the public health and welfare, each salon shall have adequate workspace to maintain a safe condition for a salon. In addition to such workspace, the salon shall have a reception area, supply room or supply area with enclosed cabinets, toilet facilities, and facilities to maintain clean conditions. There shall be adequate workspace for each additional cosmetologist, manicurist, or esthetician in the salon.
 - a. Separate entrance. All public entrances and exits must meet the local or state building codes.
 - b. ~~Salon separate.~~ A salon must be ~~separated~~ separate from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
 - c. Resident salons. Each salon in a residential building shall maintain an entrance separate from the entrance to living quarters. No cosmetology, manicuring, or esthetician services shall be conducted in any room used as living or sleeping quarters. A salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.
 - d. Mobile home salons. Mobile homes, motor homes, trailers, or any type of recreational vehicles containing a salon shall be permanently set on a foundation. Each salon in such mobile home, motor home, trailer, or any type of recreational vehicle shall maintain an entrance separate from the living quarters. No cosmetology, manicuring, or esthetician

services shall be conducted in any room used as living or sleeping quarters. A salon must be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

2. **Cosmetology schools.** To maintain adequate conditions of cleanliness and disinfection and in the interest of the public health and welfare, each cosmetology school shall have adequate square feet of floor space to maintain a safe condition for a cosmetology school. Such floor space must include a business office, reception room, ~~clinic-laboratory~~service floor area, practice room, dispensary, student lounge, hallways, and classrooms sufficient for training the number of students enrolled. Two lavatories must be in the same building as the school and immediately and easily accessible from the school. In addition, for the manicurist and esthetician courses, floor space must include separate classrooms with adequate space to teach students enrolled.
3. **Cosmetology school separate.** Each cosmetology school shall be separated from living quarters and any other business, except an affiliated school, by a solid nontransparent wall from floor to ceiling containing no openings or doors.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-04. Cleaning and disinfecting premises.

1. Walls, floors, and fixtures must be kept clean and in good repair at all times.
2. All floorsflooring surfaces must be cleaned and made free of hair and other debris after each client and must be in good repair. Carpeting is and rugs are not permitted in the working area, ~~except in a licensed salon with carpeting in the working area on July 1, 2000, and which have not changed ownership since July 1, 2000.~~ Carpeting or rugs will only be permitted in the reception ~~and drying~~ areas.
3. Windows and mirrors ~~should~~must be clean.
4. Shampoo bowls must be free from all hair and debris ~~and~~, cleansed ~~prior to~~and disinfected after each use ~~and disinfected daily~~.
5. The dispensing area must be neat and clean. The supply area may not be accessible to the public.
6. Pedicure chairs, pedicure carts, foot spas, and manicure tables must be cleaned and disinfected ~~between uses~~after each use. Manicure tables must be wiped clean with soap and water to remove all dust and debris, wiped or sprayed with a federal environmental protection agency registered disinfectant, and left wet for the manufacturer's recommended contact time. Pedicure ~~bowl~~tubs must be emptied, scrubbed with soap and water, rinsed with hot water, wiped, or sprayed with a federal environmental protection agency registered disinfectant, and left wet for the manufacturer's recommended contact time. Screens, filters, drains, and other removable parts must be removed and first cleaned with soap, ~~detergent~~, and water, rinsed with hot water, and then immersed in a federal environmental protection agency registered disinfectant, following the manufacturer's directions for proper contact time. ~~The tub must be scrubbed with soap, detergent, and water, then rinsed and filled with water, adding in an environmental protection agency registered disinfectant to achieve proper concentration. The concentration should be allowed to sit or run through the jetted system as per the manufacturer's recommended contact time. The tub should then be drained and either allowed to air dry or wiped dry with a clean towel.~~For piped pedicure tubs with jets, the disinfectant

must be circulated with the proper concentration for the manufacturer's recommended contact time, rinsed with hot water, and dried with a clean towel. For pipeless pedicure tubs the disinfectant must be sprayed on and left wet for the recommended manufacturer's contact time, rinsed with hot water, and dried with a clean towel. All removable parts must be stored in an enclosed drawer or container after cleaning and disinfecting until ready to use. All cleaning and disinfecting steps must be followed when using liners in pedicure tubs. All surrounding areas, including footrests, must be kept in a clean and disinfected condition.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; January 1, 2002; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-06. Personal hygiene.

Every cosmetologist, manicurist, esthetician, instructor, and student, while on the salon premises, shall be neat and clean in person and in attire, and free from any infectious or communicable disease.

1. **Attire.** Every cosmetologist, manicurist, esthetician, instructor, student instructor, and student must be neat and clean in person and attire, and shall wear clean washable professional attire as determined by salon and school owner.
2. **Hands.** Every cosmetologist, manicurist, esthetician, instructor, student instructor, and student shall wash one's hands with soap and water or sanitize immediately before serving each client. Hand sanitizer must be available for customers and manicurists to use.
3. **Carrying combs.** Combs or other instruments shall not be carried in clothing pockets or other leather or cloth pouches, holsters, or other porous containers or cases.
4. **Infectious or communicable diseases.** A cosmetologist, manicurist, esthetician, instructor, student instructor, or student who has an infectious or communicable disease may not knowingly transmit the disease to the public in a salon while such a disease is in a communicable stage.

~~5. **Smoking.** A cosmetologist, manicurist, esthetician, instructor, student instructor, or student may not smoke while actively engaged in serving the public.~~

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-08. Cleaning and disinfecting articles.

All tools, instruments, shampoo bowls, and other articles which come in contact with a client shall be cleaned and disinfected before use on each client. Each licensed salon shall have available for use at all times a federal environmental protection agency registered disinfectant and an enclosed container available that will be used to disinfect tools. The reuse of any porous instrument which cannot be disinfected is prohibited.

History: Amended effective July 1, 1988; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-09. Laundry and storage of cloth items.

1. **Clean cloth and linen items.** All clean cloth and linen towels, sheets and blankets, robes, capes, and similar items shall be kept in an enclosed, ~~dustproof~~ cabinet in the salon until used.
2. **Soiled cloth items and laundering.** All clean cloth and towels, sheets and blankets, robes, ~~sheets~~, capes, and similar ~~linen~~ items may be used only once and then must be properly laundered. After use, and until laundering, each item must be placed in an enclosed container. All soiled cloth and towels ~~and linens~~, sheets and blankets, robes, and capes must be laundered in a washing machine with laundry detergent in hot water. Commercial laundering is acceptable.

History: Amended effective July 1, 1988; March 1, 1998; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-10. Method of disinfection.

The disinfection process shall consist of three steps, and the elimination of any one of the steps render the process ineffective. The three steps to be followed are:

1. **Cleaning.** Remove debris from tools and instruments and wash them thoroughly with hot water and a ~~synthetic~~ detergent in order to remove all traces of soil.
2. **Rinse.** Thoroughly rinse in clear water to remove all traces of detergent from the tools and instruments.
3. **Immersion.** Completely immerse all implements that are nonporous, such as those made of glass, metal, or plastic, in an ~~appropriate~~ enclosed container, large enough to cover all items, including all handles, with an effective federal environmental protection agency registered bactericidal, virucidal, and fungicidal disinfectant ~~prepared and used in accordance with directions on the label~~ and left wet for the manufacturer's recommended contact time. After the manufacturer's required contact time listed on the label has been met, items must be removed, air dried, and stored in a clean, covered, and ~~dustproof~~ an enclosed cabinet in the salon until used.

Shears and razors are not required to be washed, but must be wiped to remove hair, product residue, and skin debris, and then disinfected with an environmental protection agency registered disinfectant spray or wipe after each use. ~~The surface and~~ must remain wet with the spray or wipe disinfectant for the contact time listed on the disinfectant label.

Nonimmersible nonbladed electrical equipment must be wiped ~~or sprayed~~ to remove hair, product residue, and then disinfected with an environmental protection agency registered disinfectant that is bactericidal, virucidal, and fungicidal, and must remain wet for the contact time listed on the disinfectant label. Nonimmersible bladed electrical equipment, such as clippers or trimmers, must be wiped to remove hair, product residue, and skin debris, and then disinfected with an environmental protection agency registered disinfectant that is bactericidal, virucidal, and fungicidal, and ~~created specifically for electrical equipment. Contact time for the electrical equipment as listed on the manufacturer's label must be observed~~ must remain wet for the contact time listed on the disinfectant label. Cords and outer parts must be wiped with an environmental protection agency registered disinfectant and must remain wet for the contact time listed on the disinfectant label.

History: Amended effective March 1, 1998; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-11. Particular aspects of disinfecting.

1. **Germicides.** In disinfecting tools, instruments, and implements, any federal environmental protection agency registered bactericidal, virucidal, and fungicidal disinfectant treatment of tools, instruments, and implements shall be used in accordance with the directions of the manufacturer. All germicidal solutions shall be fresh, clean, and free from contaminants.

2. **Fluids, creams, waxes, and powders.**

a. All fluids, semifluids, creams, waxes, and powders shall be kept in a clean, ~~covered~~enclosed container ~~free of contaminants at all times~~ and shall be dispensed with a clean spatula or from a shaker, dispenser pump, or spray-type container.

b. Single-use spatulas made of a porous material, such as wood, must be discarded after a single use or application.

c. Nonporous spatulas, such as those made of plastic or metal, can only be used for a single use or application and must be cleaned and disinfected before being used again. Fluids, semifluids, creams, and powders shall be applied only by disposable applicators and the applicators shall be discarded after use. ~~Gloves must be worn when performing waxing or tweezing services. Roll on wax is prohibited.~~

3. **Wax.**

a. A new pair of gloves must be worn when performing waxing or tweezing services.

b. Wax must be dispensed with a single-use applicator for each application and must be discarded after a single use. Double dipping is prohibited.

c. Wax pots must be cleaned of all wax residue and must maintain a fresh protective wax collar.

d. Roll on wax is prohibited.

4. **Tools and instruments.** All permanent wave equipment, clips, rollers, pins, as well as all other tools, instruments, and implements shall be kept in a clean and disinfected condition at all times. All other reusable items shall be cleaned and disinfected before use on each client.

~~4-5.~~ **Containers.** The manufacturer's label must be on all original containers for any chemicals used in the salon. All bottles and containers ~~shall~~must be correctly and distinctly labeled with the manufacturer's label to disclose their contents, and all bottles and containers containing poisonous substances shall be so designated.

~~5-6.~~ **Waste container.** Each licensed salon shall provide adequate covered and lined waste containers which shall be emptied when full.

~~6-7.~~ **Protective coverings.** All cap~~es~~ and protective coverings used on a client ~~shall~~must be kept clean and in good condition. ~~Protective coverings, or "cap~~~~es",~~Cap~~es and protective coverings~~ must always be used on clients receiving hair services and must be laundered in accordance with section 32-02-01-09 after each use. ~~Cap~~~~es made of plastic or vinyl unable to be~~~~laundered in accordance with section 32-02-01-09 shall be disinfected with the use of an~~~~environmental protection agency registered disinfectant spray or wipe in accordance with the~~~~manufacturer's label.~~

~~7-8.~~ **Wet disinfecting units.** Each licensed salon shall have wet disinfecting units of sufficient size and quantity to disinfect all tools, instruments, and implements of the establishment, and such disinfectants shall be readily accessible. Such disinfecting units shall contain an environmental

protection agency registered disinfectant and such disinfectant shall be used according to the manufacturers' directions.

~~8-9.~~ **Metal instruments.** All metal tools, instruments, and implements ~~shall~~must be cleaned and disinfected with an environmental protection agency registered disinfectant ~~solution~~ after each use and stored in ~~a closed~~an enclosed container until the next use. All clippers and trimmers must be cleaned and disinfected with an environmental protection agency registered disinfectant spray ~~or wipe~~ after each client.

~~9-10.~~ **Storage of supplies.** Every licensed salon shall have a separate enclosed cabinet or storage area for the storage of supplies, and any supplies containing any caustic or other material harmful to humans shall be stored in a place not readily accessible to clients or the public.

~~10-11.~~ **Combs and brushes.** Combs and brushes shall be cleaned and disinfected prior to each use. All shall be in good usable condition. Padded brushes must be cleaned and sprayed with an environmental protection agency registered disinfectant and may not be immersed.

~~11-12.~~ **Electric tools and outlets.** Each licensed salon shall have a sufficient number of electrical outlets so that no cord or electrical connection constitutes a hazard, fire or otherwise, to the public or ~~persons~~individuals employed or learning in the establishment.

~~12-13.~~ **Neck brushes.** No salon or school may use neck brushes.

~~13-14.~~ **Dry storage.** All tools, instruments, and implements must be stored in a clean closed cabinet or drawer. Paper, money, candy, and personal items may not be stored or placed in cabinets or drawers where tools, instruments, and implements are stored.

~~14-15.~~ **Ultraviolet light.** Ultraviolet light boxes are prohibited as a means of disinfection.

~~15-16.~~ **Banned products.** Any products or supplies banned by the United States drug enforcement administration or other federal, state, or local governing agency, including methyl-methacrylate, are prohibited.

~~16-17.~~ **Invasive practices.** ~~Skin-cutting equipment~~Equipment, including razor type callus shavers, credo blades, rasps or graters, or other implements used to remove corns, calluses, moles, or otherwise used to cut below the ~~skin surface~~epidermis, are prohibited. ~~The~~Micro-needling, plasma fibro-blasting pens, derma rollers and the use of lancets also ~~is~~are prohibited.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-12. Toilet facilities.

All salons shall have adequate toilet facilities conveniently located and readily accessible to the public patronizing the establishment. All salons in residential establishments shall provide and label toilet facilities only for the use of customers during business hours. Toilet facilities shall be clean, disinfected, and properly maintained at all times. ~~All plumbing must be in accordance with the state or local plumbing codes.~~

Each salon shall provide ~~adequate~~ handwashing facilities, including hot and cold running water. Each handwashing sink must have a soap dispenser supplied with liquid soap and disposable towels or ~~approved~~ air dryer.

History: Amended effective March 1, 1998; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-13. Pets.

No animals, ~~birds, or other pets~~, except ~~assistance~~service or companion animals ~~for the disabled~~ and fish in aquariums, shall be permitted in any licensed salon. Service or companion animals must be under control of the handler or owner at all times.

History: Amended effective December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-14. Infants and children.

Repealed effective April 1, 2022.

~~— No licensed salon premises shall be used in any manner for the care or babysitting of infants or small children.~~

~~**History:** Amended effective January 1, 2017.~~

~~**General Authority:** NDCC 43-11-05~~

~~**Law Implemented:** NDCC 43-11-11~~

32-02-01-15. Inspections.

A salon license shall only be issued to establishments inspected and approved by the board. A board inspection and approval shall be required for all new salons and schools as well as when changes of ownership or address take place. All salon premises must be open for inspection during normal business hours. If a salon is not open every day, the salon owner must inform the board office of the days the salon is open for business. The owner of the salon is responsible for keeping the entire salon open for inspection by the board or board inspectors. The board or board inspectors shall examine and inspect the entire salon premises regardless of independent licensee salons. An independent licensee salon within a salon that relocates within the same salon, does not need to go through a new inspection, but shall provide the board office with a revised floor plan as outlined in section 32-03-01-02. Inspections may be conducted as determined by the board.

History: Amended effective July 1, 1988; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-13, 43-11-17

CHAPTER 32-03-01 SALONS

Section

32-03-01-01	Salon Applications
32-03-01-02	Floor Plan
32-03-01-03	Zoning [Repealed]
32-03-01-03.1	Salon Transfer
32-03-01-04	License Displayed
32-03-01-05	Separate Establishments
32-03-01-06	Changes in Operators or Manager-Operators [Repealed]
32-03-01-07	Master Cosmetologist <u>Salon Management</u>
32-03-01-08	Tools and Supplies
32-03-01-09	Signs
32-03-01-10	Booth-Space <u>Independent Licensee-Salon</u>
32-03-01-11	Salon Discontinuance
32-03-01-12	Application for License to Practice Cosmetology for the Homebound <u>[Repealed]</u>
32-03-01-13	Brush Rollers <u>[Repealed]</u>
32-03-01-14	Practice Outside of Salon

32-03-01-01. Salon applications.

All ~~persons~~ individuals, firms, associations, corporations, partnerships, and other entities desiring to operate a salon shall make application to the board for a license prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of eighty dollars. All renewal applications of salons shall be made to the board before December thirty-first in each year. Renewal applications shall be accompanied by the fee of thirty dollars. Prior to any change of ownership, name, location, or address, a salon shall apply for a new license with the board. ~~For rural salons, owners shall supply a detailed map indicating the salon's exact location and directions for driving to that salon.~~

History: Amended effective July 1, 1988; January 1, 2002; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-17, 43-11-28

32-03-01-02. Floor plan.

Every application for a ~~certificate of registration~~ license shall be accompanied by a detailed floor plan of the proposed salon premises. The floor plan shall show entrances, exits, locations of equipment, reception area, supply area, toilet facilities, hallways, and facilities to maintain sanitary conditions. ~~A copy of an approved inspection report by local, county, or state authorities governing plumbing, electrical, and building codes is required prior to final inspection.~~ A revised floor plan shall be filed with the board in the event of any change of location or major changes in the salon premises.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-03-01-04. License displayed.

Every salon shall ~~conspicuously~~ display its ~~license~~ licenses in clear view to the public in the ~~reception~~ immediate work area of the salon where services are being provided.

History: Amended effective January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-14

32-03-01-07. ~~Master cosmetologist~~Salon management.

1. Every salon shall ~~have~~ be supervised by a master ~~cosmetologist~~ licensee as defined in North Dakota Century Code chapter 43-11 who shall be responsible for the ~~operation, conduct, and~~ management of the ~~salon~~ licensees. A master licensee shall be present on the salon premises during business hours. A salon only providing manicuring services must have a master cosmetologist or master manicurist who is responsible for the operation, conduct, and management of the salon. A salon providing only skin care shall have a master cosmetologist or master esthetician who is responsible for the operation, conduct, and management of the salon. The master cosmetologist, master manicurist, or master esthetician shall be present on the salon premises during business hours, except the individual may take breaks or leave to perform other responsibilities for periods of time that do not exceed one hour and the individual need not be present if services are not being performed.
2. Each salon owner or master cosmetologist, master manicurist, or master esthetician shall provide the board office with an accurate schedule of the days and hours the salon is open for business.
3. Every salon, upon request, must provide documented hours for master license applications. A salon or supervisor may not decline to provide documentation for master cosmetologist, manicurist, or esthetician licensure. Salons must keep documented hour records for at least two years after any separation of employment.

History: Amended effective July 1, 1988; March 1, 1998; July 1, 2000; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-15

32-03-01-10. ~~Booth-space~~Independent licensee-salon.

In the event any salon premises are divided into ~~booth-space allotments~~ independent licensee-salons to be leased to others, each ~~person~~ individual, firm, association, partnership, corporation, or other entity whose name appears on the application as ~~operator of the booth-space~~ independent licensee shall be responsible for the properly cleaning and disinfecting the space. ~~Booth-rental salons~~ Independent licensee-salons are subject to inspections during the operation whether or not ~~a booth-operator~~ an independent licensee is available. The owner of the salon shall be responsible for keeping the entire salon open for inspection by the board or ~~board~~ inspectors employed by the board, and the board shall examine and inspect the entire salon premises regardless of any ~~booth-space allotments~~ independent licensee-salons.

Each ~~booth-space allotment~~ independent licensee-salon shall be licensed as a separate salon and each ~~booth-space allotment~~ independent licensee-salon shall be operated only by a master cosmetologist, master manicurist, or master esthetician, as applicable to the independent licensee salon.

1. **Compliance as salon.** Each ~~booth-space allotment~~ independent licensee-salon must have adequate workspace. The ~~salon~~ independent licensee-salon premises must meet all of the requirements of a salon contained in North Dakota Century Code chapter 43-11 and this article, except that there may be common reception areas, common toilet facilities, common product dispensing area, and common entrances and exits.
2. **License displayed.** The license for each ~~booth-space allotment~~ independent licensee-salon shall be displayed in clear view in the ~~booth~~ immediate work area of the independent licensee-salon.

3. **Premises used.** Each master cosmetologist, master manicurist, or master esthetician operating ~~a booth space salon~~ an independent licensee-salons shall be responsible for all professional services performed and for all of the premises used.

History: Amended effective February 1, 1996; March 1, 1998; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-13, 43-11-15, 43-11-17

32-03-01-12. Application for license to practice cosmetology for the homebound.

Repealed effective April 1, 2022.

~~— All licensed cosmetologists not associated with licensed salons desiring to provide cosmetology services for the homebound shall make application to the board for a homebound license and meet the following requirements:~~

- ~~— 1. Possess a valid master cosmetologist, master manicurist, or master esthetician license.~~
- ~~— 2. Possess a kit and present the kit for inspection by a board-approved inspector. The kit must contain the following:
 - ~~— a. License;~~
 - ~~— b. Copy of rules of cleaning and disinfecting;~~
 - ~~— c. First-aid kit complying with section 32-02-01-07; and~~
 - ~~— d. Separate closed labeled containers for soiled and clean supplies.~~~~
- ~~— 3. Comply with all rules of disinfection for combs, brushes, tools, and other equipment as provided in section 32-02-01-10.~~
- ~~— 4. The original fee for a homebound license is fifty-five dollars per year and annual renewals are thirty dollars per year and yearly inspections must be coordinated with the inspector.~~

~~**History:** Effective February 1, 1996; amended effective July 1, 1996; August 8, 1996; December 1, 2005; January 1, 2012; January 1, 2017.~~

~~**General Authority:** NDCC 43-11-05~~

~~**Law Implemented:** NDCC 43-11-01, 43-11-11, 43-11-13, 43-11-13.2, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-28~~

OBJECTION

~~THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 32-03-01-12 AS ADOPTED BY THE STATE BOARD OF COSMETOLOGY EFFECTIVE FEBRUARY 1, 1996.~~

~~The committee objects to this rule because the committee deems it to be unreasonable, arbitrary, or capricious. The committee believes this rule exceeds the intent of the Legislative Assembly by unduly restricting the availability of cosmetology services to homebound persons.~~

~~Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.~~

~~**History:** Effective May 29, 1996.~~

~~General Authority: NDCC 28-32-03.3~~

32-03-01-13. Brush rollers.

Repealed effective April 1, 2022.

~~All brush rollers must be free of hair before being disinfected.~~

~~History: Effective March 1, 1998; amended effective January 1, 2017.~~

~~General Authority: NDCC 43-11-05~~

~~Law Implemented: NDCC 43-11-11, 43-11-11.1~~

32-03-01-14. Practice outside of salon.

~~A master cosmetologist, master manicurist, or master esthetician may practice outside of a salon establishment if~~ A licensee desiring to provide cosmetology services outside of a salon shall meet the following requirements:

1. ~~The licensee is a~~ master cosmetologist, master manicurist, or master esthetician ~~has one year of work experience;~~
2. The master cosmetologist, master manicurist, or master esthetician follows all applicable rules of cleaning and disinfecting adopted in chapter 32-02-01; ~~and~~
3. ~~Cosmetology services are not provided in a manner or frequency to cause the location where the services are provided to constitute a salon as defined in section 32-01-02-01.~~ The master cosmetologist, master manicurist, or master esthetician notifies the board if licensees will be practicing outside the salon; and
4. The master cosmetologist, master manicurist, or master esthetician shall possess a kit. The kit must contain the following:
 - a. Adequate tools and supplies;
 - b. License;
 - c. Copy of rules of cleaning and disinfecting;
 - d. First-aid kit in compliance with this section; and
 - e. Separate labeled, enclosed containers for soiled and clean supplies.

~~History: Effective July 1, 2000; amended effective December 1, 2005; January 1, 2017;~~ April 1, 2022.

~~General Authority: NDCC 43-11-05, 43-11-11~~

~~Law Implemented: NDCC 43-11-11~~

CHAPTER 32-04-01 COSMETOLOGY SCHOOLS

Section	
32-04-01-01	School Applications
32-04-01-02	Floor Plan
32-04-01-03	Bond [Repealed]
32-04-01-04	Certificates Licenses Displayed
32-04-01-05	Separate Establishments
32-04-01-06	Student Registration
32-04-01-07	Student Transfers
32-04-01-08	Discontinuance of Students
32-04-01-09	Change in Instructors
32-04-01-10	School Discontinuance
32-04-01-11	Attendance Reports
32-04-01-12	Signs and Advertising
32-04-01-13	Equipment and Library
32-04-01-14	Tools and Supplies
32-04-01-15	School Rules and Regulations
32-04-01-16	Lockers
32-04-01-17	Name Tags
32-04-01-18	Curriculum
32-04-01-19	Credit and Deductions
32-04-01-20	Class Schedule
32-04-01-21	Instructors at School
32-04-01-22	Student Compensation and Guaranteed Position
32-04-01-23	Certain Student Use Prohibited
32-04-01-24	Student Complaints
32-04-01-25	Examinations
32-04-01-26	Solicitor's Permit
32-04-01-26.1	Cosmetology Course Curriculum
32-04-01-27	Esthetician Course Curriculum
32-04-01-28	Manicurist Course Curriculum
32-04-01-29	Curriculum for Esthetician Instructor Training [Repealed]
32-04-01-30	Curriculum for Nail Care Instructor Training [Repealed]

32-04-01-01. School applications.

All ~~persons~~~~individuals~~, firms, associations, partnerships, corporations, and other entities desiring to operate a cosmetology school shall make application to the board for a certificate not less than three months prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of five hundred five dollars. All renewal applications of cosmetology schools shall be made to the board before December thirty-first in each year. Renewal applications shall be accompanied by the fee of two hundred five dollars. Six weeks prior to any change of ownership, location, or address, a cosmetology school shall make written application to the board. The application for reregistration must be made on a form provided by the board and must be accompanied by a fee of two hundred five dollars.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-16, 43-11-17

32-04-01-02. Floor plan.

Every application for a ~~certificate of registration~~ license to conduct a cosmetology school shall be accompanied by a detailed floor plan of the proposed school premises. The floor plan shall show entrances, exits, locations of equipment, business office, reception area, classrooms, ~~clinic~~ laboratory service floor area, dispensary, student lounge, toilet facilities, and hallways. A revised floor plan shall be filed with the board in the event of any change of location or major changes in the school premises.

History: Amended effective July 1, 1988; December 1, 2005; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16

32-04-01-04. ~~Certificates~~ Licenses displayed.

Every cosmetology school shall ~~conspicuously~~ display its ~~certificate of registration~~ license in clear view to the public in the reception area of the school.

History: Amended effective April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-14

32-04-01-09. Change in instructors.

Every cosmetology school shall notify the board in writing of any change in the staff of instructors. ~~The written notification provided to the board by the school shall contain the name, current home address, and certificate of registration number of each instructor employed or terminated.~~

History: Amended effective March 1, 1998; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-17

32-04-01-12. Signs and advertising.

1. **Entrance sign.** Every cosmetology school shall display and maintain a sign, clearly visible to anyone approaching the entrance to the school, designating it as a school and giving the name of the school.
2. **Student services sign.** Every cosmetology school shall prominently display signs stating "all services performed by students". The signs shall be clearly visible in the ~~clinic~~ laboratory service floor area and the reception area.
3. **Signs for entrances to school areas.** The entrances to the various rooms and areas of each school premises shall be clearly and suitably marked with signs.
4. **Price signs.** Signs listing prices charged for clinic work shall be prominently displayed in the reception area.
5. **Advertising.** All advertising of cosmetology schools shall disclose that services are performed by students.

History: Amended effective March 1, 1998; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16, 43-11-18

32-04-01-13. Equipment and library.

Each cosmetology school shall have the following minimum equipment and library for each of the following courses of training and instruction provided by the school:

1. Cosmetology minimum equipment:

~~1- Chart of anatomy~~

- ~~a. Bones~~
- ~~b. Muscles~~
- ~~c. Nerves~~
- ~~d. Circulatory system~~
- ~~e. Skin~~

~~1- Blackboard for each theory room~~

~~1- Large wet disinfecting unit for each twenty-five students enrolled~~

~~1- Shampoo basin for each six students enrolled~~

~~6- Facial chairs, beds, or tables~~

~~1- Hair dryer for each eight students enrolled~~

~~1- Manicure table for each four students enrolled~~

~~1- Workstation with mirror for each two students enrolled~~

~~300- Permanent cold wave rods and other permanent cold wave supplies~~

~~1- Bulletin board – conspicuously located~~

~~Solution dispensers adequate for enrollment~~

~~Fireproof cabinet or file for school and student records~~

~~Adequate supply of facial supplies~~

a. One anatomy chart, which includes:

(1) Bones;

(2) Muscles;

(3) Nerves;

(4) Circulatory system; and

(5) Skin.

b. Presentation equipment for each theory room.

c. Large wet disinfecting unit for each twenty-five students enrolled.

d. Shampoo bowl for each six students enrolled.

e. Facial chairs, bed, or tables.

f. Hair dryer for each eight students enrolled.

g. Manicure table for each four students enrolled.

h. Workstation with mirror for each two students enrolled.

2. Esthetician minimum equipment:

- a. ~~Sufficient chalkboards~~ Presentation equipment.
- b. One ~~lavatory bowl~~ sink separate from restrooms for enrollment for up to fifteen students.
- c. One workstation or position per two students, which must include a facial chair or cushioned massage table.
- d. One set of manual, mechanical, or electrical facial equipment per two workstations or positions, ~~to include manual, mechanical, or electrical apparatus (at least one of the following): electrical heating mask, steamer, brushing, vacuum ionization, glass electrode or high-frequency galvanic or cathodic current (prohibited faradic) decrustation machine, spray or mister, or one magnification lamp~~ necessary to fulfill the curriculum requirement.
- e. ~~Sufficient trays for facial supplies.~~
- ~~f.~~ One dryenclosed storage unit per each workstation.
- ~~g.f.~~ One properly lighted makeup area.
- ~~h.g.~~ One head form ~~or~~ .
- h. One facial chart per class.

i. Audiovisual aids.

3. Manicurist minimum equipment:

- a. ~~Sufficient chalkboards~~ Presentation equipment.
- b. A ~~minimum of one~~ handwashing sink separate from restrooms for enrollment up to fifteen, and one additional sink for each fifteen students ~~or fraction thereof.~~
- c. ~~Advanced department will have adequate chairs for clients, also adequate ventilation for work areas.~~
- ~~d.~~ One workspace with adequate light must be provided for every student.
- ~~e.d.~~ Sufficient trays for manicuring supplies.
- ~~f.e.~~ One set of mannequin hands per student.
- ~~g.f.~~ Manicuring kit for each student containing proper implements for manicuring and pedicuring.
- ~~h.g.~~ Implements for artificial nails, nail wraps, and tipping.
- ~~i.h.~~ One pedicure setup station.
- ~~j.i.~~ Audiovisual aids.

4. Minimum school library:

- a. Standard dictionary.
- b. Dictionary of medical words.

- c. Standard textbook.
- d. References on iron curling.
- e. References on hair straightening.
- f. References on hair coloring.
- g. Copy of cosmetology law.
- h. Copy of cleaning and disinfecting rules and regulations.
- i. Copy of minimum prices.
- j. ~~Trade magazines.~~
- ~~k.~~ Audiovisual aids pertaining to cosmetology.

History: Amended effective July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16

32-04-01-14. Tools and supplies.

The cosmetology school shall provide each student with the tools and supplies listed in the student contract.

- ~~1. **Mannequin.** Each cosmetology school shall furnish a mannequin to each cosmetology, esthetics, and manicure student, ~~except a student provided training and instruction limited to esthetics or manicure.~~~~
- ~~2. **Removing tools and supplies.** Registered students shall not remove any tools, supplies, or equipment from the school premises without permission of the school management.~~

History: Amended effective July 1, 1988; July 1, 1990; January 1, 2002; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-17. Name tags.

Each instructor, student instructor, and student shall wear name tags bearing the person's individual's name. The name tags shall be worn at all times while on the premises of a cosmetology school.

History: Amended effective April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-18. Curriculum.

Each cosmetology school shall teach branches and areas of cosmetology, which shall include theory and practice in subjects required, provided, and approved by the board.

- 1. **Hours.** The course of instruction shall consist of one thousand eightfive hundred hours for cosmetology, six hundred hours for esthetics, and three hundred fifty hours for manicuring.

2. **Theory classes.** Each cosmetology school shall conduct theory classes a minimum of ~~one hour per day for a minimum of~~ four ~~days~~ hours per week until requirements under North Dakota Century Code chapter 43-11 are met.
3. **Credit record.** Each cosmetology school shall keep the student hour and credit record current for each student, and the record shall be current by the fifth of each month the student is enrolled. Within five days of a school's knowledge that a student has either completed the course, transferred, or discontinued and fulfilled all school requirements accordingly, the school shall furnish the board with the record.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22

32-04-01-20. Class schedule.

Each cosmetology school shall keep a class schedule, and the class schedule shall be ~~posted on the school bulletin board~~ provided two weeks in advance of the classes to be held. The schedule shall also show the classes already held. The school shall maintain a true copy of the schedules in its permanent files, and the schedules shall be subject to the inspection and approval of the board.

History: Amended effective April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-21. Instructors at school.

Each instructor of a cosmetology school shall be present in classrooms of the school during classes, and each instructor shall be present and supervise all student work and activities on the school premises. All workstations in the school ~~clinic laboratory~~ service floor area shall be open and arranged so instructors can supervise each student on the clinic floor. Instructors and student instructors shall not provide any professional service to the public while employed at a cosmetology school.

History: Amended effective July 1, 1988; April 1, 2022.

General Authority: NDCC 43-11-13

Law Implemented: NDCC 43-11-16, 43-11-27

32-04-01-25. Examinations.

1. **School examinations.** Each student must have successfully passed eighty percent of the weekly examinations and secured a seventy-five percent average in the cosmetology school final examination in both written and practical work.
2. **Board examinations.** A cosmetologist, manicurist, esthetician, and instructor examination shall consist of a theoretical portion and a practical portion. The practical examinations shall be administered by the board.

In order to be certified as passing an examination, a candidate shall score at least seventy-five percent on the theoretical and practical portions of the examination.

3. **Failing applicant.** ~~Applicants who fail any portion of the examination shall reregister and pay the required fee before being permitted to retake the examination. An applicant for a cosmetology license who fails the practical examination twice must complete an additional one hundred sixty hours of training at a school of cosmetology. An applicant for an esthetician license who fails the practical examination twice must complete an additional fifty hours of training at a school of cosmetology. An applicant for a manicurist license who fails the practical examination twice must complete an additional thirty hours of training at a school of~~

cosmetology. If the applicant fails to pass the examination, the examination fee may not be returned. If an applicant fails to pass an examination, the applicant may be examined again with the payment of a re-examination fee as defined under North Dakota Century Code chapter 43-11.

4. **Applicant complaint.** An applicant shall notify the board in writing if there is reason to believe that there has been discrimination during any portion of the examination.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; July 1, 2000; December 1, 2005; January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22, 43-11-23

32-04-01-26. Solicitor's permit.

All ~~persons~~individuals who solicit or sell any course of instruction shall obtain a permit. Applications must be accompanied by a surety bond in the penal sum of one thousand dollars for each solicitor. The permit fee is thirty dollars.

History: Effective July 1, 1988; amended effective December 1, 2005; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-26.1. Cosmetology course curriculum.

The hours of the cosmetology course curriculum for classroom or clinic for instruction must include the following:

<u>Cleaning, disinfecting, and safety</u>	<u>150 hours</u>
Hair shaping <u>cutting and styling</u>	250 <u>450</u> hours
Hairstyling-	250 hours
Nails <u>Manicuring</u>	100 hours
Facials, skin <u>Skin care and esthetics</u>	100 hours
Chemical services	250 <u>300</u> hours
Study of theory, <u>and law,</u> and cleaning and disinfecting-	400 <u>150</u> hours
Related <u>Business management, interpersonal skills, ethics, and related</u> subjects (classroom or clinic for instructions)	450 <u>250</u> hours
Total minimum hours	<hr/> 1,800 <u>1,500</u> hours

History: Effective July 1, 2000; amended effective January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

CHAPTER 32-05-01

32-05-01-01. Cosmetologists.

Every ~~person~~individual desiring to be licensed by the board as a cosmetologist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to cosmetologists and the educational qualifications set forth in section 32-04-01-26.1 and shall make application to the board for a certificate prior to commencing any activity as a cosmetologist.

1. **Fee and proof.** The application shall be accompanied by the required proof of qualification applicable to the applicant, the original license fee of fifteen dollars, and the practical examination fee of twenty-five dollars.
2. **Renewal.** Every cosmetologist shall renew the cosmetologist's license by annually making written application to the board before December thirty-first each year, and such renewal application shall be accompanied by the fifteen dollar fee.
3. **Penalty fee.** If the licensee fails to renew the cosmetologist's license by the expiration date, a penalty fee of fifty dollars is required.
4. Late renewal fee. If the licensee fails to renew up to five years, a penalty fee of one hundred fifty dollars is required.
5. **Change of name or address.** Every cosmetologist shall notify the board in writing of any change of name or change of residence address.
- ~~5.6.~~ **License displayed.** Every cosmetologist shall ~~conspicuously~~ display ~~the~~their current cosmetologist's license ~~in the reception or~~in clear view to the public in the immediate work area of the salon where services are being provided.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-28

32-05-01-02. Master cosmetologists.

Every ~~person~~individual desiring to be licensed by the board as a master cosmetologist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to master cosmetologists and shall make written application to the board.

1. **Fee and proof.** The application shall be accompanied by the fee of twenty-five dollars and the required proof of qualification.
2. **Renewal.** Every master cosmetologist shall renew the master cosmetologist's license by annually making an application to the board before December thirty-first each year, and the renewal application shall be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the master cosmetologist's license by the expiration date, a penalty fee of fifty dollars is required.
4. Late renewal fee. If the licensee fails to renew up to five years, a penalty fee of one hundred fifty dollars is required.
5. **Change of name or address.** Every master cosmetologist shall notify the board in writing of any change of name or change of residence address.

5-6. License displayed. Every master cosmetologist shall ~~conspicuously~~ display ~~the~~their current master cosmetologist's license ~~in the reception or~~ in clear view to the public in the immediate work area of the salon where services are being provided.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005; January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-26, 43-11-28

32-05-01-03. Instructors.

Every ~~person~~individual desiring to be an instructor shall have the qualifications and have passed the examination required ~~by~~under North Dakota Century Code chapter 43-11 ~~applicable to student~~. Student instructors and instructors ~~and~~ shall make application in writing to the board ~~pursuant to~~ as defined under North Dakota Century Code ~~section 43-11-27~~chapter 43-11 and this section.

1. **Renewal.** Every instructor shall renew the instructor's license by annually making written application to the board before December thirty-first each year, and the renewal application shall be accompanied by the twenty dollar fee and evidence of attendance at a board-approved seminar during the previous year.
2. **Penalty fee.** If the licensee fails to renew the instructor's license by the expiration date, a penalty fee of fifty dollars is required.
3. **Late renewal fee.** If the licensee fails to renew up to five years, a penalty fee of one hundred fifty dollars is required.
4. **Seminars.** Every instructor shall attend eight hours of board-approved continuing education annually. Before attending any seminar, every instructor shall apply in writing to the board for approval of the seminar.

4-5. Change of name or address. Every instructor shall notify the board in writing of any change of name or change of residence address.

5-6. License displayed. Every instructor shall ~~conspicuously~~ display ~~the~~their current instructor's license in ~~the clinic laboratory area of the cosmetology school~~clear view to the public in the immediate work area of the salon where services are being provided.

History: Amended effective July 1, 1988; July 1, 1990; March 1, 1998; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-27, 43-11-28

32-05-01-04. Student instructors.

Every ~~person~~individual desiring to be a student instructor shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to student instructors and shall make application in writing to the board before enrollment in a registered cosmetology school. Upon board approval of the application, the ~~person~~individual may enroll in a licensed cosmetology school.

1. **Fee.** There shall be a fifteen dollar fee for application and registration of student instructors with the board.
2. **Contents and certification.** The cosmetology school of the approved student shall certify in writing to the board the name, age, and qualifications of the student instructor, and the board shall record the information in a student instructor register.

3. **Application.** Upon completion of the required course prescribed for student instructors, the student instructor shall make written application to the board on a form provided by the board, and the written application shall be accompanied by a fee of thirty-five dollars.
4. **Examination.** The time, place, and date of the examinations for instructor's licenses shall be set by the board. The examination fee is fifty-five dollars.

History: Amended effective July 1, 1988; December 1, 2005; [April 1, 2022](#).

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-27, 43-11-28

32-05-01-06. Esthetician.

Every ~~person~~individual desiring to be licensed by the board as an esthetician shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to estheticians and the educational qualifications set forth in section 32-04-01-27 and shall make written application to the board to register for the esthetician's examination:

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant, the original license fee of twenty-five dollars, and the practical examination fee of twenty-five dollars.
2. **Renewal.** Every esthetician shall renew the esthetician's license by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the esthetician's license by the expiration date, a penalty fee of fifty dollars is required.
4. **Late renewal fee. If the licensee fails to renew up to five years, a penalty fee of one hundred fifty dollars is required.**
5. **Change of name or address.** Every esthetician shall notify the board in writing of any change of name or residence.
- 5.6. **License displayed.** Every esthetician shall ~~conspicuously~~ display ~~the~~their current esthetician's license in ~~the reception or~~clear view to the public in the immediate work area of the salon where services are being provided.

History: Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012; January 1, 2017; [April 1, 2022](#).

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

32-05-01-06.1. Master esthetician.

Every ~~person~~individual desiring to be licensed by the board as a master esthetician shall furnish to the board evidence of having practiced as a licensed esthetician for one thousand hours.

A master esthetician may operate and supervise a salon that is operated and engaged exclusively in the practice of skin care.

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant and the original license fee of twenty-five dollars.

2. **Renewal.** Every master esthetician shall renew the master esthetician's license by annually making written application to the board's office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the master esthetician's license by the expiration date, a penalty fee of fifty dollars is required.
4. **Late renewal fee.** If the licensee fails to renew up to five years, a penalty fee of one hundred fifty dollars is required.
5. **Change of name or address.** Every master esthetician shall notify the board in writing of any change of name or residence.
- 5.6. **License displayed.** Every master esthetician shall ~~conspicuously~~ display ~~the~~their current master esthetician's license in ~~the reception or~~clear view to the public in the immediate work area of the salon where services are being provided.

History: Effective February 1, 1996; amended effective July 1, 2000; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13.1, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

32-05-01-07. Manicurist.

Every ~~person~~individual desiring to be licensed by the board as a manicurist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manicurists and the educational qualifications set forth in section 32-04-01-28 and shall make written application to the board to register for the manicurist's examination.

1. **Fee and proof.** The application must be accompanied by the required proof of qualification applicable to the applicant, the original license fee of twenty-five dollars, and the practical examination fee of twenty-five dollars.
2. **Renewal.** Every manicurist shall renew the manicurist's license by annually making written application to the board before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the manicurist's license by the expiration date, a penalty of fifty dollars is required.
4. **Late renewal fee.** If the licensee fails to renew up to five years, a penalty fee of one hundred fifty dollars is required.
5. **Change of name or address.** Every manicurist shall notify the board in writing of any change of name or any change of residence.
5. **License displayed.** Every manicurist shall ~~conspicuously~~ display ~~the~~their current manicurist's license in ~~the reception or~~clear view to the public in the immediate work area of the salon where services are being provided.

History: Effective July 1, 1990; amended effective March 1, 1998; January 1, 2002; December 1, 2005; January 1, 2012; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-27, 43-11-27.1, 43-11-28

32-05-01-07.1. Master manicurist.

Every ~~person~~individual desiring to be licensed by the board as a master manicurist shall furnish to the board evidence of having practiced as a licensed manicurist for one thousand hours.

A master manicurist may operate and supervise a salon that is operated and engaged exclusively in the practice of manicuring.

1. **Fee and proof.** The required proof of qualification applicable to the applicant and the original license fee of twenty-five dollars must accompany the application.
2. **Renewal.** Every master manicurist shall renew the master manicurist's license by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the twenty dollar fee.
3. **Penalty fee.** If the licensee fails to renew the master manicurist's license by the expiration date, a penalty fee of fifty dollars is required.
4. Late renewal fee. If the licensee fails to renew up to five years, a penalty fee of one hundred fifty dollars is required.
5. **Change of name or address.** Every master manicurist shall notify the board in writing of any change of name or residence.
- ~~5-6.~~ **License displayed.** Every master manicurist shall ~~conspicuously~~ display ~~the~~their current master manicurist's license in ~~the reception or~~clear view to the public in the immediate work area of the salon where services are being provided.

History: Effective February 1, 1996; amended effective July 1, 2000; December 1, 2005; January 1, 2017; April 1, 2022.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13.1, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

TITLE 43
INDUSTRIAL COMMISSION

APRIL 2022

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43-02-03-90.3	Petitions for Review of Recommended Order and Oral Arguments Prohibited
43-02-03-90.4	Notice of Order by Mail
43-02-03-90.5	Service and Filing
43-02-03-91	Rehearing [Repealed]
43-02-03-92	Burden of Proof [Repealed]
43-02-03-93	Designation of Examiners
43-02-03-94	Matters to Be Heard by Examiner [Repealed]
43-02-03-95	Powers and Duties of Examiner
43-02-03-96	Matters Heard by Commission [Repealed]
43-02-03-97	Examiner Disinterested Umpire [Repealed]
43-02-03-98	Report of Examiner
43-02-03-99	Commission Order From Examiner Hearing
43-02-03-100	Hearing De Novo Before Commission [Repealed]
43-02-03-101	Prehearing Motion Practice

43-02-03-07. United States government leases.

The commission recognizes that all persons drilling and producing on United States government land shall comply with the United States government regulations. Such persons shall also comply with all applicable state rules and regulations. Copies of the sundry notices, reports on wells, and well data required by this chapter of the wells on United States government land shall be furnished to the commission at no expense to the commission. ~~Federal forms may be used when filing such notices and reports except for reporting the plugging and abandonment of a well. In such instance, the plugging record (form 7) must be filed with the commission.~~

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1994; [April 1, 2022](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-09. Forms ~~upon request~~.

Forms ~~for written notices, requests, and reports~~ required by the commission will be furnished upon request. ~~These forms shall be of such nature as prescribed by the commission to cover proposed work and to report the results of completed work.~~ [The commission will provide electronic submission for most requests and reports.](#)

History: [Amended effective April 1, 2022.](#)

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-14.2. Oil and gas metering systems.

1. **Application of section.** This section is applicable to all allocation and custody transfer metering stations measuring production from oil and gas wells within the state of North Dakota, including private, state, and federal wells. If these rules differ from federal

requirements on measurement of production from federal oil and gas wells, the federal rules take precedence.

2. **Definitions.** As used in this section:

- a. "Allocation meter" means a meter used by the producer to determine the volume from an individual well before it is commingled with production from one or more other wells prior to the custody transfer point.
- b. "Calibration test" means the process or procedure of adjusting an instrument, such as a gas meter, so its indication or registration is in satisfactorily close agreement with a reference standard.
- c. "Custody transfer meter" means a meter used to transfer oil or gas from the producer to transporter or purchaser.
- d. "Gas gathering meter" means a meter used in the custody transfer of gas into a gathering system.
- e. "Meter factor" means a number obtained by dividing the net volume of fluid (liquid or gaseous) passed through the meter during proving by the net volume registered by the meter.
- f. "Metering proving" means the procedure required to determine the relationship between the true volume of a fluid (liquid or gaseous) measured by a meter and the volume indicated by the meter.

3. **Inventory filing requirements.** The owner of metering equipment shall file with the commission an inventory of all meters used for custody transfer and allocation of production from oil or gas wells, or both. Inventories must be updated on an annual basis, and filed with the commission on or before the first day of each year, or they may be updated as frequently as monthly, at the discretion of the operator. Inventories must include the following:

- a. Well name and legal description of location or meter location if different.
- b. North Dakota industrial commission well file number.
- c. Meter information:
 - (1) Gas meters:
 - (a) Make and model.
 - (b) Differential, static, and temperature range.
 - (c) Orifice tube size (diameter).
 - (d) Meter station number.
 - (e) Serial number.
 - (2) Oil meters:
 - (a) Make and model.
 - (b) Size.
 - (c) Meter station number.

(d) Serial number.

4. **Installation and removal of meters.** The commission must be notified of all custody transfer meters placed in service. The owner of the custody transfer equipment shall notify the commission of the date a meter is placed in service, the make and model of the meter, and the meter or station number. The commission must also be notified of all metering installations removed from service. The notice must include the date the meter is removed from service, the serial number, and the meter or station number. The required notices must be filed with the commission within thirty days of the installation or removal of a meter.

All allocation meters must be approved prior to installation and use. The application for approval must be on a sundry notice (form 4 or form provided by the commission) and shall include the make and model number of the meter, the meter or station number, the serial number, the well name, its location, and the date the meter will be placed in service.

Meter installations for measuring production from oil or gas wells, or both, must be constructed to American petroleum institute or American gas association standards or to meter manufacturer's recommended installation. Meter installations constructed in accordance with American petroleum institute or American gas association standards in effect at the time of installation shall not automatically be required to retrofit if standards are revised. The commission will review any revised standards, and when deemed necessary will amend the requirements accordingly.

5. **Registration of persons proving or testing meters.** All persons engaged in meter proving or testing of oil and gas meters must be registered with the commission. Those persons involved in oil meter testing, by flowing fluid through the meter into a test tank and then gauging the tank, are exempted from the registration process. However, such persons must notify the commission prior to commencement of the test to allow a representative of the commission to witness the testing process. A report of the results of such test shall be filed with the commission within thirty days after the test is completed. Registration must include the following:
- a. Name and address of company.
 - b. Name and address of measurement personnel.
 - c. Qualifications, listing experience or specific training.

Any meter tests performed by a person not registered with the commission will not be accepted as a valid test.

6. **Calibration requirements.** Oil and gas metering equipment must be proved or tested to American petroleum institute or American gas association standards or to the meter manufacturer's recommended procedure to establish a meter factor or to ensure measurement accuracy. The owner of a custody transfer meter or allocation meter shall notify the commission at least ten days prior to the testing of any meter.
- a. Oil allocation meter factors shall be maintained within two percent of original meter factor. If the factor change between provings or tests is greater than two percent, meter use must be discontinued until successfully reproven after being repaired or replaced.
 - b. Oil custody transfer meter factors must be maintained within one-quarter of one percent of the previous meter factor. If the factor change between provings or tests is greater than one-quarter of one percent, meter use must be discontinued until successfully reproven after being repaired or replaced.

- c. Copies of all oil allocation meter test procedures are to be filed with and reviewed by the commission to ensure measurement accuracy.
- d. All gas meters must be tested with a minimum of a three-point test for static and differential pressure elements and a two-point test for temperature elements. The test reports must include an as-found and as-left test and a detailed report of changes.
- e. Test reports must include the following:
 - (1) Producer name.
 - (2) Well or CTB name.
 - (3) Well file number or CTB number.
 - (4) Pipeline company or company name of test contractor.
 - (5) Test personnel's name.
 - (6) Station or meter number.
- f. Unless required more often by the director, minimum frequency of meter proving or calibration tests are as follows:
 - (1) Oil meters used for custody transfer shall be proved monthly for all measured volumes which exceed two thousand barrels per month. For volumes two thousand barrels or less per month, meters shall be proved at each two thousand barrel interval or more frequently at the discretion of the operator.
 - (2) Quarterly for oil meters used for allocation of production in a diverse ownership central production facility. Semiannually for oil meters used for allocation of production in a common ownership central production facility.
 - (3) Semiannually for gas meters used for allocation of production in a diverse ownership central production facility. Annually for gas meters used for allocation of production in a common ownership central production facility.
 - (4) Semiannually for gas meters in gas gathering systems.
 - (5) For meters measuring more than one hundred thousand cubic feet [2831.68 cubic meters] per day on a monthly basis, orifice plates shall be inspected semiannually, and meter tubes shall be inspected at least every five years to ensure continued conformance with the American gas association meter tube specifications.
 - (6) For meters measuring one hundred thousand cubic feet [2831.68 cubic meters] per day or less on a monthly basis, orifice plates shall be inspected annually.
- g. All meter test reports, including failed meter test reports, must be filed within thirty days of completion of proving or calibration tests unless otherwise approved. Test reports are to be filed on, but not limited to, all meters used for allocation measurement of oil or gas and all meters used in crude oil custody transfer.
- h. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy must be made available upon request. Certification of the equipment must be updated as follows:

- (1) Annually for all equipment used to test the pressure and differential pressure elements.
 - (2) Annually for all equipment used to determine temperature.
 - (3) Biennially for all conventional pipe provers.
 - (4) Annually for all master meters.
 - (5) Five years for equipment used in orifice tube inspection.
7. **Variations.** Variations from all or part of this section may be granted by the commission provided the variation does not affect measurement accuracy. All requests for variations must be on a sundry notice (form 4).

A register of variations requested and approved must be maintained by the commission.

History: Effective May 1, 1994; amended effective July 1, 1996; September 1, 2000; July 1, 2002; April 1, 2018; April 1, 2020; [April 1, 2022](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-15. Bond and transfer of wells.

1. **Bond requirements.** Prior to commencing construction of a site or appurtenance or road access thereto, any person who proposes to drill a well for oil, gas, injection, or source well for use in enhanced recovery operations, shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
2. **Bond amounts and limitations.** The bond shall be in the amount of fifty thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. Wells utilized for commercial injection operations must be bonded in the amount of one hundred thousand dollars. A blanket bond covering more than one well shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six of the following in aggregate:
 - a. A well that is a dry hole and is not properly plugged;
 - b. A well that is plugged and the site is not properly reclaimed;
 - c. A well that is abandoned pursuant to subsection 1 of North Dakota Century Code section 38-08-04 or section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed; and
 - d. A well that is temporarily abandoned under section 43-02-03-55 for more than seven years.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are

reinstated. A well with an approved temporary abandoned status for no more than seven years shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. **Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. **Bond terms.** Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
5. **Transfer of wells under bond.** Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal must proceed as follows:
 - a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.
 - (1) The principal shall submit a schematic drawing identifying all lines owned by the principal which leave the constructed pad or facility and shall provide any details the director deems necessary.
 - (2) The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.
 - (3) On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if any well on the bond is in violation of a statute, rule, or order. No abandoned well may be transferred from a bond unless the transferee has obtained a single well bond in an amount equal to the cost of plugging the well and reclaiming the well site.
 - c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. **Treating plant bond.** Prior to commencing site or road access construction, any person proposing to operate a treating plant must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
7. **Saltwater handling facility bond.** Prior to commencing site or road access construction, any person proposing to operate a saltwater handling facility that is not already bonded as an appurtenance shall submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the saltwater handling facility must be the principal on the bond. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-53.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, the surety shall satisfy the conditions or forfeit to the commission the face value of the bond. Transfer of property does not release the bond. The director may refuse to transfer any saltwater handling facility from a bond if the saltwater handling facility is in violation of a statute, rule, or order.
8. **Crude oil and produced water underground gathering pipeline bond.** The bonding requirements for crude oil and produced water underground gathering pipelines are not to be construed to be required on flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on piping utilized to connect wells, tanks, treaters, flares, or other equipment on the production facility.

- a. Any owner of an underground gathering pipeline transferring crude oil or produced water, after April 19, 2015, shall submit to the commission and obtain its approval of a surety bond or cash bond prior to July 1, 2017. Any owner of a proposed underground gathering pipeline to transfer crude oil or produced water shall submit to the commission and obtain its approval of a surety bond or cash bond prior to placing into service. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the crude oil or produced water underground gathering pipeline must be the principal on the bond. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The bond must be in the amount of fifty thousand dollars when applicable to one crude oil or produced water underground gathering pipeline system only. Such underground gathering pipelines that are less than one mile [1609.34 meters] in length may be bonded in a lesser amount if approved by the director. When the principal on the bond is operating multiple gathering pipeline systems within the state or proposes to do so, the principal may submit a blanket bond conditioned as provided by law. A blanket bond covering one or more underground gathering pipeline systems must be in the amount of one hundred thousand dollars. The owner shall file with the director, as prescribed by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point of all underground gathering pipelines on the bond. Each layer must include at least the following information:
 - (1) The name of the pipeline gathering system and other separately named portions thereof;
 - (2) The type of fluid transported;
 - (3) The pipeline composition;
 - (4) Burial depth; and
 - (5) Approximate in-service date.
- b. The blanket bond covering more than one underground gathering pipeline system is limited to no more than six of the following instances of noncompliance in aggregate:
 - (1) Any portion of an underground gathering pipeline system that has been removed from service for more than one year and is not properly abandoned pursuant to section 43-02-03-29.1; and
 - (2) An underground gathering pipeline right-of-way, including associated above ground equipment, which has not been properly reclaimed pursuant to section 43-02-03-29.1.

If this aggregate of underground gathering pipeline systems is reached, the commission may refuse to accept additional pipeline systems on the bond until the aggregate is brought back into compliance. The commission, after notice and hearing, may require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the underground gathering pipeline system and the expected cost of pipeline abandonment and right-of-way reclamation, as determined by the commission. The commission may refuse to accept a bond or to add underground gathering pipeline systems to a blanket bond if the owner or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of underground gathering pipelines; if a civil or administrative action brought by

the commission is pending against the owner or surety company; if an underground gathering pipeline system has exhibited multiple failures; or for other good cause.

- c. The underground gathering pipeline bond is to remain in force until the pipeline has been abandoned, as provided in section 43-02-03-29.1, and the right-of-way, including all associated above ground equipment, has been reclaimed as provided in section 43-02-03-29.1, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
- d. Transfer of underground gathering pipelines under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in the underground gathering pipeline and the principal desires to be released from the bond covering the underground gathering pipeline, the principal must proceed as follows:
 - (1) The principal shall notify the director, in writing, of all proposed transfers of underground gathering pipelines at least thirty days before the closing date of the transfer. The director, for good cause, may waive this requirement.

Notice of underground gathering pipeline transfer. The principal shall submit, as provided by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point of all underground gathering pipelines to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form 15pl signed by a party duly authorized to sign on behalf of the principal.

The notice of underground gathering pipeline transfer must recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such underground gathering pipelines under the transferee's pipeline bond or, as the case may be, does accept the responsibility of such underground gathering pipelines under the transferee's pipeline systems blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- (2) When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor must be released from the responsibility of abandoning the underground gathering pipelines and right-of-way reclamation. If such underground gathering pipelines include all underground gathering pipeline systems within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any underground gathering pipeline from a bond if the underground gathering pipeline is in violation of a statute, rule, or order.
- (3) The transferee (new owner) of any underground gathering pipeline is responsible for the abandonment and right-of-way reclamation of any such underground gathering pipeline. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such underground gathering pipeline. The original or prior bond may not be released as to the abandonment and right-of-way reclamation responsibility of any such transferor until

the transferee submits to the commission an acceptable bond to cover such underground gathering pipeline. All liability on bonds continues until the abandonment and right-of-way reclamation of such underground gathering pipeline is completed and approved by the director.

9. Geological storage facility bond requirements. Before commencing injection operations, the operator of any storage facility shall submit to the commission, and obtain its approval, a surety bond or cash bond in the amount specified by the commission in the order approving the storage facility. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the storage facility shall be the principal on the bond covering the storage facility. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota.

10. **Bond termination.** The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

~~40.11.~~ **Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2020; April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16.1. Designation and responsibilities of operator.

The principal on the bond covering a well ~~or a~~ treating plant, or facility is the operator. The operator is responsible for compliance with all applicable laws. A dispute over designation of the operator may be addressed by the commission. In doing so, the factors the commission may consider include those set forth in subsection 1 of section 43-02-03-16.2.

History: Effective December 1, 1996; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-21. Casing, tubing, and cementing requirements.

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

Drilling of the surface hole shall be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. This includes water used during the cementing of surface casing for displacement. The surface casing shall consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing shall be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement shall be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. If the annulus space is not adequately filled with cement, the director shall be notified immediately. The operator shall diligently perform remedial work after obtaining approval from the director. All strings of surface casing

shall stand cemented under pressure for at least twelve hours before drilling the plug ~~or initiating tests~~. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method or other methods approved by the director. The director is authorized to require an accurate gauge be maintained on the surface casing of any well, not properly plugged and abandoned, to detect any buildup of pressure caused by the migration of fluids.

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

Production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours, although in any horizontal well performing a single stage cement job from a measured depth of greater than thirteen thousand feet [3962.4 meters], the filler cement utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within forty-eight hours and at least five hundred pounds per square inch [3450 kilopascals] within ninety-six hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius]. At a formation temperature at or in excess of two hundred thirty degrees Fahrenheit [110 degrees Celsius], cement blends must include additives to address compressive strength regression.

Each casing string shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals] immediately after cementing, while the cement is in a liquid state, or the casing string must be pressure tested after all cement has reached five hundred pounds per square inch [3450 kilopascals] compressive strength. If, at the end of thirty minutes, this pressure has dropped more than ten percent, the casing shall be repaired after receiving approval from the director. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

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

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 1997; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2010; April 1, 2012; April 1, 2020; [April 1, 2022](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-27.1. Hydraulic fracture stimulation.

1. Prior to performing any hydraulic fracture stimulation, including refracs, through a frac string run inside the intermediate casing string:

- a. The frac string must be either stung into a liner with the hanger/packer located in cemented casing or run with a packer set at a minimum depth of one hundred feet [30.48 meters] below the top of cement or a minimum depth of one hundred feet [30.48 meters] below the top of the Inyan Kara formation, whichever is deeper.
 - b. The intermediate casing-frac string annulus must be pressurized and monitored during frac operations. Prior to performing any refrac, a casing evaluation tool must be run to verify adequate wall thickness of the intermediate casing.
 - c. An adequately sized, function tested pressure relief valve must be utilized on the treating lines from the pumps to the wellhead, with suitable check valves to limit the volume of flowback fluid should the relief valve open. The relief valve must be set to limit line pressure to no more than eighty-five percent of the internal yield pressure of the frac string.
 - d. An adequately sized, function tested pressure relief valve and an adequate sized diversion line must be utilized to divert flow from the intermediate casing to a pit or containment vessel in case of frac string failure. The relief valve must be set to limit annular pressure to no more than eighty-five percent of the lowest internal yield pressure of the intermediate casing string or no greater than the pressure test on the intermediate casing, less one hundred pounds per square inch gauge, whichever is less.
 - e. The surface casing must be fully open and connected to a diversion line rigged to a pit or containment vessel.
 - f. An adequately sized, function tested remote operated frac valve must be utilized at a location on the christmas tree that provides isolation of the well bore from the treating line and must be remotely operated from the edge of the location or other safe distance.
 - g. Notify the director within twenty-four hours after the commencement of hydraulic fracture stimulation operations, in an electronic format approved by the director, identifying the subject well and verifying a frac string was run in the well.
 - h. Within sixty days after the hydraulic fracture stimulation is performed, the owner, operator, or service company shall post on the fracfocus chemical disclosure registry all elements made viewable by the fracfocus website.
2. Prior to performing any hydraulic fracture stimulation, including refracs, through an intermediate casing string:
 - a. The maximum treating pressure shall be no greater than eighty-five percent of the American petroleum institute rating of the affected intermediate casing string.
 - b. Casing evaluation tools to verify adequate wall thickness of ~~the~~any affected intermediate casing string shall be run from the wellhead to a depth as close as practicable to one hundred feet [30.48 meters] above the completion formation and a visual inspection with photographs shall be made of the top joint of the intermediate casing and the wellhead flange. The visual inspection and photograph requirement may be waived by the director for good cause.

If the casing evaluation tool or visual inspection indicates wall thickness is below the American petroleum institute minimum or a lighter weight of intermediate casing than the well design called for, calculations must be made to determine the reduced pressure rating. If the reduced pressure rating is less than the anticipated treating pressure, a frac string shall be run inside the intermediate casing.

- c. Cement evaluation tools to verify adequate cementing of ~~the~~each intermediate casing string shall be run from the wellhead to a depth as close as practicable to one hundred feet [30.48 meters] above the completion formation.
 - (1) If the cement evaluation tool indicates defective casing or cementing, a frac string shall be run inside the intermediate casing.
 - (2) If the cement evaluation tool indicates the intermediate casing string cemented in the well fails to satisfy section 43-02-03-21, a frac string shall be run inside the intermediate casing.
 - d. ~~The~~Each affected intermediate casing string and the wellhead must be pressure tested ~~to a minimum depth of one hundred feet [30.48 meters] below the top of the Tyler formation~~ for at least thirty minutes with less than five percent loss to a pressure equal to or in excess of the maximum frac design pressure.
 - e. If the pressure rating of the wellhead does not exceed the maximum frac design pressure, a wellhead and blowout preventer protection system must be utilized during the frac.
 - f. An adequately sized, function tested pressure relief valve must be utilized on the treating lines from the pumps to the wellhead, with suitable check valves to limit the volume of flowback fluid should be the relief valve open. The relief valve must be set to limit line pressure to no greater than the test pressure of the intermediate casing, less one hundred pounds per square inch [689.48 kilopascals].
 - g. The surface casing valve must be fully open and connected to a diversion line rigged to a pit or containment vessel.
 - h. An adequately sized, function tested remote operated frac valve must be utilized between the treating line and the wellhead.
 - i. Notify the director within twenty-four hours after the commencement of hydraulic fracture stimulation operations, in an electronic format approved by the director, identifying the subject well and verifying all logs and pressure tests have been performed as required.
 - j. Within sixty days after the hydraulic fracture stimulation is performed, the owner, operator, or service company shall post on the fracfocus chemical disclosure registry all elements made viewable by the fracfocus website.
3. If during the stimulation, the pressure in the intermediate casing-surface casing annulus exceeds three hundred fifty pounds per square inch [2413 kilopascals] gauge, the owner or operator shall verbally notify the director as soon as practicable but no later than twenty-four hours following the incident.

History: Effective April 1, 2012; amended effective April 1, 2014; April 1, 2020; April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29. Well and lease equipment and gas gathering pipelines.

Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained. Equipment on producing wells shall be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

All newly constructed underground gas gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. All such pipelines installed in a trench must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, the possibility of damage to the pipe, and tracer wire shall be buried with any nonconductive pipes installed. When a trench for an underground gas gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material.

1. The operator of any underground gas gathering pipeline placed into service on August 1, 2011, to June 30, 2013, shall file with the director, by January 1, 2015, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. The operator of any underground gas gathering pipeline placed into service after June 30, 2013, shall file with the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Ersi) shape file format showing the location of all compressor sites, buried drip tanks, and the pipeline centerline. An affidavit of completion shall accompany each layer containing the following information:
 - a. A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.
 - b. The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
 - c. The anticipated operating pressure of the pipeline.
 - d. The type of fluid that will be transported in the pipeline and direction of flow.
 - e. Pressure to which the pipeline was tested prior to placing into service.
 - f. The minimum pipeline depth of burial.
 - g. In-service date.
 - h. Leak detection and monitoring methods that will be utilized after in-service date.
 - i. Pipeline name.
 - j. Accuracy of the geographical information system layer.
2. When an underground gas gathering pipeline or any part of such pipeline is abandoned, the operator shall leave such pipeline in a safe condition by conducting the following:
 - a. Disconnect and physically isolate the pipeline from any operating facility or other pipeline.
 - b. Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
 - c. Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
 - d. Remove cathodic protection from the pipeline.
 - e. Permanently plug or cap all open ends by mechanical means or welded means.

3. Within one hundred eighty days of completing the abandonment of an underground gas gathering pipeline the operator of the pipeline shall file with the director a geographical information system layer utilization North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Ersi) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:
 - a. A statement that the pipeline was abandoned in compliance with section 43-02-03-29.
 - b. The type of fluid used to purge the pipeline.

The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

History: Amended effective January 1, 1983; January 1, 2006; April 1, 2014; October 1, 2016; [April 1, 2022](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29.1. Crude oil and produced water underground gathering pipelines.

1. Application of section. This section is applicable to all underground gathering pipelines designed for or capable of transporting crude oil, ~~natural gas, carbon dioxide,~~ or produced water from an oil and gas production facility for the purpose of disposal, storage, or for sale purposes ~~or designed for or capable of transporting carbon dioxide from a carbon capture facility for the purpose of storage or enhanced oil recovery.~~ If these rules differ from the pipeline manufacturer's prescribed installation and operation practices, the pipeline manufacturer's prescribed installation and operation practices take precedence.

The requirements in this section are not applicable to flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on piping utilized to connect wells, tanks, treaters, flares, or other equipment located entirely within the boundary of a well site or production facility.

If these rules differ from or are preempted by federal requirements on federally regulated pipelines, the federal rules take precedence. The pipeline owner shall provide sufficient documentation to the director confirming the pipeline is federally regulated.

2. Definitions. The terms used throughout this section apply to this section only.
 - a. "Crude oil or produced water underground gathering pipeline" means an underground gathering pipeline designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes.
 - b. "New construction" means a new gathering pipeline installation project or an alteration or reroute of an existing gathering pipeline where the location, composition, size, design temperature, or design pressure changes.
 - c. "Pipeline repair" is the work necessary to restore a pipeline system to a condition suitable for safe operations that does not change the design temperature or pressure.
 - d. "Gathering system" is a group of connected pipelines ~~which are connected~~ which have been designated as a gathering system by the operator. A gathering system must have a unique name and must be interconnected.

- e. "In-service date" is the first date fluid was transported down the underground gathering pipeline for disposal, storage, or sale purposes after construction.
3. Notifications.
- a. The underground gathering pipeline owner shall notify the commission, as provided by the director, at least seven days prior to commencing new construction of any underground gathering pipeline.
 - (1) The notice of intent to construct a crude oil or produced water underground gathering pipeline must include the following:
 - (a) The proposed date construction is scheduled to begin.
 - (b) A statement that the director will be verbally notified approximately forty-eight hours prior to commencing the construction.
 - (c) A geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the proposed route of the pipeline from the point of origin to the termination point.
 - (d) The proposed underground gathering pipeline design drawings, including all associated above ground equipment.
 - [1] The proposed pipeline composition, specifications (i.e. size, weight, grade, wall thickness, coating, and standard dimension ratio).
 - [2] The type of fluid to be transported.
 - [3] The method of testing pipeline integrity (e.g. hydrostatic or pneumatic test) prior to placing the pipeline into service.
 - [4] Proposed burial depth of the pipeline.
 - [5] The location and type of all road crossings (i.e. bored and cased or bored only).
 - [6] The location of all environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies that the pipeline may traverse, if applicable.
 - b. The underground gathering pipeline owner shall file a sundry notice (form 4 or form provided by the commission) with the director notifying the commission of any underground gathering pipeline system or portion thereof that has been removed from service for more than one year.
 - c. If damage occurs to any underground gathering pipeline, flow line, or other underground equipment used to transport crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas, during construction, operation, maintenance, repair, or abandonment of an underground gathering pipeline, the responsible party shall verbally notify the director immediately.
 - d. The pipeline owner shall file a sundry notice (form 4 or form provided by the commission) within thirty days of the in-service date reporting the date of first service.
4. Design and construction.

The following applies to newly constructed crude oil and produced water underground gathering pipelines, including tie-ins to existing systems:

- a. Underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids.
- b. Underground gathering pipelines must be designed in a manner that allows for line maintenance, periodic line cleaning, and integrity testing.
- c. Installation crews must be trained in all installation practices for which they are tasked to perform.
- d. Underground gathering pipelines must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, and the possibility of damage to the pipe. Tracer wire must be buried with any nonconductive pipe installed.
- e. Unless the manufacturer's installation procedures and practices provide guidance, pipeline trenches must be constructed to allow for the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe. Trench bottoms must be free of rocks greater than two inches in diameter, debris, trash, and other foreign material not required for pipeline installation. If a trench bottom is over excavated, the trench bottom must be backfilled with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

The width of the trench must provide adequate clearance on each side of the pipe. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench. Subsoil from the excavated trench must be stockpiled separately from previously stripped topsoil.

- f. Underground gathering pipelines that cross a township, county, or state graded road must be bored unless the responsible governing agency specifically permits the owner to open cut the road.
- g. No pipe or other component may be installed unless it has been visually inspected at the site of installation to ensure that it is not damaged in a manner that could impair its strength or reduce its serviceability.
- h. The pipe must be handled in a manner that minimizes stress and avoids physical damage to the pipe during stringing, joining, or lowering in. During the lowering in process the pipe string must be properly supported so as not to induce excess stresses on the pipe or the pipe joints or cause weakening or damage to the outer surface of the pipe.
- i. When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe. Backfill material that will be within two feet of the pipe must be free of rocks greater than two inches in diameter and foreign debris. Backfilling material must be compacted as appropriate during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.
- j. Cover depths must be a minimum of four feet [1.22 meters] from the top of the pipe to the finished grade. The cover depth for an undeveloped governmental section line must be a minimum of six feet [1.83 meters] from the top of the pipe to the finished grade.

- k. Underground gathering pipelines that traverse environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies, must be installed in a manner that minimizes impacts to these areas. Any horizontal directional drilling plan prepared by the owner or required by the director, must be filed with the commission, prior to the commencement of horizontal directional drilling.
 - l. Clamping or squeezing as a method of connecting any produced water underground gathering pipeline must be approved by the director. Prior to clamping or squeezing the pipeline, the owner shall file a sundry notice (form 4 or form provided by the commission) with the director and obtain approval of the clamping or squeezing plan. The notice must include documentation that the pipeline can be safely clamped or squeezed as prescribed by the manufacturer's specifications. Any damaged portion of a produced water underground gathering pipeline that has been clamped or squeezed must be replaced before it is placed into service.
5. Pipeline reclamation.
- a. When utilizing excavation for pipeline installation, repair, or abandonment, topsoil must be stripped, segregated from the subsoils, and stockpiled for use in reclamation. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top twelve inches [30.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater.
 - b. The pipeline right-of-way must be reclaimed as closely as practicable to original condition. All stakes, temporary construction markers, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of.
 - c. During right-of-way reclamation all subsoils and topsoils must be returned in proper order to as close to the original depths as practicable.
 - d. The reclaimed right-of-way soils must be stabilized to prevent excessive settling, sluffing, cave-ins, or erosion.
 - e. The crude oil and produced water underground gathering pipeline owner is responsible for their right-of-way reclamation and maintenance until such pipeline is released by the commission from the pipeline bond pursuant to section 43-02-03-15.

6. Inspection.

All newly constructed crude oil and produced water underground gathering pipelines must be inspected by third-party independent inspectors to ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with the requirements of this section. A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, and specific training must be provided to the commission upon request. A person may not be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected. The third-party independent inspector may not be an employee of the gathering pipeline owner/operator or the contractor hired to construct and install the pipeline.

7. Associated pipeline facility.

No associated above ground equipment may be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

All associated above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

Dikes must be erected around all produced water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. Dikes must be erected and maintained around all crude oil or produced water tanks or above ground equipment, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged crude oil or produced water must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

The underground gathering pipeline owner shall take steps to minimize the amount of solids stored at the pipeline facility, although the remediation of such material may be allowed onsite, if approved by the director.

8. Underground gathering pipeline as built.

The owner of any underground gathering pipeline placed into service after July 31, 2011, shall file with the director, as prescribed by the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point. An affidavit of completion shall accompany each layer containing the following information:

- a. A third-party inspector certificate that the pipeline was constructed and installed in compliance with section 43-02-03-29.1.
- b. The outside diameter, minimum wall thickness, composition, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
- c. The maximum allowable operating pressure of the pipeline.
- d. The specified minimum yield strength and internal yield pressure of the pipeline if applicable to the composition of pipe.
- e. The type of fluid that will be transported in the pipeline.
- f. Pressure and duration to which the pipeline was tested prior to placing into service.
- g. The minimum pipeline depth of burial from the top of the pipe to the finished grade.
- h. In-service date.
- i. Leak protection and monitoring methods that will be utilized after in-service date.
- j. Any leak detection methods that have been prepared by the owner.
- k. The name of the pipeline gathering system and any other separately named portions thereof.

I. Accuracy of the geographical information system layer.

9. Operating requirements.

The maximum operating pressure for all crude oil and produced water underground gathering pipelines may not exceed the manufacturer's specifications of the pipe or the manufacturer's specifications of any other component of the pipeline, whichever is less. The maximum operating pressure of any portion of an underground gathering system may not exceed the test pressure from the most recent integrity test demonstration following modification or repair for which it was tested.

The crude oil or produced water underground gathering pipeline must be equipped with adequate controls and protective equipment to prevent the pipeline from operating above the maximum operating pressure.

10. Leak protection, detection, and monitoring.

All crude oil and produced water underground gathering pipeline owners shall file with the commission any leak protection and monitoring plan prepared by the owner or required by the director, pursuant to North Dakota Century Code section 38-08-27.

If any leak detection plan has been prepared by the owner, it must be submitted to the director.

All crude oil or produced water underground gathering pipeline owners shall develop and maintain a data sharing plan. The plan must provide for real-time sharing of data between the operator of the production facility, the crude oil or produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage, or sale. If a discrepancy in the shared data is observed, the party observing the data discrepancy shall notify all other parties and action must be taken to determine the cause. A record of all data discrepancies must be retained by the crude oil or produced water underground gathering pipeline owner. If requested, copies of such records must be filed with the commission.

11. Spill response.

All crude oil and produced water underground gathering pipeline owners shall maintain a spill response plan during the service life of any crude oil or produced water underground gathering pipeline. The plan should detail the necessary steps for an effective and timely response to a pipeline spill. The spill response plan should be tailored to the specific risks in the localized area. Response capabilities should address access to equipment and tools necessary to respond, as well as action steps to protect the health and property of impacted landowners, citizens, and the environment.

12. Corrosion control.

- a. Underground gathering pipelines must be designed to withstand the effects of external corrosion and maintained in a manner that mitigates internal corrosion.
- b. All metallic underground gathering pipelines installed must have sufficient corrosion control.
- c. All coated pipe must be electronically inspected prior to placement using coating deficiency (i.e. holiday) detectors to check for any faults not observable by visual examination. The holiday detector must be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested. During installation all joints, fittings, and tie-ins must be coated with materials compatible with the coatings on the pipe. Coating materials must:

- (1) Be designed to mitigate corrosion of the buried pipeline;
 - (2) Have sufficient adhesion to the metal surface to prevent under film migration of moisture;
 - (3) Be sufficiently ductile to resist cracking;
 - (4) Have enough strength to resist damage due to handling and soil stress;
 - (5) Support any supplemental cathodic protection; and
 - (6) If the coating is an insulating type, have low moisture absorption and provide high electrical resistance.
- d. Cathodic protection systems must meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems.
 - e. If internal corrosion is anticipated or detected, the underground gathering pipeline owner shall take prompt remedial action to correct any deficiencies, such as increased pigging, use of corrosion inhibitors, internal coating of the pipeline (e.g. an epoxy paint or other plastic liner), or a combination of these methods. Corrosion inhibitors must be used in sufficient quantity to protect the entire part of the pipeline system that the inhibitors are designed to protect.
13. Pipeline integrity.

A crude oil or produced water underground gathering pipeline owner may not operate a pipeline unless it has been pressure tested and demonstrated integrity. In addition, an owner may not return to service a portion of pipeline which has been repaired, replaced, relocated, or otherwise changed until it has demonstrated integrity.

- a. The crude oil and produced water underground gathering pipeline owner shall notify the commission at least forty-eight hours prior to commencement of any pipeline integrity test to allow a representative of the commission to witness the testing process and results. The notice must include the pipeline integrity test procedure.
- b. The crude oil and produced water underground gathering pipeline owner shall submit within sixty days of the underground gathering pipeline being placed into service the integrity test results which must include the following:
 - (1) The name of the pipeline gathering system and any other separately named portions thereof;
 - (2) The date of the test;
 - (3) The duration of the test;
 - (4) The length of pipeline which was tested;
 - (5) The maximum and minimum test pressure;
 - (6) The starting and ending pressure;
 - (7) A copy of the chart recorder or digital log results;
 - (8) A geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute

shape file format showing the location of the centerline of the portion of the pipeline that was tested;

- (9) A copy of the test procedure used; and
- (10) A third-party inspector certificate summarizing the pipeline has been pressure tested and whether it demonstrated integrity, including the identification of any leaks, ruptures, or other integrity issues encountered, and an explanation for any substantial pressure gain or losses during the integrity test, if applicable.

c. All crude oil and produced water underground gathering pipeline owners shall maintain a pipeline integrity demonstration plan during the service life of any crude oil or produced water underground gathering pipeline. The director, for good cause, may require a pipeline integrity demonstration on any crude oil or produced water underground gathering pipeline.

14. Pipeline repair.

Each owner, in repairing an underground gathering pipeline or pipeline system, shall ensure that the repairs are made in a manner that prevents damage to persons or property.

An owner may not use any pipe, valve, or fitting, for replacement or repair of an underground gathering pipeline, unless it is designed to meet the maximum operating pressure.

- a. At least forty-eight hours prior to any underground gathering pipeline repair or replacement, the underground gathering pipeline owner shall notify the commission, as provided by the director, except in an emergency.
- b. Within one hundred eighty days of repairing or replacing any underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of the centerline of the repaired or replaced pipeline and an affidavit of completion containing the following information:
 - (1) A statement that the pipeline was repaired in compliance with section 43-02-03-29.1.
 - (2) The reason for the repair or replacement.
 - (3) The length of pipeline that was repaired or replaced.
 - (4) Pressure and duration to which the pipeline was tested prior to returning to service.
- c. Clamping or squeezing as a method of repair for any produced water underground gathering pipeline must be approved by the director. Prior to clamping or squeezing the pipeline, the owner shall file a sundry notice (form 4) with the director and obtain approval of the clamping or squeezing plan. The notice must include documentation that the pipeline can be safely clamped or squeezed as prescribed by the manufacturer's specifications. If an emergency requires clamping or squeezing, the owner or the owner's agent shall obtain verbal approval from the director and the notice shall be filed within seven days of completing the repair. Any damaged portion of a produced water underground gathering pipeline that has been clamped or squeezed must be replaced before it is returned to service.

15. Pipeline abandonment.

- a. At least forty-eight hours prior to abandoning any underground gathering pipeline, the underground gathering pipeline owner shall notify the director verbally.
- b. When an underground gathering pipeline or any part of such pipeline is abandoned as defined under subsection 1 of North Dakota Century Code section 38-08-02 after March 31, 2014, the owner shall leave such pipeline in a safe condition by conducting the following:
 - (1) Disconnect and physically isolate the pipeline from any operating facility, associated above ground equipment, or other pipeline.
 - (2) Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
 - (3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
 - (4) Remove cathodic protection from the pipeline.
 - (5) Permanently plug or cap all open ends by mechanical means or welded means.
 - (6) The site of all associated above ground equipment must be reclaimed pursuant to section 43-02-03-34.1.
 - (7) If the bury depth is not at least three feet below final grade, such portion of pipe must be removed.
- c. Within one hundred eighty days of completing the abandonment of an underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:
 - (1) A statement that the pipeline was abandoned in compliance with section 43-02-03-29.1.
 - (2) The type of fluid used to purge the pipeline.
 - (3) The date of pipeline abandonment.
 - (4) The length of pipeline abandoned.

History: Effective October 1, 2016; amended effective April 1, 2020; [April 1, 2022](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-30. Notification of fires, leaks, spills, or blowouts.

All persons controlling or operating any well, pipeline and associated aboveground equipment, receiving tank, storage tank, [facility](#), treating plant, or any other receptacle or production facility associated with oil, gas, or water production, injection, processing, or well servicing shall verbally notify the director immediately and follow up utilizing the online initial notification report within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. The initial report must include the name of the reporting party, including telephone number and address, date and time of the incident, location of the incident, type and cause of the incident, estimated volume of release, containment status, waterways involved, immediate potential threat, and action taken. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within

a reasonable time also notify the surface owners upon whose land the incident occurred or traveled. Notification requirements prescribed by this section do not apply to any leak or spill involving only freshwater or to any leak, spill, or release of crude oil, produced water, or natural gas liquid that is less than one barrel total volume and remains onsite of a site where any well thereon was spud before September 2, 2000, or on a facility that was constructed before September 2, 2000, and do not apply to any leak or spill or release of crude oil, produced water, or natural gas liquid that is less than ten barrels total volume cumulative over a fifteen-day time period, and remains onsite of a site where all wells thereon were spud after September 1, 2000, or on a facility that was constructed after September 1, 2000. The initial notification must be followed by a written report within ten days after cleanup of the incident, unless deemed unnecessary by the director. Such report must include the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, root cause of the incident unless deemed unnecessary by the director, and action taken to prevent reoccurrence, and if applicable, any additional information pursuant to subdivision e of subsection 1 of North Dakota Century Code section 37-17.1-07.1. The **signature name**, title, and telephone number of the company representative must be included on such report. The persons, as named above, responsible for proper notification shall within a reasonable time also provide a copy of the written report to the surface owners upon whose land the incident occurred or traveled.

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

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 2008; April 1, 2010; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2020; [April 1, 2022](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34.1. Reclamation of surface.

1. Within a reasonable time, but not more than one year, after a well is plugged, or if a permit expires, has been canceled or revoked, or a treating plant or saltwater handling facility is decommissioned, the site, access road, and other associated facilities constructed shall be reclaimed as closely as practicable to original condition pursuant to North Dakota Century Code section 38-08-04.12. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice shall include:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;
 - c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other associated facilities; and
 - d. Reseeding plans, if applicable.

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

All equipment, waste, and debris shall be removed from the site. All pipelines shall be purged and abandoned pursuant to section 43-02-03-29.1. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

2. Gravel or other surfacing material shall be removed, stabilized soil shall be remediated, and the site, access road, and other associated facilities constructed for the well, treating plant, or saltwater handling facility shall be reshaped as near as practicable to original contour.
3. The stockpiled topsoil shall be evenly distributed over the disturbed area and, where applicable, the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
4. A site assessment may be required by the director, before and after reclamation of the site.
5. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
6. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged or treating plant or saltwater handling facility is decommissioned ~~and~~. The operator shall record documentation of the waiver with the recorder of the county in which the site or road is located.

History: Effective April 1, 2012; amended effective April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2020; April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-38.1. Preservation of cores and samples.

Unless waived by the director, operators shall have a well site geologist or mudlogger on location for at least the first well drilled on a multiwell pad to collect sample cuttings and to create a mudlog and geologic report. Sample cuttings of formations, taken at intervals prescribed by the state geologist, in all wells drilled for the production of oil or gas, injection, disposal, storage operations, or geologicgeological information in North Dakota, shall be washed and packaged in standard sample envelopes which in turn shall be placed in proper order in a standard sample box; carefully identified as to operator, well name, well file number, American petroleum institute number, location, depth of sample; and shall be sent free of cost to the state core and sample library within thirty days after completion of drilling operations.

The operator of any well drilled for the production of oil or gas, injection, disposal, storage operations, or geological information in North Dakota, during the drilling of or immediately following the completion of any well, shall inform the director of all intervals that are to be cored, or have been cored. Unless specifically exempted by the director, all cores taken shall be preserved, placed in a standard core box and the entire core forwarded to the state core and sample library, free of cost, within one hundred eighty days after completion of drilling operations. The director may grant an extension of the one hundred eighty-day time period for good reason. If an exemption is granted, the operator shall advise the state geologist of the final disposition of the core.

This section does not prohibit the operator from taking such samples of the core as the operator may desire for identification and testing. The operator shall furnish the state geologist with the results of all identification and testing procedures within thirty days of the completion of such work. The state geologist may grant an extension of the thirty-day time period for good reason.

The size of the standard envelopes, sample boxes, and core boxes shall be determined by the director and indicated in the cores and samples letter.

History: Effective October 1, 1990; amended effective January 1, 2006; April 1, 2014; April 1, 2020; April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-55. Abandonment of wells, treating plants, underground gathering pipelines, or saltwater handling facilities - Suspension of drilling.

1. The removal of production equipment or the failure to produce oil or gas, ~~or the~~ for one year constitutes abandonment of the well. The removal of production equipment or the failure to produce water from a source well; for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. The failure to plug a stratigraphic test hole within one year of reaching total depth constitutes abandonment of the well. The removal of treating plant equipment or the failure to use a treating plant for one year constitutes abandonment of the treating plant. The removal of saltwater handling facility equipment or the failure to use a saltwater handling facility for one year constitutes abandonment of the saltwater handling facility. An abandoned well must be plugged and its site must be reclaimed, an abandoned treating plant must be removed and its site must be reclaimed, and an abandoned saltwater handling facility must be removed and its site must be reclaimed, pursuant to sections 43-02-03-34 and 43-02-03-34.1. A well not producing oil or natural gas in paying quantities for one year may be placed in abandoned-well status pursuant to subsection 1 of North Dakota Century Code section 38-08-04. If an injection well is inactive for extended periods of time, the commission may, after notice and hearing, require the injection well to be plugged and abandoned. If an underground gathering pipeline is inactive for seven years, the commission may, after notice and hearing, require the pipeline to be properly abandoned pursuant to sections 43-02-03-29 and 43-02-03-29.1.
2. The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status for good cause. This status may only be given to wells that are to be used for purposes related to the production of oil and gas within the next seven years. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status and each extension may be approved for up to one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well. A surface owner may request a review of a well temporarily abandoned for at least seven years pursuant to subsection 1 of North Dakota Century Code section 38-08-04.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director exercises this discretion, the director shall set a date or circumstance upon which the waiver expires.
4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-03-34 and 43-02-03-34.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2020; April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-88.1. Special procedures for increased density wells, pooling, flaring exemption, underground injection, commingling, converting mineral wells to freshwater wells, and central tank battery or central production facilities applications.

1. Applications to amend field rules to allow additional wells on existing spacing units, for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-03-48.1, must be signed by the applicant or the applicant's representative. The application must contain or refer to attachments that contain all the information required by law as well as the information the applicant wants the commission to consider in deciding whether to grant the application. The application must designate an employee or representative of the applicant to whom the commission can direct inquiries regarding the application.
2. The commission shall give the county auditor notice at least fifteen days prior to the hearing of any application in which a request for a disposal under chapter 43-02-05 is received.
3. The applications referred to in subsection 1 will be advertised and scheduled for hearing as are all other applications received by the commission. The applicant, however, unless required by the director, need not appear at the hearing scheduled to consider the application, although additional evidence may be submitted prior to the hearing. Any interested party may appear at the hearing to oppose or comment on the application. Any interested party may also submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner.
4. The director is authorized, on behalf of the commission, to grant or deny the applications referred to in subsection 1.
5. In any proceeding under this section, the applicant, at the hearing, may supplement the record by offering testimony and exhibits in support of the application.
6. In the event the applicant is not required by the director to appear at the hearing and an interested party does appear to oppose the application or submits a written objection to the application, the hearing officer~~examiner~~ shall continue the hearing to a later date, keep the record open for the submission of additional evidence, or take any other action necessary to ensure that the applicant, who does not appear at the hearing as the result of subsection 3, is accorded due process.

History: Effective May 1, 1992; amended effective May 1, 1994; May 1, 2004; April 1, 2012; April 1, 2014; April 1, 2018; [April 1, 2022](#).

General Authority: NDCC 38-08-04, 38-08-11

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

43-02-03-90.2. Official record.

The evidence in each case heard by the commission, unless specifically excluded by the hearing officer~~examiner~~, includes the certified directional surveys, and all oil, water, and gas production records, and all injection records on file with the commission.

Any interested party may submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner.

Settlement negotiations between parties to a contested case are only admissible as governed by North Dakota Century Code section 28-32-24, although the hearing ~~officer~~examiner may strike such testimony from the record for good cause.

History: Effective May 1, 1992; amended effective April 1, 2010; April 1, 2012; October 1, 2016; April 1, 2022.

General Authority: NDCC 28-32-06

Law Implemented: NDCC 28-32-06

43-02-03-90.4. Notice of order by mail.

The commission may~~shall~~ give notice of an ~~order by mailing the~~ order, and findings and conclusions upon which it is based, to all parties ~~by regular mail provided it files an affidavit of service by mail indicating upon whom the order was served~~pursuant to North Dakota Century Code section 38-08-11.

History: Effective May 1, 1992; amended effective April 1, 2022.

General Authority: NDCC 28-32-13

Law Implemented: NDCC 28-32-13

CHAPTER 43-02-14

GEOLOGICAL STORAGE OF OIL OR GAS

Section

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43-02-14-01. Definitions.

The terms used throughout this chapter have the same meaning as in chapters 43-02-02.1, 43-02-03, and 43-02-05, and North Dakota Century Code chapters 38-08, 38-12, 38-25, and 47-31 except:

1. "Facility area" means the areal extent of the storage reservoir or salt cavern.
2. "Storage reservoir" means the total pore space occupied by the injected produced oil or gas during all phases of the project plus any reasonable or necessary horizontal buffer zones.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-02. Scope of chapter.

This chapter pertains to the geological storage of hydrogen and produced oil or gas with little to no processing involved. If the rules differ from federal requirements on federally regulated storage facilities, the federal rules take precedence. The storage facility operator shall provide sufficient documentation to the director confirming the storage facility is federally operated. Applications filed with the commission proposing to inject gas for the purposes of enhanced oil or gas recovery will be processed under chapter 43-02-05. This chapter does not apply to class III injection wells used to

create a salt cavern. Applications for class III wells are under the jurisdiction of the state geologist pursuant to chapter 43-02-02.1. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in the prevention of waste and operate in a manner to protect correlative rights.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-02.1. Application of rules for geological storage.

All geological storage facilities, injection wells, and monitoring wells are also subject to the provisions of chapters 43-02-03, 43-02-05, and 43-05-01 where applicable.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-02.2. Injection into underground source of drinking water prohibited.

Underground injection of oil or gas that causes or allows movement of fluid into an underground source of drinking water is prohibited.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-02.3. Transitioning from enhanced oil or gas recovery to geological storage.

A storage facility operator injecting oil or gas for the primary purpose of geological storage into an oil and gas reservoir shall apply for a geological storage facility and injection well permit. In determining if there is an increased risk to underground sources of drinking water, the commission shall consider the following factors:

1. Increase in reservoir pressure within the injection zone.
2. Oil or gas injection rates.
3. Decrease in reservoir production rates.
4. Distance between the injection zone and underground sources of drinking water.
5. Suitability of the enhanced oil or gas recovery area of review delineation.
6. Quality of abandoned well plugs within the area of review.
7. The storage facility operator's plan for recovery of oil or gas at the cessation of injection.
8. The source and properties of the injected oil or gas.
9. Any additional site specific factors as determined by the commission.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-02.4. Prohibition of unauthorized injection.

Any underground injection of oil or gas for the purpose of geological storage, except into a well authorized by permit issued under this chapter, is prohibited. The construction of any well or site or access road is prohibited until the permit authorizing construction of the well or site or access road has been issued.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-02.5. Existing well conversion.

Storage facility operators seeking to convert an existing well to an injection well for the purpose of geological storage of oil or gas must demonstrate to the commission that the well is constructed in a manner that will ensure the protection of underground sources of drinking water.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-03. Books and records to be kept to substantiate reports.

All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing storage facilities shall make and keep appropriate books and records until dissolution of the storage facility, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-04. Access to records.

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

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-05. Geological storage facility permit hearing.

1. At least thirty days before the scheduled hearing, the applicant shall give notice of the hearing to persons outlined in North Dakota Century Code 38-25-04.
2. Notice given by the applicant must contain the following:
 - a. A legal description of the land within the oil or gas facility area.
 - b. The date, time, and place the commission will hold a hearing on the permit application.
 - c. A statement of purpose of the application.

d. A statement that a digital copy (.pdf format) of the permit may be obtained from the commission.

e. A statement that all comments regarding the geological storage facility permit application must be in writing and submitted to the commission by five p.m. on the last business day before the hearing date or presented at the hearing.

f. Storage in an oil and gas reservoir must contain:

(1) A statement that amalgamation of the pore space within the geological storage reservoir is required to operate the geological storage facility, which requires consent of persons who own at least fifty-five percent, unless otherwise provided for as outlined in North Dakota Century Code section 38-25-05, of the pore space, and a statement that the commission may require the pore space owned by nonconsenting owners to be included in the geological storage facility.

(2) A statement that unitization of oil and gas minerals and oil and gas leases within the geological storage reservoir is required to operate the geological storage facility, which requires consent of persons who own at least fifty-five percent, unless otherwise provided for as outlined in North Dakota Century Code section 38-25-05, of the oil and gas minerals and oil and gas leases, and a statement that the commission may require the oil and gas minerals and oil and gas leases owned by nonconsenting owners to be included in the geological storage facility.

g. Storage in a saline reservoir must contain a statement that amalgamation of the pore space within the geological storage reservoir is required to operate the geological storage facility, which requires consent of persons who own at least sixty percent of the pore space, and a statement that the commission may require the pore space owned by nonconsenting owners to be included in the geological storage facility.

h. Storage in a salt cavern must contain:

(1) A statement that amalgamation of the pore space within the salt cavern is required to operate the geological storage facility, which requires consent of persons who own at least sixty percent of the pore space, and a statement that the commission may require the pore space owned by nonconsenting owners to be included in the geological storage facility.

(2) A statement that unitization of salt minerals and salt leases within the salt cavern is required to operate the geological storage facility, which requires consent of persons who own at least fifty-five percent of the salt minerals and salt leases, and a statement that the commission may require the salt minerals and salt leases owned by nonconsenting owners to be included in the geological storage facility.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-05.1. Area of review and corrective action.

1. The storage facility operator shall prepare, maintain, and comply with a plan to delineate the area of review for a proposed storage facility, periodically re-evaluate the delineation, and perform corrective action that meets the requirements of this section and is acceptable to the commission. The requirement to maintain and implement a commission-approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the storage facility permit application, the storage facility operator shall submit an area of review and corrective action plan that includes the following:

a. The method for delineating the area of review, results of the reservoir or geomechanical modeling and simulation, inputs that will be made, and the site characterization data on which the model will be based.

b. A description of:

(1) The re-evaluation date, not to exceed five years, at which time the storage facility operator shall re-evaluate the area of review.

(2) The monitoring and operational conditions that would warrant a re-evaluation of the area of review before the next scheduled re-evaluation date.

(3) How monitoring and operational data will be used to inform an area of review re-evaluation.

(4) How corrective action will be conducted to meet requirements of this section, and how corrective action will be adjusted if there are changes in the area of review.

2. The storage facility operator shall perform the following actions to delineate the area of review and identify all wells that require corrective action:

a. Applicable to oil and gas and saline reservoirs. Predict, using existing site characterization, monitoring and operational data, and reservoir modeling and simulation, the projected lateral and vertical migration of the injectate in the subsurface from the commencement of injection activities until the oil or gas movement ceases, or until the end of a fixed time as determined by the director:

(1) Be based on detailed geologic data collected to characterize the injection zone, confining zones, and any additional zones; and anticipated operating data, including injection pressures, rates, and total volumes over the proposed life of the storage project.

(2) Consider any geologic heterogeneities, other discontinuities, data quality, and their possible impact on model predictions.

(3) Consider potential migration through faults, fractures, and artificial penetrations.

b. Applicable to salt caverns. Using site-specific geology, cavern construction data acquired during dissolution mining, and geomechanical modeling, determine necessary buffers as setbacks for the following:

(1) Future drilling in the proximity of the cavern.

(2) Additional caverns.

3. The storage facility operator shall perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of injectate or fluid into or between underground sources of drinking water or other unauthorized zones.

4. At the re-evaluation date, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, the storage facility operator shall:

a. Re-evaluate the area of review in the same manner specified in subdivision a or b of subsection 2, whichever is applicable.

- b. Identify all wells or caverns in the re-evaluated area of review in the same manner specified in subsection 2.
 - c. Perform corrective action on wells requiring action in the re-evaluated area of review in the same manner specified in subsection 3.
 - d. Submit an amended area of review and corrective action plan or demonstrate to the commission through monitoring data and modeling results that no amendment to the plan is needed. Any amendments to the plan are subject to the director's approval and must be incorporated into the permit.
5. All modeling inputs and data used to support area of review delineations and re-evaluations must be retained until project completion. Upon project completion, the storage facility operator shall deliver the records to the commission.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-06. Permit requirements - Storage in oil and gas reservoir.

An application for a geological storage facility permit must include at least the following:

1. The name and address of the operator of the storage facility.
2. Address surface, pore space, and mineral ownership by filing the following:
 - a. An affidavit of mailing, including the name and address of each owner, certifying that all surface owners of record within the storage reservoir and one-half mile [.80 kilometer] adjacent have been notified of the proposed geological storage project.
 - b. An affidavit of mailing, including the name and address of each owner, certifying that all mineral lessees, mineral owners of record, pore space owners and pore space lessees of record within the storage reservoir and one-half mile [.80 kilometer] adjacent have been notified of the proposed geological storage project.
 - c. Legal descriptions of surface ownership of record within the storage reservoir and one-half mile [.80 kilometer] adjacent.
 - d. Legal descriptions of mineral lessees and mineral owners of record within the storage reservoir and one-half mile [.80 kilometer] adjacent.
 - e. Legal descriptions of pore space owners and pore space lessees of record within the storage reservoir and one-half mile [.80 kilometer] adjacent.
3. Applicant shall request a permit for all oil or gas injection wells, monitoring wells, and surface facilities by filing the following:
 - a. Application for permit to drill filed on a form provided by the director pursuant to chapter 43-02-03; and
 - b. Application for permit to inject filed on a form provided by the director including at least the following:
 - (1) The name and address of the operator of the injection well.
 - (2) The estimated bottom hole fracture pressure of the upper confining zone.

(3) Average maximum daily rate of oil or gas to be injected.

(4) Average and maximum requested surface injection pressure.

(5) Geologic name and depth to base of the lowermost underground source of drinking water which may be affected by the injection.

(6) Existing or proposed casing, tubing, and packer data.

(7) Existing or proposed cement specifications, including amounts and actual or proposed top of cement.

(8) A plat and maps depicting the area of review, based on the associated geological storage facility permit, and detailing the location, well name, and operator of all wells in the area of review. The plat and maps must include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, permitted wells, water wells, surface bodies of water, and other pertinent surface features, such as occupied dwellings and roads.

(9) A review of the surficial aquifers within one mile [1.61 kilometers] of the proposed injection well site or surface facilities.

(10) Proposed injection program, including method of transportation of the oil or gas to the injection facility and the injection well.

(11) List identifying all source wells or sources of injectate.

(12) All logging and testing data on the well which has not been previously submitted.

(13) Schematic or other appropriate drawings and tabulations of the wellhead and surface facilities, including the size, location, construction, and purpose of all tanks, the height and location of all dikes and containment, including a calculated containment volume, all areas underlain by a synthetic liner, the location of all flow lines, and a tabulation of any pressurized flow line specifications. It must also include the proposed road access to the nearest existing public road and the authority to build such access.

(14) A schematic drawing of the well detailing the proposed well bore construction, including the size of the borehole; the total depth and plug back depth; the casings and tubing sizes, weights, grades, and top and bottom depths; the perforated interval top and bottom depths; the packer depth; the injection zone; and upper and lower confining zones top and bottom depths.

(15) A detailed description of the proposed completion or conversion procedure, including any proposed well stimulation.

(16) Any other information required by the director to evaluate the proposed well.

4. A map showing the extent of the pore space that will be occupied by the injection and geological storage of oil or gas over the life of the project.

5. A map showing the outside boundary of the oil or gas facility area, its delineated area of review, and the surface and bottom hole location of all proposed injection wells, monitoring wells, cathodic protection boreholes, and surface facilities.

6. Structural and stratigraphic cross sections that describe the geological conditions of the geological storage reservoir.

7. A structure map of the top and base of the geological storage reservoir.
8. An isopach map of the geological storage reservoir.
9. Identification of all structural spill points or stratigraphic discontinuities controlling the isolation of stored oil or gas and associated fluids within the geological storage reservoir.
10. Geomechanical information sufficient to demonstrate that the confining zone is free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected oil or gas stream.
11. Any known regional or local faulting. If faults are known or suspected, a cross section that includes a depiction of the fault at depth.
12. A method for delineating the area of review, including the computational model to be used, assumptions that will be made, and the site characterization data on which the model will be based.
13. A map of all wells, including all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, water wells, and other subsurface structures within the oil or gas facility area and its delineated area of review.
14. A determination that all abandoned wells have been properly plugged and all operating wells have been constructed in a manner that prevents the oil or gas or associated fluids from escaping the geological storage reservoir.
15. A tabular description and well bore diagram of each well's type, construction, date drilled, location, depth, record of plugging, and completion.
16. Quantitative analysis from a state-certified laboratory of freshwater from all available freshwater wells within the oil or gas facility area and its delineated area of review. The location of all wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.
17. Quantitative analysis from a third-party laboratory of a representative sample of the oil or gas to be injected. A compatibility analysis with the receiving formation may also be required.
18. A map showing all occupied dwellings within the oil or gas facility area and its delineated area of review.
19. Corrective action plan pursuant to section 43-02-14-05.1.
20. Identify whether the area of review extends across state jurisdiction boundary lines.
21. Address the potential for unrecoverable injected oil or gas.
22. Address enrichment of the injected gas by hydrocarbons native to the oil and gas reservoir.
23. The stimulation plan for all geological storage facility wells, if any, including a description of the stimulation fluids to be used, and a determination that the stimulation will not interfere with containment.
24. An emergency and remedial response plan pursuant to section 43-02-14-15.
25. A corrosion monitoring and prevention plan for all wells and surface facilities.
26. A leak detection and monitoring plan for all surface facilities.

27. A leak detection and monitoring plan to monitor any movement of the oil or gas outside of the geological storage reservoir. This may include monitoring wells and the collection of baseline information of oil or gas background concentrations in ground water, surface soils, and chemical composition of in situ waters within the oil or gas facility area, and its delineated area of review.
28. A time frame for extraction of injected oil or gas and expected recovery percentages.
29. Address associated water recovery and a plan for disposal.
30. Any additional information the director may require.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-07. Permit requirements - Storage in saline reservoir.

An application for a geological storage facility permit must include at least the following:

1. The name and address of the operator of the storage facility.
2. Address surface and pore space ownership by filing the following:
 - a. An affidavit of mailing, including the name and address of each owner, certifying that all surface owners of record within the storage reservoir and one-half mile [.80 kilometer] adjacent have been notified of the proposed geological storage project.
 - b. An affidavit of mailing, including the name and address of each owner, certifying that all pore space owners and pore space lessees of record within the storage reservoir and one-half mile [.80 kilometer] adjacent have been notified of the proposed geological storage project.
 - c. Legal descriptions of surface ownership of record within the storage reservoir and one-half mile [.80 kilometer] adjacent.
 - d. Legal descriptions of pore space owners and pore space lessees of record within the storage reservoir and one-half mile [.80 kilometer] adjacent.
3. Applicant shall request a permit for all oil or gas injection wells, monitoring wells, and surface facilities by filing the following:
 - a. Application for permit to drill filed on a form provided by the director pursuant to chapter 43-02-03; and
 - b. Application for permit to inject filed on a form provided by the director, including at least the following:
 - (1) The name and address of the operator of the injection well.
 - (2) The estimated bottom hole fracture pressure of the upper confining zone.
 - (3) Average maximum daily rate of oil or gas to be injected.
 - (4) Average and maximum requested surface injection pressure.
 - (5) Geological name and depth to base of the lowermost underground source of drinking water which may be affected by the injection.

(6) Existing or proposed casing, tubing, and packer data.

(7) Existing or proposed cement specifications, including amounts and actual or proposed top of cement.

(8) A plat and maps depicting the area of review, based on the associated geological storage facility permit, and detailing the location, well name, and operator of all wells in the area of review. The plat and maps must include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, permitted wells, water wells, surface bodies of water, and other pertinent surface features, such as occupied dwellings and roads.

(9) A review of the surficial aquifers within one mile [1.61 kilometer] of the proposed injection well site or surface facilities.

(10) Proposed injection program, including method of transportation of the oil or gas to the injection facility and the injection well.

(11) List identifying all source wells or sources of injectate.

(12) All logging and testing data on the well which has not been previously submitted.

(13) Schematic or other appropriate drawings and tabulations of the wellhead and surface facilities, including the size, location, construction, and purpose of all tanks, the height and location of all dikes and containment, including a calculated containment volume, all areas underlain by a synthetic liner, the location of all flow lines, and a tabulation of any pressurized flow line specifications. It must also include the proposed road access to the nearest existing public road and the authority to build such access.

(14) A schematic drawing of the well detailing the proposed well bore construction, including the size of the borehole; the total depth and plug back depth; the casings and tubing sizes, weights, grades, and top and bottom depths; the perforated interval top and bottom depths; the packer depth; the injection zone; and upper and lower confining zones top and bottom depths.

(15) A detailed description of the proposed completion or conversion procedure, including any proposed well stimulation.

(16) Any other information required by the director to evaluate the proposed well.

4. A map showing the extent of the pore space that will be occupied by the injection and geological storage of oil or gas over the life of the project.

5. A map showing the outside boundary of the oil or gas facility area, its delineated area of review, and the surface and bottom hole location of all proposed injection wells, monitoring wells, cathodic protection boreholes, and surface facilities.

6. Structural and stratigraphic cross sections that describe the geological conditions of the geological storage reservoir.

7. A structure map of the top and base of the geological storage reservoir.

8. An isopach map of the geological storage reservoir.

9. Identification of all structural spill points or stratigraphic discontinuities controlling the isolation of stored oil or gas and associated fluids within the geological storage reservoir.

10. Geomechanical information sufficient to demonstrate that the confining zone is free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected oil or gas stream.
11. Any known regional or local faulting. If faults are known or suspected, a cross section that includes a depiction of the fault at depth.
12. A method for delineating the area of review, including the computational model to be used, assumptions that will be made, and the site characterization data on which the model will be based.
13. A map of all wells, including all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, water wells, and other subsurface structures within the oil or gas facility area and its delineated area of review.
14. A determination that all abandoned wells have been properly plugged and all operating wells have been constructed in a manner that prevents the oil or gas or associated fluids from escaping the geological storage reservoir.
15. A tabular description and well bore diagram of each well's type, construction, date drilled, location, depth, record of plugging, and completion.
16. Quantitative analysis from a state-certified laboratory of freshwater from all available freshwater wells within the oil or gas facility area and its delineated area of review. The location of all wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.
17. Quantitative analysis from a third-party laboratory of a representative sample of the oil or gas to be injected. A compatibility analysis with the receiving formation may also be required.
18. A map showing all occupied dwellings within the oil or gas facility area, including the delineated area of review.
19. Corrective action plan pursuant to section 43-02-14-05.1.
20. Identify whether the area of review extends across state jurisdiction boundary lines.
21. Address the potential for migration of unrecoverable injected oil or gas.
22. The stimulation plan for all geological storage facility wells, if any, including a description of the stimulation fluids to be used, and a determination that the stimulation will not interfere with containment.
23. An emergency and remedial response plan pursuant to section 43-02-14-15.
24. A corrosion monitoring and prevention plan for all wells and surface facilities.
25. A leak detection and monitoring plan for all surface facilities.
26. A leak detection and monitoring plan to monitor any movement of the oil or gas outside of the geological storage reservoir. This may include monitoring wells and the collection of baseline information of oil or gas background concentrations in ground water, surface soils, and chemical composition of in situ waters within the oil or gas facility area, its delineated area of review.
27. A time frame for extraction of injected oil or gas and expected recovery percentages.
28. Address associated water recovery and a plan for disposal.

29. Any additional information the director may require.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-08. Permit requirements - Storage in salt cavern.

An application for a geological storage facility permit must include at least the following:

1. The name and address of the operator of the storage facility.
2. Address surface, pore space, and salt mineral ownership by filing the following:
 - a. An affidavit of mailing, including the name and address of each owner, certifying that all surface owners of record within the salt cavern and one-half mile [.80 kilometer] adjacent have been notified of the proposed geological storage project.
 - b. An affidavit of mailing, including the name and address of each owner, certifying that all salt mineral lessees, salt mineral owners of record, pore space owners and pore space lessees of record within the salt cavern and one-half mile [.80 kilometer] adjacent have been notified of the proposed geological storage project.
 - c. Legal descriptions of surface ownership of record within the salt cavern and one-half mile [.80 kilometer] adjacent.
 - d. Legal descriptions of salt mineral lessees and salt mineral owners of record within the salt cavern and one-half mile [.80 kilometer] adjacent.
 - e. Legal descriptions of pore space owners and pore space lessees of record within the salt cavern and one-half mile [.80 kilometer] adjacent.
3. Applicant shall request a permit for all oil or gas injection wells, monitoring wells, and surface facilities by filing an application for permit to inject filed on a form provided by the director, including at least the following:
 - a. The name and address of the operator of the injection well.
 - b. The estimated bottom hole fracture pressure of the upper confining zone.
 - c. Average maximum daily rate of oil or gas to be injected.
 - d. Average and maximum requested surface injection pressure.
 - e. Current capacity and geometry of the cavern.
 - f. Tools used to confirm capacity and geometry of cavern.
 - g. Current thickness of remaining salt at top and bottom of cavern.
 - h. Geological name and depth to base of the lowermost underground source of drinking water which may be affected by the injection.
 - i. Existing or proposed casing, tubing, and packer data.
 - j. Existing or proposed cement specifications, including amounts and actual or proposed top of cement.

- k. A plat and maps depicting the area of review, based on the associated geological storage facility permit, and detailing the location, well name, and operator of all wells in the area of review. The plat and maps must include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, permitted wells, water wells, surface bodies of water, and other pertinent surface features, such as occupied dwellings and roads.
 - l. A review of the surficial aquifers within one mile [1.61 kilometer] of the proposed injection well site or surface facilities.
 - m. Proposed injection program, including method of transportation of the oil or gas to the injection facility and the injection well.
 - n. List identifying all source wells or sources of injectate.
 - o. All logging and testing data on the well which has not been previously submitted.
 - p. Schematic or other appropriate drawings and tabulations of the wellhead and surface facilities, including the size, location, construction, and purpose of all tanks, the height and location of all dikes and containment, including a calculated containment volume, all areas underlain by a synthetic liner, the location of all flow lines, and a tabulation of any pressurized flow line specifications. It must also include the proposed road access to the nearest existing public road and the authority to build such access.
 - q. A schematic drawing of the well detailing the proposed well bore construction, including the size of the borehole; the total depth and plug back depth; the casings and tubing sizes, weights, grades, and top and bottom depths; the perforated interval top and bottom depths; the packer depth; the injection zone; and upper and lower confining zones top and bottom depths.
 - r. A detailed description of the proposed completion or conversion procedure.
 - s. Any other information required by the director to evaluate the proposed well.
4. Anticipated capacity and geometry of the cavern.
 5. Minimum and maximum capacity of the cavern to be utilized.
 6. Tools used to confirm capacity and geometry of the cavern.
 7. Current thickness of remaining salt at the top and bottom of the cavern.
 8. Description and schematics for brine management at the surface.
 9. Description of measures in place to prevent unintended flowback.
 10. A map showing the extent of the pore space that will be occupied by the injection and geological storage of oil or gas over the life of the project.
 11. A map showing the outside boundary of the oil or gas facility area, its delineated area of review, and the surface and bottom hole location of all proposed injection wells, monitoring wells, cathodic protection boreholes, and surface facilities.
 12. Structural and stratigraphic cross sections that describe the geological conditions of the salt cavern.
 13. A structure map of the top and base of the salt formation being utilized.

14. An isopach map of the salt formation being utilized.
15. Geomechanical analysis of the cavern used to determine cavern stability, using the following:
 - a. Geological characteristics.
 - b. Petrophysical properties.
 - c. Rock mechanical properties.
 - d. In situ stresses.
 - e. Any other input data acquired and utilized.
16. Address the following cavern stability issues at minimum:
 - a. Salt creep and mitigation measures.
 - b. Minimum salt roof thickness.
 - c. Roof collapse.
 - d. Maximum cavern diameter.
 - e. Spacing between offsetting caverns.
 - f. Minimum setback for drilling in the vicinity.
 - g. Salt thinning due to any stratigraphic change.
 - h. Any dissolution zones in the salt.
 - i. Minimum operating pressures and capacity volumes, roof geometry, and height/diameter ratios used to prevent any of the above or other pertinent stability issues.
17. Any known regional or local faulting. If faults are known or suspected, a cross section that includes a depiction of the fault at depth.
18. A method for delineating the area of review, including the geomechanical model to be used, assumptions that will be made, and the site characterization data on which the model will be based.
19. A map of all wells, including all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, water wells, and other subsurface structures within the oil or gas facility area and its delineated area of review.
20. A determination that all abandoned wells have been properly plugged and all operating wells have been constructed in a manner that prevents the oil or gas or associated fluids from escaping the salt cavern.
21. A tabular description and well bore diagram of each well's type, construction, date drilled, location, depth, record of plugging, and completion.
22. Quantitative analysis from a state-certified laboratory of freshwater from all available freshwater wells within the geological storage facility. The location of all wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.

23. Quantitative analysis from a third-party laboratory of a representative sample of the oil or gas to be injected. A compatibility analysis with the receiving formation may also be required.
24. A map showing all occupied dwellings within the oil or gas facility area, including the delineated area of review.
25. Corrective action plan pursuant to section 43-02-14-05.1.
26. Identify whether the area of review extends across state jurisdiction boundary lines.
27. An emergency and remedial response plan pursuant to section 43-02-14-15.
28. A corrosion monitoring and prevention plan for all wells and surface facilities.
29. A leak detection and monitoring plan for all surface facilities.
30. A leak detection and monitoring plan to monitor any movement of the oil or gas outside of the salt cavern. This may include monitoring wells and the collection of baseline information of oil or gas background concentrations in ground water, surface soils, and chemical composition of in situ waters within the oil or gas facility area and its delineated area of review.
31. Any additional information the director may require.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-09. Siting.

All injection wells must be sited in such a fashion that they inject into a formation which has confining zones that are free of known open faults or fractures within the facility area and its delineated area of review.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-10. Construction requirements.

1. All injection wells must be cased and cemented to prevent movement of fluids into or between underground sources of drinking water or into an unauthorized zone. The casing and cement used in construction of each new injection well must be designed for the life expectancy of the well. All wells used for injection into a storage reservoir or salt cavern must have surface casing set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. In determining and specifying casing and cementing requirements, all the following factors must be considered:
 - a. Depth to the injection zone and lower confining zone, or salt cavern specifics. Long string casing must be set at least to the top of the injection zone and cemented as approved by the director.
 - b. Depth to the bottom of all underground sources of drinking water.
 - c. Estimated minimum, maximum, and average injection pressures.
 - d. Fluid pressure.
 - e. Estimated fracture pressures.

f. Physical and chemical characteristics of the injection zone.

2. Appropriate logs and other tests must be conducted during the drilling and construction of injection wells. Any well drilled or converted to an injection well must have a cement bond log from which a presence of channels and microannulus can be determined radially. Cement bond logs must contain elements approved by the director.
3. After an injection well has been completed, approval must be obtained on a sundry notice filed on a form provided by the director before any subsequent perforating.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-11. Mechanical integrity.

1. An injection well has mechanical integrity if:
 - a. There is no significant leak in the casing, tubing, or packer; and
 - b. There is no significant fluid movement into an underground source of drinking water through channels adjacent to the well bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
 - a. Pressure test with liquid or gas.
 - b. Monitoring of positive annulus pressure following a valid pressure test.
 - c. Radioactive tracer survey.
3. On a schedule determined by the commission, the storage facility operator shall use one or more of the following methods to determine the absence of significant fluid or gas movement:
 - a. A cement bond log from which a presence of channels and micro annulus can be determined radially.
 - b. A temperature log.
 - c. Any alternative testing method that provides equivalent or better information and that the director requires or approves.
4. The operator of an injection well immediately shall shut in the well if mechanical failure indicates fluids are, or may be, migrating into an underground source of drinking water or an unauthorized zone, or if so directed by the director.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-12. Plugging of injection wells.

The proper plugging of an injection well requires the well be plugged with cement or other types of plugs, or both, in a manner which will not allow movement of fluids into an underground source of drinking water. The operator shall file a notice of intention to plug on a form provided by the director and shall obtain the director's approval of the plugging method before the commencement of plugging operations.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-13. Pressure restrictions.

1. The following applies to geological storage in an oil and gas reservoir or saline reservoir:

- a. Injection pressure at the wellhead may not exceed a maximum authorized injection pressure which must be calculated to assure that the pressure in the storage reservoir during injection does not initiate new fracture or propagate existing fractures in the confining zones.
- b. In no case may injection pressure initiate fractures in the confining zones or cause the movement of injection or formation fluids into an unauthorized zone or underground source of drinking water.

2. The following applies to geological storage in a salt cavern:

- a. A minimum operating pressure protective of the cavern's integrity must be maintained.
- b. A maximum allowable operating pressure must be established based on the casing seat or the highest elevation of the cavern's roof, whichever is higher in elevation.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-13.1. Salt cavern integrity.

The operator shall execute the emergency and remedial response plan pursuant to section 43-02-14-15 in the event of loss of integrity in the storage cavern for any reason.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-14. Bonding requirements.

All storage facilities, injection wells, and monitoring wells must be bonded as provided in section 43-02-03-15.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-15. Emergency and remedial response plan.

The storage facility operator shall maintain a commission approved emergency and remedial response plan. This plan must include emergency response and security procedures. The plan, including revision of the list of contractors and equipment vendors, must be updated as necessary or as the commission requires. Copies of the plans must be available at the storage facility and at the storage facility operator's nearest operational office.

1. The emergency and remedial response plan requires a description of the actions the storage facility operator shall take to address movement of the injection or formation fluids that may endanger an underground source of drinking water during any phase of the project. The requirement to maintain and implement a commission-approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The plan must also detail:

- a. The safety procedures concerning the facility and residential, commercial, and public land use within the facility area and its delineated area of review.
 - b. Contingency plans for addressing oil or gas leaks from any well, flow lines, or other facility, and loss of containment from the storage reservoir or salt cavern and identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to such leaks or loss of containment.
2. If the storage facility operator obtains evidence that the injected oil or gas stream, or displaced fluids may endanger an underground source of drinking water, the storage facility operator shall:
 - a. Immediately cease injection.
 - b. Take all steps reasonably necessary to identify and characterize any release.
 - c. Notify the director immediately and submit a subsequent sundry notice filed on a form provided by the director within twenty-four hours.
 - d. Implement the emergency and remedial response plan approved by the director.
 3. The commission may allow the operator to resume injection before remediation if the storage facility operator demonstrates that the injection operation will not endanger underground sources of drinking water.
 4. The storage facility operator shall review annually the emergency and remedial response plan developed under subsection 1. Any amendments to the plan are subject to the commission's approval, must be incorporated into the storage facility permit, and are subject to the permit modification requirements. Amended plans or demonstrations that amendments are not needed must be submitted to the commission as follows:
 - a. With the area of review re-evaluation.
 - b. Following any significant changes to the facility, such as addition of injection or monitoring wells, or on a schedule determined by the commission.
 - c. When required by the commission.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-16. Reporting, monitoring, and operating requirements.

1. The operator of a storage facility shall meter or use an approved method to keep records and shall report monthly to the director, the volume and nature of the injected hydrocarbons, the average, minimum, and maximum injection pressures, the maximum injection rates, and such other information as the director may require. The operator of each storage facility shall, on or before the fifth day of the second month succeeding the month in which the well is capable of injection, file with the director the aforementioned information for the storage facility in a format provided by the director.
2. Immediately upon the commencement or recommencement of injection, the operator shall notify the director of the injection date verbally and in writing.
3. The operator shall place accurate gauges on the tubing and the tubing casing annulus of all injection wells utilized in the storage facility. Accurate gauges must also be placed on any other annuluses deemed necessary by the director.

4. The operator of a storage facility shall keep the wells, surface facilities, and injection system under continuing surveillance and conduct such monitoring, testing, and sampling as the director may require verifying the integrity of the surface facility, gathering system, and injection wells to protect surface and subsurface waters. Before commencing operations, the injection pipeline must be pressure tested. All existing injection pipelines where the pump and the wellhead are not located on the same site are required to be pressure tested annually.
5. The operator of a storage facility shall report any noncompliance with regulations or permit conditions to the director verbally within twenty-four hours followed by a written explanation within five days. The operator shall cease injection operations if so directed by the director.
6. Within ten days after the discontinuance of injection operations, the operator shall notify the director of the date of such discontinuance and the reason therefor.
7. Upon the completion or recompletion of an injection well or the completion of any remedial work or attempted remedial work, such as plugging back, deepening, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, tubing repairs, packer repairs, casing repairs, or other similar operations not specifically covered herein, a report on the operation must be filed with the director within thirty days. The report must present a detailed account of all work done, including the reason for the work, the date of such work, the shots per foot and size and depth of perforations, the quantity of sand, crude, chemical, or other materials employed in the operation, the size and type of tubing, the type and location of packer, the result of the packer pressure test, and any other pertinent information or operations which affect the status of the well and are not specifically covered herein.
8. Annular injection of fluids is prohibited.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-17. Leak detection and reporting.

1. Leak detection must be integrated, where applicable and must be inspected and tested on a semiannual basis and, if defective, must be repaired or replaced within ten days. Any repaired or replaced detection equipment must be retested if required by the commission. An extension of time for repair or replacement of leak detection equipment may be granted upon a showing of good cause by the storage facility operator. A record of each inspection must include the inspection results and be maintained by the operator at least until project completion, and must be made available to the commission upon request.
2. Pursuant to section 43-02-03-30 the storage facility operator shall immediately report to the commission any leak detected at any well or surface facility.
3. The storage facility operator immediately shall report to the commission any pressure changes or other monitoring data from subsurface observation wells or injection wells that indicate the presence of leaks in the storage reservoir or salt cavern.
4. The storage facility operator immediately shall report to the commission any other indication that the storage facility is not containing oil, gas, or brine, whether the lack of containment concerns the storage reservoir or salt cavern, surface equipment, or any other aspect of the storage facility.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-18. Storage facility permit transfer.

1. The storage operator and proposed transferee shall notify the commission in writing of any proposed permit transfer. The notice must contain the following:
 - a. The name and address of the person to whom the permit is to be transferred.
 - b. The name of the permit subject to transfer and location of the storage facility and a description of the land within the facility area.
 - c. The date that the storage operator desires the proposed transfer to occur.
 - d. Meet the bonding requirements of section 43-02-14-14.
2. A transfer may only take place after notice and hearing. The transferee shall demonstrate that all requirements of chapter 43-02-14 are complied with. The transferee shall outline necessary permit modifications based on operational changes, if any.
3. Commission review. The commission shall review the proposed transfer to ensure that the purposes of North Dakota Century Code chapter 38-25 are not compromised but are promoted. For good cause, the commission may deny a transfer request, delay on acting on it, and place conditions on its approval.
4. Commission approval required. A permit transfer may occur only upon the commission's written order. The transferor of a permit shall receive notice from the commission that the approved new storage facility operator has met the bonding requirements of section 43-02-14-14.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-19. Modification, revocation, and reissuance or termination of permits.

1. Permits are subject to review by the commission. Any interested person (i.e., the storage operator, local governments having jurisdiction over land within the area of review, and any person who has suffered or will suffer actual injury or economic damage) may request that the commission review permits issued under this chapter for one of the reasons set forth below. All requests must be in writing and must contain facts or reasons supporting the request. If the commission determines that the request may have merit or at the commission's initiative for one or more of the reasons set forth below, the commission may schedule a hearing to review the permit and thereafter issue an order modifying or revoking the permit. Permits, after notice and hearing, may be modified or revoked and reissued when the commission determines one of the following events has occurred:
 - a. Changes to the facility area.
 - b. Area of review or corrective action re-evaluations pursuant to section 43-02-14-05.1.
 - c. Operating outside of parameters of the permit of section 43-02-14-06, 43-02-14-07, or 43-02-14-08, whichever is applicable.
 - d. Amendment to the emergency and remedial response plan of section 43-02-14-15.
 - e. Amendment to the leak detection plan of section 43-02-14-17.
 - f. Review of monitoring and testing results conducted in accordance with injection well permit requirements.

g. The commission receives information that was not available at the time of permit issuance. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and would have justified application of different permit conditions at the time of the issuance.

h. The standards or regulations on which the storage facility permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued.

i. The commission determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the storage operator has little or no control and for which there is no reasonably available remedy.

j. There are material and substantial additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. If the commission tentatively decides to modify or revoke and reissue a permit, the commission shall incorporate the proposed changes to the original permit. The commission may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the commission shall require the submission of a new permit application.

3. In a permit modification under this section, only those conditions to be modified may be reopened when a revised permit is prepared. All other aspects of the existing permit remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the storage operator shall comply with all conditions of the existing permit until a new final permit is reissued.

4. Suitability of the storage facility location may not be considered at the time of a permit modification or revocation unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

5. The following are causes for terminating an injection well permit during its term:

a. Noncompliance by the storage operator with any permit condition.

b. Failure by the storage operator to fully disclose all relevant facts or misrepresentation of relevant facts to the commission.

c. A determination that the permitted activity endangers human health or the environment.

6. If the commission tentatively decides to terminate a permit, the commission shall issue notice of intent to terminate.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

43-02-14-19.1. Minor modifications of permit.

Upon agreement between the storage facility operator and the commission, the commission may modify a permit to make the corrections or allowances without the storage operator filing an application to amend a permit. Any permit modification not processed as a minor modification under this section

must be filed as an application to amend an existing permit under section 43-02-14-18. Minor modifications may include:

1. Correct typographical errors.
2. Require more frequent monitoring or reporting by the storage operator.
3. Change quantities or types of fluids or gases injected which are within the capacity of the facility as permitted and, in the judgement of the commission, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification.
4. Change construction requirements approved by the commission, provided that any such alteration must comply with the requirements of this chapter and no such changes are physically incorporated into construction of the well before approval of the modification by the commission.
5. Amending any of the plans of this chapter where the modifications merely clarify or correct the plan, as determined by the commission.

History: Effective April 1, 2022.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-25

CHAPTER 43-05-01

43-05-01-11. Injection well construction and completion standards.

1. The storage operator shall ensure that all injection wells are constructed and completed to prevent movement of the carbon dioxide stream or fluids into underground sources of drinking water or outside the authorized storage reservoir. The injection wells must be constructed and completed in a way that allows the use of appropriate testing devices and workover tools. The casing and cement or other materials used in the construction of each new injection well must be designed for the well's life expectancy. In determining and specifying casing and cementing requirements, all of the following factors must be considered:
 - a. Depth to the injection zone;
 - b. Injection pressure, external pressure, internal pressure, and axial loading;
 - c. Hole size;
 - d. Size and grade of all casing strings (wall thickness, external diameter, nominal weight, length, joint specification, and construction material);
 - e. Corrosiveness of the carbon dioxide stream and formation fluids;
 - f. Down-hole temperatures;
 - g. Lithology of injection and confining zone;
 - h. Type or grade of cement and cement additives; and
 - i. Quantity, chemical composition, and temperature of the carbon dioxide stream.
2. Surface casing in all newly drilled carbon dioxide injection and subsurface observation wells drilled below the underground source of drinking water must be set fifty feet [15.24 meters] below the base of the lowermost underground source of drinking water and cemented pursuant to section 43-02-03-21.
3. The long string casing in all injection and subsurface observation wells must be cemented pursuant to section 43-02-03-21. Sufficient cement must be used on the long string casing to fill the annular space behind the casing to the surface of the ground and a sufficient number of centralizers shall be used to assure a good cement job. The long string casing must extend to the injection zone.
4. Any liner set in the well bore must be cemented with a sufficient volume of cement to fill the annular space.
5. All cements used in the cementing of casings in injection and subsurface observation wells must be of sufficient quality to maintain well integrity in the carbon dioxide injection environment. Circulation of cement may be accomplished by staging. The commission may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the storage operator can demonstrate by using logs that the cement does not allow fluid movement behind the well bore.
6. All casings must meet the standards specified in any of the following documents, which are hereby adopted by reference:
 - a. The most recent American petroleum institute bulletin on performance properties of casing, tubing, and drill pipe;

- b. Specification for casing and tubing (United States customary units), American petroleum institute specification 5CT, as published by the American petroleum institute;
 - c. North Dakota Administrative Code section 43-02-03-21; or
 - d. Other equivalent casing as approved by the commission.
7. All casings used in new wells must be new casing or reconditioned casing of a quality equivalent to new casing and that has been pressure-tested in accordance with the requirements of subsection 6. For new casings, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill the requirements of subsection 6.
 8. The location and amount of cement behind casings must be verified by an evaluation method approved by the commission. The evaluation method must be capable of evaluating cement quality radially and identifying the location of channels to ensure that underground sources of drinking water are not endangered.
 9. All injection wells must be completed with and injection must be through tubing and packer. In order for the commission to determine and specify requirements for tubing and packer, the storage operator shall submit the following information:
 - a. Depth of setting;
 - b. Characteristics of the carbon dioxide stream (chemical content, corrosiveness, temperature, and density) and formation fluids;
 - c. Maximum proposed injection pressure;
 - d. Maximum proposed annular pressure;
 - e. Proposed injection rate (intermittent or continuous) and volume and mass of the carbon dioxide stream;
 - f. Size of tubing and casing; and
 - g. Tubing tensile, burst, and collapse strengths.
 10. All tubing strings must meet the standards contained in subsection 6. All tubing must be new tubing or reconditioned tubing of a quality equivalent to new tubing and that has been pressure-tested. For new tubing, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill this requirement.
 11. All wellhead components, including the casinghead and tubing head, valves, and fittings, must be made of steel having operating pressure ratings sufficient to exceed the maximum injection pressures computed at the wellhead and to withstand the corrosive nature of carbon dioxide. Each flow line connected to the wellhead must be equipped with a manually operated positive shutoff valve located on or near the wellhead.
 12. All packers, packer elements, or similar equipment critical to the containment of carbon dioxide must be of a quality to withstand exposure to carbon dioxide.
 13. All injection wells must have at all times an accurate, operating pressure gauge or pressure recording device. Gauges must be calibrated as required by the commission and evidence of such calibration must be available to the commission upon request.
 14. All newly drilled wells must establish internal and external mechanical integrity as specified by the commission and demonstrate continued mechanical integrity through periodic testing as determined by the commission. All other wells to be used as injection wells must demonstrate

mechanical integrity as specified by the commission prior to use for injection and be tested on an ongoing basis as determined by the commission using these methods:

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

History: Effective April 1, 2010; amended effective April 1, 2013; April 1, 2022.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

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

1. The storage operator shall pay the commission ~~a fee of one cent on each ton of carbon dioxide injected for storage. The fee must be deposited in the carbon dioxide storage facility administrative fund.~~

~~2.~~ as follows:

a. Carbon dioxide sources that contribute to the energy and agriculture production economy of North Dakota:

(1) A fee of one cent on each ton of carbon dioxide injected for storage. The fee must be deposited in the carbon dioxide storage facility administrative fund.

(2) The storage operator shall pay the commission a fee of seven cents on each ton of carbon dioxide injected for storage. The fee must be deposited in the carbon dioxide storage facility trust fund.

b. Carbon dioxide sources that do not fall under the definition of subdivision a of subsection 1:

(1) The storage operator shall pay a per ton of carbon dioxide injected commission fee determined by hearing. The fee must be deposited in the carbon dioxide storage facility administrative fund and consider the commission's expenses during regulation of the storage facility's construction, operational, and preclosure phases.

(2) The storage operator shall pay a per ton of carbon dioxide injected commission fee determined by hearing. The fee must be deposited in the carbon dioxide storage facility trust fund and must consider:

(a) The cost of postclosure emergency and remedial response associated with the storage facility.

(b) The cost of long-term monitoring postclosure associated with the storage facility.

3.2. Moneys from the carbon dioxide storage facility trust fund, including accumulated interest, may be relied upon to satisfy the financial assurance requirements pursuant to section 43-05-01-09.1 for the postclosure period. If sufficient moneys are not available in the carbon dioxide storage facility trust fund at the end of the closure period, the storage operator shall make additional payments into the trust fund to ensure that sufficient funds are available to carry out the required activities on the date at which they may occur. The commission shall take into account project-specific risk assessments, projected timing of activities (e.g., postinjection site care), and interest accumulation in determining whether sufficient funds are available to carry out the required activities.

History: Effective April 1, 2010; amended effective April 1, 2013; April 1, 2022.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

TITLE 45
INSURANCE, COMMISSIONER OF

APRIL 2022

**ARTICLE 45-03
REGULATION OF INSURANCE COMPANIES**

Chapter	
45-03-01	Solicitation of Proxies, Consents, and Authorizations of Domestic Stock Insurers [Repealed]
45-03-02	Insider Trading of Equity Securities of Domestic Stock Insurers [Repealed]
45-03-03	Takeover Bids and Circulation of Material Regarding the Financial Condition of an Insurer
45-03-04	Reporting of Salvage and Subrogation by Fire and Casualty Companies on the Annual Statement [Repealed]
45-03-05	Insurance Holding Company System Model Regulation With Reporting Forms and Instructions
45-03-06	Premium Tax Payments - Estimates
45-03-07	Reinsurance
45-03-07.1	Credit for Reinsurance Model Regulation
45-03-07.2	Life and Health Reinsurance Agreements
45-03-08	Return of Premium
45-03-09	Admission of Foreign Insurance Companies
45-03-10	Unfair Sex Discrimination
45-03-11	Notice, Consent, and Disclosure for Testing of Blood or Other Body Fluids
45-03-12	Investment, Capital, and Surplus Requirements
45-03-13	Regulation of and Standards for Companies Deemed to be in Hazardous Financial Condition
45-03-14	Administrative Supervision Model
45-03-15	Accounting Practices and Procedures
45-03-16	Valuation of Securities and Other Investments [Superseded]
45-03-17	Examinations [Repealed]
45-03-18	Fire District Assignment
45-03-19	Actuarial Opinion and Memorandum Regulation
45-03-19.1	Property and Casualty Actuarial Opinion
45-03-20	Annual Financial Reporting Model Regulation
45-03-21	Demutualization
45-03-22	Mutual Insurance Holding Company Act Rules
45-03-23	Custodial Agreements and the Use of Clearing Corporations
45-03-24	Unclaimed Life Insurance Benefits
45-03-25	Corporate Governance Annual Disclosure Model Regulation
<u>45-03-26</u>	<u>Term and Universal Life Insurance Reserve Financing Model Regulation</u>

CHAPTER 45-03-07.1

CREDIT FOR REINSURANCE MODEL REGULATION

Section

45-03-07.1-01	Credit for Reinsurance - Reinsurer Licensed in This State
45-03-07.1-02	Credit for Reinsurance - Accredited Reinsurers
45-03-07.1-03	Credit for Reinsurance - Reinsurer Domiciled in Another State
45-03-07.1-04	Credit for Reinsurance - Reinsurers Maintaining Trust Funds
45-03-07.1-04.1	Credit for Reinsurance - Certified Reinsurers
45-03-07.1-04.2	Credit for Reinsurance - Reciprocal Jurisdictions
45-03-07.1-05	Credit for Reinsurance Required by Law
45-03-07.1-06	Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer Not Meeting the Requirements of Sections 45-03-07.1-01 Through 45-03-07.1-05
45-03-07.1-07	Trust Agreements Qualified Under Section 45-03-07.1-06
45-03-07.1-08	Letters of Credit Qualified Under Section 45-03-07.1-06
45-03-07.1-09	Other Security
45-03-07.1-10	Reinsurance Contract
45-03-07.1-11	Contracts Affected

45-03-07.1-01. Credit for reinsurance - Reinsurer licensed in this state.

Pursuant to subsection [12](#) of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; [April 1, 2022](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

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

- Pursuant to subsection [23](#) of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer must:
 - File a properly executed form AR-1 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
 - File with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
 - File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
 - Maintain a surplus as regards policyholders in an amount not less than twenty million dollars, or obtain the affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.
- If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and opportunity for hearing,

suspend or revoke the accreditation. Credit may not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; [April 1, 2022](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

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

1. Pursuant to subsection [34](#) of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:
 - a. Is domiciled in, or, in the case of a United States branch of an alien assuming insurer, is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under North Dakota Century Code chapter 26.1-31.2 and this chapter;
 - b. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
 - c. Files a properly executed form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.
2. The provisions of this section relating to surplus as regards policyholders do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of North Dakota Century Code chapter 26.1-31.2 and this chapter.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; [April 1, 2022](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

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

1. Pursuant to subsection [45](#) of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed in this section in a qualified United States financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03, for the payment of the valid claims of its United States domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.
2. The following requirements apply to the following categories of assuming insurer:
 - a. The trust fund for a single assuming insurer must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars, except as provided in subdivision b.

- b. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.
- c. (1) The trust fund for a group, including incorporated and individual unincorporated underwriters, must consist of:
 - (a) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by the United States domiciled ceding insurers to any underwriter of the group;
 - (b) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
 - (c) In addition to these trusts, the group shall maintain a trustee surplus of which one hundred million dollars must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.
- (2) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of regulation solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:
 - (a) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
 - (b) If a certification is unavailable, a financial statement prepared by independent public accountants, of each underwriter member of the group.
- d. (1) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and accounting practices and procedures manual of the national association of insurance commissioners, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, must:

- (a) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group;
 - (b) Maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and
 - (c) File a properly executed form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any examination.
 - (2) Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the members' domiciliary regulators and financial statements, prepared by independent public accountants, of each underwriter member of the group.
3. a. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that:
- (1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States;
 - (2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;
 - (3) The trust shall be subject to examination as determined by the commissioner;
 - (4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
 - (5) No later than February twenty-eighth of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding yearend, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December thirty-first.
- b. (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

- (2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
 - (3) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
 - (4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.
4. For purposes of this section, the term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and includes:
 - a. For business ceded by domestic insurers authorized to write accident and health and property and casualty insurance:
 - (1) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
 - (2) Reserves for losses reported and outstanding;
 - (3) Reserves for losses incurred but not reported;
 - (4) Reserves for allocated loss expenses; and
 - (5) Unearned premiums.
 - b. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:
 - (1) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
 - (2) Aggregate reserves for accident and health policies;
 - (3) Deposit funds and other liabilities without life or disability contingencies; and
 - (4) Liabilities for policy and contract claims.
5. Assets deposited in trusts established pursuant to North Dakota Century Code section 26.1-31.2-01 and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust shall not exceed five percent of total investments. No more than twenty percent of the total of the investments in the trust may be foreign investments authorized under paragraph 5 of subdivision a, subdivision c, paragraph 2 of subdivision f, and subdivision g, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For

purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of North Dakota Century Code section 26.1-31.2-01 shall be invested only as follows:

- a. Government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by:
 - (1) The United States or by any agency or instrumentality of the United States;
 - (2) A state of the United States;
 - (3) A territory, possession, or other governmental unit of the United States;
 - (4) An agency or instrumentality of a governmental unit referred to in paragraphs 2 and 3 if the obligations shall be by law, statutory or otherwise, payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or
 - (5) The government of any other country that is a member of the organization for economic cooperation and development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- b. Obligations that are issued in the United States, or that are dollar-denominated and issued in a non-United States market, by a solvent United States institution other than an insurance company or that are assumed or guaranteed by a solvent United States institution other than an insurance company and that are not in default as to principal or interest if the obligations:
 - (1) Are rated A or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
 - (2) Are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners; or
 - (3) Have been designated as class one or class two by the securities valuation office of the national association of insurance commissioners.
- c. Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the organization for economic cooperation and development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- d. An investment made pursuant to the provisions of subdivisions a, b, or c shall be subject to the following additional limitations:

- (1) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;
- (2) An investment in any one mortgage-related security shall not exceed five percent of the assets of the trust;
- (3) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent of the assets of the trust; and
- (4) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs 1 and 3 of subdivision b, but shall not exceed two percent of the assets of the trust.

e. As used in this section:

- (1) "Mortgage-related security" means an obligation that is rated AA or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners and that either:
 - (a) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation, that:
 - [1] Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 ~~U.S.C.A.~~U.S.C. section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and
 - [2] Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to 12 ~~U.S.C.A.~~U.S.C. sections 1709 and 1715-b, or, when the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the secretary of housing and urban development pursuant to 12 ~~U.S.C.A.~~U.S.C. section 1703; or
 - (b) Is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subparagraph a.
- (2) "Promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

f. Equity interests.

- (1) Investments in common shares or partnership interests of a solvent United States institution are permissible if:
 - (a) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and
 - (b) The equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. § 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the financial industry regulatory authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.
 - (2) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the organization for economic cooperation and development, if:
 - (a) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners; and
 - (b) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the organization for economic cooperation and development.
 - (3) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.
- g. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- h. Investment companies.
- (1) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. section 80a, are permissible investments if the investment company:
 - (a) Invests at least ninety percent of its assets in the types of securities that qualify as an investment under subdivision a, b, or c or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in subdivision a, b, or c; or
 - (b) Invests at least ninety percent of its assets in the types of equity interests that qualify as an investment under paragraph 1 of subdivision f.
 - (2) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

- (a) An investment in an investment company qualifying under subparagraph a of paragraph 1 shall not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent of the assets in the trust; and
 - (b) Investments in an investment company qualifying under subparagraph b of paragraph 1 shall not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph 1 of subdivision f.
- i. Letters of credit.
- (1) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
 - (2) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which a draw would be required shall be deemed to be negligence or willful misconduct.
6. A specific security provided to a ceding insurer by an assuming insurer pursuant to section 45-03-07.1-06 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016; [April 1, 2022](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

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

1. Pursuant to subsection [56](#) of North Dakota Century Code Section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of subsection [56](#) of North Dakota Century Code section 26.1-31.2-01 and section 26.1-31.2-02 and North Dakota Administrative Code section 45-03-07.1-07, 45-03-07.1-08, or 45-03-07.1-09. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

a. Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%

Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

- b. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
- c. The commissioner shall require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.
- d. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the national association of insurance commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
 - (1) Line 1: Fire.
 - (2) Line 2: Allied lines.
 - (3) Line 3: Farmowners multiple peril.
 - (4) Line 4: Homeowners multiple peril.
 - (5) Line 5: Commercial multiple peril.
 - (6) Line 9: Inland marine.
 - (7) Line 12: Earthquake.
 - (8) Line 21: Auto physical damage.
- e. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
- f. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

2. Certification procedure.

- a. The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on

the application until at least thirty days after posting the notice required by this subdivision.

- b. The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer in accordance with subsection 1. The commissioner shall publish a list of all certified reinsurers and their ratings.
- c. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 - (1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection 3.
 - (2) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated in accordance with paragraph 8 of subdivision d. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.
 - (3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
 - (a) Standard & Poor's;
 - (b) Moody's Investors Service;
 - (c) Fitch Ratings;
 - (d) A.M. Best Company; or
 - (e) Any other nationally recognized statistical rating organization.
 - (4) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.
- d. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include the following:
 - (1) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

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

- (2) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- (3) For certified reinsurers domiciled in the United States, a review of the most recent applicable national association of insurance commissioners annual statement blank, either schedule F for property and casualty reinsurers, or schedule S for life and health reinsurers;
- (4) For certified reinsurers not domiciled in the United States, a review annually of form CR-F for property and casualty reinsurers, or form CR-S for life and health reinsurers, attached as exhibits to this chapter;
- (5) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute. with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
- (6) Regulatory actions against the certified reinsurer;
- (7) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 8;
- (8) For certified reinsurers not domiciled in the United States, audited financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor. ~~Acceptable audited financial statements are those performed using:~~
 - ~~(a) United States generally accepted accounting principles;~~
 - ~~(b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or~~
 - ~~(c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company, with a translation into English.~~

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

- (9) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - (10) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 - (11) Any other information deemed relevant by the commissioner.
- e. Based on the analysis conducted under paragraph 5 of subdivision d of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under paragraph 1 of subdivision d if the commissioner finds that:
- (1) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or
 - (2) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.
- f. The assuming insurer must submit a properly executed form CR-1, attached as an exhibit to this chapter, as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.
- g. The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under North Dakota Century Code section 44-04-18 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
- (1) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefor;
 - (2) Annually, form CR-F or CR-S, as applicable;
 - (3) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 4;

(4) Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer's supervisor. ~~Acceptable audited financial statements are those performed using:~~

~~(a) United States generally accepted accounting principles;~~

~~(b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or~~

~~(c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company, with a translation into English.~~

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

(5) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(6) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(7) Any other information that the commissioner may reasonably require.

h. Change in rating or revocation of certification.

(1) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph 1 of subdivision d.

(2) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(3) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(4) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with section 45-03-07.1-06 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 45-03-07.1-04, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its

certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

3. Qualified jurisdictions.

- a. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- b. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include the following:
 - (1) The framework under which the assuming insurer is regulated.
 - (2) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - (3) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - (4) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
 - (5) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.
 - (6) The history of performance by assuming insurers in the domiciliary jurisdiction.
 - (7) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
 - (8) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the international association of insurance supervisors or successor organization.
 - (9) Any other matters deemed relevant by the commissioner.

- c. A list of qualified jurisdictions shall be published through the national association of insurance commissioners committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under paragraphs 1 through 9 of subdivision b.
 - d. United States jurisdictions that meet the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.
4. Recognition of certification issued by a national association of insurance commissioners accredited jurisdiction.
- a. If an applicant for certification has been certified as a reinsurer in a national association of insurance commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed form CR-1 and the additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.
 - b. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.
 - c. The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with paragraph 1 of subdivision g of subsection 2.
 - d. The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with paragraph 2 of subdivision g of subsection 2, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.
5. Mandatory funding clause. In addition to the clauses required under section 45-03-07.1-10, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.
6. The commissioner shall comply with all reporting and notification requirements that may be established by the national association of insurance commissioners with respect to certified reinsurers and qualified jurisdictions.

History: Effective January 1, 2016; amended effective April 1, 2017; [April 1, 2022](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

[45-03-07.1-04.2. Credit for reinsurance - Reciprocal jurisdictions.](#)

- [1. Pursuant to subsection 7 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this rule.](#)

2. A "reciprocal jurisdiction" is a jurisdiction, as designated by the commissioner pursuant to subdivision d, that meets one of the following:
- a. A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union.
 - b. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. sections 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;
 - c. A United States jurisdiction that meets the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program; or
 - d. A qualified jurisdiction, as determined by the commissioner pursuant to subdivision c of subsection 6 of North Dakota Century Code section 26.1-31.2-01 and subsection 3 of section 45-03-07.1-04.1, which is not otherwise described in subdivision a or b and which the commissioner determines meets all of the following additional requirements:
 - (1) Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a United States-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;
 - (2) Does not require a United States-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-United States jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;
 - (3) Recognizes the United States state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the national association of insurance commissioners shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and
 - (4) Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction, including the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the national association of insurance commissioners.
3. Credit must be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

- a. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.
- b. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December thirty-first or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subdivision g according to the methodology of its domiciliary jurisdiction, in the following amounts:
 - (1) No less than two hundred fifty million dollars; or
 - (2) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:
 - (a) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least two hundred fifty million dollars; and
 - (b) A central fund containing a balance of the equivalent of at least two hundred and fifty million dollars.
- c. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:
 - (1) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subdivision a of subsection 2, the ratio specified in the applicable covered agreement;
 - (2) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subdivision b of subsection 2, a risk-based capital ratio of three hundred percent of the authorized control level, calculated in accordance with the formula developed by the national association of insurance commissioners; or
 - (3) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subdivision c of subsection 2, after consultation with the reciprocal jurisdiction and considering any recommendations published through the national association of insurance commissioners committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.
- d. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1, attached as an exhibit to this chapter, of its agreement to the following:
 - (1) The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subdivision b or c, or if any regulatory action is taken against it for serious noncompliance with applicable law.
 - (2) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process.
 - (a) The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.
 - (b) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

- (3) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
- (4) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.
- (5) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security must be in a form consistent with the provisions of subsection 6 of North Dakota Century Code section 26.1-31.2-01 and North Dakota Century Code section 26.1-31.2-02 and sections 45-03-07.1-07, 45-03-07.1-08 and 45-03-07.1-09. For purposes of this regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.
- (6) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subdivision e.

e. The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

- (1) For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;
- (2) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;
- (3) Before entry into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and
- (4) Before entry into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subdivision f.

f. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(1) More than fifteen percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;

(2) More than fifteen percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars, or as otherwise specified in a covered agreement; or

(3) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety days or more, exceeds fifty million dollars, or as otherwise specified in a covered agreement.

g. The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in subdivisions a and b.

h. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

4. The commissioner shall timely create and publish a list of reciprocal jurisdictions.

a. A list of reciprocal jurisdictions is published through the national association of insurance commissioners committee process. The commissioner's list must include any reciprocal jurisdiction as defined under subdivisions a and b of subsection 2, and must consider any other reciprocal jurisdiction included on the national association of insurance commissioners list. The commissioner may approve a jurisdiction that does not appear on the national association of insurance commissioners list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the national association of insurance commissioners committee process.

b. The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the national association of insurance commissioners committee process, except that the commissioner may not remove from the list a reciprocal jurisdiction as defined under subdivisions a and b of subsection 2. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction must be allowed, if otherwise allowed pursuant to North Dakota Century Code chapter 26.1-31.2 or chapter 45-03-07.1.

5. The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions must be granted credit in accordance with this section.

a. If a national association of insurance commissioners accredited jurisdiction has determined that the conditions set forth in subsection 3 have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions must be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another national association of insurance commissioners accredited jurisdiction or with the national association of insurance commissioners in satisfaction of the requirements of subsection 3.

b. When requesting that the commissioner defer to another national association of insurance commissioners accredited jurisdiction's determination, an assuming insurer shall submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the national association of insurance commissioners committee process and provide relevant information with respect to the determination of eligibility.

6. If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

a. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with section 45-03-07.1-06.

b. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of section 45-03-07.1-06.

7. Before denying statement credit or imposing a requirement to post security under subsection 6 or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

a. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection 3;

b. Provide the assuming insurer with thirty days from the initial communication to submit a plan to remedy the defect, and ninety days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

c. After the expiration of ninety days or less, as set out in subdivision b if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subsection; and

d. Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

8. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-05. Credit for reinsurance required by law.

Pursuant to subsection ~~6~~7 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsections ~~1~~, 2, 3, 4, ~~and 5~~, and 6 of North Dakota Century Code section

26.1-31.2-01, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district, or territory of the United States and any lawful national government.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; [April 1, 2022](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-10. Reinsurance contract.

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

1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to North Dakota Century Code section 26.1-06.1-31; and
2. Includes a provision pursuant to North Dakota Century Code section 26.1-31.2-01 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and
3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; [April 1, 2022](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

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

_____, the assuming insurer under a reinsurance
(name of assuming insurer)

agreement with one or more insurers domiciled in _____, be considered for
(name of state)

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

1. Submits to the jurisdiction of any court of competent jurisdiction in North Dakota for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the commissioner. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
2. Designates the Insurance Commissioner of North Dakota as its lawful attorney in and for upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.
5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in [Name of State]. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the commissioner, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.
6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.
7. Agrees to provide the documentation in accordance with subdivision e of subsection 3 of North Dakota Administrative Code section 45-03-07.1-04.2 if requested by the commissioner.

Dated: _____
(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

CHAPTER 45-03-26

TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING MODEL REGULATION

Section

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45-03-26-01. Authority.

This chapter is adopted pursuant to the authority granted by North Dakota Century Code chapter 26.1-31.2.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2-04

45-03-26-02. Purpose.

The purpose and intent of this chapter is to establish standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, as defined in section 45-03-26-05, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer:

1. Are issued by the ceding insurer or its affiliates;
2. Are not unconditionally available to satisfy the general account obligations of the ceding insurer; or
3. Create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates, other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-03. Applicability.

This chapter shall apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in subsection 2 of section 45-03-26-05, issued by any life insurance company domiciled in this state. This chapter and North Dakota Century Code chapter 26.1-31.2 shall both apply to such reinsurance treaties.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-04. Exemptions from this chapter.

This chapter does not apply to the situations described in subsections 1 through 6.

1. Reinsurance of:

a. Policies that satisfy the criteria for exemption set forth in subsection 6 of section 45-04-12-04 or subsection 7 of section 45-04-12-04 and which are issued before the later of:

(1) The effective date of this chapter, and

(2) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

b. Portions of policies that satisfy the criteria for exemption set forth in subsection 5 of section 45-04-12-04 and which are issued before the later of:

(1) The effective date of this chapter, and

(2) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

c. Any universal life policy that meets all of the following requirements:

(1) Secondary guarantee period, if any, is five years or less;

(2) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the commissioner's standard ordinary valuation tables and valuation interest rate applicable to the issue year of the policy; and

(3) The initial surrender charge is not less than one hundred percent of the first year annualized specified premium for the secondary guarantee period;

d. Credit life insurance;

e. Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

f. Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year;

2. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subsection 5 of North Dakota Century Code section 26.1-31.2-01;

3. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subsection 2, 3, or 4 of North Dakota Century Code section 26.1-31.2-01 and that, in addition:

a. Prepares statutory financial statements in compliance with the national association of insurance commissioners' "Accounting Practices and Procedures Manual", without any departures from national association of insurance commissioners statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1; and

b. Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in North Dakota Century Code chapter 26.1-03.1 when its risk-based capital is calculated in accordance with the life risk-based capital report, including overview and instructions for companies, as the same may be amended by the national association of insurance commissioners from time to time, without deviation;

4. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subsection 2, 3, or 4 of North Dakota Century Code section 26.1-31.2-01 and that, in addition:

a. Is not an affiliate, as that term is defined in subsection 1 of North Dakota Century Code section 26.1-10-01 of:

(1) The insurer ceding the business to the assuming insurer; or

(2) Any insurer that directly or indirectly ceded the business to that ceding insurer;

b. Prepares statutory financial statements in compliance with the national association of insurance commissioners' "Accounting Practices and Procedures Manual";

c. Is both:

(1) Licensed or accredited in at least ten states, including its state of domicile; or

(2) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

d. Is not, or would not be, below five hundred percent of the authorized control level risk-based capital as that term is defined in North Dakota Century Code chapter 26.1-03.1 when its risk-based capital is calculated in accordance with the life risk-based capital report, including overview and instructions for companies, as the same may be amended by the national association of insurance commissioners from time to time, without deviation, and without recognition of any departures from national association of insurance commissioners' statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus;

5. Cessions to an assuming insurer that:

a. Meets the conditions set forth in subsection 7 of North Dakota Century Code section 26.1-31.2-01 or is operating in accordance with provisions substantially equivalent to subsection 7 of North Dakota Century Code section 26.1-31.2-01 in a minimum of five other states;

b. Is certified in this state as set forth in subsection 6 of North Dakota Century Code section 26.1-31.2-01 or certified in accordance with provisions substantially equivalent to subsection 6 of North Dakota Century Code section 26.1-31.2-01 in a minimum of five other states; or

c. Maintains at least two hundred fifty million dollars in capital and surplus when determined in accordance with national association of insurance commissioners' "Accounting Practices and Procedures Manual", including all amendments thereto adopted by the national association of insurance commissioners, excluding the impact of any permitted or prescribed practices; and is:

(1) Licensed in at least twenty-six states; or

(2) Licensed in at least ten states, and licensed or accredited in a total of at least thirty-five states; or

6. Reinsurance not otherwise exempt under subsections 1 through 5 if the commissioner, after consulting with the national association of insurance commissioners' financial analysis working group or other group of regulators designated by the national association of insurance commissioners, as applicable, determines under all the facts and circumstances that all of the following apply:

a. The risks are clearly outside of the intent and purpose of this chapter as described in section 45-03-26-02;

b. The risks are included within the scope of this chapter only as a technicality; and

c. The application of this chapter to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to this subsection to exempt a reinsurance treaty from this chapter, as well as the general basis therefor, including a summary description of the treaty.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2-01

45-03-26-05. Definitions.

1. "Actuarial method" means the methodology used to determine the required level of primary security, as described in section 45-03-26-06.

2. "Covered policies" means subject to the exemptions described in section 45-03-26-04, covered policies are those policies, other than grandfathered policies, of the following policy types:

a. Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, or both, except for flexible premium universal life insurance policies; or

b. Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

3. "Grandfathered policies" means policies of the types described in subsection 2 that were:

a. Issued prior to January 1, 2015; and

b. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in section 45-03-26-04 had that section then been in effect.

4. "Noncovered policies" means any policy that does not meet the definition of covered policies, including grandfathered policies.

5. "Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.
6. "Primary security" means the following forms of security:
 - a. Cash meeting the requirements of subsection 1 of North Dakota Century Code section 26.1-31.2-02.
 - b. Securities listed by the securities valuation office of the national association of insurance commissioners meeting the requirements of subsection 2 North Dakota Century Code section 26.1-31.2-02 but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and
 - c. For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:
 - (1) Commercial loans in good standing of CM3 quality and higher;
 - (2) Policy loans; and
 - (3) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.
7. "Other security" means any security acceptable to the commissioner other than security meeting the definition of primary security.
8. "Valuation manual" means the valuation manual adopted by the national association of insurance commissioners as described in subdivision a of subsection 1 of North Dakota Century Code section 26.1-35-00.2, with all amendments adopted by the national association of insurance commissioners that are effective for the financial statement date on which credit for reinsurance is claimed.
9. "VM-20" means requirements for principle-based reserves for life products, including all relevant definitions, from the Valuation Manual.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-06. The actuarial method.

1. The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this chapter shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the valuation manual as then in effect, applied as follows:
 - a. For covered policies described in subdivision a of subsection 2 of section 45-03-26-05, the actuarial method is the greater of the deterministic reserve or the net premium reserve regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in subdivision b of subsection 2 of section 45-03-26-05, the ceding insurer may elect to instead use subdivision b as the actuarial method for the entire reinsurance

agreement. Whether subdivision a or subdivision b are used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

b. For covered policies described in subdivision b of subsection 2 of section 45-03-26-05, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve regardless of whether the criteria for exemption testing can be met.

c. Except as provided in subdivision d, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

d. If the reinsurance treaty cedes less than one hundred percent of the risk with respect to the covered policies, then the required level of primary security may be reduced as follows:

(1) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under paragraph 3, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(2) If the reinsurance treaty in a nonexempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(3) If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed $[cx / (2 * \text{number of reinsurance premiums per year})]$ where cx is calculated using the same mortality table used in calculating the net premium reserve; and

(4) For any other treaty ceding a portion of risk to a different reinsurer, including stop loss, excess of loss, and other nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

(5) It is possible for any combination of paragraphs 1, 2, 3, and 4 to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than one hundred percent of the risk. The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

- e. In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.
- f. If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this regulation, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this chapter.
- g. If a reinsurance treaty subject to this chapter cedes risk on both covered and noncovered policies, credit for the ceded reserves shall be determined as follows:
 - (1) The actuarial method shall be used to determine the required level of primary security for the covered policies, and section 45-03-26-07 shall be used to determine the reinsurance credit for the covered policy reserves; and
 - (2) Credit for the noncovered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of paragraph 1, is held by or on behalf of the ceding insurer in accordance with North Dakota Century Code sections 26.1-31.2-01 and 26.1-31.2-02. Any primary security used to meet the requirements of this paragraph may not be used to satisfy the required level of primary security for the covered policies.

2. For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

- a. For assets, including any such assets held in trust, that would be admitted under the national association of insurance commissioners' "Accounting Practices and Procedures Manual" if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and
- b. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the national association of insurance commissioners' life actuarial task force no later than the December thirty-first on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2-01

45-03-26-07. Requirements applicable to covered policies to obtain credit for reinsurance - Opportunity for remediation.

- 1. Subject to the exemptions described in section 45-03-26-04 and the provisions of subsection 2, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies pursuant to North Dakota Century Code sections 26.1-31.2-01 and 26.1-31.2-02 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

- a. The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of North Dakota Century Code chapter 26.1-35 and related chapters and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this chapter does not exceed the proportionate share of those reserves ceded under the contract;
- b. The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner;
- c. Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of North Dakota Century Code section 26.1-31.2-02 on a funds withheld, trust, or modified coinsurance basis;
- d. Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to subdivision c, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of North Dakota Century Code section 26.1-31.2-02;
- e. Any trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of section 45-03-07.1-08 except that:
 - (1) Funds consisting of primary security or other security held in trust, shall for the purposes identified in subsection 2 of section 45-03-07.1-08, be valued according to the valuation rules set forth in subsection 2 of section 45-03-07.1-08, as applicable;
 - (2) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of subdivision c;
 - (3) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subdivision c below one hundred two percent of the level required by subdivision c at the time of the withdrawal or substitution; and
 - (4) The determination of reserve credit under subdivision c of subsection 4 of section 45-03-07.1-08 shall be determined according to the valuation rules set forth in subsection 2 of section 45-03-26-06, as applicable; and
- f. The reinsurance treaty has been approved by the commissioner.

2. Requirements at inception date and on an ongoing basis; remediation.

- a. The requirements of subsection 1 must be satisfied as of the date that risks under covered policies are ceded, if such date is on or after the effective date of this chapter, and on an ongoing basis thereafter. Under no circumstances may a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subdivision c of subsection 1 or subdivision d of subsection 1 with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.
- b. Before the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of section 45-03-26-03 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under

which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter, the valuation date, the requirements of subdivision c of subsection 1 and subdivision d of subsection 1 were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to subdivision c of subsection 1, unless either:

(1) The requirements of subdivisions c and d of subsection 1 were fully satisfied as of the valuation date as to such reinsurance treaty; or

(2) Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security or other security, or both, as the case may be, in such amount and in such form as would have caused the requirements of subdivision c of subsection 1 and subdivision d of subsection 1 to be fully satisfied as of the valuation date.

c. Nothing in subsection 2 shall be construed to allow a ceding company to maintain any deficiency under subdivision c of subsection 1 or subdivision d of subsection 1 for any period of time longer than is reasonably necessary to eliminate it.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2-01, 26.1-31.2-02

45-03-26-08. Severability.

If any provision of this chapter is held invalid, the remainder shall not be affected.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-09. Prohibition against avoidance.

No insurer that has covered policies as to which this chapter applies as set forth in section 45-03-26-03 may take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement, or series thereof is to avoid the requirements of this chapter, or to circumvent its purpose and intent, as set forth in section 45-03-26-02.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

CHAPTER 45-05-09

45-05-09-04. Acknowledgment.

The applicant or insured must sign a disclosure form as part of the application or renewal process wherein the applicant or insured acknowledges that the subject policy has limits of liability which may be reduced or completely eliminated by payments for legal defense costs or claims expenses. Only one signed disclosure is required regardless of whether the disclosure is attached to an application or a renewal.

History: Effective April 1, 2015; amended effective October 1, 2019; April 1, 2022.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

TITLE 67
PUBLIC INSTRUCTION, SUPERINTENDENT OF

APRIL 2022

**ARTICLE 67-11
EDUCATION PROFESSIONAL CREDENTIALS**

Chapter	
67-11-01	Driver Education Instructor's Credential [Repealed]
67-11-02	Elementary Principal's Credential [Repealed]
67-11-03	Reading Credentials [Repealed]
67-11-03.1	Reading and Mathematics Credentials [Repealed]
67-11-03.2	Reading and Mathematics Credentials [Repealed]
67-11-03.3	Title I Coordinator Credential [Repealed]
67-11-03.4	Title I Coordinator Credential
67-11-03.5	Reading and Mathematics Credentials
67-11-04	Library Media Credential
67-11-05	School Counselor Credentials
67-11-06	Secondary Principal's Credential [Repealed]
67-11-07	Superintendent's Credential
67-11-08	Special Education Director's Credential
67-11-09	Early Childhood Special Education Teacher Credential [Repealed]
67-11-10	Emotional Disturbance Teacher Credential [Repealed]
67-11-11	Gifted and Talented Teacher Credential [Repealed]
67-11-12	Physical Disabilities Teacher Credential [Repealed]
67-11-13	Specific Learning Disabilities Teacher Credential [Repealed]
67-11-14	Certificate of Completion for Paraprofessionals
67-11-15	School Psychology Intern Approval
67-11-16	Special Education Strategist Credential [Repealed]
67-11-17	Mental Retardation Teacher Credential [Repealed]
67-11-18	Credential Requirement for Teachers of the Visually Impaired [Repealed]
67-11-19	Credential Requirement for Teachers of Students Who Are Deaf or Hard of Hearing [Repealed]
67-11-20	Certificate of Completion for Speech-Language Pathology Paraprofessionals
67-11-21	Principal Credentials
67-11-22	Computer Science and Cybersecurity Credentials
67-11-23	Certificates of Completion for Special Education Technicians
67-11-24	Certificates of Completion for School Health Technicians
67-11-25	Credentials for Specialists Trained in Dyslexia

**[CHAPTER 67-11-25](#)
[CREDENTIALS FOR SPECIALISTS TRAINED IN DYSLEXIA](#)**

[Section](#)

67-11-25-01	Issuing Agency
67-11-25-02	Pathways to Support
67-11-25-03	Definitions
67-11-25-04	Requirements for Specialist Trained in Dyslexia Credential
67-11-25-05	Application Process
67-11-25-06	Credential Renewal
67-11-25-07	Reconsideration

67-11-25-01. Issuing agency.

The North Dakota credential for specialists trained in dyslexia is issued by the:

Superintendent of Public Instruction
 Department of Public Instruction
 600 East Boulevard Avenue, Dept. 201
 Bismarck, ND 58505-0440

History: Effective April 1, 2022.
General Authority: NDCC 15.1-02-16, 28-32-02
Law Implemented: NDCC 15.1-02-16

67-11-25-02. Pathways to support.

A school district or nonpublic school may choose to employ an individual that holds the credential for specialists trained in dyslexia according to the rules of this chapter to work in schools with children with dyslexia.

History: Effective April 1, 2022.
General Authority: NDCC 15.1-02-16, 28-32-02
Law Implemented: NDCC 15.1-02-16

67-11-25-03. Definitions.

A "specialist trained in dyslexia" is an individual with the coursework and competencies listed in section 67-11-25-04.

History: Effective April 1, 2022.
General Authority: NDCC 15.1-02-16, 28-32-02
Law Implemented: NDCC 15.1-02-16

67-11-25-04. Requirements for specialist trained in dyslexia credential.

1. To obtain a credential for a specialist trained in dyslexia to teach students in a school setting, an educator must hold a valid North Dakota educator's professional license issued by the education standards and practices board.
2. The individual must have completed the required coursework from a state-approved institution of higher education. This coursework must include:
 - a. Introduction to dyslexia;
 - b. Assessment for students with dyslexia;
 - c. Interventions for students with dyslexia; and
 - d. A minimum of three semester hours of practicum experience related to dyslexia assessment and interventions.

3. An individual is exempted from subsection 2 if the individual has completed certification approved by the international dyslexia association or the center for effective reading instruction. The certification must include a practicum experience of a minimum of three credits or forty-five clock-hours and be equivalent to that required in subsection 2.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-02-16, 28-32-02

Law Implemented: NDCC 15.1-02-16

67-11-25-05. Application process.

The application process to obtain a credential under this chapter must consist of:

1. The completion of an online application; and
2. The submission of official transcripts and other documentation as needed.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-02-16, 28-32-02

Law Implemented: NDCC 15.1-02-16

67-11-25-06. Credential renewal.

A credential issued under this chapter is valid only while the credentialed individual holds a valid North Dakota educator's professional license. An applicant for renewal of a credential issued under this chapter shall:

1. Renew the credential before the expiration of the applicant's license, or every five years if the applicant has a lifetime license or certification.
2. Complete continuing education requirements towards renewal of the credential as follows:
 - a. The applicant shall complete two semester hours of credit before the expiration date of the applicant's credential, unless the individual's license will expire as described in subdivision b or c.
 - b. An applicant who holds a two-year educator's professional license shall complete one semester hour of credit before the expiration date of the applicant's credential.
 - c. If the applicant's teaching license expires within twenty-four months of the issuance of a first-time credential issued under this chapter, then no additional credit hours are required.
 - d. Credits earned to fulfill the requirements of subdivisions a or b must be related to language-based reading disorders or dyslexia.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-02-16, 28-32-02

Law Implemented: NDCC 15.1-02-16

67-11-25-07. Reconsideration.

If an application for a credential for specialists trained in dyslexia is denied, the applicant must be notified of the opportunity for reconsideration. Upon receipt of a written denial, the applicant may request a reconsideration of the denial. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within twenty-one days of the date the denial was mailed to the applicant by the superintendent of public instruction. Untimely requests may not be considered. The request for reconsideration must discuss:

1. The fact, law, or rule the applicant believes was erroneously interpreted or applied; and

2. The applicant's arguments on how the fact, law, or rule should have been applied, giving specific reasons and a thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within twenty-one days after receiving a complete and timely reconsideration request. If the superintendent's written response denies the reconsideration request, the superintendent's written response must notify the applicant of the applicant's right to a hearing conducted pursuant to North Dakota Century Code chapter 28-32. The applicant shall request the hearing within thirty days after receiving the superintendent's written response to the reconsideration request.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-02-16, 28-32-02

Law Implemented: NDCC 15.1-02-16

CHAPTER 67-13-01
SCHOOL DISTRICT COOPERATIVE AGREEMENTS

Section

67-13-01-01	Purpose
67-13-01-02	Approval
67-13-01-03	Withdrawal
67-13-01-04	School Districts
67-13-01-05	Cooperative Program
67-13-01-06	Agreements
<u>67-13-01-07</u>	<u>Cost-Sharing Reimbursement</u>

67-13-01-05. Cooperative program.

The school district cooperative or special education units must address the following:

- ~~1.~~ ~~A plan for providing unduplicated grade-level services for at least four grade levels, unless the school district has taxable property located in the same city as the other school district under the cooperative plan;~~
- ~~2.~~ A plan for sharing administration, at a minimum a shared superintendent or special education director unless the school district has taxable property located in the same city as the other school district under the cooperative plan;
- ~~3.~~2. A plan for sharing cooperative expenditures between the member districts or special education units;
- ~~4.~~3. A plan for sharing cooperative or unit revenues upon termination of the ~~cooperative agreement~~;
and
- ~~5.~~4. A plan for the changing of the agreement.

History: Effective May 1, 1999; amended effective January 1, 2018; January 1, 2020; April 1, 2022.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15.1-27-16

67-13-01-07. Cost-sharing reimbursement.

To be eligible to be reimbursed for a cost-sharing agreement, school districts or special education units must:

1. Share a superintendent or special education administrator and business manager;
2. Demonstrate a cost-savings by sharing central office personnel; and
3. Indicate the percentage of time the superintendent or special education administrator and business manager are assigned to each district or unit.

History: Effective April 1, 2022.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15.1-27-16

ARTICLE 67-23 SPECIAL EDUCATION

Chapter	
67-23-01	Comprehensive General Plan Requirements for Special Education Programs
67-23-02	State Funding for Special Education
67-23-03	Federal Funding for Special Education
67-23-04	Special Education Dispute Resolution Options and Appeals [Repealed]
67-23-05	Special Education Dispute Resolution
67-23-06	Response to Intervention
<u>67-23-07</u>	<u>Postsecondary Transition Programs</u>

CHAPTER 67-23-07 POSTSECONDARY TRANSITION PROGRAMS

Section

<u>67-23-07-01</u>	<u>Definition</u>
<u>67-23-07-02</u>	<u>Description of Program</u>
<u>67-23-07-03</u>	<u>Grant Payments for Postsecondary Transition Programs</u>

67-23-07-01. Definition.

A "postsecondary transition program" is a degree, certificate, or nondegree program at an accredited postsecondary institution that is designed to support students with an intellectual or developmental disability who are seeking to continue academic, career and technical, and independent living instruction. The program must be consistent with the federal Higher Education Opportunity Act requirements for the degree, certificate, or program.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-32-09, 15.1-32-21.1, 28-32-02

Law Implemented: NDCC 15.1-32-21.1, Pub. L. 110-315

67-23-07-02. Description of program.

A postsecondary transition program:

1. Serves students with intellectual disabilities or developmental disabilities who:
 - a. Are at least eighteen years of age but have not reached the age of twenty-two;
 - b. Have graduated from high school in the state or obtained an equivalent degree; and
 - c. Enroll in a postsecondary transitional program at an institution of higher education;
2. Includes an advising and curriculum structure based upon individualized needs of the student;
3. Requires students with intellectual disabilities or developmental disabilities to participate on not less than a half-time basis as determined by the institution;
4. Provides individual supports and services for the academic and social inclusion of students with intellectual disabilities or developmental disabilities in academic courses, extracurricular activities, and other aspects of the institution of higher education's regular postsecondary program;
5. With respect to the students with intellectual disabilities or developmental disabilities, provides a focus on:

- a. Academic enrichment, including access to inclusive college courses available to students without disabilities to the maximum extent possible;
 - b. Socialization in inclusive environments to the maximum extent possible;
 - c. Independent living skills, including self-advocacy skills; and
 - d. Integrated work experiences and career skills that lead to competitive integrated employment;
6. Integrates person-centered planning in the development of the course of study for each student with an intellectual disability or developmental disability; and
7. Creates and offers a meaningful credential for students with intellectual disabilities or developmental disabilities upon the completion of the postsecondary transition program.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-32-09, 15.1-32-21.1, 28-32-02

Law Implemented: NDCC 15.1-32-21.1

67-23-07-03. Grant payments for postsecondary transition programs.

1. In order to receive integrated formula payments as described in North Dakota Century Code section 15.1-32-21.1, postsecondary transition programs must be:
- a. Proven to be successful for students with intellectual and developmental disabilities; and
 - b. An established program with evidence of results.
2. The superintendent of public instruction shall review and approve postsecondary transitional programs and develop a system for the distribution of payments to the postsecondary transition program necessary to implement this section.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-32-09, 15.1-32-21.1, 28-32-02

Law Implemented: NDCC 15.1-32-21.1

ARTICLE 67-31
READING CURRICULUM

Chapter
67-31-01 Professional Development for Grades Kindergarten Through Three Reading

CHAPTER 67-31-01
PROFESSIONAL DEVELOPMENT FOR GRADES KINDERGARTEN THROUGH THREE
READING

Section
67-31-01-01 Definitions
67-31-01-02 Professional Development Required
67-31-01-03 Implementation and Compliance

67-31-01-01. Definitions.

1. "Comprehension" means the process by which a reader thinks about written language to extract and construct meaning through integration with the reader's prior knowledge and experiences.
2. "Fluency" means the ability to read accurately, with expression, and at a rate that supports deep understanding.
3. "Mastery" means the successful demonstration of knowledge in the areas of reading competency described in this section.
4. "Phonemic awareness" means the ability to identify and manipulate individual sounds, called phonemes, in spoken words.
5. "Phonics" means the alphabetic letter-sound correspondences used in reading, writing, and spelling.
6. "Systematic direct instruction" means the carefully planned sequence of instruction with organization of material that follows a developmentally appropriate order within a pre-established routine. Systematic direct instruction is explicit, follows a gradual release process, and allows opportunities for practice and feedback.
7. "Teacher-approved professional development" means professional development identified and organized through the collaboration of district teachers and administrators.
8. "Vocabulary" means the knowledge of, and memory for word meanings which include receptive and expressive skills in the areas of reading, writing, speaking, and listening.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-21-12.1, 28-32-02

Law Implemented: NDCC 15.1-21-12.1

67-31-01-02. Professional development required.

1. Pursuant to subsection 2 of North Dakota Century Code section 15.1-21-12.1, beginning with the 2022-23 school year, each teacher and principal serving students in grades kindergarten through three in a public or nonpublic school shall have attended teacher-approved professional development training described in subsection 1 of North Dakota Century Code section 15.1-21-12.1, or demonstrate mastery in the topics provided in that subsection.

2. Pursuant to subsection 2 of North Dakota Century Code section 15.1-21-12.1, beginning with the 2022-23 school year, each teacher and principal newly hired to serve students in grades kindergarten through three in a public or nonpublic school shall complete teacher-approved professional development training described in subsection 1 of North Dakota Century Code section 15.1-21-12.1 within one year of first-year placement, or demonstrate mastery in the topics provided in that subsection.
3. Required trainings must have occurred on or later than July 1, 2018.
4. Teachers and principals that successfully completed reading training in accordance with North Dakota Century Code section 15.1-13-35.1 are considered to have met the training requirements of this section.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-21-12.1, 28-32-02

Law Implemented: NDCC 15.1-21-12.1

67-31-01-03. Implementation and compliance.

1. School districts and nonpublic schools shall choose curriculum and curricular resources meeting the focus areas listed in subdivision b of subsection 1 of North Dakota Century Code section 15.1-21-12.1.
2. Each school district or nonpublic school shall ensure compliance of this section in a manner determined by the superintendent of public instruction.
3. The department shall collect assurances of school districts and nonpublic schools to ensure compliance with subsection 4 of North Dakota Century Code section 15.1-21-12.1.
4. During the monitoring process, the school district or nonpublic school shall report the following information regarding this chapter in a manner determined by the superintendent of public instruction:
 - a. Reading curriculum and instruction;
 - b. Professional development and training offered for grades kindergarten through three, or demonstrated mastery of literacy topics by teachers and principals; and
 - c. Assessment instruments to diagnose reading development and comprehension.
5. School districts and nonpublic schools shall report information required in subsection 4 annually to the department on the first day of October, unless the school district or nonpublic school meets the requirements of subsection 6.
6. School districts and nonpublic schools that have submitted satisfactory information required under subsection 4 and subsection 5 may be awarded an exemption from the additional annual reporting requirements of subsection 5 for a period of up to three years. Satisfactory information may include student outcome reading proficiency data collected using the assessment instrument to diagnose reading development and comprehension, such as the screening measures given three times per year in kindergarten through grade three.

History: Effective April 1, 2022.

General Authority: NDCC 15.1-21-12.1, 28-32-02

Law Implemented: NDCC 15.1-21-12.1

TITLE 71
RETIREMENT BOARD

APRIL 2022

CHAPTER 71-02-02

71-02-02-01. Membership - General rule.

When an eligible employee becomes a member of the public employees retirement system, the following requirements apply:

1. A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. ~~Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.~~
- ~~3.~~ Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
- 4.3. Upon taking a refund, future participation as a temporary member is waived.
- 5.4. A member may not contribute concurrently to the plan within any given month as both a permanent and a temporary member. Permanent employment has precedence.
- 6.5. Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998; May 1, 2004; July 1, 2006; April 1, 2016; July 1, 2018; [April 1, 2022](#).

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-01, 54-52-02.9, 54-52-05

CHAPTER 71-02-04

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~~meets minimum distribution rules provided in subsection 2 of North Dakota Century Code section 54-52-28, 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~~meets minimum distribution rules provided in subsection 2 of North Dakota Century Code section 54-52-28. 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 directly deposited into a financial account identified by the member or 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. If two consecutive checks issued remain uncashed, future payments will be suspended until the member makes payment arrangements with the office.

History: Amended effective November 1, 1990; July 1, 1994; July 1, 2000; July 1, 2010; July 1, 2018; April 1, 2022.

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 or normal amount. Payment of the single life or normal 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,~~receipt, in the public employees retirement system office, of written notification of the spouse's death or member's divorce. Written notification must be either a death certificate or 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 or normal amount. Payment of the single life or normal 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,~~receipt, in the public employees retirement system office, of written notification of the spouse's death or member's divorce. Written notification must be either a death certificate or a photocopy of the divorce decree.

3. **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: Amended effective September 1, 1982; November 1, 1990; July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; July 1, 2010; April 1, 2012; April 1, 2022.

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 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 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 simple 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 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; [April 1, 2022](#).

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 39-03.1-25, 54-52-17

71-02-04-11. Erroneous payment of benefits - Underpayments.

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within sixty days of the discovery of the error.
3. If the underpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the employer or recipient, the underpayment of benefits is to include [simple](#) interest at the rate of six percent from the time the underpayment occurred.
4. If the underpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the employer or recipient, the underpayment of benefits will not include [simple](#) interest.
5. If an individual dies prior to receiving the underpayment of benefits, the public employees retirement system must pay the designated beneficiary on record or, in the absence of a designation of beneficiary, to the estate.

History: Effective June 1, 1996; amended effective May 1, 2004; April 1, 2008; [April 1, 2022](#).

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 39-03.1-25, 54-52-17

CHAPTER 71-02-06 CONTRIBUTIONS

Section

71-02-06-01	Conditions for Return
71-02-06-02	Effect of Return
71-02-06-03	Inapplicability of Return of Contribution Guarantee [Repealed]
71-02-06-04	Adjustment for Bonuses, Profit Sharing, and Contributions Paid in a Month Other Than Month Earned
71-02-06-05	Basis for Calculating Contribution - Salary Reduction - Salary Deferral Arrangements
71-02-06-06	Employer Payment of Employee Contributions
71-02-06-07	Employer Contribution - National Guard/Law Enforcement
71-02-06-08	Retirement Contributions for Individuals Working Less Than a Forty-Hour Workweek
71-02-06-09	Individual Employee Incentive Payments
71-02-06-10	Transfer of Funds
71-02-06-11	Transfer Date
71-02-06-12	Employee-Paid Contributions - Repayment Options
<u>71-02-06-13</u>	<u>Refusal of Interest on Contributions</u>

71-02-06-06. Employer payment of employee contributions.

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52-05 shall be reported to the board a minimum of thirty-one days prior to the effective date.
2. An employer may not discriminate between in its contributions to eligible participating employees ~~as to its contribution~~ within the same plan under North Dakota Century Code section 54-52-05.

History: Effective July 1, 1994; amended effective May 1, 2004; April 1, 2022.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05

71-02-06-13. Refusal of interest on contributions.

A member or beneficiary may decline to receive interest on the member's contributions and vested employer contributions, if any, by notifying the public employees retirement system, in writing, of that decision when the member or beneficiary applies for a distribution of the accumulated contributions. A member or beneficiary who does so waives any right to that interest.

History: Effective April 1, 2022.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 39-03.1-09, 54-52-02.9, 54-52-05, 54-52-06.1, 54-52-06.3, 54-52-06.4

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, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health, dental, vision, or prescription drug insurance plan.
2. Marriage. An employee who previously waived coverage 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 must enroll for coverage at the same time that the employee's eligible dependent is enrolled.
4. Addition of a dependent as a result of birth, adoption, or placement for adoption. Effective date of coverage is the first of the month in which the event occurred. An employee who previously waived coverage shall 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; April 1, 2012; April 1, 2016; April 1, 2022.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03

71-03-03-09. Leave without pay.

An employee on an approved leave without pay may elect to continue coverage for the periods specified in the plans for life insurance, health, dental, vision, or prescription drug coverages by paying the full premium to the agency. An eligible employee electing not to continue coverage during a leave of absence is entitled to renew coverage for the first of the month following the month that the employee has returned to work if the employee submits an application for coverage within the first thirty-one days of returning to work. An eligible employee failing to submit an application for coverage within the first thirty-one days of returning to work 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.

History: Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; September 1, 1997; July 1, 1998; May 1, 2004; April 1, 2012; April 1, 2022.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03

CHAPTER 71-03-07

71-03-07-01. Employer contribution.

Each employer ~~must submit~~ shall pay to the board the full monthly premium amount for each eligible employee enrolled in the group insurance plan by the fifteenth of each month. The employer must 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 participating employer to another, the new employer is responsible for the payment of the premium for the first of the month following employment.

History: Effective June 1, 1996; amended effective July 1, 2010; April 1, 2022.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03.1

TITLE 75
DEPARTMENT OF HUMAN SERVICES

APRIL 2022

**ARTICLE 75-02
ECONOMIC ASSISTANCE**

Chapter	
75-02-01	Aid to Families With Dependent Children [Repealed]
75-02-01.1	Aid to Families With Dependent Children [Repealed]
75-02-01.2	Temporary Assistance for Needy Families Program
75-02-01.3	Child Care Assistance
75-02-02	Medical Services
75-02-02.1	Eligibility for Medicaid
75-02-02.2	Children's Health Insurance Program [Repealed]
75-02-02.3	[Reserved]
75-02-02.4	Home and Community-Based Services Informed Choice Referrals
75-02-03	Homes for Aged and Infirm [Superseded]
75-02-04	Child Support Division
75-02-04.1	Child Support Guidelines
75-02-04.2	State Disbursement Unit
75-02-05	Provider Integrity
75-02-05.1	Nursing Home Sanctions [Repealed]
75-02-05.2	Nursing Facility Enforcement Action
75-02-06	Ratesetting for Nursing Home Care
75-02-07	Provider Reimbursement - Basic Care Facilities [Repealed]
75-02-07.1	Ratesetting for Basic Care Facilities
75-02-08	Homes for the Aged and Infirm [Repealed]
75-02-09	Ratesetting for Psychiatric Residential Treatment Facilities
75-02-10	Aid to Vulnerable Aged, Blind, and Disabled Individuals
75-02-11	Food Stamp Program [Repealed]
<u>75-02-12</u>	<u>Housing Assistance</u>

CHAPTER 75-02-12
HOUSING ASSISTANCE

<u>Section</u>	
<u>75-02-12-01</u>	<u>Definitions</u>
<u>75-02-12-02</u>	<u>Application for Housing Provider Participation in the Housing Assistance Program</u>
<u>75-02-12-03</u>	<u>Housing Provider Denials and Revocations</u>
<u>75-02-12-04</u>	<u>Housing Provider's Appeals of Denials and Revocations</u>
<u>75-02-12-05</u>	<u>Signed Acknowledgment Required</u>
<u>75-02-12-06</u>	<u>Household Eligibility for Housing Assistance</u>
<u>75-02-12-07</u>	<u>Approval of a Household's Housing Assistance Application and Payment</u>

<u>75-02-12-08</u>	<u>Denial or Revocation of Housing Assistance Payment</u>
<u>75-02-12-09</u>	<u>Appeals of Denials and Revocation of Eligibility for Housing Assistance</u>
<u>75-02-12-10</u>	<u>Exceptions to Eligibility Rules Considered</u>

75-02-12-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the North Dakota department of human services.
2. "Fraud" means deception or misrepresentation made by a person with knowledge that the deception could result in some unauthorized housing assistance benefit to that person or another and includes an act that constitutes fraud under applicable federal or state law.
3. "Household" means any individual or group of individuals, regardless of relationship, who are living together as one economic unit which meets the identified eligibility criteria for housing assistance.
4. "Housing provider" means an individual, partnership, association, corporation, or limited liability company that leases housing units to individuals.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1

75-02-12-02. Application for housing provider participation in the housing assistance program.

The department shall approve or deny a housing provider's application within thirty days of receipt of a complete housing provider's application. The department may declare an application withdrawn if the housing provider fails to submit a complete housing provider's application within twenty-one days of the department's notification to the household that the housing assistance application is incomplete. A complete housing provider's application includes:

1. A completed and signed housing provider's application in the form and manner prescribed by the department;
2. A signed agreement pursuant to section 75-02-12-05; and
3. Any information or documentation that has been requested by the department.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1

75-02-12-03. Housing provider denials and revocations.

1. A housing provider's application to participate in the housing assistance program may be denied if:
 - a. The housing provider is not the legal owner or property manager of the housing unit listed in the household's housing assistance application;
 - b. The housing provider's application contains false or misleading material information or the housing provider intentionally withheld material information;
 - c. The housing provider's participation in the housing assistance program has been previously revoked;

- d. The department determines there is a credible allegation of fraud;
- e. The household's housing assistance application is denied or withdrawn;
- f. The exhaustion of appropriated funds has occurred for the housing assistance program;
or
- g. The housing assistance program has ended.

2. A housing provider's participation in the housing assistance program may be revoked:

- a. For failure to comply with the terms and conditions of any signed agreements;
- b. If it is discovered that a housing provider is not the legal owner or property manager of the housing unit for which housing assistance is being issued;
- c. If a housing provider is not applying all housing assistance payments to the oldest rental and late fee arrears obligation first;
- d. If the housing provider's participation approval was issued upon false or misleading material information or the housing provider intentionally withheld material information;
- e. If the department determines there is a credible allegation of fraud;
- f. If the household's housing assistance is revoked;
- g. If the exhaustion of appropriated funds has occurred for the housing assistance program;
or
- h. If the housing assistance program has ended.

3. Housing assistance payment made directly to the housing provider may be denied if:

- a. A revocation of the housing provider's participation approval in the housing assistance program has occurred before the household's rent payment being due;
- b. The housing provider fails to comply with the terms and conditions of any signed agreements; or
- c. The eligible household moves out of the housing unit.

4. The department may revoke all the housing provider's participation approvals pursuant to subsection 2.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1

75-02-12-04. Housing provider's appeals of denials and revocations.

A housing provider whose application to participate in or receive payment through the housing assistance program is denied or revoked may appeal a decision to deny the completed housing provider's application to participate in or receive payment or revocation. An appeal under this section must be made in writing on a form developed and provided by the department within ten days of the date of the department's notice of denial or revocation. A housing provider shall submit the written request for an appeal and hearing under North Dakota Century Code chapter 28-32 to the appeals supervisor for the department. A housing provider may not appeal a denial or revocation resulting from an exhaustion of appropriated funds for the housing assistance program, the housing assistance program ending, the submission of an invalid housing assistance payment request, or the housing

provider's application being considered withdrawn. The household and the housing provider are not entitled to a housing assistance payment ten days after the issuance of a notice of revocation unless a final decision has been made by the department that reverses the decision to revoke.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1

75-02-12-05. Signed acknowledgment required.

A housing provider shall sign the acknowledgments contained in the housing provider application. The signed acknowledgments are considered a signed agreement as referenced herein.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1

75-02-12-06. Household eligibility for housing assistance.

The household is eligible for housing assistance if:

1. The household completes and submits a housing assistance application in the form and manner prescribed by the department;
2. The household resides in North Dakota;
3. The household is at risk of eviction or experiencing housing instability;
4. The household has a written rental agreement with the housing provider or both parties self-attest to a rental agreement;
5. The household has an annual income no greater than eighty percent of area median income by household size by county;
6. The household's housing assistance application and housing provider's application does not contain false or misleading material information, or the household or housing provider did not intentionally withhold material information;
7. The exhaustion of appropriated funds has not occurred for the housing assistance program; and
8. The housing assistance program has not ended.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1

75-02-12-07. Approval of a household's housing assistance application and payment.

1. A notice of determination should be made no later than thirty days following the day that the household submitted a completed housing assistance application. A complete housing assistance application includes:
 - a. A completed and signed application in the form and manner prescribed by the department pursuant to section 75-02-12-06; and
 - b. Any information or documentation that has been requested by the department.
2. Housing assistance payments shall be made directly to the housing provider unless:

- a. The housing provider's application to participate in the housing assistance program is denied;
 - b. The housing provider's participation in the housing assistance program is revoked before the household's rent payment being due;
 - c. The housing provider fails to comply with the terms and conditions of any signed agreements;
 - d. The housing provider refuses to participate in the program;
 - e. The housing provider refuses to receive payment; or
 - f. The eligible household moves out of the housing unit.
3. Housing assistance payments may be made directly to the household for the program purposes of promoting housing stability if the housing assistance payments are not made directly to the housing provider.
 4. The department may declare a household's housing assistance application withdrawn if the department does not receive a complete application within twenty-one days of the department's notification to the household that the application is incomplete.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1

75-02-12-08. Denial or revocation of housing assistance payment.

1. A notice of denial should be sent no later than thirty days following the day that the household submitted a completed housing application. The department may deny the household's housing assistance application if the household is not eligible pursuant to section 75-02-12-06.
2. The department shall notify the household that the housing assistance is revoked. The department may revoke the household's housing assistance if the household no longer meets the eligibility criteria under section 75-02-12-06.
3. The department shall inform the household requesting the housing assistance of the reason for the denial or revocation and that the household may appeal the denial or revocation.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-05.1

75-02-12-09. Appeals of denials and revocation of eligibility for housing assistance.

A household that has requested housing assistance may appeal a decision to deny the completed application or revocation of eligibility for assistance. An appeal under this section must be made in writing on a form developed and provided by the department within ten days of the date of the notice issued under section 75-02-12-08. A household shall submit the written request for an appeal and hearing under North Dakota Century Code chapter 28-32 to the appeals supervisor for the department. A household may not appeal a denial or revocation resulting from an exhaustion of appropriated funds for the housing assistance program or the housing assistance program ending. The household and the housing provider are not entitled to a housing assistance payment ten days after the issuance of a notice of revocation unless a final decision has been made by the department that reverses the decision to revoke.

History: Effective April 1, 2022.

General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-05.1

75-02-12-10. Exceptions to eligibility rules considered.

A household may request an exception to the eligibility criteria. Exceptions will be considered with regard to a household meeting the eligibility criteria. Exception requests will be reviewed on a case-by-case basis. The department may deny a request for an exception and may revoke an exception granted under this section. The decision to deny a request for an exception or to revoke an exception is not an appealable decision.

History: Effective April 1, 2022.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-05.1

CHAPTER 75-03-18
PROCEDURES FOR APPEAL OF CHILD ABUSE AND NEGLECT ASSESSMENTS

Section

75-03-18-01	Definitions
75-03-18-02	Who May File an Appeal
75-03-18-03	Request for Appeal to be in Writing - Where Filed - Content
75-03-18-04	Time for Filing Request for Appeal
75-03-18-05	Informal Meeting
75-03-18-06	Request for Formal Hearing [Repealed]
75-03-18-07	Formal Hearing
75-03-18-07.1	Treatment of Witnesses
75-03-18-08	Hearing Decision [Repealed]
75-03-18-09	Probable Cause Finding not Directly Reviewable [Repealed]
75-03-18-10	Confidentiality
75-03-18-11	Evidence
75-03-18-12	Effect of Appeal
75-03-18-13	Effect of Overturn <u>Reversal</u> of Case Decision or Appeal

75-03-18-01. Definitions.

1. "Assessing agency" means the human service zone where the report of suspected abuse or neglect is assessed, or, in certain instances, the department.
2. "Assessment" is the factfinding process designed to provide information which enables a decision to be made ~~that services are required to provide for the protection and treatment~~whether a child meets the definition of an abused or neglected child.
3. "Decision" means the ~~conclusion that determines whether services are required to provide for the protection and treatment of~~determination made under North Dakota Century Code section 50-25.1-05.1 whether a child meets the definition an abused or neglected child.
4. "Department" means the North Dakota department of human services or its ~~designee~~authorized agent.
5. "Subject" means a person responsible for the child's welfare as defined by North Dakota Century Code section 50-25.1-02.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; July 1, 2020; April 1, 2022.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-04.1, 50-25.1-05.4

75-03-18-02. Who may file an appeal.

1. The subject of ~~a report~~an assessment of suspected child abuse or neglect who is aggrieved by the result of the assessment may file an appeal.
2. A staff member of child protection services will notify the subject in writing of the decision resulting from an assessment. The staff member of child protection services who notifies the subject of the decision resulting from the assessment shall complete an affidavit of mailing that becomes a part of the assessment record in the form and manner prescribed by the department.
3. Written appeal procedures are available from the department upon request.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; September 1, 1997; [April 1, 2022](#).

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-04. Time for filing request for appeal.

An appeal may not be filed before the date of an assessment decision and must be ~~filed~~[received by the department](#) within thirty days after the documented date of the subject notification of the decision in accordance with procedures in chapter 75-01-03. Notification is considered to have occurred three days after the date on the affidavit of mailing. [A postmark date is not accepted as the received date.](#)

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; September 1, 1997; [April 1, 2022](#).

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-07.1. Treatment of witnesses.

1. The hearing must be conducted according to any fair treatment standards adopted by the legislative assembly or the supreme court for the protection of witnesses or children in court proceedings.
2. If any child is to be called as a witness during the appeal hearing, whether for deposition, discovery, or for the hearing, the office of administrative hearings may appoint a guardian ad litem for the child witness. If the child witness is the victim and the party calling the victim is the subject and the victim's parent or guardian, the office of administrative hearings shall appoint a guardian ad litem for the child victim. [A guardian ad litem's involvement is considered to be assisting in an investigation or child protection assessment.](#)

History: Effective January 1, 1996; January 1, 1996, amendments voided by the Administrative Rules Committee effective August 8, 1996; amended effective September 1, 1997; [April 1, 2022](#).

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-03, 50-25.1-05.4

75-03-18-10. Confidentiality.

1. Information furnished at any informal [conference, grievance meeting,](#) and formal hearing is confidential and subject to the provisions of North Dakota Century Code sections 50-06-15, 50-25.1-11, and 50-25.1-14.
2. The identity of a reporter of any incident of suspected abuse and neglect may not be disclosed at any informal ~~meeting~~[conference](#) or at any ~~formal hearing~~[grievance meeting](#) conducted under this chapter [or chapter 75-03-18.1.](#)

History: Effective September 1, 1990; amended effective November 1, 1994; [April 1, 2022](#).

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4, 50-06-15, 50-25.1-11, 50-25.1-14

75-03-18-13. Effect of ~~overturn~~[reversal](#) of case decision or appeal.

If an assessment decision is reversed on appeal under this chapter or under North Dakota Century Code chapter 28-32, a notation of the fact that the finding was ~~overturned~~[reversed](#) must be added to the record.

History: Effective November 1, 1994; amended effective January 1, 1996; [April 1, 2022](#).

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

CHAPTER 75-03-19

75-03-19-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-25.1, except:

1. "Assessment" ~~is the~~ means an alternative response assessment, child protection assessment, and family services assessment as defined in North Dakota Century Code chapter 50-25.1-02.
2. "Decision" means the determination made under North Dakota Century Code section 50-25.1-05.1 whether ~~services are required to provide for the protection and treatment~~ a child meets the definition of an abused or neglected child.
3. ~~"Department" means the North Dakota department of human services.~~
- 4.— "Subject" means a person responsible for the child's welfare as defined by North Dakota Century code section 50-25.1-02.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; January 1, 1996, amendments voided by Administrative Rules Committee effective August 8, 1996; September 1, 1997; July 1, 2020; April 1, 2022.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05

75-03-19-03. Time for initiating assessments - Emergencies.

All nonemergency child abuse or neglect assessments must be initiated ~~no later than seventy-two hours~~ within time frames established by the department after receipt of a report by the assessing agency ~~unless the department prescribes a different time in a particular case~~. In cases involving a serious threat or danger to the life or health of a child, the assessment and any appropriate protective measures must commence immediately upon receipt of a report by the assessing agency. An assessment is initiated by ~~a search of records for information relating to the report,~~ contact with at the alleged abused or neglected child, a law enforcement officer with jurisdiction in the location where the child may be found or where the alleged abuse or neglect occurred, or the subject of the report, ~~or with a collateral contact~~.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; April 1, 2022.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05

75-03-19-06. Assessment procedures.

Assessments of reports of suspected child abuse or neglect must be conducted by the department or its authorized agents in substantial conformity with the policies of the department. Assessments of reports of suspected child abuse or neglect must reflect:

1. An assessment process designed to collect sufficient information to make a decision whether ~~services are required~~ child abuse or neglect is confirmed, confirmed with an unknown subject, unconfirmed, or unable to determine to provide for the protection and treatment of an abused or neglected child;
2. Assessment techniques that include interviewing and observing the subject, and the child victim, and interviewing other interested or affected persons, and documenting those interviews and observations;

3. Conclusions and a summary based on information gathered by assessment techniques described in subsection 2; and
4. If ~~services are required~~the child abuse or neglect decision is confirmed or confirmed within an unknown subject and the child remains at substantial risk of continued abuse or neglect due to a supported state of impending danger, development of ~~treatment~~service plans for the provision of protective services based on goals and objectives established by the department or its authorized agent for the subject and for the family of the child victim.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; July 1, 2006; July 1, 2020; April 1, 2022.

General Authority: NDCC 50-25.1-05, 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05, 50-25.1-05.4

75-03-19-07. Caseload standards.

Any authorized agent designated by the department to receive reports and conduct assessments of reports of suspected child abuse or neglect shall adhere to the caseload standards establishing minimum ~~staff to client~~staff-to-assessment ratios.

History: Effective September 1, 1990; amended effective January 1, 1996; July 1, 2006; April 1, 2022.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05, 50-25.1-06.1

CHAPTER 75-03-19.1

75-03-19.1-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-25.1, except:

1. "Decision" means the conclusion reached by the panel regarding:
 - a. Manner of death listed on the death certificate;
 - b. Whether a death was preventable, nonpreventable, or preventability undeterminable;
 - c. Cause of death, if possible;
 - d. Circumstances that contributed to the death; and
 - e. Changes in policy, practices, and law to prevent children's deaths.
2. "Indepth review" means the process of reviewing information contained in written documentation obtained from any hospital, physician, medical professional, medical facility, mental health professional, mental health facility, or other entity regarding a child who has died, and using the information as a basis of a panel decision.
3. "Panel" means the child fatality review panel, governed by North Dakota Century Code chapter 50-25.1.
4. "Presiding officer" means the representative of the department's ~~administrator of~~ child protection services program.

History: Effective July 1, 2006; amended effective April 1, 2022.

General Authority: NDCC 50-25.1-04.2

Law Implemented: NDCC 50-25.1-04.3

CHAPTER 75-03-19.2

75-03-19.2-02. Department's authorized agent to receive reports and conduct assessments.

The department's authorized agent shall act as designee of the department for the purpose of receiving reports of infants abandoned under the provisions of chapter 75-03-19 and North Dakota Century Code section 50-25.1-15. Upon receipt of a report of an infant abandoned under North Dakota Century Code section 50-25.1-15, the department's authorized agent shall conduct an assessment. Upon a determination that the infant is unharmed, the assessment must be terminated and no ~~determination that services are required for the protection and treatment of an abused or neglected child~~ abuse or neglect assessment decision shall be made.

History: Effective October 1, 2020; amended effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-25.1-15

TITLE 85
UNIVERSITY AND SCHOOL LANDS, BOARD OF

APRIL 2022

CHAPTER 85-01-01

85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 15-08, 15-08.1, 38-09, 47-06, ~~47-30.1~~47-30.2, and 57-62, apply to this title:

1. "Acquired lands" includes all property defined as "nongrant" and "other than original grant lands" in North Dakota Century Code section 15-07-01.
2. "Arm's length transaction" means a transaction between parties with adverse economic interests in which each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships that may compromise their individual interests.
3. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, haying, and honey bee pasture or meadow.
4. "Board" means the board of university and school lands.
5. "Bonus" means the monetary consideration paid by a lessee for the execution of a lease by the board.
6. "Certified appraiser" means a certified general appraiser or a certified residential appraiser who holds a valid permit issued by the North Dakota real estate appraiser qualifications and ethics board.
7. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.
8. "Coal lease" means a contract entered between the board and a third party for a coal mining operation on trust lands.
9. "Coal leased premises" means the land subject to a given coal lease.

10. "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.
11. "Commercial quantities" means whether:
 - a. The well yields a profit exceeding operating costs over a reasonable period of time; and
 - b. A reasonably prudent operator would continue operating a well in the manner being operated under the facts and circumstances.
12. "Commissioner" means the commissioner of university and school lands.
13. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.
14. "Construction aggregate lease" means a contract entered between the board and a third party for mining of construction aggregate on trust lands.
15. "Construction aggregate leased premises" means the land area subject to a given construction aggregate lease.
16. "Construction aggregate mining operation" means any type of activity conducted to discover, or prospect for, the presence of construction aggregate, or to remove the construction aggregate so discovered from its original position on or in the land by any means whatsoever.
17. "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day-to-day care for the livestock.
18. "Delay rental" means the annual minimum payment given to maintain a lease in the absence of production in commercial quantities during the primary term.
19. "Department" means the office of the commissioner and the department of trust lands.
20. "Disturbed" means any alteration of the surface or subsurface of any lands subject to a lease or encumbrance with the board.
21. "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically excludes leases ~~for agricultural use, construction aggregate, sodium sulfate, chemical substances, metallic ores, uranium ores, and oil, gas, and coal~~ which are administered separately.
22. "Fair market value" means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area under article 85-04.
23. "F.O.B." means free on board.
24. "Gas" means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but does not include coal, lignite, oil shale, or similar hydrocarbons.
25. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission, other than from coalbed methane.
26. "Gross proceeds" means the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.

27. "Invasive species" means a species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
28. "Market value" means the price a willing buyer would pay a willing seller in an arm's length transaction in which the buyer is not compelled to buy or the seller is not compelled to sell.
29. "Net construction aggregate interest" means the undivided portions of the total construction aggregate estate on a given tract of land.
30. "Offset drainage" means the drainage of oil or gas to an adjoining tract of land on which a well is being drilled or is already in production.
31. "Offset well" means any well drilled opposite another well on adjoining property with the specific purpose of preventing drainage to the adjoining property.
32. "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
33. "Oil and gas lease" means a contract entered between the board and a third party for oil and gas production.
34. "Oil and gas leased premises" means the land subject to a given oil and gas lease.
35. "Oil well" means a well capable of producing oil and which is not a gas well as defined herein.
36. "Original grant lands" means all those lands granted to the state of North Dakota by virtue of the Enabling Act of 1889, as further defined in North Dakota Century Code section 15-06-01.
37. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.
38. "Pest" means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.
39. "Surface land lease" means a contract entered between the board and a third party for agricultural use on trust lands.
40. "Surface land leased premises" means the land area subject to a given surface land lease.
41. "Terminate," unless otherwise provided, has the same meaning as the word "cancel."
42. "Trust lands" means any property owned by the state of North Dakota and managed by the board.
43. "Trusts" means permanent trusts and other funds managed or controlled by the board.
44. ~~"Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway or trail, except devices moved by human power.~~
- ~~45.~~ "Vertical oil and gas well" means a well, the wellbore of which is drilled on a vertical or directional plane into a non-shale formation and is not turned or curved horizontally to allow the wellbore additional access to the oil and gas reserves in the formation.

~~46.45.~~ "When run" means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time must be considered to be 7:00 a.m., on the day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

History: Effective January 1, 2019; amended effective January 1, 2020; January 1, 2021; [April 1, 2022](#).

General Authority: NDCC 15-05-05, 15-07-20, 15-08.1-06, 28-32, 61-33-06

Law Implemented: NDCC 4.1-47-04, 15-01, 15-04, 15-05, 15-07, 15-08, 15-08.1

ARTICLE 85-03 UNCLAIMED PROPERTY

Chapter	
85-03-01	Definitions
85-03-02	Reporting Abandoned Property
85-03-03	Claiming Property
<u>85-03-04</u>	<u>Examinations</u>

CHAPTER 85-03-01

85-03-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapter ~~47-30.1~~47-30.2, apply to this article:

1. "Claim" means the formal filing that initiates the process of returning unclaimed property to the rightful owner.
2. "Claimant" means the individual submitting the claim form for unclaimed property.
3. "Claim form" means the form prescribed by the administrator by which a claim can be initiated.
4. "Due diligence" means the holder's efforts to contact the owner prior to remitting property to the administrator, as required under North Dakota Century Code ~~section 47-30.1-17~~sections 47-30.2-26 and 47-30.2-27.
5. "Heir finder" means an individual or business that assists owners in locating unclaimed property for a fee.

History: Effective January 1, 2019; amended effective April 1, 2022.

General Authority: NDCC ~~47-30.1-38~~47-30.2-03

Law Implemented: NDCC ~~47-30.1~~47-30.2

CHAPTER 85-03-02 REPORTING ABANDONED PROPERTY

Section

85-03-02-01	Electronic Reporting of Abandoned Property
85-03-02-02	Information Contained in Reports
85-03-02-03	Due Diligence [Repealed]
85-03-02-04	Mineral Proceeds
85-03-02-05	Early Reporting [Repealed]
<u>85-03-02-06</u>	<u>Notice to Apparent Owner by Holder of Automatic Reinvestment Account</u>

85-03-02-01. ~~Electronic reporting~~ Reporting of abandoned property.

A holder shall report abandoned property ~~electronically~~ to the administrator in the standard national association of unclaimed property administrators' format.

History: Effective January 1, 2019; amended effective April 1, 2022.

General Authority: NDCC ~~47-30.1-38~~47-30.2-03

Law Implemented: NDCC ~~47-30.1-17, 47-30.1-27~~47-30.2-21, 47-30.2-22, 47-30.2-23, 47-30.2-32, 47-30.2-37

85-03-02-02. Information contained in reports.

In addition to the requirements in North Dakota Century Code section ~~47-30.1-17~~47-30.2-22, a holder shall submit the following information in the report, if available:

- ~~1. Owner social security number;~~
- ~~2. Identifying check, account, or policy number;~~
- ~~3.2. Owner date of birth; and~~
- ~~4. Payee and remitter information for all cashier's checks, money orders, and traveler's checks; and~~
- ~~5.3. For mineral proceeds, a legal land description, well number, recording information, and any other information to adequately describe the lease.~~

History: Effective January 1, 2019; amended effective April 1, 2022.

General Authority: NDCC ~~47-30.1-38~~47-30.2-03

Law Implemented: NDCC ~~47-30.1-17, 47-30.1-27~~47-30.2-21, 47-30.2-22, 47-30.2-23

85-03-02-03. Due diligence.

Repealed effective April 1, 2022.

~~Holder due diligence, including written or electronic communication, must include:~~

- ~~1. A deadline for owner response to holder;~~
- ~~2. Property type;~~
- ~~3. Property value; and~~
- ~~4. Unclaimed property division contact information.~~

History: Effective January 1, 2019.

General Authority: NDCC 47-30.1-38

Law Implemented: NDCC ~~47-30.1-17~~

85-03-02-04. Mineral proceeds.

A holder shall accumulate mineral proceeds and submit an annual lump sum report to the administrator ~~by~~before November first for the amount due through June thirtieth.

History: Effective January 1, 2019; amended effective April 1, 2022.

General Authority: NDCC ~~47-30.1-38~~47-30.2-03

Law Implemented: NDCC ~~47-30.1-16.1, 47-30.1-17, 47-30.1-27~~47-30.2-04, 47-30.2-21, 47-30.2-22, 47-30.2-23, 47-30.2-32

85-03-02-05. Early reporting.

Repealed effective April 1, 2022.

~~—A holder may report property before it is deemed abandoned if the holder:~~

~~—1.— Has been granted prior written approval by the administrator; and~~

~~—2.— Demonstrates to the satisfaction of the administrator that due diligence has been performed.~~

History: Effective January 1, 2019.

General Authority: NDCC 47-30.1-38

Law Implemented: NDCC 47-30.1-17, 47-30.1-27

85-03-02-06. Notice to apparent owner by holder of automatic reinvestment account.

For accounts containing a security as defined in subsection 30 of North Dakota Century Code section 47-30.2-01 that allow for automatic reinvestment of dividends or interest and where there is no record of indication of apparent owner interest in the property as defined in North Dakota Century Code section 47-30.2-12, holders shall provide notice via certified mail to the apparent owner at a minimum of once every three years in a format substantially similar to that required in North Dakota Century Code section 47-30.2-27. A return of a certified mail return receipt signed by the apparent owner shall constitute evidence of indication of apparent owner interest in the subject property as required by North Dakota Century Code section 47-30.2-12. The holder shall retain all valid return receipts as records of indication of apparent owner interest. A return to sender as undeliverable or not signed by the apparent owner shall cause the property to be subject to due diligence procedures pursuant to North Dakota Century Code sections 47-30.2-26 and 47-30.2-27. A deceased individual cannot demonstrate an ownership interest in property.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03

Law Implemented: NDCC 47-30.2-12, 47-30.2-26, 47-30.2-27

**CHAPTER 85-03-03
CLAIMING PROPERTY**

Section

85-03-03-01	Claims [Repealed]
85-03-03-02	Required Documentation
85-03-03-03	Payment of Claim
85-03-03-04	Heir Finder Requests
85-03-03-05	Claims Submitted by Heir Finder

85-03-03-01. Claims.

[Repealed effective April 1, 2022.](#)

~~—A claim must be submitted on a claim form and signed under penalty of perjury.~~

~~**History:** Effective January 1, 2019.~~

~~**General Authority:** NDCC 47-30.1-38~~

~~**Law Implemented:** NDCC 47-30.1-24, 47-30.1-24.1, 47-30.1-25~~

CHAPTER 85-03-04 EXAMINATIONS

Section

<u>85-03-04-01</u>	<u>Contract Examiners</u>
<u>85-03-04-02</u>	<u>Notice of Examination</u>
<u>85-03-04-03</u>	<u>Entrance Conference</u>
<u>85-03-04-04</u>	<u>Examination Refusal</u>
<u>85-03-04-05</u>	<u>Examination Guidelines</u>
<u>85-03-04-06</u>	<u>Estimation</u>
<u>85-03-04-07</u>	<u>Multistate Examinations</u>
<u>85-03-04-08</u>	<u>Bankruptcy</u>
<u>85-03-04-09</u>	<u>Examination Resolution Agreements</u>
<u>85-03-04-10</u>	<u>Voluntary Disclosure Agreement Program</u>

85-03-04-01. Contract examiners.

1. The administrator may contract with a person to conduct unclaimed property examinations to determine compliance with North Dakota Century Code chapter 47-30.2.
2. A contract to conduct an examination may provide for compensation of the person based on a fixed fee, hourly fee, or contingent fee.
3. An examiner may not engage in any unclaimed property examination to determine compliance with North Dakota Century Code chapter 47-30.2 without written authorization from the administrator.
4. An examiner shall report in writing to the administrator at least monthly on the status of all unclaimed property examinations the examiner has been authorized to perform by the administrator.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55

85-03-04-02. Notice of examination.

1. All unclaimed property examinations begin with an official notice of examination.
2. The notice of examination must include:
 - a. An explanation that the administrator is authorized to examine the records of the person subject to examination pursuant to North Dakota Century Code chapter 47-30.2;
 - b. The identity of the assigned examiner; and
 - c. The examiner's contact information.
3. A notice of examination may either be sent directly to the person subject to examination by the administrator or to the examiner assigned to the examination for delivery to the person subject to examination.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55

85-03-04-03. Entrance conference.

1. Once an examination is assigned and written notice of examination is provided to the person subject to examination, an entrance conference will be scheduled with the examiner and representatives of the person subject to examination. A representative of the administrator may participate in an entrance conference.
2. During the entrance conference, the examiner shall, to the extent practicable:
 - a. Identify the types of property that will be subject to the examination and the time period covered by the examination;
 - b. Discuss an examination work plan, a tentative schedule, and the scope of work;
 - c. Provide contact information for both the examiner and the administrator;
 - d. Notify the person subject to examination of the person's ability to request an informal conference with the administrator pursuant to North Dakota Century Code section 47-30.2-61;
 - e. Advise the person subject to examination that the administrator and not the examiner makes determinations concerning that person's liability under North Dakota Century Code chapter 47-30.2 and that interpretations of that chapter are made by the administrator;
 - f. Request records and materials necessary to proceed with the next steps of the examination;
 - g. Explain the requirement to provide a due diligence notice to the apparent owner of property presumed abandoned; and
 - h. Explain that, unless otherwise agreed to in writing by the administrator, the person subject to examination shall remit to the examiner any unclaimed property identified during the examination that is owed to the state of North Dakota.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-57, 47-30.2-58, 47-30.2-61, 47-30.2-62

85-03-04-04. Examination refusal.

If the person subject to examination refuses to adhere to the rules and laws, the examiner shall inform the administrator of the refusal and the commissioner may bring action to enforce the rules and laws as outlined in North Dakota Century Code chapter 47-30.2, including issuing an administrative subpoena.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2

85-03-04-05. Examination guidelines.

1. The examiner and the person subject to examination shall act in good faith to conduct the examination under the terms and within the time frame established in the entrance conference.
2. During the examination, the examiner may make subsequent requests, to the person subject to examination, for additional books and records required to complete the examination.

- a. The examiner shall submit record requests to the person subject to examination in writing or, if the request is made verbally, shall follow up with written documentation of the request.
 - b. Record requests must have reasonable deadlines in order to move the examination forward and avoid unnecessary delays.
 - c. The examiner shall provide a reasonable time frame for the person subject to examination to respond to the request based on the type and extent of the information requested and other relevant facts and circumstances.
 - d. The examiner shall provide confirmation of receipt with reasonable projected response times to submissions received from the person subject to examination.
3. The examination must include access to the original books, records, and other supporting documentation deemed by the administrator to be necessary to ascertain compliance with North Dakota Century Code chapter 47-30.2.
 4. The examiner shall properly document the examination and make the working papers gathered during the unclaimed property examination available for review by the administrator. The working papers must include planning information and all related calculations, statistical analyses, and summarizations.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-57, 47-30.2-58

85-03-04-06. Estimation.

Examinations carried out using estimation as set forth by North Dakota Century Code section 47-30.2-59 adhere to the following rules:

1. Estimation may only be used when the person subject to the examination failed to comply with North Dakota Century Code section 47-30.2-24, or when the person and the administrator mutually agree to the use of estimation. The ability of the administrator to use estimation is intended as a deterrent to the intentional or negligent destruction of records that would be used in an unclaimed property examination to identify unclaimed property.
2. A payment made based on estimation under this section does not relieve a person subject to an examination from an obligation to report and deliver property to a state in which the holder is domiciled.
3. An examiner may use estimation in an examination if:
 - a. The person subject to examination agrees in writing to the use of estimation as part of an examination resolution agreement; or
 - b. The administrator concludes that the person subject to an examination failed to comply with North Dakota Century Code section 47-30.2-24 and the administrator approves in writing the use of estimation in the examination.
4. Estimation by the administrator should reasonably approximate the amount of unclaimed property that should have been reported to North Dakota if all reports had been filed and records had been maintained as required by North Dakota Century Code chapter 47-30.2.
5. In circumstances where the administrator has concluded that the person subject to an examination failed to comply with North Dakota Century Code section 47-30.2-24 and the

administrator has approved in writing the use of estimation in the examination, before the use of estimation in an examination, the administrator shall:

- a. Notify the person subject to examination, in writing, that estimation is being considered because of a failure to maintain the records required by North Dakota Century Code section 47-30.2-24;
- b. After considering any evidence submitted by the examiner and the person subject to examination, make a written determination that the person subject to examination has failed to maintain the records required by North Dakota Century Code section 47-30.2-24;
- c. Provide an opportunity for the person subject to examination to submit written objections, including:
 - (1) Submitting evidence that the person subject to examination has maintained sufficient records to perform the examination for some or all of the years during the time period covered by the examination; or
 - (2) Proposing an estimation methodology;
- d. Notify in writing the person subject to examination of:
 - (1) The estimation methodology to be used; and
 - (2) For which years during the time period covered by the examination estimation will be used.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-24, 47-30.2-55, 47-30.2-59, 47-30.2-62

85-03-04-07. Multistate examinations.

1. The administrator may agree to participate in an examination of a person for compliance with unclaimed property laws of multiple states, including North Dakota Century Code chapter 47-30.2, when examiners perform examinations for more than one state.
2. As different states participating in a multistate examination will have different rules for examinations, there may be conflicts between the statutory or regulatory requirements for how the examiner should conduct the examination. When practicable, the examiner should comply with the requirements of this section when conducting a multistate examination. However, if there is a conflict between the requirements of this section and the requirements of one or more other states, the examiner may vary from the requirements of this section so long as the examiner:
 - a. Follows any requirements imposed by North Dakota Century Code chapters 44-04 and 47-30.2, including confidentiality requirements; and
 - b. Uses North Dakota Century Code chapter 47-30.2 with regards to any property for which the state of North Dakota has the superior claim.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-57, 47-30.2-63, 47-30.2-64

85-03-04-08. Bankruptcy.

If, at any time before or during an examination, the person subject to examination files for bankruptcy, that person shall give notice of the filing to the examiner. The examiner shall, within seven calendar days after receiving notice or the discovery of the event, notify the administrator of the bankruptcy filing. If the administrator so elects, the examiner shall assist the administrator to ensure that a proper proof of claim is timely filed in the bankruptcy action.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-58, 47-30.2-62

85-03-04-09. Examination resolution agreements.

1. The commissioner may resolve an examination via negotiation and settlement with the person subject to examination.
2. The commissioner may not agree in a settlement to provide indemnification beyond that provided in North Dakota Century Code chapter 47-30.2.
3. A mutually agreed upon settlement resolves a specific examination and does not create any precedent on specific legal issues.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-58, 47-30.2-62

85-03-04-10. Voluntary disclosure agreement program.

1. The administrator may establish a voluntary disclosure agreement program for persons who are not in compliance with North Dakota Century Code chapter 47-30.2.
2. Under a voluntary disclosure agreement program, the commissioner may agree to waive, in whole or in part, interest and penalties for a person who voluntarily reports and remits to the administrator property that should have been previously reported, paid, or delivered to the administrator pursuant to North Dakota Century Code chapter 47-30.2. The voluntary disclosure agreement program includes property that is reportable pursuant to the transition provisions of North Dakota Century Code section 47-30.2-74. Property reportable under North Dakota Century Code chapter 47-30.2 or the previous Uniform Unclaimed Property Act may be eligible to be voluntarily reported and remitted under the voluntary disclosure agreement program.
3. A person who has been sent an official notice of examination may not participate in the voluntary disclosure agreement program.
4. Participation in the administrator's voluntary disclosure agreement program does not waive or otherwise limit the administrator's authority to order and conduct an unclaimed property examination pursuant to North Dakota Century Code section 47-30.2-55.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-21, 47-30.2-56

Law Implemented: NDCC 47-30.2-22, 47-30.2-55, 47-30.2-58, 47-30.2-59, 47-30.2-62, 47-30.2-65, 47-30.2-66, 47-30.2-67, 47-30.2-74

ARTICLE 85-04
SURFACE LAND MANAGEMENT

Chapter	
85-04-01	Leasing Trust Lands for Agricultural Use
85-04-02	Construction Aggregate
85-04-03	Permanent Improvements
85-04-04	Encumbrances of Trust Lands
85-04-05	Public Access and Use [Repealed]
85-04-06	Land Exchange
85-04-07	Land Sales Under North Dakota Century Code Chapter 15-06
85-04-08	Land Sales Under North Dakota Century Code Chapter 15-07
85-04-09	Land Sales Under North Dakota Century Code Chapter 15-09

CHAPTER 85-04-05
PUBLIC ACCESS AND USE

[\[Repealed effective April 1, 2022\]](#)

Section

85-04-05-01	Vehicular Access
85-04-05-02	Public Access
85-04-05-03	Prohibited Activities
85-04-05-04	Organized Event

CHAPTER 85-06-01

85-06-01-12. Reports of lessee - Delinquency penalty.

Royalty payment and reporting are due on forms prescribed by the department as follows:

1. For gas:
 - a. Within one hundred twenty-three days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
 - b. Successive royalty payments and reporting are due within sixty-one days of the last day of the month in which production occurs.
2. For oil:
 - a. Within ninety-two days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
 - b. Successive royalty payments and reporting are due within thirty days of the last day of the month in which production occurs.
3. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
4. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection 6. [For leases issued after July 31, 2021, any penalty must be calculated pursuant to subsection 3 of North Dakota Century Code section 15-05-10.](#)

5. Unpaid royalties bear interest under subsection 2 of North Dakota Century Code section 47-16-39.1 15-05-10.
6. A lessee has thirty days from the date of the receipt of a notice of a penalty and interest assessment to pay the penalty and interest, request a waiver or reduction, or to request board review.
 - a. A request for a waiver or reduction of the penalty or interest or a request for board review must be in writing and provide the grounds for the request.
 - b. The following factors may be considered when deciding to waive or reduce the penalty or interest: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
 - c. ~~The commissioner, for good cause, may waive up to twenty-five thousand dollars of the penalty or reduce interest initially sought. A request for a waiver or reduction of penalty in excess of twenty-five thousand dollars must be presented to the board, with the commissioner's recommendation, for review and decision.~~
 - d. A waiver or reduction of penalty and interest does not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim for royalty payment is not paid. If a claim for unpaid royalties, penalties, and interest is settled and payment received, the amount of penalties and interest not collected is deemed waived.

History: Effective January 1, 2020; amended effective April 1, 2022.

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10, ~~47-16-39.1~~, 47-16-39.2

TITLE 87
VETERINARY MEDICAL EXAMINERS, BOARD OF

APRIL 2022

CHAPTER 87-01-01

87-01-01-01. Organization of board of veterinary medical examiners.

1. **History.** The 1895 legislative assembly passed a law entitled "Qualifications of Veterinarians" which requires the governor to appoint a board of veterinary examiners, known as the state board of veterinary medical examiners.
2. **Board membership.** The board consists of five members (three veterinarians, one veterinary technician, and one public member) who serve three-year terms, with no more than two terms expiring each year.
3. **Compensation of members of board.** A member of the board may receive for each day during which that member is actually engaged in the performance of the duties of office a per diem in the amount of one hundred twenty-five dollars.
4. **Executive secretary.** The board employs an executive secretary and such other persons necessary to carry out administration of the board's activities.
5. **Inquiries.** Inquiries regarding the board may be ~~addressed~~directed to the executive secretary:

~~Dr. John R. Boyce
Executive Secretary
North Dakota Board of Veterinary Medical Examiners
P.O. Box 5001
Bismarck, North Dakota 58502
(701) 328-9540.~~

History: Amended effective November 1, 1981; April 1, 1988; November 1, 1991; March 1, 1999; August 1, 2004; January 1, 2014; April 1, 2022.

General Authority: NDCC 28-32-02, 43-29-03

Law Implemented: NDCC 28-32-02, 43-29-02, 43-29-05, 43-29-05.1

CHAPTER 87-01.1-01 EXAMINATION AND WAIVER

Section

- 87-01.1-01-01 Examination - Waiver
- 87-01.1-01-02 Examination Application Fee
- 87-01.1-01-03 [Temporary Permit](#)
- [87-01.1-01-03.1 Military Member and Military Spouse Licensure](#)
- 87-01.1-01-04 Veterinarians From Nonaccredited Institutions

87-01.1-01-01. Examination - Waiver.

1. To qualify for a North Dakota license, each applicant must take and pass a North Dakota examination, and the national board examination and the clinical competency test or the North American veterinary licensing examination. The North Dakota examination is a ~~combination written~~ jurisprudence examination ~~and that may be administered by written or electronic methods.~~ At the board's discretion, an oral interview may be required.
2. The board adopts the passing score on the national examination recommended by the ~~national board of veterinary medical examiners~~ international council for veterinary assessment. Applicants must request that their examination scores be sent to the board.
3. The North American veterinary licensing examination is required of all applicants for licensure in North Dakota who have been in practice less than five years. For an applicant who has been in practice more than five years, the applicant may petition the board to waive this requirement if the applicant meets the requirements of North Dakota Century Code section 43-29-07.2.
4. The North Dakota examination may not be waived.
5. A senior veterinary student may take the North Dakota examination if the student has taken and passed the North American veterinary licensing examination and submits a letter from the dean of a veterinary college indicating the student's anticipated graduation date.
6. North Dakota candidates may apply for and take the North American veterinary licensing examination according to eligibility criteria, deadlines, and fees specified in the annual agreement between the board and the ~~national board of veterinary medical examiners~~ international council for veterinary assessment.
7. Beginning with the fall 2007 administration of the North American veterinary licensing examination, a candidate may not take the examination more than five times, and may not take the examination at a date that is later than five years after a candidate's initial attempt. Each of the final two attempts must be at least one year from the previous attempt.

History: Effective January 1, 1999; amended effective November 1, 2000; June 1, 2002; August 1, 2004; April 1, 2009; January 1, 2014; [April 1, 2022](#).

General Authority: NDCC 43-29-03, 43-29-07.2

Law Implemented: NDCC 43-29-07.2

87-01.1-01-02. Examination application fee.

An applicant for the North Dakota examination must file with the board a completed application, a copy of the applicant's diploma or other official proof of graduation, and an examination fee of ~~fifty~~ seventy-five dollars. The examination fee will not be refunded. All required material and money must be submitted thirty days prior to the examination date.

History: Effective January 1, 1999; amended effective November 1, 2000; December 1, 2004; January 1, 2014; April 1, 2022.

General Authority: NDCC 43-29-07.2

Law Implemented: NDCC 43-29-07.2

87-01.1-01-03. Permit Temporary permit.

An applicant who has taken and passed the national board examination and clinical competency test or the North American veterinary licensing examination and has not ~~for good cause~~ taken the North Dakota ~~test~~examination for good cause, may obtain a permit to practice in North Dakota until the next examination is given. The fee for the permit is ~~twenty-five~~forty dollars. A permit expires on the date the next North Dakota examination is given.

History: Effective January 1, 1999; amended effective November 1, 2000; April 1, 2022.

General Authority: NDCC 43-29-07.2

Law Implemented: NDCC 43-29-07.2

87-01.1-01-03.1. Military member and military spouse licensure.

The board shall adhere to the process for licensure of military members and military spouses set forth in North Dakota Century Code section 43-51-11.1.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-07.2

Law Implemented: NDCC 43-29-07.2

CHAPTER 87-02-01 CONTINUING EDUCATION REQUIREMENTS

Section

87-02-01-01	License Renewal
87-02-01-02	Educational Program Attendance Required
87-02-01-03	Educational Program Requirement Waiver
87-02-01-04	Educational Program Requirements
87-02-01-05	Notice of Failure to Comply
<u>87-02-01-06</u>	<u>Discipline Reporting</u>
<u>87-02-01-07</u>	<u>Name Change</u>

87-02-01-01. License renewal.

1. Annual license renewal ~~forms~~notice will be provided to all licensed veterinarians on or before June first and completed license renewal ~~forms~~ must be received by June thirtieth.
2. The annual license renewal fee for veterinarians is ~~seventy-five~~ninety dollars and must be received by June thirtieth of each year.
3. Renewals not received by the due date will be assessed a late fee of fifty percent of the license fee.
4. A license may be renewed for two years after it expires by payment of all past-due renewal registration fees and late fees and completion of continuing education requirements. If more than two years have passed since expiration, a new application for licensure must be made and the North Dakota examination must be completed.

History: Amended effective January 1, 1999; December 1, 2004; April 1, 2009; January 1, 2014; April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-07.3

87-02-01-02. Educational program attendance required.

Each ~~licenseholder~~licensed veterinarian, except as otherwise provided, shall be required to receive twenty-four hours of veterinary continuing education, approved by the board, in the twenty-four months preceding each even-year renewal date. Veterinary continuing education is defined as an educational program which will enhance the licenseholder's professional ability to serve the public and which has the prior approval of the board.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03, 43-29-07.3

87-02-01-03. Educational program requirement waiver.

The board ~~shall have the authority to~~may waive the continuing education ~~requirement~~requirements for an individual, upon the individual's request, for any of the following reasons:

1. Impaired health.
2. For ~~persons~~individuals who have reached the age of sixty-five and are no longer actively engaged in practice and have so indicated on their license renewal form. The license of such ~~a person~~an individual will be placed on inactive status and the ~~veterinarian~~individual subsequently may not practice veterinary medicine in North Dakota until ~~all required~~the individual becomes current as to continuing education ~~is obtained~~requirements.

3. For other ~~good and sufficient~~legitimate reasons as presented and verified to the board at one of its regular meetings.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2009; April 1, 2022.

General Authority: NDCC 43-29-03, 43-29-07.3

Law Implemented: NDCC 43-29-07.3

87-02-01-04. Educational program requirements.

Veterinary continuing education may consist of the following:

1. ~~Eight hours of in-house training including veterinary medical tapes, films, computer-based programs, and self-assessment tests relevant to the practice of veterinary medicine.~~

- ~~2. Programs sponsored by local, state, regional, or national veterinary associations and other continuing educational programs.~~

2. Seminars or training approved by the North Dakota veterinary medical examining board. The ~~other programs~~seminars or training may be approved only if they relate to the practice of veterinary medicine, as defined by subsection 8 of North Dakota Century Code section 43-29-01.1, and consist of evidence-based scientific material. ~~The board accepts programs~~

3. Programs approved by the registry of approved continuing education of the American association of veterinary state boards.

- ~~3-4.~~ Wet labs or instructions, or both, taken at a college or university, the subject material of which must pertain to veterinary medicine.

- ~~4. Up to eight hours of veterinary continuing education may relate to practice management. Programs designed to enhance the veterinarian's ability to earn money, invest money, or relating to personal financial planning are not acceptable for meeting the continuing education requirement.~~

5. Programs presented by pharmaceutical companies and other commercial groups may be approved, as long as they consist of objective presentations of scientific information and are not designed principally to sell products to the veterinarian or the animal owner.

6. ~~Eight~~A maximum of eight hours of participation in a clinical setting at another veterinary practice and completion of the written report required by the board's veterinary exchange program.

7. A maximum of eight hours of veterinary continuing education may relate to practice management. Programs designed to enhance the veterinarian's ability to earn money or invest money, or that relate to personal financial planning do not meet continuing education requirements.

8. A maximum of twelve hours of approved veterinary continuing education may be obtained through professional written journals or technology-based methods relevant to the practice of veterinary medicine.

Proof of attendance and verification will be necessary on request. Verification may include a printed program, certificate, brochure, handout, or syllabus that lists the topics presented, the persons doing the instruction and their qualifications, and the time for each presentation. Verification may be completed through a third-party database at the discretion of the board.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2009; January 1, 2014; April 1, 2022.

General Authority: NDCC 43-29-03, 43-29-07.3

Law Implemented: NDCC 43-29-07.3

87-02-01-05. Notice of failure to comply.

If a ~~licenseholder~~licensed veterinarian fails to ~~receive the amount of~~complete the continuing education ~~necessary~~requirements, a written notice ~~must~~shall be sent ~~and~~to the licenseholder. At the discretion of the board, a six-month grace period ~~will~~may be allowed to make up the requirement. If, after six months, the requirements have not been met, the license will be revoked, suspended, or placed on probationary status.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2022.

General Authority: NDCC 43-29-03, 43-29-07.3

Law Implemented: NDCC 43-29-07.3

87-02-01-06. Discipline reporting.

A licensed veterinarian is required to affirmatively report any initiated disciplinary action from any other regulatory body to the board within thirty days of that other regulatory body's initiation of the disciplinary action.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

87-02-01-07. Name change.

A licensed veterinarian must report any personal name change to the board within thirty days. Proper documentation must be provided upon request.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

CHAPTER 87-03-01
PROCEDURES FOR LICENSURE OF VETERINARY TECHNICIANS

Section

87-03-01-01	Definition of a Veterinary Technician
87-03-01-02	Requirements for Licensure as a Veterinary Technician
87-03-01-03	Prerequisites for Taking the National Examination
87-03-01-04	Application for Licensure - Fees - License Renewal
87-03-01-05	Educational Program Attendance Required
<u>87-03-01-06</u>	<u>Educational Program Requirement Waiver</u>
<u>87-03-01-07</u>	<u>Educational Program Requirements</u>
<u>87-03-01-08</u>	<u>Notice of Failure to Comply</u>
<u>87-03-01-09</u>	<u>Discipline Reporting</u>
<u>87-03-01-10</u>	<u>Name Change</u>

87-03-01-02. Requirements for licensure as a veterinary technician.

Licensure as a veterinary technician requires ~~a recommendation from a licensed veterinarian and a~~ passing score on the veterinary technician national examination.

History: Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999; April 1, 2009; April 1, 2022.

General Authority: NDCC 43-29-09

Law Implemented: NDCC 43-29-07.1

87-03-01-03. Prerequisites for taking the national examination.

The minimum prerequisite for taking the veterinary technician national examination is graduation from an accredited program in veterinary technology or equivalent program. Candidates who are students in good standing at an accredited program in veterinary technology may be approved by the board to take the national examination for the first time no earlier than six months prior to their expected graduation date.

History: Effective October 1, 1981; amended effective April 1, 1986; November 1, 1991; April 1, 2009; April 1, 2022.

General Authority: NDCC 43-29-09

Law Implemented: NDCC 43-29-07.1

87-03-01-04. Application for licensure - Fees - License renewal.

1. Any person desiring licensure as a veterinary technician shall make written application for licensure to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota board of veterinary medical examiners a fee of ~~twenty-five~~thirty dollars plus, if applicable, the cost of the veterinary technician national examination. Fees are not returned, except by action of the board. ~~If the license is granted, the technician shall pay a fifteen-dollar annual renewal registration fee by December thirty-first. The renewal registration fee shall be paid by all licensed technicians. The license will expire if the renewal registration fee is not paid~~
2. Annual license renewal notice shall be provided to all licensed veterinary technicians on or before December first, either by regular mail or electronic mail, and completed license renewal forms must be received by December thirty-first.
3. The annual license renewal fee for veterinary technicians is twenty dollars and must be received by December thirty-first of each year.

4. Renewals not received by the due date will be assessed a late fee of fifty percent of the ~~registration~~ license fee.

5. A license may be renewed for two years after it expires by payment of all past-due renewal registration fees and late fees. ~~After two years after expiration and completion of continuing education requirements. If more than two years have passed since expiration,~~ a new application for licensure must be made.

History: Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999; August 1, 2004; April 1, 2009; April 1, 2022.

General Authority: NDCC 43-29-03, 43-29-09

Law Implemented: NDCC 43-29-07.1, 43-29-08.1

87-03-01-05. Educational program attendance required.

Each licensed veterinary technician, except as otherwise provided, shall be required to receive eight hours of veterinary technician continuing education, approved by the board, in the twenty-four months preceding each even-year renewal date. Veterinary technician continuing education is defined as an educational program that will enhance the licenseholder's professional ability to serve the public and which has the prior approval of the board. ~~No more than two hours may be from in-house training. If a licenseholder fails to receive the amount of continuing education necessary, a written notice must be sent and a six-month grace period will be allowed to make up the requirement. If, after six months, the requirements have not been met, the license will expire.~~

History: Effective January 1, 1999; amended effective August 1, 2004; April 1, 2022.

General Authority: NDCC 43-29-03, 43-29-07.3, 43-29-09

Law Implemented: NDCC 43-29-07.3, 43-29-08.1

87-03-01-06. Educational program requirement waiver.

The board may waive the continuing education requirements for an individual, upon the individual's request, for any of the following reasons:

1. Impaired health.

2. For individuals who have reached the age of sixty-five and are no longer actively engaged in practice and have so indicated on their license renewal form. The license of such individual must be placed on inactive status and the individual subsequently may not practice in North Dakota until the individual becomes current as to continuing education requirements.

3. For other legitimate reasons as presented and verified to the board at one of its regular meetings.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03, 43-29-07.3

Law Implemented: NDCC 43-29-07.3

87-03-01-07. Educational program requirements.

Veterinary technician continuing education may consist of the following:

1. Programs sponsored by local, state, regional, or national veterinary or veterinary technician associations.

2. Seminars or training approved by the North Dakota veterinary medical examining board. The seminars or training may be approved only if they relate to the practice of veterinary medicine.

as defined by subsection 8 of North Dakota Century Code section 43-29-01.1, and consist of evidence-based scientific material.

3. Programs approved by the registry of approved continuing education of the American association of veterinary state boards.
4. Wet labs or instructions, or both, taken at a college or university, the subject material of which must pertain to veterinary medicine.
5. Programs presented by pharmaceutical companies and other commercial groups may be approved, as long as they consist of objective presentations of scientific information and are not designed principally to sell products to the veterinarian or the animal owner.
6. A maximum of two hours of participation in a clinical setting at another veterinary practice and completion of the written report required by the board's veterinary exchange program.
7. A maximum of two hours of veterinary technician continuing education may relate to practice management. Programs designed to enhance the veterinary technician's ability to earn money or invest money, or that relate to personal financial planning do not meet the continuing education requirements.
8. A maximum of four hours of approved veterinary technician continuing education may be obtained through professional written journals or technology-based methods relevant to the practice of veterinary medicine.

Proof of attendance and verification will be necessary on request. Verification may include a printed program, certificate, brochure, handout, or syllabus that lists the topics presented, the persons doing the instruction and their qualifications, and the time for each presentation. Verification may be completed through a third-party database at the discretion of the board.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03, 43-29-07.3

Law Implemented: NDCC 43-29-07.3

87-03-01-08. Notice of failure to comply.

If a licensed veterinary technician fails to complete the continuing education requirements, a written notice shall be sent to the licenseholder. At the discretion of the board, a six-month grace period may be allowed to make up the requirements.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03, 43-29-07.3

Law Implemented: NDCC 43-29-07.3

87-03-01-09. Discipline reporting.

A licensed veterinary technician is required to affirmatively report any initiated disciplinary action from any other regulatory body to the board within thirty days of that other regulatory body's initiation of the disciplinary action.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

87-03-01-10. Name change.

A licensed veterinary technician shall report any personal name change to the board within thirty days. Proper documentation must be provided upon request.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

CHAPTER 87-04-01

87-04-01-02. Prescription drugs - Records - Labeling - Dispensing.

1. Adequate treatment records must be maintained by the veterinarian for at least three years, for all animals treated, to show that the drugs were supplied to clients with whom a valid veterinarian-client-patient relationship has existed. Such records must include the information set forth in section 87-04-01-03.
2. All veterinary prescription drugs must be properly labeled when dispensed. A complete label must include the information set forth in section 87-04-01-03. If that information is included in a manufacturer's drug label, it is unnecessary to repeat it in the veterinarian's label. If there is inadequate space on the label for complete instructions, the veterinarian must provide additional information to accompany the drug dispensed or prescribed. ~~The veterinarian's additional instructions must be kept in the owner's drug storage area.~~
3. When veterinary prescription drugs are dispensed to companion animal owners, such drugs must be placed in child-resistant containers, unless otherwise requested by the client.
4. After a valid veterinarian-client-patient relationship has been established, a veterinarian shall make available, upon request, and may assess a reasonable cost for, a prescription for a drug that has been determined by the veterinarian to be appropriate for the patient.
5. Nonpharmacologic and non-opioid treatment must be given consideration before dispensing an opioid or other controlled substance.

History: Effective January 1, 1999; amended effective April 1, 2009; July 1, 2016; April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

87-04-01-04. Storage of prescription drugs.

Veterinary prescription drugs must be stored separately from over-the-counter drugs. Drugs must be stored under conditions recommended by the manufacturer.

The drug enforcement administration registrant under which the drugs were purchased is responsible for the effective security of the drug stock. Opioids and other controlled substances must be stored in a securely locked cabinet of substantial construction as per drug enforcement administration requirements.

History: Effective January 1, 1999; amended effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

CHAPTER 87-04-02 PATIENT RECORDS

Section

87-04-02-01 Companion Animal Records

87-04-02-02 ~~Food Animal and Nontraditional~~Livestock Records

87-04-02-01. Companion animal records.

Patient records must contain the following information in electronic or written legible form:

1. Client name, address, and phone numbers.
2. Patient name, breed, description, sex, and age.
3. Results of any patient physical examinations, diagnostic and treatment plans, and results of diagnostic and treatment procedures.
4. Any medications used, including route of administration and dosage.
5. Evidence of the client's consent for all surgical procedures and euthanasias. Although it is preferred that a signed consent form be obtained from each client, such is not required as long as the records reflect oral consent was received.

6. Identity of the veterinarian or authorized representative making entry of record.

History: Effective January 1, 1999; amended effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

87-04-02-02. ~~Food animal and nontraditional livestock~~Livestock records.

Patient records must contain the following information in electronic or written legible form:

1. Client name, address, and phone numbers.
2. Identification of animals or herds treated.
3. Any medications used, including route of administration and dosage.
4. Evidence of client's consent for all surgical procedures and euthanasias. Although it is preferred that a signed consent form be obtained from each client, such is not required as long as the records reflect oral consent was received.

5. Identify of the veterinarian or authorized representative making entry of record.

History: Effective January 1, 1999; amended effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

CHAPTER 87-05-01

87-05-01-01. Complaint.

A person may file a written complaint with the board setting forth the specific charges upon which the complaint is made. Upon receiving a complaint, the board shall notify the veterinarian of the complaint and request the veterinarian provide a written response to the complaint within twenty days of receipt of the board's letter. The veterinarian's response will be made available to the complainant.

After receiving the response, the board will review the complaint and response and determine whether, on its face, the complaint warrants further action by the board. If the board determines the complaint does not warrant further action, the complaint is dismissed and the complainant and the veterinarian will be notified in writing of the board action. If the board determines the complaint warrants additional investigation, the board will determine whether the complaint should be referred to a peer review committee for investigation or whether the investigation should be conducted by other means. If the board determines sufficient information exists to warrant initiating formal disciplinary action, a formal complaint will be filed pursuant to North Dakota Century Code chapter 28-32.

The board may initiate its own investigation and file an administrative complaint upon receiving information that indicates a violation of the practice act or board rules has occurred.

History: Effective January 1, 1999; amended effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-15

CHAPTER 87-05-02

87-05-02-01. Unprofessional conduct.

Unprofessional conduct manifestly disqualifying a licensee from practicing veterinary medicine includes:

1. Failing to meet the minimum standards of practice.
2. Engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, in which case, proof of actual injury need not be established.
3. Claiming to have performed or charging for an act or treatment that was, in fact, not performed or given.
4. Promoting, aiding, abetting, or permitting the practice of veterinary medicine by an unlicensed person.
5. Prescribing or dispensing, delivering, or ordering delivered a controlled substance without first having established a veterinarian-client-patient relationship by having personally examined the individual animal, herd, or a representative segment or a consignment lot and determining that treatment with the controlled substance is therapeutically indicated. Use of euthanizing drugs in recognized animal shelters or government animal control facilities is exempt from this requirement.
6. Willful continuation of prescribing a controlled substance to a patient when reasonably on notice that the substance negligently or willfully has been diverted or is being diverted by the client to human use.
- ~~7.~~ Performing surgery to conceal genetic or congenital defects, in any species, with the knowledge that the surgery has been requested to deceive a third party.
- ~~7-8.~~ Promoting, selling, prescribing, or using a product for which the ingredient formula is unknown to the veterinarian.
- ~~8-9.~~ Failing to report to law enforcement or humane officers inhumane treatment to animals, including staged animal fights or training events for fights, the veterinarian reasonably believed occurred.
- ~~9-10.~~ Fraudulently issuing or using a certificate of veterinary inspection, test chart, vaccination report, or other official form used in the practice of veterinary medicine to prevent the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption.
- ~~10-11.~~ Willfully harassing, abusing, or intimidating a client or animal owner ~~either physically or verbally~~. Taking legal action to collect for services rendered cannot be considered harassment.
- ~~11-12.~~ Engaging in conduct which willingly and knowingly leads to the spread of contagious disease from one herd or animal to another.
- ~~12-13.~~ Advertising, stating, or implying that the veterinarian is a certified or recognized specialist in any given field unless the veterinarian is a diplomate of a speciality board recognized by the American veterinary medical association.
14. Failure to provide referral to a specialist when medically indicated and requested by the client.

History: Effective August 1, 2004; amended effective January 1, 2014; April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-14

87-05-02-02. Minimum standards of practice.

Minimum standards of practice include:

1. The delivery of veterinary care must be provided in a competent and humane manner consistent with prevailing standards of practice for the species of animal and the professed area of expertise of the veterinarian. For a veterinarian to exercise properly the rights granted by the veterinary license, a veterinarian-client-patient relationship must exist.
2. Medical records and radiographs are the physical property of the hospital or the proprietor of the practice that prepared them. Records must be maintained for a minimum of three years after the last visit. Radiographs must be maintained for a minimum of three years.
3. Medical records, or an accurate summary of them, must be released to the animal owner or the owner's authorized agent, including the board, within a reasonable time of a request. A reasonable charge for copying or preparation of a summary may be made, except in the case of a board investigation, in which case no charges are authorized.
4. Contents of medical records must be kept private and not released to third parties unless authorized by the client or required by law. Medical records may be released without consent of the client under the following circumstances:
 - a. For statistical and scientific research, if the information is abstracted in a way as to protect the identity of the patient and client;
 - b. To verify a rabies vaccination of an animal;
 - c. To investigate a threat to human or animal health;
 - d. For the protection of individual animal, human, or public health or welfare; or
 - e. If requested by another veterinarian for the purpose of continuity of care.
- ~~5. A licensed veterinarian shall treat animals entrusted to the veterinarian by a client consistent with prevailing professional standards of humane treatment and care.~~

History: Effective August 1, 2004; amended effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-14

ARTICLE 87-06
PRACTICE OF VETERINARY MEDICINE

<u>Chapter</u>	
87-06-01	<u>Veterinarian-Client-Patient Relationship</u>
87-06-02	<u>Specialties of Veterinary Medicine</u>

CHAPTER 87-06-01
VETERINARIAN-CLIENT-PATIENT RELATIONSHIP

<u>Section</u>	
87-06-01-01	<u>Veterinarian-Client-Patient Relationship</u>

87-06-01-01. Veterinarian-client-patient relationship.

The establishment of a veterinarian-client-patient relationship as defined in subsection 9 of North Dakota Century Code section 43-29-01.1 may extend to all veterinarians within the same practice with access to the patient medical records.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

CHAPTER 87-06-02
SPECIALTIES OF VETERINARY MEDICINE

Section

87-06-02-01 Specialties of Veterinary Medicine

87-06-02-01. Specialties of veterinary medicine.

Veterinary medicine includes telemedicine, laser therapy, chemotherapy, and rehabilitation services.

History: Effective April 1, 2022.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03

TITLE 96
BOARD OF CLINICAL LABORATORY PRACTICE

APRIL 2022

CHAPTER 96-02-03

96-02-03-01. Fees.

The board shall set fees in such an amount as to reimburse the operational cost of licensure services rendered.

1. Initial fee for licensing

Category MT (CLS) and Specialists \$100.00

Category CLT, MLT \$80.00

a. Application for license received on or after May first of the even-numbered year and before January first of the odd-numbered year:

(1) Medical technologist \$100.00

(2) Clinical laboratory scientist \$100.00

(3) Clinical laboratory specialist \$100.00

(4) Clinical laboratory technician \$80.00

(5) Medical laboratory technician \$80.00

b. Application for license received on or after January first of the odd-numbered year and before July first of the odd-numbered year:

(1) Medical technologist \$75.00

(2) Clinical laboratory scientist \$75.00

(3) Clinical laboratory specialist \$75.00

(4) Clinical laboratory technician \$60.00

(5) Medical laboratory technician \$60.00

c. Application for license received on or after July first of the odd-numbered year and on or before December thirty-first of the odd-numbered year:

(1) Medical technologist \$50.00

(2) Clinical laboratory scientist \$50.00

(3) Clinical laboratory specialist \$50.00

(4) Clinical laboratory technician \$40.00

(5) Medical laboratory technician \$40.00

- d. Application for license received on or after January first of the even-numbered year and before May first of the even-numbered year:
- | | |
|---|----------------|
| (1) <u>Medical technologist</u> | <u>\$25.00</u> |
| (2) <u>Clinical laboratory scientist</u> | <u>\$25.00</u> |
| (3) <u>Clinical laboratory specialist</u> | <u>\$25.00</u> |
| (4) <u>Clinical laboratory technician</u> | <u>\$20.00</u> |
| (5) <u>Medical laboratory technician</u> | <u>\$20.00</u> |
2. License fee for biennial license renewal
- | | |
|--|--------------------|
| Category MT (CLS) and Specialists | \$90.00 |
| Category CLT, MLT | \$70.00 |
| a. <u>Medical technologist</u> | <u>\$100.00</u> |
| b. <u>Clinical laboratory scientist</u> | <u>\$100.00</u> |
| c. <u>Clinical laboratory specialist</u> | <u>\$100.00</u> |
| d. <u>Clinical laboratory technician</u> | <u>\$80.00</u> |
| e. <u>Medical laboratory technician</u> | <u>\$80.00</u> |
3. Late fees \$100.00
4. Provisional permit fee \$50.00
5. Provisional permit extension fee \$50.00
6. The provisional permit fee may be applied toward the initial fee for licensing if the application for licensure is submitted before the provisional permit expires.
7. Any request for the purchase of a list of licensees' names and employment addresses for offering continuing education opportunities, research, and professional organizations building lists of contacts in the state of North Dakota shall be accompanied by a one hundred dollar administrative service fee.

History: Effective June 1, 1991; amended effective May 1, 2002; July 1, 2017; April 1, 2022.

General Authority: NDCC 43-48-04, 43-48-06

Law Implemented: NDCC 43-48-04, 43-48-06

CHAPTER 96-02-10

96-02-10-01. Exempt tests and methods.

An individual is exempt from the provisions of North Dakota Century Code chapter 43-48 if the individual is supervised either by an individual licensed by the board, an advanced practice registered nurse, or a physician and the individual is performing the following food and drug administration-waived tests and using the following methods, or performing tests determined by the board to be equivalent to those listed in this section:

1. Any of the following tests by nonautomated or automated urinalysis by dipstick:
 - a. Bilirubin.
 - b. Blood.
 - c. Glucose.
 - d. Ketone.
 - e. Leukocyte.
 - f. Nitrate.
 - g. Potential of hydrogen (pH).
 - h. Protein.
 - i. Specific gravity.
 - j. Urobilinogen.
2. Fecal occult blood by any accepted method.
3. Ovulation test by visual color comparison.
4. Qualitative urine pregnancy test by visual color comparison.
5. Erythrocyte sedimentation rate by any accepted nonautomated method.
6. Whole blood glucose by any accepted single analyte method.
7. Spun microhematocrit by any accepted method.
8. Hemoglobin by single analyte instrument or manual copper sulfate method.
9. Any of the following tests by immunoassay using a rapid test device that detects antibodies or antigens:
 - a. Helicobacter pylori.
 - b. Influenza.
 - c. Mononucleosis.
 - d. Streptococcus group A.
 - e. Hepatitis C virus.
 - f. Respiratory syncytial virus.

g. SARS-CoV-2

10. Prothrombin time international normalized ratio by mechanical endpoint.
11. Antibodies to human immunodeficiency virus types 1 and 2 by clearview complete HIV 1/2 assay.
12. Alere cholestech analyzer, but only for the following analytes:
 - a. Total cholesterol; and
 - b. High-density lipoprotein (HDL) cholesterol.
13. Syphilis health check.
14. CoaguCheck XS system.
15. UltraCrit hematocrit.
16. Abaxis piccolo xpress analyzer whole blood methods, but only for the following analytes:
 - a. Total cholesterol.
 - b. HDL cholesterol.
 - c. Triglycerides.
 - d. Glucose.
 - e. Blood urea nitrogen (BUN).
 - f. Creatinine.
 - g. Sodium.
 - h. Chloride.
 - i. Potassium.
 - j. Bicarbonate.
 - k. Total protein.
 - l. Total bilirubin.
 - m. Aspartate aminotransferase (AST).
 - n. Alanine aminotransferase (ALT)
 - o. Albumin.
 - p. Total calcium.
 - q. Alkaline phosphatase.
17. i-STAT creatinine when performed by radiology technologists or technicians.
18. Alere affinion AS100 glycosylated hemoglobin (A1C).

19. Urine drug screen, only if positive results are confirmed by utilizing additional confirmation tests.

History: Effective January 1, 2006; amended effective January 1, 2008; April 1, 2012; April 1, 2013; July 1, 2017; April 1, 2020; April 1, 2022.

General Authority: NDCC 43-48-03, 43-48-04

Law Implemented: NDCC 43-48-03

TITLE 109
PEACE OFFICER STANDARDS AND TRAINING BOARD

APRIL 2022

CHAPTER 109-01-01

109-01-01-02. Board membership.

1. The peace officer standards and training board consists of nine members, including the director of the ~~highway patrol~~ law enforcement training center, six peace officers, one county government representative, and one city government representative.
2. With the exception of the director of the ~~highway patrol~~ law enforcement training center, all members of the peace officer standards and training board must be appointed by the attorney general and serve staggered two-year terms.
3. Peace officers appointed by the attorney general may serve no more than three consecutive terms.
4. The attorney general shall appoint the chairman of the board.
5. The office of attorney general shall provide support staff to the board, including an employee to serve as the secretary to the board and as an ex officio nonvoting member of the board.

History: Effective October 1, 2004; amended effective April 1, 2022.

General Authority: NDCC ~~28-32-02~~ 12-63-04(2)(d)

Law Implemented: NDCC 12-63-01.1, ~~28-32-02~~

109-01-01-04. Inquiries.

1. All inquiries regarding the peace officer standards and training board may be addressed to the secretary of the board. All requests for hearings and for participating in rulemaking may be addressed to the secretary of the board, unless specific public notice provides otherwise.
2. Correspondence is to be addressed to the board as follows:

Secretary
Peace Officer Standards and Training Board
~~4205 State Street~~ 1720 Burlington Drive
Bismarck, ND 58504

or

P.O. Box 1054
Bismarck, ND 58502-1054

History: Effective October 1, 2004; amended effective April 1, 2022.

General Authority: NDCC ~~28-32-02~~12-63-04(2)(d)

Law Implemented: NDCC ~~28-32-02~~12-63-04

ARTICLE 109-02 PEACE OFFICER STANDARDS

Chapter

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109-02-06	Confidential Informants

CHAPTER 109-02-01 GENERAL PROVISIONS

Section

109-02-01-01	Definitions
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109-02-01-02	<u>Criminal History</u> Background Investigation Required
109-02-01-03	Minimum License Requirements
109-02-01-04	Other License Requirements
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109-02-01-05	Agency's Responsibility
109-02-01-06	Record of Certified Instructors and Shooting Courses [Repealed]
109-02-01-07	Waiver
109-02-01-08	Additional Agency Requirements
109-02-01-09	Hearings and Appeals

109-02-01-01. Definitions.

The terms used throughout this article have the same meaning as in the North Dakota Century Code except:

1. "Agency" means a criminal justice agency, or an agency of the state of North Dakota or one of its political subdivisions, authorized to employ licensed peace officers. For purposes of this title, an agency includes the North Dakota stockmen's association and a railroad that employs licensed peace officers.
2. "Basic full-time peace officer training course" means a board-certified entrance-level training course based on performance objectives essential for full-time licensed peace officers in the state of North Dakota.
3. "Basic part-time peace officer training course" means a board-certified entrance-level training course based on performance objectives essential for part-time licensed peace officers in the state of North Dakota.
4. "Basic reserve peace officer training course" means a board-certified entrance-level training course based on performance objectives essential for reserve licensed peace officers in the state of North Dakota.
5. "Certified instructor" means an instructor certified by the board to instruct law enforcement or basic correctional officer training courses.
- ~~5.6.~~ "Certified shooting course" means a shooting course that meets the requirements of these rules.
- ~~6.7.~~ "Certified training" means training approved by the board.

- ~~7-8.~~ "College credits" means credits earned for studies satisfactorily completed through an accredited institution of higher learning in a program leading to an academic degree.
- ~~8-9.~~ "Controlling agent" means the peace officer who is the main point of contact with the confidential informant for the controlled buy, controlled sale, or in-person surreptitious recording.
- ~~9-10.~~ "Crime of violence" means any violation of law where a person purposely or knowingly causes or threatens to cause death or physical bodily injury to another person or persons.
- ~~40-11.~~ "Criminal justice agency" means a unit of government of the state of North Dakota or one of its political subdivisions charged by law with criminal law enforcement duties.
- ~~44-12.~~ "Duty equipment" means the equipment issued or approved by the ~~peace~~ officer's employing agency and normally carried by a ~~peace~~an officer in the performance of the ~~peace~~ officer's duties.
- ~~42-13.~~ "Duty weapon" means the sidearm issued or approved by the ~~peace~~ officer's employing agency and normally carried by the ~~peace~~ officer in the performance of the ~~peace~~ officer's duties.
- ~~13.~~ ~~"Full time peace officer" means a full time salaried public servant employed by an agency of the state of North Dakota or one of its political subdivisions, or a peace officer employed by the North Dakota stockmen's association or a railroad, to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.~~
14. "Good standing" means an individual who holds a current license that is not issued on a temporary or restricted basis, is not encumbered or on probation, and is not suspended or revoked.
- ~~15.~~ "Law enforcement training academy" means the ~~highway patrol~~ law enforcement training center.
- ~~45-16.~~ "License requirement" means any term or condition established by the board that must be met before the board may issue, renew, or reinstate a ~~peace~~an officer's license.
- ~~46-17.~~ "Limited license" means a conditional license granted by the board to an individual who has been hired or appointed by an agency but who has not completed a basic full-time peace officer training course and has not successfully passed the licensing examination.
- ~~47-18.~~ "Moral turpitude" means conduct that:
- a. Involves dishonesty, falsification, or fraud;
 - b. Involves harm or injury directed to another individual or entity or another individual's or entity's property; or
 - c. Is in violation of North Dakota Century Code chapter 12.1-20, 12.1-27.1, or 12.1-27.2 or the equivalent laws of another state or the federal government.
- ~~48-19.~~ "Officer" includes all categories of peace officer standards and training board licensees.
- ~~20.~~ "Online training" means computer-based training, distance learning, or e-learning, in a form that takes place completely on the internet. It involves a variety of multimedia elements including graphics, audio, video, and weblinks, which all can be accessed through an internet browser. For the purposes of continuing education credit, any course of instruction that allows for real-time instructor interaction with the student may not be considered "online training".

21. "Part-time peace officer" means a public servant who has a part-time peace officer license and is employed or appointed by a criminal justice agency of the state of North Dakota or one of its political subdivisions to enforce the law or to conduct or engage in investigations or prosecutions for violations of law within the scope of the part-time peace officer's training.
- ~~19.~~22. "Peace officer" means a ~~salaried~~ public servant employed by a criminal justice agency of the state of North Dakota or one of its political subdivisions, or a peace officer employed by the North Dakota stockmen's association or a railroad, to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.
- ~~20.~~23. "Peace officer license" means a license issued by the board.
- ~~21.~~24. "Reserve peace officer" means a volunteer or employee of a criminal justice agency of the state of North Dakota or one of its political subdivisions who has a reserve peace officer license to enforce the law.
25. "Reserve peace officer license" means a license issued by the board.
26. "School" means a facility, agency, or academy that conducts board-certified basic, advanced, and specialized peace officer training courses or basic correctional officer training courses.
- ~~22.~~27. "Sidearm" means a handgun, including a semiautomatic handgun or revolver, carried by a ~~peace~~an officer as the officer's authorized duty weapon.
- ~~23.~~28. "Sidearm qualification" means the test a ~~peace~~an officer must complete on a certified shooting course with the ~~peace~~ officer's duty weapon.
- ~~24.~~29. "Training provider" means an individual, school, facility, or academy that conducts certified basic, advanced, specialized ~~peace~~ officer training courses, or basic correctional officer training courses.
- ~~25.~~30. "Weapon" includes a handgun, shotgun, and rifle.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014; July 1, 2018; April 1, 2022.

General Authority: NDCC 12-63-02.1(7), 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-44.1-01(10), 12-44.1-04(4), 12-63-02, 12-63-02.1, 12-63-04

109-02-01-01.1. Application of chapter to ~~part-time peace officer license~~all licensees.

The provisions of this chapter apply to ~~part-time peace officers' licenses~~all licensees and ~~peace~~ officers who have been issued a ~~part-time peace officer~~ license unless otherwise provided for in this chapter.

History: Effective July 1, 2006; amended effective April 1, 2022.

General Authority: NDCC 12-63-02.1(7), 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-02.3, 12-63-04

109-02-01-02. ~~Background~~Criminal history background investigation required.

1. The agency shall conduct a criminal history background investigation when the agency hires or appoints an individual to perform ~~peace~~ officer duties. ~~The agency shall file verification of the completed criminal history background investigation and results on a form provided by the board. In addition to the form required, the agency shall submit~~ by submitting a complete set of the individual's fingerprints and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation. The agency

shall file verification of the completed criminal history background investigation and results on a form provided by the board.

2. A school shall conduct a criminal history background investigation on each enrollee in the school, unless the enrollee has a limited license or is attending the law enforcement training academy. ~~The school shall file verification of the completed criminal history background investigation and results on a form provided by the board. In addition to the form required, the school shall require each enrollee to submit~~center by submitting a complete set of the enrollee's fingerprints and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.1(7), 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(1)(a), 12-63-06(3)

109-02-01-03. Minimum license requirements.

An applicant for ~~a peace~~an officer license and all licensees:

1. Must be a United States citizen, or in resident alien status, as defined by United States citizenship and immigration services laws and regulations.
2. Must be a high school graduate, have a high school equivalency diploma, or have a ~~general educational development~~ (GED) certificate.
3. Must not have pled guilty to, pled nolo contendere to, or have been found guilty, in any state or federal court, of ~~a~~any felony offense.
4. Must not have pled guilty to, pled nolo contendere to, or have been convicted in any state or federal court of ~~an offense~~offenses involving moral turpitude, ~~an offense involving~~sexual violations, domestic violence ~~or,~~ violation of a domestic violence restraining order, ~~an offense involving~~ child abuse or neglect, ~~an offense involving~~ firearms under North Dakota Century Code title 12.1 or 62.1, or any other criminal offense the board determines has a direct bearing on the applicant's or licensee's ability to serve as a ~~peace~~an officer.
5. Must not be prohibited from using or possessing a firearm ~~under state or federal law.~~
6. Must have a valid driver's license issued in the United States.
7. Must have undergone a criminal history background investigation by the employing agency and have fingerprint clearance from the North Dakota bureau of criminal investigation and the United States department of justice federal bureau of investigation.
8. Must have passed a medical examination and psychological examination. The psychological examination must be administered by a board-approved psychological provider. Only physicians, osteopathic physicians, nurse practitioners, and physician assistants are authorized to administer medical examinations for the board. The psychological and medical examinations remain valid for one year from the examination date.
9. Must be employed or appointed as ~~a full-time peace officer by an agency, or for a part-time peace~~an officer ~~license, employed or appointed~~ by an agency.
10. Must not be prohibited from access to national crime information center and criminal justice information sharing databases.

11. Must not have been dishonorably discharged or administratively discharged from United States military service for conduct that would be in violation of the ~~peace~~-officer code of conduct.
12. ~~Shall submit all required documentation and application materials to the board no less than five days prior to attendance of any required basic peace officer training course.~~Must be in good standing with all applicable law enforcement licensing authorities.
13. Must pass the use of force examination and meet the sidearm qualification standards.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.1(7), 12-63-02.3(5), 12-63-04(2)(d), 12-63-06, 12-63-12(2)

Law Implemented: NDCC 12-63-02.1, 12-63-02.3, 12-63-04, 12-63-12

109-02-01-04. Other license requirements.

1. In addition to other requirements of law when an agency employs or appoints an individual to be a ~~peace~~an officer, the agency shall notify the board of the employment of the individual on a form provided by the board and verify that the individual meets the requirements of North Dakota Century Code chapter 12-63 and these rules before the individual may begin performing ~~peace~~-officer duties. The agency shall submit on a form provided by the board verification of completion of the criminal history background investigation, medical examination, and psychological examination. The agency shall also forward a complete record of the individual's previous training and law enforcement experience to the board.
2. Only a salaried peace officer who has a limited license may attend the basic full-time peace officer training course at the law enforcement training ~~academy~~center. The peace officer's employing agency shall submit a verified statement to the board that the peace officer is a full-time peace officer of the agency in connection with the peace officer's application to attend the law enforcement training ~~academy~~center for the basic full-time peace officer training course and that the peace officer is receiving a salary while attending the law enforcement training ~~academy~~center.
3. Only an individual hired to be a full-time peace officer may apply for a limited license or a peace officer license, apply for renewal of a license, except for renewal of an inactive license, or apply for reinstatement of a license. The peace officer's employing agency shall submit a verified statement to the board that the peace officer is a full-time peace officer of the agency in connection with the peace officer's application for a limited license or an application for renewal or reinstatement of a license.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.1(7), 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-02.3, 12-63-04(1), 12-63-06, 12-63-07, 12-63-09

109-02-01-04.1. Other reserve peace officer license requirements.

1. In addition to other requirements of law when an agency employs or appoints an individual to be a reserve peace officer, the agency shall notify the board of the employment or appointment of the individual on a form provided by the board and verify that the individual meets the requirements of North Dakota Century Code chapter 12-63 and these rules before the individual may begin performing reserve peace officer duties. The agency shall submit on a form provided by the board verification of completion of the criminal history background investigation, medical examination, and psychological examination. The agency shall forward to the board the record of the individual's completion of the reserve peace officer basic course.
2. An individual may only work for one criminal justice agency at a time in a reserve peace officer capacity.

3. A reserve peace officer may not be on duty more than forty hours in any thirty-day period unless a state of emergency exists.

History: Effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5)

Law Implemented: NDCC 12-63-02.3

109-02-01-05. Agency's responsibility.

1. Every agency shall provide or obtain the necessary training for its ~~peace~~ officers in order that ~~its peace~~ those officers meet all board license requirements.
2. Every agency shall maintain records of training provided to ~~its peace~~ their officers and make the records available to the board upon request.
3. Every agency shall notify the board when it hires ~~a peace~~ an officer, when it terminates the employment or appointment of a peace officer, or when ~~a peace~~ an officer resigns from employment with the agency. The agency shall submit the notification on the form provided by the board within thirty days from the date of the officer's employment, termination, or resignation.
4. It is the responsibility of each agency to investigate and submit a written report to the board of any of the following:
 - a. A violation of North Dakota Century Code chapter 12-63 by ~~a peace~~ an officer employed or appointed by the agency;
 - b. An arrest, plea of guilty, or finding of guilt for a felony offense by ~~a peace~~ an officer employed or appointed by the agency;
 - c. An arrest, plea of guilty, or finding of guilt by an officer employed by the agency for an offense involving moral turpitude, sexual violations, an offense involving domestic violence or violation of a domestic violence restraining order, an offense involving child abuse or neglect, an offense involving firearms under North Dakota Century Code title 12.1 or 62.1; or
 - d. Any other ~~criminal offense~~ violation of law or rule of the board ~~may determine has a direct bearing on the applicant's ability to serve as a peace officer.~~

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04, 12-63-12

109-02-01-07. Waiver.

The board may waive the requirements of this article upon a showing of good cause. Good cause means a situation involving extreme hardship that places an undue burden on ~~a peace~~ an officer or agency.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04

109-02-01-08. Additional agency requirements.

This article establishes minimum standards and requirements for ~~peace~~ officers and does not preclude an agency from establishing additional or more stringent hiring and training requirements and ethical standards.

History: Effective October 1, 2004; amended effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5). 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3. 12-63-04

CHAPTER 109-02-02 LICENSING AND TRAINING REQUIREMENTS

Section

109-02-02-01	Compliance With Minimum Training Standards
109-02-02-02	Supervision of a -Part-Time Licensed Peace Officer <u>Officers and Reserve Licensed Peace Officers</u>
109-02-02-03	Reserve Officers [Repealed]
109-02-02-04	Limited Peace Officer License
<u>109-02-02-04.1</u>	<u>Reserve Peace Officer License</u>
109-02-02-05	Waiver of Required Training - Out-of-State and Federal Peace Officers <u>Reciprocity</u>
109-02-02-06	Licensing Examinations
<u>109-02-02-06.1</u>	<u>Reserve Peace Officer Licensing Examinations</u>
109-02-02-07	Employment of Peace -Officers
109-02-02-08	Medical and Psychological Examination
109-02-02-09	Compliance With Sidearm Qualification as a License Requirement
109-02-02-10	License Certificate [Repealed]
109-02-02-10.1	Scope of Part-Time Peace Officer Authority
109-02-02-11	Licensing, Renewal, and Reinstatement Fees
109-02-02-12	Surrender of License
109-02-02-13	Reinstatement of License
109-02-02-14	Inactive Status
109-02-02-15	Continuing Education Requirements
109-02-02-16	License Renewal
109-02-02-17	Termination of Peace -Officer Employment <u>or Appointment</u>
109-02-02-18	Notice of Termination
109-02-02-19	Notice of Denial, Suspension, or Revocation - Hearing

109-02-02-02. Supervision of ~~a~~-part-time licensed peace ~~officer~~officers and reserve licensed peace officers.

Supervision of ~~a peace officer~~officers with a part-time license and reserve peace officers means the supervising officer has the ability to have direct personal contact with the part-time peace officer or reserve peace officer within a reasonable time and the part-time peace officer or reserve peace officer is able to have direct personal contact with the supervising full-time peace officer within a reasonable time.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.1(3)(7), 12-63-02.3(3), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-02.3, 12-63-04

109-02-02-04. Limited peace officer license.

1. The board may issue a limited peace officer license to an individual who is in good standing and has completed the educational, medical, and psychological examination licensing requirements and has been qualified to carry a sidearm.
2. The application for the limited license must be made by the individual's employing agency. A peace officer with a limited license must work under the supervision of an officer with a full-time peace officer license. Supervision of a peace officer with a limited license means the supervising officer has the ability to have direct personal contact with the peace officer with a limited license within a reasonable time and the peace officer with a limited license is able to have direct personal contact with the supervising full-time peace officer within a reasonable time.

3. A limited license is effective until the individual has successfully completed the first available basic full-time peace officer training course and has successfully completed the licensing examination.
4. The board may authorize an individual to attend a subsequent basic full-time peace officer training course upon a showing of good cause by the agency or individual. The board may renew the limited license once if the individual failed the licensing examination. An individual with a limited license may retake the licensing examination within thirty days after the first examination and upon payment of the examination fee. If an individual with a limited license fails the licensing examination a second time, the individual shall successfully complete a basic full-time peace officer training course before the individual may retake the licensing examination. The individual shall obtain a limited license if the individual will attend the basic full-time peace officer training course at the law enforcement training [academycenter](#).
5. If a peace officer with a limited license is no longer employed with the agency that applied for the limited license, or if the peace officer fails to attend and successfully complete the first available basic full-time peace officer training course without the prior approval of the board, the peace officer's limited license expires.
6. An applicant for a part-time peace officer license may not receive a limited peace officer license.
7. An individual who has not been issued a limited license may not perform peace officer duties under this section. North Dakota Century Code section 12-63-02 requires an individual to be licensed before performing peace officer duties. North Dakota Century Code section 12.1-13-04 makes impersonating a law enforcement officer a class A misdemeanor.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014; [April 1, 2022](#).

General Authority: NDCC 12-63-02.1(7), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-06, 12-63-07, 12-63-09

109-02-02-04.1. Reserve peace officer license.

The board may issue a reserve peace officer license to an individual who is in good standing; passed a criminal history background investigation; has completed the educational, medical, and psychological examination licensing requirements; and has qualified to carry a sidearm. The educational requirement is the reserve peace officer training course set by the board. The application for the reserve peace officer license must be made by the individual's employing or appointing agency.

History: Effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d), 12-63-06

Law Implemented: NDCC 12-63-02.3, 12-63-04

109-02-02-05. Waiver of required training - ~~Out-of-state and federal peace officers~~ [Reciprocity](#).

1. An individual having peace officer experience or having completed an equivalent basic full-time peace officer training course conducted in [anotherany](#) state or by a federal law enforcement agency may qualify for a partial waiver of basic full-time peace officer training requirements. The administrator of the agency employing the individual may apply to the board for a partial waiver. The board shall review all applications for a waiver and may grant a partial waiver.
 - a. Training received in a state or from a federal law enforcement agency with laws governing or regulating peace officer training must have been approved or certified by the governing or regulating body of the state or federal agency in which the individual received the training.

- b. The board may prescribe additional training as a license requirement for an individual applying for a partial waiver under this rule.
- c. Applicants for a partial waiver of basic full-time peace officer training shall submit complete documentation of prior basic full-time peace officer training, including current licensing or certification, to the board.

d. Applicants shall prove they are in good standing with all law enforcement licensing authorities where they have been licensed in order to obtain a waiver.

- 2. If the board has granted an applicant a partial waiver, the board may only allow the applicant two attempts to successfully complete the licensing examination. If a passing score is not obtained on the first attempt, the applicant may retake the examination, but only if the applicant retakes the examination within thirty days from the date of the first examination. If a passing score is not obtained on the second attempt, the applicant shall complete the entire basic full-time peace officer training course before retaking the licensing examination.
- 3. An individual without peace officer experience who has completed an equivalent basic full-time peace officer training course in anotherany state or with a federal law enforcement agency may only qualify for a partial waiver of the basic full-time peace officer training course if it has been less than three years since the individual completed the other state's or federal agency's peace officer training course.
- 4. An individual with peace officer experience who has been employed as a certified or licensed peace officer in anotherany state or with a federal law enforcement agency may only qualify for a partial waiver of the basic full-time peace officer training course if it has been less than three years since the individual has been employed as a peace officer in another state or with a federal law enforcement agency.

5. Those peace officers currently licensed in North Dakota and working for an agency who wish to obtain a reserve peace officer license may be issued a reserve peace officer license upon completion of the reserve peace officer application and payment of the reserve peace officer licensing fee.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)

Law Implemented: NDCC 12-63-02.3, 12-63-04, 12-63-06

109-02-02-06. Licensing examinations.

- 1. **Examination requirements.** An individual is eligible to take the licensing examination upon completion of or during the basic full-time peace officer training course. A minimum score of seventy percent is necessary for successful completion of the licensing examination. The individual shall pay the examination fee established by the board prior to taking the examination. The examination must be administered by the board or the board's designee.
- 2. **Retaking examinations.** An individual who fails the first examination may retake the examination one time upon furnishing to the board the required examination fee. After the second unsuccessful attempt, the individual shall successfully complete the entire basic full-time peace officer training course before the individual may retake the examination a third time. The individual shall obtain a limited license if the individual will attend the basic full-time peace officer training course at the law enforcement training academycenter.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04, 12-63-07

109-02-02-06.1. Reserve peace officer licensing examinations.

- 1. Examination requirements.** An individual is eligible to take the licensing examination within thirty days of completing the reserve peace officer training course. A minimum score of seventy percent is necessary for successful completion of the licensing examination. There is no fee for the reserve peace officer examination. The examination must be administered by the board or the board's designee.
- 2. Retaking examinations.** An individual who fails the first examination may retake the examination one time within thirty days. After a second unsuccessful attempt, the individual shall successfully complete the entire reserve peace officer training course before the individual may retake the examination a third time.
- 3. Existing reserve officers or reserve deputies.** Individuals who have served as a reserve officer or reserve deputy for more than one year preceding August 1, 2021, and who meet the minimum license requirements of this chapter may obtain a reserve peace officer license without taking the entire reserve peace officer training program. Those qualified individuals may obtain a reserve peace officer license by taking a use of force class, passing the use of force examination, taking the reserve peace officer North Dakota criminal and traffic law course, qualifying with their duty weapon, and successfully passing the reserve peace officer examination. Individuals availing themselves of this process only may take the reserve peace officer examination once. If the individual does not pass the reserve peace officer examination, they must take the entire reserve peace officer training program in order to retake the reserve peace officer examination.

History: Effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5)

Law Implemented: NDCC 12-63-02.3

109-02-02-07. Employment of ~~peace~~ officers.

- ~~**1. Application procedures for a full-time peace officer license.** If an individual is not already a licensed ~~peace~~ officer when hired by an agency, but the individual is eligible to be licensed, the individual shall apply to be licensed at the time of appointment or hire. The application must be made on a form provided by the board, and both the applicant and the agency administrator shall verify the applicant is eligible to be licensed. The applicable license fee must accompany the application.~~
- ~~**2. Application procedures for a part-time peace officer license.** If an agency has hired or appointed an individual to be a part-time ~~peace~~ officer, and the individual does not have a part-time ~~peace~~ officer license, but has completed all requirements for a part-time ~~peace~~ officer license, the individual shall apply for a part-time ~~peace~~ officer license at the time of appointment or hire. The application must be made on a form provided by the board. The applicant and the agency administrator shall verify the applicant is eligible for a part-time ~~peace~~ officer license. The applicable license fee must be submitted with the application.~~

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.1(7), 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.1, 12-63-02.3, 12-63-04, 12-63-06, 12-63-07, 12-63-09

109-02-02-08. Medical and psychological examination.

An applicant for a ~~peace officer~~ license shall successfully complete a board-approved psychological examination by a board-approved provider. An applicant shall also successfully complete a medical examination. The employing agency shall submit the results of the psychological examination and

documentation of the medical examination with the application for the ~~peace officer~~ license or limited license.

History: Effective October 1, 2004; amended effective April 1, 2014; [April 1, 2022](#).

General Authority: NDCC [12-63-02.3\(1\)\(5\)](#), 12-63-04(2)(d)

Law Implemented: NDCC [12-63-02.3](#), 12-63-06(4)

109-02-02-09. Compliance with sidearm qualification as a license requirement.

The board may not issue, renew, or reinstate ~~a peace officer~~ an officer's license or limited license unless the ~~peace officer~~ has complied with all sidearm qualification requirements. The board may suspend an officer's license if the officer fails to comply with all sidearm qualification requirements under these rules.

History: Effective October 1, 2004; amended effective April 1, 2014; [April 1, 2022](#).

General Authority: NDCC [12-63-02.3\(1\)\(5\)](#), 12-63-04(2)(d)

Law Implemented: NDCC [12-63-02.3](#), 12-63-04(1)(d)

109-02-02-11. Licensing, renewal, and reinstatement fees.

1. The following fees are nonrefundable:

- a. ~~Licensing~~ Peace officer licensing examination fee - twenty-five dollars.
- b. Initial license fee - the initial license fee is forty-five dollars.
- c. License renewal fee - forty-five dollars ~~for a three-year period~~.
- d. Late license renewal fee for up to thirty days after expiration of license - one hundred dollars.
- e. Late license renewal fee from thirty-one days to three hundred sixty-five days after expiration of license - two hundred fifty dollars.
- f. License reinstatement fee after revocation of license - five hundred dollars.
- g. Duplicate license fee - ten dollars.
- h. Late sidearm qualification fee - one hundred dollars.
- i. Reinstatement fee for sidearm suspension or revocation - two hundred fifty dollars.
- j. Late instructor renewal fee - one hundred dollars.

2. License renewals are every three years on a calendar-year basis. License renewal dates are based on the following surname divisions: A-G, H-M, N-Z. If an officer's name changes, their current license remains in effect until the expiration date. When an officer's name changes resulting in a surname division change, at the next renewal, the board will move the officer into the appropriate surname division. Depending on the new surname division, the officer shall complete either twenty or forty hours of continuing education in order to renew their license.

History: Effective October 1, 2004; amended effective April 1, 2014; [April 1, 2022](#).

General Authority: NDCC 12-63-04(2)(d), 12-63-05, [12-63-11](#)

Law Implemented: NDCC 12-63-05, 12-63-10

109-02-02-12. Surrender of license.

Licenses remain the property of the board. ~~A peace~~An officer shall surrender the officer's license if the board has suspended or revoked the ~~peace~~-officer's license or if the ~~peace~~-officer has not requested inactive status and has allowed the ~~peace~~-officer license to expire.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC ~~12-63-02~~, 12-63-04, 12-63-11(2)

109-02-02-13. Reinstatement of license.

~~A peace officer that~~An individual who does not perform duties as ~~a peace~~an officer, is no longer employed or appointed by an agency, or otherwise allows the ~~peace~~-officer's license to expire shall comply with the following conditions for reinstatement:

1. If the board has revoked an individual's ~~peace officer~~-license by adverse license action under North Dakota Century Code section 12-63-12, the individual may not apply for reinstatement of the license until one year from the date of revocation of the license.
2. Before the board may accept the application for reinstatement, the individual shall comply with the following conditions for reinstatement:
 - a. The individual shall pay the reinstatement fee and shall meet the same continuing education requirements applicable for renewal of a ~~peace officer~~-license under this chapter.
 - b. The individual shall successfully complete the written examination and sidearm qualification requirements under chapter 109-02-03 of these rules prior to reinstatement.
 - c. If the individual does not apply for reinstatement within one year after becoming eligible to apply for reinstatement, the board may not accept the application for reinstatement.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04, 12-63-12

109-02-02-14. Inactive status.

An individual who does not perform duties as a licensed peace officer or is no longer employed by an agency may request the board place the individual on inactive status. The individual shall make the request for inactive status in writing on a form provided by the board. The individual may remain on inactive status indefinitely if the individual meets the same requirements for a peace officer on active status, including annual sidearm qualification requirements, and maintains continuing education requirements and renews the license in accordance with the rules of the board. An individual who has been hired by an agency but who has been on inactive status for three or more years when the individual was hired by the agency shall attend the first available criminal and traffic law portions of the full-time peace officer basic course, and successfully complete the licensing examination before the board may restore the individual's license to active status. Reserve peace officers may not maintain a license in inactive status.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-11(2)

109-02-02-15. Continuing education requirements.

1. In order for ~~a peace~~an officer to remain licensed, the ~~peace~~ officer shall comply with all license requirements ~~and~~. Peace officers shall receive a minimum of sixty hours of certified training every three years. Certified training in online, web-based, or video format cannot constitute more than twenty hours of the sixty-hour requirement for continuing education requirements. Training may not be in increments of less than one hour. If an officer has received more than sixty hours in a three-year period, the surplus in training hours may not be carried forward into the next three-year period.
2. Every ~~peace~~ officer shall meet the ~~sixty-hour~~ continuing education requirements within the officer's ~~three-year~~ license period ~~or the peace officer's license expires at the expiration of the officer's three-year license period. If an officer fails to complete the required continuing education within the time period specified in this section, or the officer or the officer's agency fails to submit a record of the officer's approved continuing education to the board within the time period specified in this section, the officer's license expires.~~
3. A peace officer who has enrolled and completed college courses may request a waiver of the sixty-hour training requirement for renewal of the peace officer's license. The board may grant the request upon a showing of successful completion of at least four semester credit hours of college credit in a criminal justice-related or job-related topic. The peace officer shall submit documentation of successful course completion within thirty days after completion of the college course.
4. ~~If a peace officer fails to complete the required sixty-hour continuing education within the time period specified in this section, or the peace officer or the peace officer's agency fails to submit a record of the peace officer's approved continuing education to the board within the time period specified in this section, the peace officer's license expires.~~
- ~~5.~~ A training course or seminar must be certified training to qualify for the continuing education training requirement for license renewal under this chapter.
 - a. If an out-of-state training course or seminar has not been approved by the board, the ~~peace~~ officer or the ~~peace~~ officer's employing agency shall notify the board ~~of the proposed training course or seminar prior to commencement~~within fifteen days before the start of the training course or seminar. The ~~peace~~ officer, or the ~~peace~~ officer's employing agency, shall provide the board the course name and subject matter, the training location, the dates and times of training, and if available, a training syllabus or agenda.
 - b. Within thirty days after completion of any training, the officer or the officer's employing agency shall submit verification of the officer's attendance at the training or seminar. ~~If the training or seminar agenda was not previously submitted, the training or seminar agenda must be submitted within thirty days following completion of the training or seminar.~~
 - c. The board may waive the required number of training hours upon a showing of good cause. For purposes of this section, good cause means a situation in which the officer is unable to complete the required training because of factors beyond the control of either the officer or the officer's employing agency. Under this section, good cause includes a situation in which the officer has suffered a physical injury or ailment that prevents the officer from successfully completing required training or when the officer is called to active military service and is unable to successfully complete the required training. This waiver request must come from the officer's employing or appointing agency.

5. Reserve peace officers shall receive a minimum of thirty hours of certified training every three years. Ten hours of the certified training may consist of online training. If a reserve peace officer received more than thirty hours in a three-year period, the surplus in training hours may not be carried forward into the next three-year period.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5). 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3. 12-63-04

109-02-02-16. License renewal.

1. **Application.** An application for renewal of a ~~peace officer~~ license must be made on forms issued by the board. ~~A peace~~An officer applying for renewal shall verify compliance with sidearm and continuing education requirements on the application for renewal and submit the application for renewal prior to the expiration of the ~~peace officer's~~ license.
2. **Renewal.** The board shall issue a license renewal, which is valid for three years, to each ~~peace officer~~ who has submitted the appropriate fee on or before December thirty-first of the year the ~~peace officer's~~ license expires and who has verified compliance with all licensing requirements, including continuing education and annual sidearm qualification requirements.
3. **Late renewal.** If ~~a peace~~a officer fails to renew a license by December thirty-first of the year the ~~peace officer's~~ license expires, the ~~peace officer's~~ license is no longer in effect and the ~~peace officer~~individual may not perform ~~peace officer~~ duties until the ~~peace officer~~ has renewed the license in accordance with the requirements of this section. The ~~peace officer~~ may apply for late renewal no later than December thirty-first of the following year upon payment of the late renewal fee and verification of compliance with all licensing requirements, including continuing education and sidearm qualification requirements. The board may not renew the officer's license unless the officer has completed all required continuing education and annual sidearm qualification requirements.
4. **Expiration of license.** If ~~a peace~~a officer fails to apply for renewal of a license within one year after the expiration of the officer's license, the board may not renew the officer's license.
5. **Application for limited license and partial waiver.** If ~~an individual~~a peace officer fails to renew the license within one year after expiration of the license, the individual's employing agency may apply to the board for a limited license. The individual's employing agency may request a partial waiver of basic training after the board has issued a limited license to the individual.
6. **No partial waiver.** ~~If an individual has not been employed or appointed by an agency as a peace officer within three years after the individual's peace officer license has expired, the individual shall complete the enter basic full-time peace officer training course, successfully pass the licensing examination, and must be employed by an agency. The individual shall obtain a limited license if the individual will attend the basic full-time peace officer training course at the law enforcement training academy. There are not waivers available for individuals whose peace officer license has been expired for more than three years.~~

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04, 12-63-11

109-02-02-17. Termination of ~~peace officer~~ employment or appointment.

An agency's termination of ~~a peace~~a officer's employment or appointment, whether the termination is voluntary or involuntary, may not preclude adverse license action against the individual by the board under North Dakota Century Code section 12-63-12.

History: Effective October 1, 2004; amended effective April 1, 2014; [April 1, 2022](#).

General Authority: NDCC [12-63-02.3\(5\)](#), 12-63-04(2)(d)

Law Implemented: NDCC [12-63-02.3](#), 12-63-12, 12-63-13

109-02-02-18. Notice of termination.

If an agency terminates ~~a peacean~~ officer's employment ~~or appointment~~, the agency shall notify the board within thirty days of the termination on a form provided by the board. The notice of termination must include:

1. The nature and cause of the termination.
2. The effective date of the termination.
3. A statement from the agency indicating whether ~~or not~~ the agency is recommending denial, suspension, or revocation of the ~~peace officer~~ officer's license.

History: Effective October 1, 2004; amended effective April 1, 2014; [April 1, 2022](#).

General Authority: NDCC [12-63-02.3\(5\)](#), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-01(2), [12-63-02.3](#), 12-63-12, 12-63-13

109-02-02-19. Notice of denial, suspension, or revocation - Hearing.

The board shall notify ~~a peacean~~ officer in writing when the board has made a determination to deny, refuse to renew or reinstate, suspend, revoke, or impose probationary conditions on ~~a peacean~~ officer's license. The notice must specify the basis of the denial, refusal to renew or reinstate, suspension, revocation, or probationary conditions. The ~~peace~~ officer may request an administrative hearing on the denial, refusal to renew or reinstate, suspension, revocation, or probationary conditions. The board may take adverse license action by service of an administrative complaint on the ~~peace~~ officer. The board shall notify ~~a peacean~~ officer's employing ~~or appointing~~ agency if the board has commenced adverse license action against ~~a peacean~~ officer currently employed ~~or appointed~~ by the agency.

History: Effective October 1, 2004; amended effective April 1, 2014; [April 1, 2022](#).

General Authority: NDCC [12-63-02.3\(5\)](#), 12-63-04(2)(d)

Law Implemented: NDCC [12-63-02.3](#), 12-63-12, 12-63-13

CHAPTER 109-02-03
MINIMUM STANDARDS OF TRAINING PRIOR TO CARRYING A WEAPON

Section

109-02-03-01	Sidearm Authorization and Qualification
109-02-03-02	Use of Force Examination and Weapons Safety and Proficiency Examination <u>Sidearm Qualification for Individuals Not Licensed in North Dakota</u>
109-02-03-03	Shotgun, Rifle, and Special Weapons Certification [Repealed]
109-02-03-04	Sidearm Qualification Required Annually
109-02-03-05	Certified Shooting Course
109-02-03-06	Criteria for a Certified Shooting Course
109-02-03-07	Issuance, Denial, or Revocation of <u>Sidearm</u> Qualification
109-02-03-08	Waiver [Repealed]
109-02-03-09	Notice of Denial or Revocation of Qualification - Hearing [Repealed]

109-02-03-01. Sidearm authorization and qualification.

~~A peace~~An officer may not carry a sidearm in the course of employment or in the performance of official duties unless the officer has successfully completed the sidearm qualification requirements and the board has issued ~~a peace~~an officer license or limited license. Sidearm qualification requires ~~completion of a weapons safety and proficiency test approved by the board~~passing a North Dakota peace officer standards and training board-approved sidearm qualification course.

History: Effective October 1, 2004; amended effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(1)(d)

109-02-03-02. Use of force examination and ~~weapons safety and proficiency examination~~sidearm qualification for individuals not licensed in North Dakota.

The board shall establish and certify a ~~weapons safety and proficiency~~sidearm qualification and use of force examination for individuals not licensed in North Dakota, including:

1. A written examination covering criminal and civil liability and North Dakota law on the use of force. A score of one hundred percent is necessary for successful completion of the written examination. An individual may attempt the use of force examination three times. Only one attempt may occur in any twelve-hour period. If those three attempts are unsuccessful, the individual must wait thirty days from the last unsuccessful attempt before retaking. After that period, the individual may attempt a single use of force examination. If the individual does not pass, they may not attempt the use of force examination for three hundred sixty-five days.
2. A North Dakota certified sidearm shooting course using the ~~peace~~ officer's duty weapon, duty equipment, and duty ammunition or ammunition ~~ballistically similar~~equivalent grain to the ammunition the ~~peace~~ officer carries on duty. Successful completion of the ~~weapons safety and proficiency portion of the~~sidearm qualification ~~examination~~ requires a minimum score of seventy percent and the demonstration of competence in sidearm skills, including the safe handling, loading, and unloading of the sidearm, as determined by a certified weapons instructor.
3. ~~A peace officer may not take the written examination or sidearm qualification test more than three times in any twelve-month period. After the third unsuccessful attempt, the peace officer must wait one year before retaking the examination or sidearm qualification test.~~An individual may attempt to qualify four times. The first three attempts only may occur once in any twelve-hour period. If a third unsuccessful attempt occurs, the individual must wait thirty days before their final attempt at qualification. If the individual is still unable to qualify, they may not attempt qualification for three hundred sixty-five days from the fourth unsuccessful attempt.

4. Only a North Dakota certified weapons instructor may administer the ~~weapons safety and proficiency, North Dakota law, sidearm qualification~~ and use of force examination ~~or sidearm qualification~~.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04

109-02-03-04. Sidearm qualification required annually.

Every ~~peace~~ officer shall qualify with the ~~peace~~ officer's duty weapon each year as a license requirement.

1. Sidearm qualification requires successful completion of a North Dakota certified shooting course at least once during each calendar year. If a ~~peace~~an officer fails to qualify after one attempt at any certification course on three separate days by the end of the calendar year, the ~~peace~~ officer may not carry a duty weapon for thirty days during which time the officer no longer meets minimum license requirements. After thirty days, the officer may again attempt to qualify; however, the officer's license remains suspended until the employing or appointing agency provides proof the officer successfully ~~completes~~completed the sidearm qualification and pays the late sidearm qualification fee if required under these rules.
2. For ~~peace~~ officers employed by an agency who are not required to carry a sidearm in the performance of their duties, the ~~peace~~ officer's agency may apply to the board for a waiver of the sidearm qualification requirements.

- ~~3. Peace officers who have not successfully completed the annual sidearm qualification requirements for two consecutive years shall successfully complete both the written examination and a certified shooting course as a condition of licensing, license renewal, or license reinstatement. The peace officer shall also pay the sidearm qualification reinstatement fee required under these rules.~~

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04

109-02-03-05. Certified shooting course.

~~A~~an officer may not qualify with the officer's duty weapon on a noncertified shooting course.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04

109-02-03-06. Criteria for a certified shooting course.

A sidearm shooting course must meet the following requirements before the agency may receive certification for the course and before a ~~peace~~an officer may qualify or requalify with the ~~peace~~ officer's duty weapon:

1. The course must provide for a minimum of three firing positions, including:
 - a. Prone.
 - b. Sitting.
 - c. Standing.

- d. Kneeling.
 - e. Point shoulder.
 - f. Crouch.
 - g. Walking.
 - h. Barricade position.
2. The course must induce stress by the use of time, physical activity, or night or low light conditions or a combination of all three. The course must provide a time limit for course completion.
 3. The course must include firing from at least three different distances:
 - a. The distance may not be less than one yard [.91 meter] nor more than twenty-five yards [22.86 meters].
 - b. The majority of firing must occur at seven yards [6.40 meters] or more.
 4. The course must include firing at least eighteen but not more than sixty rounds of ammunition from start to finish.
 5. The course must be fired completely with the ~~peace~~-officer's duty weapon and duty equipment and include left-hand and right-hand shooting. An approved substitute weapon of the same type, model, and manufacture as the duty weapon may be used if the duty weapon becomes defective during firing.
 6. The ammunition used when firing for qualification must be the same as or ~~ballistically similar~~equivalent grain to the ammunition normally carried on duty.
 7. Only silhouette targets may be used on a certified shooting course.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(1)(d)

109-02-03-07. Issuance, denial, or revocation of sidearm qualification.

1. The board shall review all applications for sidearm qualification. The board may deny or revoke an application for sidearm qualification:
 - a. If the applicant failed to successfully complete the ~~written examination or the~~ shooting course;
 - b. Upon a finding that the applicant falsified any information required to obtain qualification or requalification;
 - c. Upon the written recommendation of a certified instructor; or
 - d. If the shooting course was not board-certified.
2. The board may require any ~~peace~~-officer to repeat a sidearm qualification test based upon the written recommendation of the agency administrator or certified weapons instructor or when the board deems it necessary.
3. Documentation for sidearm qualification must be submitted to the board on forms provided by the board and must include:

- a. Identification of the ~~peace~~-officer.
- b. Identification of the weapons instructor.
- c. Identification of the duty weapon, including model and manufacturer.
- d. Date of the ~~peace~~-officer's sidearm qualification.
- e. Identification of the certified shooting course.

History: Effective October 1, 2004; amended effective April 1, 2014; [April 1, 2022](#).

General Authority: NDCC [12-63-02.3\(5\)](#), 12-63-04(2)(d)

Law Implemented: NDCC [12-63-02.3](#), 12-63-04(1)(d)

CHAPTER 109-02-04 INSTRUCTOR AND TRAINING COURSE CERTIFICATION

Section

109-02-04-01	Certification of Instructors
109-02-04-02	Requirements for Certification of Law Enforcement Instructors
109-02-04-03	Certification Duration
109-02-04-04	Application for Instructor Certification
109-02-04-05	Requirements for Weapons Instructor Certification
109-02-04-06	Weapons Instructors <u>Instructor</u> Requirements
109-02-04-07	Certification of Training Providers
109-02-04-07.1	Certified Training Provider <u>and Certified Instructor</u> Denial, Suspension, Revocation, or Imposition of Probationary Terms
109-02-04-08	Basic Full-Time Peace Officer Training Course Requirements
109-02-04-08.1	Basic Part-Time Law Enforcement Training Course <u>Requirements</u>
109-02-04-08.2	<u>Basic Reserve Law Enforcement Training Course Requirements</u>
109-02-04-09	Application for Course Certification
109-02-04-10	Notice of Suspension, Revocation, Denial, or Denial of Renewal - Hearing <u>[Repealed]</u>

109-02-04-02. Requirements for certification of law enforcement instructors.

1. A North Dakota licensed ~~peace~~-officer applying for certification as a law enforcement instructor to teach ~~peace officer~~general police subjects, ~~including patrol, investigation,~~ or the use of weapons, must have:
 - a. Two years' experience as a licensed or certified ~~peace~~-officer;
 - b. Verified training or documented experience in each subject to be taught;
 - c. Compliance with all board requirements, including successful completion of a course of instructor development training or its equivalent approved by the board; and
 - d. A recommendation by the applicant's agency administrator or training officer.
2. The board may waive any part of the requirements of this section if it finds that a person who does not satisfy all requirements of this section is otherwise qualified to be an instructor.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(1)(a)(b)(c)

109-02-04-03. Certification duration.

A law enforcement instructor's certification is effective for no more than the instructor's ~~peace~~-officer license period. The law enforcement instructor's initial certification period will expire the same date as the instructor's officer license. Subsequent instructor certification periods will run concurrently with the instructor's three-year license period. At the end of the instructor's ~~peace~~-officer license period, the board may renew the instructor's certification provided that:

1. The instructor has completed a certified instructor refresher course at least once during the certification period;
2. The instructor is recommended by the agency administrator or training officer; and
3. A law enforcement instructor who has not completed a certified instructor refresher course during the instructor's ~~peace~~-officer license period may not apply for renewal ~~and instead must~~

~~apply for new certification, including successful completion of a course of instructor development training certified by the board.~~

- ~~4. The law enforcement instructor's initial certification period will expire the same date as the instructor's peace officer license. Subsequent instructor certification periods will run concurrent with the instructor's three-year peace officer license period. If the instructor completes the methods of instruction refresher long course and pays the late instructor renewal fee within six months of instructor certification expiration, the instructor certification is reinstated. Individuals not completing these requirements within six months of the expiration date must retake the entire methods of instruction training to obtain their instructor certification.~~

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(1)(a)(b)(c)

109-02-04-05. Requirements for weapons instructor certification.

1. In order to be certified as a weapons instructor, ~~a peace~~an officer shall successfully complete ~~a certified~~North Dakota peace officer standards and training board-approved instructor development ~~course~~ and ~~a certified~~ weapons instructor development ~~course~~courses. In order to waive any of those requirements the applicant shall make a personal appearance before the peace officer standards and training board.
2. If the ~~peace~~ officer is only going to conduct sidearm qualification testing on a certified shooting course, the ~~peace~~ officer only needs to successfully complete a ~~certified~~North Dakota peace officer standards and training board-approved weapons instructor course.
3. Each instructor shall successfully complete a certified weapons instructor refresher course at least once during the instructor's certification period in order to be eligible for recertification.
4. The initial weapons instructor certification period will expire the same date as the instructor's ~~peace~~ officer license. Subsequent weapons instructor certification periods will run concurrent with the three-year license period.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(1)(a)(b)(c)

109-02-04-06. Weapons ~~instructors~~instructor requirements.

1. Within thirty days after ~~a peace~~an officer or applicant has completed a certified shooting course, the weapons instructor shall forward a completed sidearm qualification form to the board.
2. The board may suspend a weapons instructor's certification if the weapons instructor fails to submit ~~a peace~~an officer's or applicant's sidearm qualification form to the board within thirty days after the ~~peace~~ officer has completed the sidearm qualification on a certified shooting course.
3. The board shall notify a weapons instructor in writing if it suspends the instructor's certification. The notice must specify the basis of the suspension.

History: Effective October 1, 2004; amended effective April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(1)(a)(b)(c)

109-02-04-07.1. Certified training provider and certified instructor denial, suspension, revocation, or imposition of probationary terms.

1. The board may deny, suspend, ~~or revoke~~, or place conditions upon a training provider's or certified instructor's certification, or impose probationary conditions on the training provider or certified instructor, or suspend or revoke certification of a training course if the training provider or certified instructor:
 - a. Fails to provide instruction consistent with the prescribed performance objectives in the subject areas for which the training provider or training course was certified;
 - b. Fails to comply with or cooperate in a board investigation of the training provider or training course, including an investigation of misconduct by students, faculty, or staff. For purposes of this requirement, the term "misconduct" includes cheating on a licensing examination or tests required by the training provider or the board, helping another individual to cheat on a licensing examination or tests required by the training provider or the board, filing a false report or information with the board, or obstructing a board investigation; or
 - c. ~~Failure~~Fails to comply with North Dakota Century Code chapter 12-63 or the rules of the board.
2. Failure to comply with board requirements may result in one or more of the following:
 - a. A letter of censure to the certified training provider or certified instructor;
 - b. Formal or informal probation for the certified training provider or certified instructor; or
 - c. Denial, denial of renewal, suspension, or revocation of certification of the certified training provider, certified instructor, or certified training course.
3. The board shall notify in writing any certified training provider or certified instructor when the board denies, denies renewal of, suspends, revokes, or places conditions upon certification. The notice must specify the basis of the denial, denial of renewal, suspension, or revocation of the certification. The certified training provider or certified instructor may request a hearing in accordance with North Dakota Century Code chapter 28-32.

History: Effective April 1, 2014; amended effective April 1, 2022.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-08.2. Basic reserve law enforcement training course requirements.

1. The basic reserve law enforcement training course must include training based on performance objectives essential to reserve peace officers in the state of North Dakota, and must include classroom training, field training, and firearms training.
2. The basic reserve peace officer training course must include testing on the performance objectives. The school or agency conducting the basic reserve peace officer training course shall maintain records of tests and testing procedures.
3. An applicant for a reserve peace officer license must successfully complete the basic reserve peace officer training course within one year after the applicant started the basic reserve peace officer training course.

4. The school or agency conducting the basic reserve peace officer training course shall notify the board if the applicant for a reserve peace officer license fails to complete or pass any part of the basic reserve peace officer training course.

History: Effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5)

Law Implemented: NDCC 12-63-02.3

109-02-04-09. Application for course certification.

The following procedures apply to all training courses for which certification is requested:

1. The individual or training provider seeking course certification shall submit an application and course description for program certification to the board on a form provided by the board at least fifteen days before the training is to commence.
2. The application must include:
 - a. A course description showing the title of course, a detailed course outline, name of person or agency preparing the training program, course objective, testing methods if applicable, course content, estimated length of course, and references; and
 - b. Information concerning the instructors' education and experience if the instructors have not been certified by the board.
3. Within thirty days after the completion of a training program, the training coordinator shall submit to the board a completed student roster on a form provided by the board. The completed form must include each ~~peace~~-officer's name, license number, employing agency, hours attended, course name, subject matter, training location, and the dates and times of training.
4. Course certification will not be granted unless the course meets the following criteria:
 - a. Meets a law enforcement educational need;
 - b. Is law enforcement or law enforcement administrative function related;
 - c. Is based on knowledge, skills, or abilities needed to be a ~~peace~~an officer; and
 - d. Is a minimum of one hour in length and is offered in one-hour increments.

History: Effective October 1, 2004; amended effective July 1, 2006; April 1, 2014; April 1, 2022.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

109-02-04-10. Notice of suspension, revocation, denial, or denial of renewal - Hearing.

Repealed effective April 1, 2022.

~~—The board shall notify in writing any training provider when the board will deny, deny renewal of, suspend, or revoke certification of a training provider. The notice must specify the basis of the denial, denial of renewal, suspension, or revocation of the certification. The training provider may request a hearing in accordance with North Dakota Century Code chapter 28-32 on the issue of denial, denial of renewal, suspension, or revocation of the training provider's certification.~~

History: Effective October 1, 2004; amended effective April 1, 2014.

General Authority: NDCC 12-63-04(2)(d)

Law Implemented: NDCC 12-63-04(1)(a)(b)(c)

CHAPTER 109-02-05
~~PEACE~~-OFFICER CODE OF CONDUCT AND OATH

Section

109-02-05-01 ~~Peace~~-Officer Code of Conduct

109-02-05-02 ~~Peace-Officer~~ Oath

109-02-05-01. ~~Peace-officer~~Officer code of conduct.

1. This section applies to every ~~peace~~-officer licensed by the board and every peace officer standards and training board license applicant ~~for a peace officer license, including applicants for limited and part-time licenses~~. This section applies to on-duty and off-duty officers.
2. All applicants for a peace officer license, including a part-time license, reserve, or limited license shall sign a code of conduct on a form provided by the board and shall submit the code of conduct with the application. In the absence of a signed code of conduct, a license may not be issued.
3. All applicants for a renewal of a peacean officer license shall sign a code of conduct on a form provided by the board and shall submit the code of conduct with the application for renewal. In the absence of a signed code of conduct no license will be issued.
4. It is a violation of this section:
 - a. To possess or consume alcoholic beverages on duty or while in uniform on ~~duty~~ or off duty except as authorized or required for the lawful performance of the ~~peace~~-officer's duties.
 - b. To possess, sell, consume, use, or assist in the use of any illegal or unauthorized controlled substances or medications whether on ~~duty~~ or off duty except as authorized or required for the lawful performance of the officer's duties.
 - c. To engage in conduct that is in violation of the criminal laws of the state or federal government or ordinances of a political subdivision ~~of the state of North Dakota~~.
 - d. To engage in acts of corruption or bribery or to condone acts of corruption or bribery by other ~~peace~~-officers.
 - e. To willfully lie, omit, provide false testimony, provide misleading information, or falsify written or verbal communications in reports when the information may be relied upon by the courts, state's attorneys, or other law enforcement officials.
 - f. To willfully provide false testimony, evidence, or misleading information in an application for a search warrant, arrest warrant, or criminal complaint.
 - g. To engage in illegal harassment or intimidation of another individual, or to condone acts of illegal harassment or intimidation by other ~~peace~~-officers.
 - h. To willfully fail to report the violation of a criminal law or North Dakota Century Code chapter 12-63 by a peacean officer.

History: Effective April 1, 2014; amended effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(2)(d)

109-02-05-02. ~~Peace officer oath~~Oath.

Every ~~peace~~-officer must be sworn in as a ~~peace~~an officer and take an oath that substantially complies with the following:

1. The ~~peace~~-officer will uphold the constitution and laws of the United States, the constitution and laws of the state of North Dakota, and the laws of the community that the ~~peace~~-officer has been entrusted to enforce.
2. The ~~peace~~-officer will not betray the ~~peace~~-officer's code of conduct, the trust of a fellow-~~peace~~ officer, and the trust of the public.

History: Effective April 1, 2014; amended effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04(2)(d)

Law Implemented: NDCC 12-63-02.3, 12-63-04(2)(d)

CHAPTER 109-02-06

109-02-06-01. Confidential informants.

1. A peace officer utilizing a confidential informant should take reasonable steps to ensure the safety of the confidential informant and shall document that relationship using a written informant agreement agreed to by the parties prior to any controlled buy, controlled sale, or in-person surreptitious recording taking place.
2. A peace officer shall review the confidential informant agreement with each confidential informant. Each informant agreement must be in writing on a form approved by the board and must be signed by the confidential informant and the controlling agent who must be a peace officer. The peace officer shall maintain and control access to the written informant agreement.
3. A peace officer shall keep all confidential informant records secret with access limited to persons with a need to know or subject to a court order for disclosure.
4. When a controlling agent gets removed from an investigation using a confidential informant, that peace officer shall document this information on the informant agreement and notify the confidential informant. If the investigation continues, the peace officer assuming control of the confidential informant shall enter a new informant agreement with the confidential informant.
5. A peace officer who is acting as the controlling agent for a confidential informant shall request a criminal history report on all known target offenders of the investigation and verbally report the propensity for crimes of violence for each target offender to the confidential informant.
6. The controlling agent shall provide an operational/safety plan for each controlled buy, controlled sale, or in-person surreptitious recording attempted by a confidential informant.
7. A peace officer shall inform a paid confidential informant in writing of the compensation amounts prior to any controlled buy, controlled sale, or in-person surreptitious recording taking place.
8. A peace officer may not have any sexual contact or sexual relationship with any confidential informant.
9. A peace officer shall communicate to the confidential informant, if possible, when the confidential informant is deactivated. A peace officer shall enter a dated, written notation on the informant agreement when the confidential informant is deactivated.
10. A peace officer may not violate North Dakota Century Code chapter 29-29.5.

11. A reserve peace officer may not utilize confidential informants.

History: Effective July 1, 2018; amended effective April 1, 2022.

General Authority: NDCC 12-63-02.3(5), 12-63-04

Law Implemented: NDCC 12-63-02.3, 12-63-04