92-01-02-11.1. Attorney's fees. Upon receipt of a certificate of program completion from the office of independent review, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred ~~twenty-five~~ thirty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at sixty five dollars per hour.

2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to seventy dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at thirty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.

3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:

    a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

    b. Two thousand five hundred dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the administrative hearing is held.

    c. Five thousand one hundred dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing is held. If the employee prevails after an evidentiary hearing and the organization wholly rejects the recommended decision, and

the employee appeals from the organization's final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.

d. Five thousand seven hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Seven thousand six hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.

e. Nine thousand three hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Ten thousand dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

f. One thousand four hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

g. Five hundred dollars for review of a proposed settlement, if the employee to whom the settlement is offered was not represented by counsel at the time of the offer of settlement.

h. Should a settlement or order amendment offered during the OIR process be accepted after the OIR certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.

4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).

6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.

7. The following costs will be reimbursed:

   a. Actual postage, if postage exceeds three dollars per parcel.

   b. Actual toll charges for long-distance telephone calls.

   c. Copying charges, at eight cents per page.

   d. Mileage and other expenses for reasonable and necessary travel. mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.

   e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.

8. The following costs will not be reimbursed:

   a. Facsimile charges.

   b. Express mail.

   c. Additional copies of transcripts.

   d. Costs incurred to obtain medical records.

   e. On-line computer-assisted legal research.

f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

History: Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; amended April 1, 2009.
General Authority: NDCC 65-02-08, 65-02-15
Law Implemented: NDCC 65-02-08, 65-02-15, 65-10-03

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-11.1
Title of Rule: Attorney's Fees

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-11.1
Title of Rule: Attorney's Fees

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. Establishing performance standards that replace design or operational standards required in the proposed rule: None

E. Exempting sm all entities from all or part of the rule's requirements: None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

1. The organization shall bill each employer annually for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the organization, the organization may send to the employer annually a form on which the employer shall report payroll expenditures from the preceding payroll year. An electronic report of payroll information in a format approved by the organization is acceptable. The employer shall complete the report and send it to the organization either by regular mail or electronic transmission. The report must be received by the organization by the last day of the month following the expiration date of the employer's payroll period. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report.

2. The organization shall send the first billing statement ~~approximately fifteen days after the report is received by the organization,~~ to the employer by regular mail to the employer's last-known address or by electronic transmission. The first billing statement must identify the amount due from the employer and the payment due date. The statement must explain the installment payment option. The payment due date for an employer's account is thirty days from the date of billing indicated on the premium billing statement.

3. If the organization does not receive full payment or the minimum installment payment indicated on the premium billing statement, on or before the payment due date, the organization shall send a second billing statement.

4. If the minimum installment payment remains unpaid thirty days after the organization sends the second billing statement to the employer, the organization shall notify the employer by regular mail to the employer's last-known address or by electronic transmission that:

   a. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default;

   b. The employer's account has been referred to the collections unit of the policyholder services department; and

   c. Workforce safety and insurance may cancel the employer's account.

5. The organization may extend coverage by written binder if the organization and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer is in default of the agreed payment schedule, however, that employer is not insured.

6. If the employer's payroll report is not timely received by the organization, the organization shall notify the employer, by electronic transmission or regular mail addressed to the last-known address of the employer of the delinquency. The notification must indicate that the organization may assess a penalty of up to two thousand dollars against the employer's account.

7. If the payroll report is not received within forty-five days following the expiration of the employer's payroll year, the organization shall assess a penalty of fifty dollars. The organization shall notify the employer by electronic transmission or regular mail addressed to the employer's last-known address that the employer is uninsured.

8. At any time after sixty days following the expiration of the employer's payroll year, when the employer has failed to submit a payroll report, the organization may bill the employer at the wage cap per employee using the number of employees reported per rate classification from a previous year of actual or estimated payroll reported to the organization. The organization may also bill an employer account using data obtained from job service North Dakota to bill an employer who has failed to submit a payroll report. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the organization shall adjust the employer's account. The organization may also cancel the employer's account.

9. If the organization receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's premium billing due date is fifteen days following the expiration of the employer's payroll period. Any employer account billed without benefit of the employer payroll report has a premium billing due date which is fifteen days following the expiration of the employer's payroll year.

10. If the employer does not have an open account with the organization, the organization shall send the employer an application for coverage by regular mail or by electronic transmission. The organization shall notify the employer of the penalties provided by North Dakota Century Code chapter 65-04 and this section.

11. The employer shall submit the completed payroll report within fifteen days of the organization's request. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. If the payroll report is not timely received by the organization, the organization may assess a penalty of up to two thousand dollars and shall notify the employer that the employer is uninsured.

History: Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003; July 1, 2006; amended April 1, 2009.
General Authority: NDCC 65-02-08, 65-04-33
Law Implemented: NDCC 65-04-33

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-14
Title of Rule: Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-14
Title of Rule: Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. Consolidating or simplifying compliance or reporting requirements:
None

D. Establishing performance standards that replace design or operational standards required in the proposed rule: None

E. Exempting sm all entities from all or part of the rule's requirements:
None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-01-02-18. Experience rating system. The following system is established for the experience rating of risks of employers contributing to the fund:

1. Definitions. In this section, unless the context otherwise requires:

   a. "Five-year losses" means the total sum of ratable losses accrued on claims occurring during the first five of the six years immediately proceeding the premium year being rated.

   b. "Five-year payroll" means the total sum of limited payroll reported for the first five of the six years immediately proceeding the premium year being rated.

   c. "Five-year premium" means the total sum of earned premium for the first five of the six years immediately preceding the premium year being rated.

   d. "Manual premium" means the actual premium, prior to any experience rating, for the premium year immediately proceeding the premium year being rated for claims experience.

2 An employer's account is not eligible for an experience rating until the account has completed three consecutive ~~twelve-month payroll~~ payroll periods and has developed aggregate manual premiums of at least twenty-five thousand dollars for the rating period used in developing the experience modification factor.

3 For accounts with ratable manual premium of twenty-five thousand dollars or more:

   a. The experience rating must be applied prior to the inception of each premium year for all eligible accounts. A claim is deemed to occur in the premium year in which the injury date occurs.

   b. The experience modification factor (EMF) to be applied to the current estimated portion of an employer's payroll report is computed as follows:

      (1) Calculate the actual primary losses (Ap), which consist of the sum of those five-year losses, comprising the first ten thousand dollars of each individual claim.

      (2) Calculate the actual excess losses (Ae), which consist of the sum of those five-year losses in excess of the first ten thousand dollars of losses of each individual claim, limited to the maximum loss amount contained in the most recent edition of

North Dakota workforce safety and insurance rating plan values which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(3) Calculate the total expected losses (Et), which are determined by adding the products of the actual payroll for each year of the five-year payroll times the class expected loss rate for each year. The class expected loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance ~~summary of expected loss rates and information~~ rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(4) Calculate the expected excess losses (Ee), which are determined by adding the products of the actual payroll for each year of the five-year payroll times the class expected excess loss rates. The class expected excess loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance ~~summary of expected loss rates and information~~ rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(5) Calculate the "credibility factor" (Z) ~~which is the quotient of the total expected losses divided by the sum of the total expected losses plus one million dollars.~~ Based on the formula which is contained in the most recent edition of North Dakota workforce safety and insurance rating plan values which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(6) The experience modification factor is then calculated as follows: (a) Calculate the "ballast amount" (B) which is contained in the most recent edition of workforce safety and insurance' rating plan values which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(a) Add the actual primary losses to the product of the actual excess losses times the credibility factor.

(b) To this sum add the product of the expected excess losses times the difference between one dollar and the credibility factor.

(c) To this sum add ~~twenty thousand dollars~~ the ballast amount (B).

(d) Divide this total sum by the sum of the total expected losses plus ~~twenty thousand dollars~~ the ballast amount (B).

The resulting quotient is the experience modification factor to be applied in calculating the estimated premium for the current payroll year.

(7) The formula for the above-mentioned calculation is as follows:

$$EMF = \frac{Ap + (Z \times Ae) + [(1.00 - Z) \times Ee] + \$20{,}000.00\ B}{Et + \$20{,}000.00\ B}$$

4. Small Account Credit/Debit Program. Accounts that fall below the eligibility standard for experience rating outlined in subsection two of this section are subject to the Small Account Credit/Debit Program. The rating period and ratable losses used to determine eligibility for the Small Account Credit/Debit Program are the same as those used for the experience rating program outlined above. The amount of the credit/debit will be determined annually in conjunction with the development of rating plan values for the prospective coverage period.

5. The organization shall include any modification to the North Dakota workforce safety and insurance rating plan values in its rate making process pursuant to N.D.C.C. section 65-04-01.

History: Effective June 1, 1990; amended effective July 1, 1993; July 1, 1994; April 1, 1997; July 1, 2001; July 1, 2006; amended April 1, 2009.
General Authority: NDCC 65-02-08, 65-04-17
Law Implemented: NDCC 65-04-01

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-18
Title of Rule: Experience rating system.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-18
Title of Rule: Experience rating system.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. **Exempting sm all entities from all or part of the rule's requirements:** None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-01-02-25. Permanent impairment evaluations and disputes.

1. Definitions:

a. Amputations and loss as used in subsection 11 of North Dakota Century Code section 65-05-12.2.

"Amputation of a thumb" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the second or distal phalanx of the thumb" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of the first finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the first finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the third or distal phalanx of the first finger" means disarticulation at or proximal to the distal interphalangeal joint.

"Amputation of the second finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the second finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the third or distal phalanx of the second finger" means disarticulation at or proximal to the distal interphalangeal joint.

"Amputation of the third finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the third finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the fourth finger" means disartriculation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the fourth finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the leg at the hip" means disarticulation at or distal to the hip joint (separation of the head of the femur from the acetabulum).

"Amputation of the leg at or above the knee" means disarticulation at or proximal to the knee joint (separation of the femur from the tibia).

"Amputation of the leg at or above the ankle" means disarticulation at or proximal to the ankle joint (separation of the tibia from the talus).

"Amputation of a great toe" means disarticulation at the metatarsal phalangeal joint.

"Amputation of the second or distal phalanx of the great toe" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of any other toe" means disarticulation at the metatarsal phalangeal joint.

"Loss of an eye" means enucleation of the eye.

b. "Maximum medical improvement" means the injured employee's recovery has progressed to the point where substantial further improvement is unlikely, based on reasonable medical probability and clinical findings indicate the medical condition is stable.

c. "Medical dispute" means an employee has reached maximum medical improvement in connection with a work injury and has been evaluated for permanent impairment, and there is a disagreement between doctors arising from the evaluation that affects the amount of the award. It does not include disputes regarding proper interpretation or application of the American medical association guides to the evaluation of permanent impairment, fifth edition.

d. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has reached maximum medical improvement and has a permanent impairment caused by the work injury that will likely ~~be in excess of fifteen percent whole body.~~ <u>result in a monetary impairment award</u>.

e. "Treating doctor" means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license who has physically examined or provided direct care or treatment to the injured employee.

2. Permanent impairment evaluations must be performed in accordance with the American medical association guides to the evaluation of permanent impairment, fifth edition, and modified by this section. All permanent impairment reports must include the opinion of the doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work-related and non-work-related injuries or conditions.

3. The organization shall establish a list of medical specialists ~~within the state~~ who have the training and experience necessary to conduct an evaluation of permanent impairment. ~~The organization may include in the list medical specialists from other states if there is an insufficient number of specialists in a particular specialty within the state who agree to be listed.~~ When an employee requests an evaluation of impairment, the organization shall schedule an evaluation with a physician from the list. The organization may not schedule a permanent impairment evaluation with the employee's treating doctor. The organization and employee may agree to an evaluation by a physician not on the current list. In the event of a medical dispute, the organization shall furnish the list of appropriate specialists to the employee. The organization and the employee, if they cannot agree on an independent medical specialist, shall choose a specialist by striking names of medical specialists from the ~~appropriate specialty~~ list until a name is chosen.

4. Upon receiving a permanent impairment rating report from the doctor the organization shall audit the report and shall issue a decision awarding or denying permanent impairment benefits.

   a. Pain Impairment Ratings. A permanent impairment award may not ~~include a rating due solely~~ be made upon a rating solely under Chaper 18 of the guides where there is no accompanying rating under the conventional organ and body system ratings of impairment. ~~to pain, including chronic pain; chronic pain syndrome; pain that is rated under section 13.8, table 13-22, or chapter 18 of the American medical association guides to the evaluation of permanent impairment, fifth edition; or pain beyond the pain associated with injuries and illnesses of specific organ systems rated under other chapters of the fifth edition.~~ In addition, no rating

for pain may be awarded when the evaluating physician determines the individual being rated has low credibility, where the individual's pain is ambiguous or the diagnosis is a controversial pain syndrome. A controversial pain syndrome is a syndrome which is not widely accepted by physicians and does not have a well-defined pathophysiologic basis.

a. An evaluating physician qualified in application of the guides to determine permanent impairment shall conduct an informal pain assessment and evaluate the individual under the guide's conventional rating system according to the body part or organ system specific to that person's impairment. If the body system impairment rating adequately encompasses the pain, no further assessment may be done.

b. If the pain related impairment increases the burden of the individual's condition *slightly*, the evaluating physician may increase the percentage attributable to pain by up to three percent (3%) and, using the combined values chart of the 5th edition, calculate a combined overall impairment rating.

c. If the pain related impairment increases the burden of the individual's condition *substantially*, the evaluating physician shall conduct a formal pain assessment using tables 18-4, 18-5 and 18-6 of the guides and calculate a score using table 18-7.

d. The score from table 18-7 correlates to an impairment classification found in table 18-3.

e. If the score falls within classifications two, three or four of Table 18-3, the evaluating physician must determine whether the pain is rateable or unrateable.

f. To determine whether the pain is rateable or unrateable, the evaluating physician must answer the three questions in this section. If the answer to all three of the following questions is yes, the evaluating physician should consider the pain rateable. If any question is answered no, the pain is unrateable.

   (1) Do the individual's symptoms and/or physical findings match any known medical condition?

   (2) Is the individual's presentation typical of the diagnosed condition?

(3) Is the diagnosed condition one that is widely accepted by physicians as having a well defined pathophysiologic basis?

g. If the pain in unrateable, no percentage may be assigned to the impairment.

h. If the pain is rateable, the evaluating physician shall classify the individual into one of the categories in table 18-3 and, using the combined values chart of the 5th edition, calculate a combined overall impairment rating.

i. The impairment percentages assigned to table 18-3 are:

(1) class 1, mild: 1-3%
(2) class 2, moderate: 4-5%
(3) class 3, moderately severe:6-7%
(4) class 4, severe: 8-9%

5. Permanent mental and behavioral disorder impairment ratings.

a. Any evaluating physician determining permanent mental or behavioral disorder impairment shall:

(1) Include in the rating only those mental or behavioral disorder impairments not likely to improve despite medical treatment;

(2) Use the instructions contained in the American medical association guides to the evaluation of permanent impairment, fifth edition, giving specific attention to:

(a) Chapter 13, "central and peripheral nervous system"; and

(b) Chapter 14, "mental and behavioral disorders"; and

(3) Complete a full psychiatric assessment following the principles of the American medical association guides to the evaluation of permanent impairment, fifth edition, including:

(a) A nationally accepted and validated psychiatric diagnosis made according to established standards of the American psychiatric association as contemplated by the American medical association guides to the evaluation of permanent impairment, fifth edition; and

(b) A complete history of the impairment, associated stressors, treatment, attempts at rehabilitation, and

premorbid history and a determination of causality and apportionment.

b. If the permanent impairment is due to organic deficits of the brain and results in disturbances of complex integrated cerebral function, emotional disturbance, or consciousness disturbance, then chapter 13, "central and peripheral nervous system", must be consulted and may be used, when appropriate, with chapter 14, "mental and behavioral disorders". The same permanent impairment may not be rated in both sections. The purpose is to rate the overall functioning, not each specific diagnosis. The impairment must be rated in accordance with the "permanent mental impairment rating work sheet" incorporated as appendix A to this chapter.

c. The permanent impairment report must include a written summary of the mental evaluation and the "report work sheet" incorporated as appendix A to this chapter.

d. If other work-related permanent impairment exists, a combined whole-body permanent impairment rating may be determined.

7. Errata Sheets and Guides Updates. Any updates, additions or revisions by the editors of the fifth edition of the Guides to the Evaluation of Permanent Impairment are adopted as an update, addition or revision by the organization.

History: Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006. amended April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-05-12.2

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-25
Title of Rule: Permanent impairment evaluations and disputes.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-25
Title of Rule: Permanent impairment evaluations and disputes.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. **Exempting sm all entities from all or part of the rule's requirements:** None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-01-02-29.1. Medical necessity.

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to the location of service, is medically necessary if it is widely accepted by the practicing peer group and has been determined to be safe and effective based on published, peer-reviewed, scientific studies.

2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the organization. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.

3. The organization will not authorize or pay for the following treatment:

a. Massage therapy or acupuncture unless specifically preapproved or otherwise authorized by the organization. Massage therapy must be provided by a licensed physical therapist, licensed occupational therapist, licensed chiropractor, or licensed massage therapist.

b. Chemonucleolysis; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; ~~viscosupplementation injections;~~ and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).

c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the organization. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the organization and prescribed by the attending doctor. Dietary supplements, including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.

d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, cold packs, and gravity traction devices are not compensable except at the discretion of the organization under exceptional circumstances.

e. Vertebral axial decompression therapy (Vax-D treatment).

f. Intradiscal electrothermal annuloplasty (IDET).

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; amended April 1, 2009
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-29.1
Title of Rule: Medical Necessity

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-29.1
Title of Rule: Medical Necessity

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. Exempting sm all entities from all or part of the rule's requirements:
None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

NEW SECTION

92-01-02-29.3. Motor Vehicle Purchase or Modification.

1. An injured worker must obtain a doctor's order of medical necessity before the purchase of a specially equipped motor vehicle or modification of a vehicle may be approved.

2. The organization may require assessments to determine the functional levels of an injured worker who is being considered for a specially equipped motor vehicle or vehicle modification.

3. In the event an existing vehicle cannot be repaired or modified, the organization, in its sole discretion, may approve the purchase of a specially equipped motor vehicle.

4. Any available vehicle rebates or tax exemptions shall be applied back to the lifetime benefit of one hundred thousand dollars.

5. Any appeal of a decision under this section shall be adjudicated pursuant to N.D.C.C. § 65-02-20.

History: Effective April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-05-07(5)(b)

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-29.3
Title of Rule: Motor Vehicle Purchase or Modification.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-29.3
Title of Rule: Motor Vehicle Purchase or Modification.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. **Exempting sm all entities from all or part of the rule's requirements:** None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-01-02-32. Physician assistant and nurse practitioner rules.

~~1.~~ Physician assistants and nurse practitioners may be reimbursed within the scope of their licenses for services performed under the supervision of a licensed physician that are required by their licensure.

~~2. Physician assistant or nurse practitioner fees will be paid at the rate of eighty percent of a doctor's fee for a comparable service. The bills for these services must be marked with modifier NP. Services provided by a physician assistant or nurse practitioner which meet the following criteria will be reimbursed at one hundred percent of the fee allowed a physician for those services:~~

~~a. The services are rendered under the direct supervision of a physician;~~

~~b. The services are rendered in a clinical setting as an integral, although incidental, part of the physician's professional services in the course of diagnosis or treatment of an injury or illness; and~~

~~c. The physician must be physically onsite when and where service is provided.~~

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; amended April 1, 2009
General Authority:NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented:NDCC 65-02-20, 65-05-07

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-32
Title of Rule: Physician assistant and nurse practitioner rules.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-32
Title of Rule: Physician assistant and nurse practitioner rules.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. **Exempting sm all entities from all or part of the rule's requirements:** None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.

1. Certain treatment procedures require prior authorization or preservice review by the organization or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, and expected prognosis.

2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.

3. Medical service providers shall request prior authorization directly from the claims analyst for the items listed in this subsection. The claims analyst shall respond to requests within fourteen days.

   a. Durable medical equipment.

      (1) The organization will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The claims analyst shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the claims analyst. If the equipment is needed on a long-term basis, the organization may purchase the equipment. The claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The organization shall purchase the equipment from the most cost-efficient source.

      (2) The claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the organization will reimburse the doctor or the provider pursuant to its fee schedule. Providers and doctors shall supply the organization with a copy of their original invoice showing actual cost of the item upon request of the organization. The organization will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.

(3) If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.

(4) Equipment costing less than five hundred dollars does not require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics, but specifically excludes ten units.

b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.

c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the organization will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The claims analyst will approve concurrent care on a case-by-case basis. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.

d. Telemedicine. The organization may pay for audio and video telecommunications instead of a face-to-face "hands on" appointment for the following appointments: office or other outpatient visits that fall within CPT codes 99241 through 99275, inclusive; new and established evaluation and management visits that fall within CPT codes 99201 through 99215, inclusive; individual psychotherapy visits that fall within CPT codes 90804 through 90809, inclusive; and pharmacologic management visits that fall within CPT code 90862. As a condition of payment, the patient must be present and participating in the telemedicine appointment. The professional fee payable is equal to the fee schedule amount for the service provided. The organization may pay the originating site a facility fee, not to exceed twenty dollars.

4. Notwithstanding the requirements of subsection 5, the organization may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.

5. Medical service providers shall request preservice review from the utilization review department for:

   a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery and outpatient surgical procedures. For an inpatient stay that exceeds fourteen days, the provider shall request, on or before the fifteenth day, additional review of medical necessity for a continued stay.

   b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the utilization review department actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the utilization review department may require an independent consultation with a doctor of the organization's choice. The organization shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the organization shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the organization may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the organization believes the proposed surgery is excessive, inappropriate, or ineffective and the organization cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46.

   c. Magnetic resonance imaging, a myelogram, discogram, bonescan, arthrogram, or computed axial tomography. Tomograms are subject to preservice review if requested in conjunction with a myelogram, discogram, bonescan, arthrogram, computed axial tomography scan, or magnetic resonance imaging. The organization may waive preservice review requirements for procedures listed in this subdivision when requested by a doctor who is performing an independent medical examination or permanent partial impairment evaluation at the request of the organization.

d. Physical therapy and occupational therapy treatment beyond the first ten treatments or beyond thirty days after first prescribed, whichever occurs first, or physical therapy and occupational therapy treatment after an inpatient surgery, outpatient surgery, or ambulatory surgery beyond the first ten treatments or beyond thirty days after therapy services are originally prescribed, whichever occurs first. Postoperative physical therapy and occupational therapy may not be started beyond ninety days after surgery date. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.

e. Electrodiagnostic studies, which may only be performed by electromyographers who are certified or eligible for certification by the American board of electrodiagnostic medicine, American board of physical medicine and rehabilitation, or the American board of neurology and psychiatry's certification in the specialty of clinical neurophysiology. Nerve conduction study reports must include either laboratory reference values or literature-documented normal values in addition to the test values.

f. Thermography.

g. Intra-articular injection of hyaluronic acid.

h. Trigger point injections if more than three injections are required in a two-month period. No more than twenty injections may be paid over the life of a claim. If a trigger point injection is administered, the organization may not pay for additional modalities such as cryotherapy and osteopathic manipulations performed in conjunction with the trigger point injection. For purposes of this paragraph, injections billed under CPT code 20552 or 20553 will count as a single injection. Only injections administered on or after May 1, 2002, will be applied toward the maximum number of injections allowed under this subdivision.

i. Facet joint injections.

j. Sacroiliac joint injections.

k. Facet nerve blocks.

l. Epidural steroid injections.

m. Nerve root blocks.

n. Peripheral nerve blocks.

o. Botox injections.

p. Stellate ganglion blocks.

q. Cryoablation.

r. Radio frequency lesioning.

s. Facet rhizotomy.

t. Prolotherapy.

u. Implantation of stimulators and pumps.

6. Chiropractic providers shall request preservice review from the organization's chiropractic managed care vendor for chiropractic treatment beyond the first twelve treatments or beyond ninety days after the first treatment, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The organization may waive this subsection in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.

7. Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.

8. The organization may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.

9. The organization or managed care vendor must respond to the medical service provider within twenty-four hours, or the next business day, of receiving the necessary information to complete a review and make a recommendation on the service, unless the organization or managed care vendor requires a review by the organization's medical director. ~~If a review by the medical director is required, the organization or managed care vendor must inform the provider within twenty-four hours, or the next business day, of receiving the necessary information that the review will be performed.~~ If a review by the medical director is performed, the organization or the managed care vendor must respond to the provider's request within seventy-two hours of receiving the necessary information. Within the time for review, the organization or managed care vendor must recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial.

10. The organization may conduct retrospective reviews of medical services and subsequently reimburse medical providers only:

    a. If preservice review or prior authorization of a medical service is requested by a provider and a claimant's claim status in the adjudication process is pending or closed; or

b. If preservice review or prior authorization of a medical service is not requested by a provider and the provider can prove, by a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not know, that the condition was, or likely would be, covered under workers' compensation.

All medical service providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the organization or the managed care vendor, the medical information requested in relation to the reviewed service.

11. The organization must notify provider associations of the review requirements of this section prior to the effective date of these rules.

12. The organization must respond to the medical service provider within thirty days of receiving a retrospective review request.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003; July 1, 2004; July 1, 2006; April 1, 2008; amended April 1, 2009.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-34
Title of Rule: Treating requiring authorization, preservice review, and retrospective review.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-01-02-34
Title of Rule: Treating requiring authorization, preservice review, and retrospective review.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. **Exempting sm all entities from all or part of the rule's requirements:** None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-05-02-06. Safety outreach program. North Dakota employers with the highest frequency and greatest severity rates and those employers in rate classification industries with historically high frequency and severity rates may be selected by the organization to participate in this three year program.

1. **Calculation of discount.** The safety outreach program provides a ten percent annual premium discount for the creation and implementation of a written action plan approved by the organization. The safety outreach program provides a ten percent premium discount for a reduction of at least ten percent in frequency rate and a ten percent premium discount for a reduction of at least ten percent in severity rate. If an employer reduces both frequency and severity rates by at least ten percent each in a premium year, that employer is entitled to an additional five percent premium discount. An employer's annual discount under this program may not exceed thirty-five percent.

2. **Ongoing eligibility.** Participation beyond the inception year is subject to the sole discretion of the organization. In no event shall an employer's participation extend beyond three consecutive years ~~in total and in consecutive order~~.

History: Effective July 1, 2006; amended April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04, 65-04-19.1, 65-04-19.3

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-02-06
Title of Rule: Safety outreach program.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-02-06
Title of Rule: Safety outreach program.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. **Exempting sm all entities from all or part of the rule's requirements:** None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-05-03-01. Grant programs - Purpose. The organization may create grant programs ~~for North Dakota employers~~ to fund safety interventions or develop other programs to reduce workplace injury and illness. A grant award under this section is within the discretion of the organization.

History: Effective July 1, 2006; amended effective April 1, 2008; amended April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-01
Title of Rule: Grant program – Purpose.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-01
Title of Rule: Grant program - Purpose.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. Consolidating or simplifying compliance or reporting requirements: None

D. Establishing performance standards that replace design or operational standards required in the proposed rule: None

E. Exempting sm all entities from all or part of the rule's requirements: None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-05-03-02. Eligibility. A North Dakota-based ~~employers~~ employer who ~~have~~ has an active employer account, a volunteer organization who has elected volunteer coverage with the organization, or an association or group compromised of North Dakota employers or employees active and in good standing with the North Dakota secretary of state for at least one year are eligible to apply for an organization grant. An applicant must submit a completed application. An applicant must demonstrate a need for grant moneys pursuant to the terms of the grant application. The organization may require the applicant to submit proof of its financial ability to support a matching grant program. A grant award under this chapter rests solely within the discretion of the organization. The organization may consider all aspects of an employer's history, including whether the employer account is in good standing, in determining eligibility for a grant award under this chapter.

History: Effective July 1, 2006; amended effective July 1, 2007; amended April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-02
Title of Rule: Eligibility.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-02
Title of Rule: Eligibility.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. Establishing less stringent compliance or reporting requirements:

None

B. Establishing less stringent schedules or deadlines for compliance or report: None

C. Consolidating or simplifying compliance or reporting requirements: None

D. Establishing performance standards that replace design or operational standards required in the proposed rule: None

E. Exempting sm all entities from all or part of the rule's requirements: None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-05-03-03. Administration. Grant awards must be determined by a grant review board established by the organization. Grants awarded by the organization are subject to the terms of a signed agreement executed by the organization and the recipient of the grant moneys. No grant money may be distributed until a signed agreement is fully executed.

If the review board determines that a grant application contains erroneous or misrepresented facts, and a grant award was made based on those facts, the organization may decline to process a grant application or revoke a grant award. The applicant shall refund all grant dollars to the organization.

History: Effective July 1, 2006; amended April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-03
Title of Rule: Administration.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-03
Title of Rule: Administration.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:**
   None

B. Establishing less stringent schedules or deadlines for compliance or report: None

C. Consolidating or simplifying compliance or reporting requirements: None

D. Establishing performance standards that replace design or operational standards required in the proposed rule: None

E. Exempting sm all entities from all or part of the rule's requirements: None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-05-03-06. Hazard elimination ~~learning~~ program. The organization may create grant programs to defray the costs ~~incurred by a North Dakota employer who elects to participate~~ <u>of participation</u> in the organization's hazard elimination ~~learning~~ program. A grant award under this section is within the discretion of the organization.

History: Effective April 1, 2008; <u>amended April 1, 2009.</u>
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-06
Title of Rule: Hazard elimination program.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-06
Title of Rule: Hazard elimination program.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. **Exempting sm all entities from all or part of the rule's requirements:** None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.

92-05-03-07. Safety training and education program. The organization may create grant programs to defray the costs incurred by a North Dakota association or formally organized pursuant to 92-05-03-02 employee or employer group that elects to participate in the organization's safety training and education program. A grant award under this section is within the discretion of the organization.

History: Effective April 1, 2008; amended April 1, 2009
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-07
Title of Rule: Safety training and education program.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the NDCC.

This rule is not expected to impact the regulated community in excess of $50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED RULE

Section: 92-05-03-07
Title of Rule: Safety training and education program.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(2) of the NDCC.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

A. **Establishing less stringent compliance or reporting requirements:** None

B. **Establishing less stringent schedules or deadlines for compliance or report:** None

C. **Consolidating or simplifying compliance or reporting requirements:** None

D. **Establishing performance standards that replace design or operational standards required in the proposed rule:** None

E. **Exempting sm all entities from all or part of the rule's requirements:** None

SMALL ENTITY ECONOMIC IMPACT STATEMENT

GENERAL: The following analysis is submitted in compliance with §28-32-08.1(3) of the NDCC.

Based on our analysis of this rule, there is no need to complete a Small Entity Economic Impact Statement as there is not an impact.