

PROPOSED RULES

NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-02-02
LICENSING OF INSURANCE PRODUCERS, SURPLUS LINES
INSURANCE PRODUCERS, AND CONSULTANTS

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Section 45-02-02-01 is amended as follows:

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

History: Effective September 1, 1983; amended effective _____.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-02

Section 45-02-02-03 is amended as follows:

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

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

a.	Life and annuity	Life and annuity
b.	Accident and health	Accident and health
c.	Property	Property
d.	Casualty	Casualty
e.	Variable life and annuity	Life and annuity
6. An examination score is valid for one year after the date of the examination for a license applicant who has not completed the application process and who has not obtained licensure. After one year from the date of the examination, an applicant must retake the required examination.

- 7. 5. An examination is valid for as long as a person continuously holds a valid insurance producer's license issued by the North Dakota insurance department and for twelve months following cancellation of a license, with the exception that an examination ceases to be valid immediately upon the suspension or revocation of the license unless the order of suspension or revocation specifies otherwise.
- 8. ~~An applicant for a consultant license must take and pass the insurance producer's examination for the lines in which the applicant wishes to consult.~~

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

General Authority: NDCC 26.1-26-49

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

Section 45-02-02-04 is amended as follows:

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

- 1. ~~Consultants' exemption.~~
 - a. ~~If an applicant holds an insurance producer's license in North Dakota, the applicant is exempt from the testing requirements for the lines held on that license within the last twelve months; however, the applicant must terminate all other licenses prior to obtaining a consultant's license.~~
 - b. ~~Upon application, it may be shown that the educational background or work experience record is an adequate basis to grant an exemption from testing. A narrative must be included with the application.~~

An applicant applying to conduct insurance in the following lines must pass the following examinations:

- | | | |
|----|----------------------------------|----------------------------|
| a. | <u>Life and annuity</u> | <u>Life and annuity</u> |
| b. | <u>Accident and health</u> | <u>Accident and health</u> |
| c. | <u>Property</u> | <u>Property</u> |
| d. | <u>Casualty</u> | <u>Casualty</u> |
| e. | <u>Variable life and annuity</u> | <u>Life and annuity</u> |

2. An applicant applying for a license for title insurance is exempt from any examination requirement but must meet the following qualifications:
 - a. The applicant must be a licensed abstracter or attorney; or
 - b. The applicant must have a minimum of eighty hours of training provided by an insurer licensed in the line of title insurance. A certification by the insurer that the training has been completed must accompany the application.
3. An applicant for a license to write travel and baggage insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier is exempt from examination requirements.
4. An applicant for a license with the line of authority of surety shall take and pass the casualty examination. Surety coverage is insurance or a bond that covers obligations to pay the debts of or answer for the default of another, including faithlessness in a position of public or private trust, but not including bail bonds.
5. An applicant for a license to write the following products need only take the reduced examination required for that specific product:
 - a. Bail bonds.
 - b. Credit including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of credit insurance.
 - c. Crop or crop hail. Crop or crop hail insurance is insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions, or perils provided by the private insurance market, or that is subsidized by the federal crop insurance corporation, including multiperil crop insurance.
 - d. Legal expense, including prepaid legal service.
 - e. Personal lines. Personal lines is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

6. An applicant for a consultant's license shall take and pass the insurance producer's examination for the lines in which the applicant seeks to consult. If an applicant for a consultant's license holds a North Dakota insurance producer's license, the applicant is exempt from the testing requirements for the lines held on the insurance producer's license within the twelve months preceding the date on which the consultant application is filed with the commissioner; however, the applicant must terminate the insurance producer's license prior to obtaining a consultant's license.

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

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-25

Sections 45-02-02-05.1 and 45-02-02-05.2 are created as follows:

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

History: Effective _____.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-13.4

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

History: Effective _____.

General Authority: NDCC 26.1-26-49

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

PROPOSED RULES

NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-02-04
INSURANCE CONTINUING EDUCATION

Section	Purpose
45-02-04-01	Purpose
45-02-04-02	Definitions
45-02-04-03	General Rules
45-02-04-04	General Powers of Commissioner
45-02-04-05	Course Coordinator
45-02-04-06	Instructors
45-02-04-07	Prohibited Practices
45-02-04-08	Extension of Time
45-02-04-09	Licensee Report of Compliance [Repealed]
<u>45-02-04-09.1</u>	<u>Continuing Education Due Dates</u>
<u>45-02-04-09.2</u>	<u>Reporting Continuing Education to Commissioner</u>
45-02-04-10	License Revocation [Repealed]
45-02-04-11	Reciprocity—Proof of Good Standing and Filing of Fee <u>Nonresident Continuing Education</u>
45-02-04-12	Nonresident Letter of Certification Required [Repealed]
45-02-04-13	Penalty [Repealed]
45-02-04-14	Cancellation [Repealed]
<u>45-02-04-15</u>	<u>Continuing Education for Relicensure</u>

Section 45-02-04-09, relating to licensee report of compliance, is repealed.

Sections 45-02-04-09.1 and 45-02-04-09.2 are created as follows:

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

History: Effective _____.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31.1

45-02-04-09.2. Reporting continuing education to commissioner. Continuing education providers are required to report completion of continuing education courses to the commissioner. However, it is the responsibility of the individual resident insurance producer to ensure that the commissioner's records reflect the completion of the required number of continuing education courses on or before the continuing education due date. The insurance producer must correct any discrepancies in the record through the continuing education provider.

History: Effective _____
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-49

Section 45-02-04-10, relating to license revocation, is repealed.

Section 45-02-04-11 is amended as follows:

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

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

Section 45-02-04-13, relating to penalty, is repealed.

Section 45-02-04-14, relating to cancellation, is repealed.

Section 45-02-04-15 is created as follows:

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

History: Effective _____
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-49

PROPOSED RULES

**NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-03-13
REGULATION OF AND STANDARDS FOR COMPANIES DEEMED TO BE IN
HAZARDOUS FINANCIAL CONDITION**

Section

45-03-13-01	Standards
45-03-13-02	Commissioner's Authority

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

1. Adverse findings reported in financial condition and market conduct examination reports, audit reports, actuarial opinions, reports, or summaries.
2. The national association of insurance commissioners insurance regulatory information system and its related reports other financial analysis solvency tools and reports.
3. ~~The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus.~~
4. ~~The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature~~ Whether the insurer has made adequate provision according to presently accepted actuarial standards of practice for the anticipated cash flows required by the contractual obligations and related expenses of the insurer when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items including the investment earnings on the assets, and considerations anticipated to be received and retained under the policies and contracts.
- 5- 4. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's

insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

- 6- 5. The insurer's operating loss in the last twelve-month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.
6. Whether the insurer's operating loss in the last twelve-month period or any shorter period of time excluding net capital gains is greater than twenty percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.
7. Whether a reinsurer, obligor, or any affiliate, subsidiary, or reinsurer entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation and which may affect the solvency of the insurer.
8. Contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer.
9. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer.
10. The age and collectibility of receivables.
11. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position.
12. Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry.
13. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner.
14. Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer.

14. 15. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.
15. 16. Whether the ~~company~~ insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems, or both.
17. Whether management has established reserves that do not comply with minimum standards established by state insurance laws, rules, statutory accounting standards, sound actuarial principles and standards of practice.
18. Whether management persistently engages in material under reserving that results in adverse development.
19. Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains or both do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.
20. Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

History: Effective January 1, 1992; amended effective _____.

General Authority: NDCC 28-32

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

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

1. For the purposes of making a determination of an insurer's financial condition under this chapter, the commissioner may:
 - a. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding.
 - b. Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the national association of insurance commissioners accounting policies and procedures manual, state laws, and rules.

- c. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor.
 - d. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.
2. If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to ~~the~~ its policyholders, creditors, or the general public, then the commissioner may, upon his determination, issue an order requiring the insurer to:
- a. Reduce the total amount of present and potential liability for policy benefits by reinsurance.
 - b. Reduce, suspend, or limit the volume of business being accepted or renewed.
 - c. Reduce general insurance and commission expenses by specified methods.
 - d. Increase the insurer's capital and surplus.
 - e. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders.
 - f. File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets.
 - g. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary.
 - h. Document the adequacy of premium rates in relation to the risks insured.
 - i. File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on such format as promulgated by the commissioner. If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.
 - j. Correct corporate governance practice deficiencies and adopt and use governance practices acceptable to the commissioner.

- k. Provide a business plan to the commissioner in order to continue to transact business in the state.
 - l. Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustment, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.
3. Any insurer subject to an order under subsection 2 may request a hearing to review that order. The notice of hearing must be served upon the insurer pursuant to North Dakota Century Code chapter 28-32. The notice of hearing must state the time and place of hearing, and the conduct, condition, or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing must occur not less than ten days nor more than forty-five days after notice is served and must be in the place to be designated by the commissioner. The commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing must be public.

History: Effective January 1, 1992; amended effective _____.

General Authority: NDCC 28-32-02

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

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-03-15
ACCOUNTING PRACTICES AND PROCEDURES

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

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

General Authority: NDCC 28-32-02

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

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

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

General Authority: NDCC 28-32-02

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

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-03-19.1
PROPERTY AND CASUALTY ACTUARIAL OPINION

Section

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

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

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

History: Effective April 1, 2010.

General Authority: NDCC 26.1-03-11.1

Law Implemented: NDCC 26.1-03-11.1

PROPOSED RULES

NORTH DAKOTA ADMINISTRATIVE CODE

CHAPTER 45-03-20

**MODEL RULE REQUIRING ANNUAL AUDITED FINANCIAL REPORTS REPORTING
MODEL REGULATION**

Section

45-03-20-01	Purpose and Scope
45-03-20-02	Definitions
45-03-20-03	<u>General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports Report and Audit Committee Appointment</u>
45-03-20-04	Contents of Annual Audited Financial Report
45-03-20-05	Designation of Independent Certified Public Accountant
45-03-20-06	Qualifications of Independent Certified Public Accountant
45-03-20-07	Consolidated or Combined Audits
45-03-20-08	Scope of Examination <u>Audit</u> and Report of Independent Certified Public Accountant
45-03-20-09	Notification of Adverse Financial Condition
45-03-20-10	Report on Significant Deficiencies in Internal Controls <u>Communication of Internal Control Related Matters Noted in an Audit</u>
45-03-20-11	Accountant's Letter of Qualifications
45-03-20-12	Definition, Availability, and Maintenance of <u>Independent Certified Public Accountant Workpapers</u>
<u>45-03-20-12.1</u>	<u>Requirements for Audit Committees</u>
<u>45-03-20-12.2</u>	<u>Conduct of Insurer in Connection with the Preparation of Required Reports and Documents</u>
<u>45-03-20-12.3</u>	<u>Management's Report of Internal Control Over Financial Reporting</u>
45-03-20-13	Exemptions and Effective Dates
<u>45-03-20-14</u>	<u>Canadian and British Companies</u>

45-03-20-01. Purpose and scope. The purpose of this chapter is to improve the North Dakota insurance department's surveillance of the financial condition of insurers by requiring (1) an annual examination audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants of the financial statements reporting the financial position and the results of operations of insurers , (2) communication of internal control related matters noted in an audit, and (3) management's report of internal control over financial reporting.

Every insurer, as defined in section 45-03-20-02, is subject to this chapter, ~~except a company, so defined, which is licensed only in North Dakota. The commissioner may exempt an insurer, or type of insurer, from the requirements of this chapter.~~ Insurers having direct premiums written in this state of less than one million dollars in any calendar year and less than one thousand policyholders or certificate holders of ~~directly~~ direct written policies nationwide at the end of the calendar year are exempt from this chapter for that year, unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities, except that insurers having assumed premiums pursuant to contracts or treaties of reinsurance of one million dollars or more will not be so exempt.

Foreign or alien insurers filing the audited financial reports report in another state, pursuant to the other state's requirement for filing of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from ~~this chapter~~ sections 45-03-20-03 through 45-03-20-12 if:

1. A copy of the audited financial report, ~~report on significant deficiencies in internal controls~~ communication of internal control related matters noted in an audit, and the accountant's letter of qualifications which are filed with another state are filed with the commissioner in accordance with the filing dates specified in sections 45-03-20-03, 45-03-20-10, and 45-03-20-11, respectively. Canadian insurers may submit accountants' reports as filed with the office of the superintendent of financial institutions, Canada.
2. A copy of any notification of adverse financial condition report filed with another state is filed with the commissioner within the time specified in section 45-03-20-09.

Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

This chapter may not prohibit, preclude, or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers under the rules and regulations of the North Dakota insurance department ~~of insurance~~ and the practices and procedures of the North Dakota insurance department ~~of insurance~~.

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

General Authority: NDCC 28-32-02

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

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

1. "Accountant" and or "independent certified public accountant" mean means an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in all states in which they are licensed to practice. For Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
2. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
3. "Audit committee" means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. Refer to subsection 5 of section 45-03-20-12.1 for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.
4. "Audited financial report" means and includes those items specified in section 45-03-20-04.
5. "Group of insurers" means those licensed insurers included in the reporting requirements of North Dakota Century Code chapter 26.1-10, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financing reporting.
3. 6. "Indemnification" means an agreement of indemnity or a release from liability if the intent or effect is to shift or limit in any manner the potential liability of a person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.
7. "Independent board member" has the same meaning as described in subsection 3 of section 45-03-20-12.1.
4. 8. "Insurer" means a licensed insurer as defined in North Dakota Century Code chapter 26.1-02.
9. "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial

statements, that is those items specified in subsections 2 through 7 of section 45-03-20-04 and includes those policies and procedures that:

- a. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
 - b. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04 and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
 - c. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04.
10. "Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 [Pub.L. 107-204, 116 Stat. 745] and the United States securities and exchange commission's rules and regulations promulgated thereunder.
 11. "Section 404 report" means management's report on internal control over financial reporting as defined by the United States securities and exchange commission and the related attestation report of the independent certified public accountant as described in subsection 1.
 12. "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 [Pub.L. 107-204, 116 Stat. 745]:
 - a. The preapproval requirements of section 201 (section 10A(i) of the Securities Exchange Act of 1934 [Pub.L. 73-291, 48 Stat. 881]);
 - b. The audit committee independence requirements of section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934 [Pub.L. 73-291, 48 Stat. 881]; and
 - c. The internal control over financial reporting requirements of section 404 (item 308 of the United States securities and exchange commission regulation S-K).

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

General Authority: NDCC 28-32-02

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

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

1. All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June first for the year ended December thirty-first immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June first with ninety days' advance notice to the insurer.
2. Extensions of the June first filing date may be granted by the commissioner for thirty-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.
3. If an extension is granted in accordance with the provisions in subsection 2 of section 45-03-20-03, a similar extension of thirty days is granted to the filing of management's report of internal control over financial reporting.
4. Every insurer required to file an annual audited financial report pursuant to this chapter shall designate a group of individuals as constituting its audit committee, as defined in section 45-03-20-02. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this chapter at the election of the controlling person.

History: Effective October 1, 1995; amended effective _____.

General Authority: NDCC 28-32-02

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

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

The annual audited financial report must include the following:

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

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

General Authority: NDCC 28-32-02

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

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

1. Each insurer required by this chapter to file an annual audited financial report within sixty days after becoming subject to the requirement, shall register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm, ~~generally referred to in this chapter as the "accountant"~~, retained to conduct the annual audit under this chapter. Insurers not retaining an independent certified public accountant on October 1, 1995, shall register the name and address of their retained independent certified public accountants not

less than six months before the date when the first audited financial report is to be filed.

2. The insurer shall obtain a letter from the accountant and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the rules and regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that department, specifying the exceptions as the accountant may believe appropriate.
3. If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the department commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding the event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of the disagreement in connection with the accountant's opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decisionmaking level, that is between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which the accountant does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

History: Effective October 1, 1995; amended effective _____.

General Authority: NDCC 28-32-02

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

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

1. The commissioner shall not recognize any person or firm as a qualified independent certified public accountant which if the person or firm:

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

- e. (3) Number of jurisdictions in which the insurer transacts business. ~~The requirements of this subsection become effective October 1, 1997.~~

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

- b. The insurer shall file, with its annual statement filing, the approval for relief from subdivision a with the states that it is licensed in or doing business in and with the national association of insurance commissioners. If the nondomestic state accepts electronic filing with the national association of insurance commissioners, the insurer shall file the approval in an electronic format acceptable to the national association of insurance commissioners.

- 5. The commissioner shall ~~not~~ neither recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:
 - a. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;
 - b. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this chapter; or
 - c. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.
- 6. The commissioner may hold a hearing to determine whether a an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.
- 7. a. The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

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

are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit the accountant's own work, and cannot serve in an advocacy role for the insurer.

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

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

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

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

General Authority: NDCC 28-32-02

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

45-03-20-07. Consolidated or combined audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet must be filed with the report, as follows:

1. Amounts shown on the consolidated or combined audited financial report must be shown on the worksheet.
2. Amounts for each insurer subject to this section must be stated separately.
3. Noninsurance operations may be shown on the worksheet on a combined or individual basis.

4. Explanations of consolidating and eliminating entries must be included.
5. A reconciliation must be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

History: Effective October 1, 1995; amended effective _____.

General Authority: NDCC 28-32-02

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

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

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

General Authority: NDCC 28-32-02

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

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

1. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination audit or that the insurer does not meet the minimum capital and surplus requirement of the North Dakota insurance statute as of that date. An insurer who has received a report under this section shall forward a copy

of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-business-day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

2. An independent certified public accountant is not liable in any manner to any person for any statement made in connection with this section if the statement is made in good faith in compliance with ~~this section~~ subsection 1.
3. If the accountant, subsequent to the date of the audited financial report filed under this chapter, becomes aware of facts that might have affected the accountant's report, the ~~department~~ commissioner notes the obligation of the accountant to take action as prescribed in volume 1, section AU 561 of the professional standards of the American institute of certified public accountants.

History: Effective October 1, 1995; amended effective _____.

General Authority: NDCC 28-32-02

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

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

1. In addition to the annual audited financial statements report, each insurer shall furnish the commissioner with a written report communication as to any unremediated material weaknesses in its internal controls over financial reporting noted during the audit. Such communication shall be prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60, communication of internal control structure matters noted in an audit, AU section 325 of the professional standards of the American institute of certified public accountants, requires an accountant to communicate significant deficiencies known as "reportable conditions" noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report must be filed annually by the insurer with the department within sixty days after the filing of the annual audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the accountant's report within sixty days after the filing of the

annual audited financial report, and shall contain a description of any unremediated material weakness, as the term material weakness is defined by statements on auditing standards No. 60, communication of internal control related matters noted in an audit or its replacement, as of December 31 immediately preceding, in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

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

History: Effective October 1, 1995; amended effective _____.

General Authority: NDCC 28-32-02

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

45-03-20-11. Accountant's letter of qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. That the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the code of professional ethics and pronouncements of the American institute of certified public accountants and the rules of professional conduct of the North Dakota board of accountancy, or similar code.
2. The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this chapter may be construed as prohibiting the accountant from utilizing the staff as deemed appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.
3. That the accountant understands the annual audited financial report and the accountant's opinion thereon will be filed in compliance with this chapter and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.
4. That the accountant consents to the requirements of section 45-03-20-12 and that the accountant consents and agrees to make available for review by the commissioner, the commissioner's designee, or the commissioner's appointed agent, the workpapers, as defined in section 45-03-20-12.

5. A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American institute of certified public accountants.
6. A representation that the accountant is in compliance with the requirements of section 45-03-20-06.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

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

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

1. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountant's examination audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's examination audit of the financial statements of an insurer and which support the accountant's opinion thereof.
2. Every insurer required to file an audited financial report under this chapter, shall require the accountant to make available for review by insurance department examiners, all workpapers prepared in the conduct of the accountant's examination audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the insurance department has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.
3. In the conduct of the aforementioned periodic review by the insurance department examiners, it must be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners must be considered investigations and all working papers and communications obtained during the course of the investigations must be afforded the same confidentiality as other examination workpapers generated by the department.

History: Effective October 1, 1995; amended effective _____.

General Authority: NDCC 28-32-02

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

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

1. The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this chapter. Each accountant shall report directly to the audit committee.
2. Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection 5 and subsection 3 of section 45-03-20-02.
3. In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in the member's capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.
4. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.
5. To exercise the election of the controlling person to designate the audit committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which

shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

6. a. The audit committee shall require the accountant that performs for an insurer any audit required by this chapter to timely report to the audit committee in accordance with the requirements of statements on auditing standards No. 61, communication with audit committees, or its replacement, including:
- (1) All significant accounting policies and material permitted practices;
 - (2) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
 - (3) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.
- b. If an insurer is a member of an insurance holding company system, the reports required by subdivision a may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

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

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

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

hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

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

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

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

History: Effective _____.

General Authority: NDCC 28-32-02

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

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

1. No director or officer of an insurer shall, directly or indirectly:
 - a. Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this chapter; or
 - b. Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this chapter.
2. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce,

manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

3. For purposes of subsection 2, actions that if successful, could result in rendering the insurer's financial statements materially misleading include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:
 - a. To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances, due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;
 - b. Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;
 - c. Not to withdraw an issued report; or
 - d. Not to communicate matters to an insurer's audit committee.

History: Effective _____.

General Authority: NDCC 28-32-02

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

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

1. Every insurer required to file an audited financial report pursuant to this chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of five hundred million dollars or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in section 45-03-20-02. The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit described under section 45-03-20-10. Management's report of internal control over financial reporting shall be as of December thirty-first immediately preceding.
2. Notwithstanding the premium threshold in subsection 1, the commissioner may require an insurer to file management's report of internal control over

financial reporting if the insurer is in any risk-based capital level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in chapter 45-03-13.

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

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

may file its or its parent's section 404 report and an addendum in satisfaction of this section 45-03-20-12.3 requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements were included in the scope of the section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in subsections 2 through 7 of section 45-03-20-04) excluded from the section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the section 404 report, the insurer or group of insurers may either file (1) a section 45-03-20-12.3 report, or (2) the section 404 report and a section 45-03-20-12.3 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the section 404 report.

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

- a. A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
- b. A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide

reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

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

History: Effective _____.

General Authority: NDCC 28-32-02

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

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

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

6. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

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

History: Effective October 1, 1995; amended effective _____.

General Authority: NDCC 28-32-02

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

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

1. In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

2. For such insurers, the letter required in subsection 2 of section 45-03-20-05 shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to section 45-03-20-03 and shall affirm that the opinion expressed is in conformity with those requirements.

History: Effective _____.

General Authority: NDCC 28-32-02

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

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-03-23
REGULATION ON THE USE OF CLEARING CORPORATIONS AND FEDERAL
RESERVE BOOK-ENTRY SYSTEM BY INSURANCE COMPANIES

Section	
45-03-23-01	Definitions
45-03-23-02	Custody of Agreement - Requirements
45-03-23-03	Deposit With Affiliates - Requirements

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

1. "Agent" means a national bank, state bank, or trust company or broker/dealer which maintains an account in its name in a clearing corporation or which is a member of the federal reserve system and through which a custodian participates in a clearing corporation ~~or the federal reserve book entry system~~; including the treasury/reserve automated debt entry securities system (TRADES) or treasury direct systems except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "agent" may include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under ~~such~~ those laws to accept custody of securities.
2. "Clearing corporation" means a corporation as defined in subsection 1 of North Dakota Century Code section 41-08-02 which is organized for the purpose of effecting transactions in securities by computerized book-entry; except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation ~~which that~~ that is organized or existing under the laws of any foreign country and which is legally qualified under ~~such~~ those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes "treasury/reserve automated debt entry securities system" and "treasury direct" book-entry securities systems established

under 31 U.S.C. section 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301.

3. "Custodian" means:

- a. a national bank, state bank, or trust company which has that must at all times aggregate capital, surplus, and undivided profits of not less than one million dollars during which it acts as a custodian under this chapter be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and which is regulated by either state banking laws or is a member of the federal reserve system and which is legally qualified to accept custody of securities in accordance with the standards set forth below; except that with respect to securities issued by institutions organized or existing under the laws of any foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "custodian" may include a bank, or trust company, or similar institution which has at all times aggregate capital, surplus, and undivided profits of not less than the equivalent of one million dollars incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency of that country that must be at all times during which it acts as a custodian pursuant to this chapter be no less than adequately capitalized as determined by the standards adopted by international banking authorities and which is legally qualified to accept custody of securities; or
- b. A broker/dealer that shall be registered with and subject to jurisdiction of the securities and exchange commission, maintains membership in the securities investor protection corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars.

4. "Federal reserve book entry system" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks through banks which are members of the federal reserve system or which otherwise have access to such computerized systems "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the treasury/reserve automated debt equity securities system (TRADES) or treasury direct systems.

5. "Securities" means certificated securities and uncertificated securities as defined in subdivisions d and r of subsection 1 of North Dakota Century Code section 41-08-02.
6. "Securities certificate" means a certificate as defined in subdivision p of subsection 1 of North Dakota Century Code section 41-08-02.
7. "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent annual or transition report under section 13 or 15(d) of the Securities Exchange Act of 1934 (SEC form 10-K) filed with the securities and exchange commission.
8. "Treasury/reserve automated debt entry securities system" ("TRADES") and "treasury direct" mean the book entry securities systems established under 31 U.S.C. section 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and treasury direct are subject to 31 C.F.R. pt. 357, et seq.

History: Effective March 1, 2004; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

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

1. An insurance company may provide, by written agreement with a custodian, for the custody of its securities with a custodian, ~~which securities may be held by the custodian or its agent or in a clearing corporation or in the federal reserve book entry system. Securities so held, whether held by the custodian or its agent or in a clearing corporation or in the federal reserve book entry system, are referred to herein as "custodied securities".~~ The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.
2. ~~Any such~~ The agreement must be in writing and must be authorized by the resolution of the board of directors of the insurance company or of an authorized committee ~~thereof~~ of the board. The terms of the agreement must comply with the following:
 - a. ~~Certified securities~~ Securities certificates held by the custodian must be held ~~either separate from the securities of the custodian and of all of its other customers or in a fungible bulk of securities as part of a filing of securities by issue arrangement.~~

- b. Securities held in a fungible bulk indirectly by the custodian and securities in a clearing corporation ~~or in the federal reserve book-entry system~~ must be separately identified on the custodian's official records as being owned by the insurance company. ~~Said~~ The records must identify which ~~custodied~~ securities are held by the custodian or by its agent and which securities are in a clearing corporation ~~or in the federal reserve book-entry system~~. If the securities are in a clearing corporation ~~or in the federal reserve book-entry system~~, ~~said~~ the records must also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation and, if through an agent, the name of the agent.
- c. All custodied securities that are registered must be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.
- d. Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in North Dakota Century Code section 26.1-05-23 must, to the extent required by that section, be under the control of the insurance commissioner and must not be withdrawn by the insurance company without the commissioner's approval.
- e. The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company. The custodian's trust committee's annual reports of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.
- f. During the course of the custodian's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, and any representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.

- g. The custodian and its agents shall be required to send to the insurance company:
- (1) All reports which they receive from a clearing corporation or ~~the federal reserve book entry system~~ on their respective systems of internal accounting control; and
 - (2) Any reports prepared by outside auditors on the custodians or its agent's internal accounting control of custodied securities that the insurance company may reasonably request.
- h. The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in any audit of the financial statements of the insurance company.
- i. The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form ~~attached hereto~~ described in the appendices to this chapter, with respect to custodied securities.
- j. A national bank, state bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the securities investor protection corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.
- k. The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities, except that the custodian shall not be so obligated to the extent that the loss was caused by other than the negligence or dishonesty of the custodian.
- l. The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction.

- k. m. In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company, the custodian shall promptly replace the securities or ~~the~~ their value thereof and the value of any loss of rights or privileges resulting from said the loss of securities.
- l. n. The agreement may provide that the custodian will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations rules, orders, or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.
- m. o. In the event that the custodian gains entry in a clearing corporation ~~or in the federal reserve book entry system~~ through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian; provided, however, that if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian, the insurance commissioner of the state of domicile of the insurance company may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the custodian.
- n. p. The custodian shall provide written notification to the insurer's domiciliary commissioner if the custodial agreement with the insurer has been terminated or if one hundred percent of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three business days of the receipt by the custodian of the insurer's written notice of termination or within three business days of the withdrawal of one hundred percent of the account assets.

History: Effective March 1, 2004; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

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

1. Nothing prevents an insurance company from depositing securities with another insurance company with which the depositing insurance company

is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof of the board and that the receiving insurance company is organized under the laws of one of the states of the United States or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of such deposit to the insurance commissioner in the state of its domicile and the commissioner shall not have objected thereto to it within thirty days of the receipt of said the notice.

2. The terms of such an the agreement must comply with the following:
 - a. The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.
 - b. The receiving insurance company shall allow representatives of any appropriate regulatory body to examine records relating to securities held subject to the agreement.
 - c. The depositing insurance company may authorize the receiving insurance company:
 - (1) To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company; and
 - (2) To provide for such securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation ~~or the federal reserve book entry system.~~

History: Effective March 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-35

APPENDIX I

FORM A
CUSTODIAN AFFIDAVIT

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

STATE OF)
) ss.
COUNTY OF)

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

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

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

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

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

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

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

Vice President (or other authorized officer) (L.S.)

APPENDIX II

FORM B
CUSTODIAN AFFIDAVIT

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

STATE OF)
) ss.
COUNTY OF)

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

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

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

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

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

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

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

_____(L.S.)
Vice President (or other authorized officer)

APPENDIX III

FORM C
CUSTODIAN AFFIDAVIT

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

STATE OF)
) ss.
COUNTY OF)

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

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

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

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

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

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

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

_____(L.S.)
Vice President (or other authorized officer)

PROPOSED RULES

**NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-04-04
VARIABLE LIFE INSURANCE**

Subdivision a of subsection 4 of Section 45-04-04-03, relating to policy loan provisions in insurance policy requirements, is amended as follows:

4. **Policy loan provision.** Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state must contain provisions which are not less favorable to the policyholder than the following:
 - a. A provision for policy loans after the policy has been in force for three full years which provides the following:
 - (1) At least seventy-five percent of the policy's cash surrender value may be borrowed.
 - (2) The amount borrowed must bear interest at a rate not to exceed that permitted by chapter 45-04-03.
 - (3) Any indebtedness must be deducted from the proceeds payable on death.
 - (4) Any indebtedness must be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.
 - (5) For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following processing day exceed the amounts available under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by subsection 3 of section 45-04-04-08.

- (6) The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding one hundred percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request.
- (7) The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum may not apply to any automatic premium loan provision.
- (8) No policy loan provision is required if the policy is under extended insurance nonforfeiture option.
- (9) The policy loan provisions may be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.
- (10) Amounts paid to the policyholders upon the exercise of any policy loan provision must be withdrawn from the separate account and must be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account.

History: Effective June 1, 1984; amended effective _____.

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

Law Implemented: NDCC 26.1-33, 26.1-34

Subdivision c of subsection 1 of Section 45-04-04-05, relating to establishment and administration of separate accounts, is amended as follows:

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

1. **Establishment and administration of separate accounts.** Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to North Dakota Century Code sections 26.1-33-13 and 26.1-34-11.

- c. All persons with access to the cash, securities, or other assets of the separate account must be under bond in the amount of not less than \$_____ a value indexed to the fidelity bonding recommendations of the national association of insurance commissioners in effect in 2009 regarding personnel handling general account assets.

History: Effective June 1, 1984; amended effective _____.

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

Law Implemented: NDCC 26.1-33, 26.1-34

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-04-13
VIATICAL SETTLEMENT ADVERTISING

Chapter 45-04-13, relating to viatical settlement advertising, is repealed.

NORTH DAKOTA ADMINISTRATIVE CODE
ARTICLE 45-16
LIFE SETTLEMENTS

Article 45-16, relating to life settlements, is created as follows:

ARTICLE 45-16
LIFE SETTLEMENTS

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

CHAPTER 45-16-01
LIFE SETTLEMENT LICENSES

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

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

History: Effective _____.
General Authority: NDCC 26.1-33.4-11
Law Implemented: NDCC 26.1-33.4-01

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

History: Effective _____.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-02

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

History: Effective _____.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-02

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

History: Effective _____.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-02

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

History: Effective _____.

General Authority: NDCC 26.1-33.4-11
Law Implemented: NDCC 26.1-33.4-08

CHAPTER 45-16-02
LIFE SETTLEMENT ADVERTISING

Section

<u>45-16-02-01</u>	<u>Definitions</u>
<u>45-16-02-02</u>	<u>Applicability</u>
<u>45-16-02-03</u>	<u>Disclosure Requirements</u>

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

History: Effective _____.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-01

45-16-02-02. Applicability.

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

History: Effective _____.

General Authority: NDCC 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-01

45-16-02-03. Disclosure requirements.

1. Advertisements must be accurate and truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.
2. A person or trust may not directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy.
3. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
 - a. An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving owners as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the life settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the owner is not satisfied or that the life settlement contract includes a free-look period that satisfies or exceeds legal requirements, does not remedy misleading statements.
 - b. An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.
 - c. An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.
 - d. The words "free", "no cost", or words of similar import may not be used in the marketing, advertising, soliciting, or otherwise promoting of a life settlement contract. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

e. Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement contract advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisal, or analysis, a licensee under this chapter makes as its own all the statements contained therein and the statements are subject to all the provisions of this section.

(1) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement, either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(2) An advertisement shall not state or imply that a life settlement contract has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(3) When an endorsement refers to benefits received under a life settlement contract, all pertinent information shall be retained for a period of five years after its use.

4. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

5. An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, life settlement investment agents, insurance producers, policies, services, or methods of marketing.

6. The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract and if any specific life settlement contract is advertised the life settlement contract

shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

7. An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other devise or reference without disclosing the name of the life settlement licensee if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.
8. An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners into believing that the solicitation is in some manner connected with a government program or agency.
9. An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears provided it does not exaggerate that fact or suggest or imply that a competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the insurance department to find out if the state requires licensing and, if so, whether the life settlement provider or life settlement broker is licensed.
10. An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by any government entity.
11. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.
12. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves, or favors:

- a. Any life settlement licensee or its business practices or methods of operation;
 - b. The merits, desirability, or advisability of any life settlement contract;
 - c. Any life settlement contract; or
 - d. Any life insurance policy or life insurance company.
13. If the advertiser emphasizes the speed with which the life settlement transaction will occur, the advertising must disclose the average timeframe from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.
14. If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percent of face value obtained by owners contracting with the licensee during the past six months.

History: Effective _____.

General Authority: NDCC 26.1-33.4-07, 26.1-33.4-11

Law Implemented: NDCC 26.1-33.4-07

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-05-05
RISK RETENTION AND PURCHASING GROUPS

Section 45-05-05-06, relating to risk retention group representatives and purchasing group representatives, is amended as follows:

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

1. License requirement. No person, resident or nonresident in this state, may act as or hold out in this state to be a risk retention group representative for a risk retention group, or a purchasing group representative for a purchasing group which solicits members for the purpose of selling liability insurance coverage, purchases liability insurance coverage for group members located within this state or otherwise does business in this state unless then licensed as such under these rules.
2. Any person, resident or nonresident in this state, acting as or holding out in this state to be a risk retention group representative or a purchasing group representative must either:
 - a. ~~Hold~~ hold a current North Dakota insurance producer license as ~~agent or broker~~, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota; ~~or~~
 - b. ~~Be the holder of a current North Dakota nonresident license as agent or broker in another state, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota.~~
3. Any person acting as a risk retention group representative or purchasing group representative ~~in compliance with subdivision a or b of subsection 2~~ shall otherwise be subject to and comply with the provisions of North Dakota Century Code chapter 26.1-46 as they pertain to ~~agents and brokers~~ insurance producers.
4. Exceptions to license requirement. Risk retention group representative and purchasing group representative for the purpose of licensing does not include:

- a. Any officer, director, owner, partner, trustee, or full-time salaried employee of a risk retention group or purchasing group; and
 - b. Any telemarketing or mass mailing organization or any radio or television station or network or, newspaper or magazine publisher or distributor which makes statements or carries advertisements for a risk retention group or purchasing group to the extent only general, nonrisk specific information is given concerning the Federal Liability Risk Retention Act, North Dakota Century Code chapter 26.1-46, and the risk retention group or purchasing group and no application for insurance is received, no underwriting information is taken, and no insurance rate or premium is quoted or collected.
5. Licensing of partnership or corporation.
- a. A partnership or corporation may be licensed as a risk retention group representative or purchasing group representative. Each general partner and each other individual authorized to act for the partnership and each individual authorized to act for the corporation must be named in the license or registered with the commissioner and shall qualify as through an individual licensee; and
 - b. The licensee shall promptly notify the commissioner of any changes among its members, directors, officers, and other individuals designated in or registered as to the license.
6. ~~Risk retention group representative and purchasing group representative bond. Prior to issuance of an appointment as a risk retention group representative or purchasing group representative for any risk retention group or insurer not chartered in this state, the applicant shall file with the commissioner, and shall keep in force for as long as such an appointment remains in effect, a bond in favor of the state of North Dakota in the penal sum of one thousand dollars, with an authorized corporate surety the commissioner approves, conditioned that the person will conduct business under the person's risk retention group or purchasing group license in accordance with North Dakota Century Code chapter 26.1-46 and this chapter and that the person will promptly remit the taxes pursuant to North Dakota Century Code section 26.1-46-03. Any risk retention group representative or purchasing group representative licensed as a surplus line broker in the state of North Dakota and maintaining a bond pursuant to North Dakota Century Code section 26.1-26-18 or previously appointed by a risk retention group or insurer not chartered in this state group or unauthorized insurer and maintaining a bond pursuant to this section shall not be subject to any additional bond requirement. The aggregate liability~~

~~of the surety for any claims on the bond may not exceed the penal sum of the bond. The bond shall not be terminated unless not less than thirty days' prior written notice thereof is given to the licensee and filed with the commissioner.~~

History: Effective October 1, 1989; amended effective _____.

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

Law Implemented: NDCC 26.1-46

Section 45-05-05-08, relating to insurance purchase, is amended as follows:

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

1. A risk retention group authorized to do business in this state.
2. An admitted insurance carrier.
3. An authorized surplus lines carrier listed on the commissioner's white list, only if the purchase is effected through a licensed surplus lines ~~broker~~ producer who has been appointed by the purchasing group.

History: Effective October 1, 1989; amended effective _____.

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

Law Implemented: NDCC 26.1-46

The Application for Registration as a Purchasing Group is amended as follows:

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

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

(Name of Purchasing Group)

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

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

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

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

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

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

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

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

President or Chief Executive Officer

Secretary

Sworn to before me this _____
day of _____, 20__.

Notary Public
State of _____
My Commission Expires: _____

The Application for Registration as a Risk Retention Group (Foreign) is amended as follows:

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

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

(Name must include the phrase "Risk Retention Group")

located at _____

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

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

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

_____ the sole owner of the Group is

(Give name and address of organization)

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

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

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

- a. the insurance commissioner of the Group's chartering state has not begun or has refused to initiate an examination of the Group; and
 - b. any such examination by the Insurance Commissioner is coordinated so as to avoid unjustified duplication and unjustified repetition.
13. The Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner upon a finding of financial impairment, or in a voluntary dissolution proceeding.
 14. The Group will comply with the laws of North Dakota concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.
 15. The Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner alleging that the Group is in hazardous financial condition or is financially impaired.
 16. The Group will provide the following notice, in 10-point type, in any insurance policy issued by the Group:

"NOTICE

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

17. The Group has submitted to the Insurance Commissioner, as part of this application and before it has offered any insurance in North Dakota, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner of its chartering state. The plan or study submitted herewith discloses the name of the state in which the Group is chartered, as well as the Group's principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the Insurance Commissioner any revisions of such plan or study to reflect any changes therein including, but without limitation, additional lines of liability insurance which the Group intends to offer, and any change in the designation of the Group's chartering state.
18. The Group has submitted to the Insurance Commissioner, as part of this application, a copy of the Group's annual financial statement submitted to the state in which it is chartered as an insurance company. The annual

financial statement has been certified by an independent public accountant and contains a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. Hereafter, the Group will submit its annual financial statement to the Insurance Commissioner by March 1 of each year.

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

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

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

President or Chief Executive Officer

Secretary

Sworn to before me this day of _____, 20__.

Notary Public, State of:
My Commission Expires:

10/5/09

PROPOSED RULES

**NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-06-09
GROUP HEALTH INSURANCE PURCHASING COOPERATIVES**

Section 45-06-09-07 is repealed:

45-06-09-07. Insurance risk. ~~A health insurance purchasing cooperative may bear no insurance risk and may not self insure.~~ Repealed effective _____, 2009.

History: ~~Effective August 1, 1994.~~

General Authority: ~~NDCC 26.1-01-07.4~~

Law Implemented: ~~NDCC 26.1-01-07.4~~

PROPOSED RULES
NORTH DAKOTA ADMINISTRATIVE CODE
ARTICLE 45-12
NORTH DAKOTA BOILER RULES

Section 45-12-01-01 is amended as follows:

45-12-01-01. Definitions.

...

23. "National board inspection code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The national board inspection code, ~~2004~~ 2007 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 Crupper Avenue, Columbus, Ohio 43229.

...

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-02-01 is amended as follows:

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

1. **Power boilers.** Each authorized inspection agency or owner/user inspection organization, to which a special inspector commission has been issued, shall submit to the chief boiler inspector complete data of each high pressure boiler insured or inspected by it or covered by a written inspection agreement in North Dakota on form SFN 10706. Each ~~certificate~~ inspection must be reported to the chief boiler inspector within fifteen days after inspection on form SFN 10706. ~~Noncertificate inspections on high pressure boilers must be reported on form SFN 10706 only when hazardous conditions affecting the safety of the boiler are found to exist.~~

2. **Low pressure, hot water heating, and hot water supply boilers.** Within one year from effective date of this article, each authorized inspection agency or owner/user inspection organization shall submit to the chief boiler inspector complete data of each boiler insured or inspected by it or covered by a written inspection agreement in North Dakota on form SFN 10706. All required ~~certificate~~ inspections must be reported on form SFN 10706.

History: Effective June 1, 1994; amended effective January 1, 2006; _____, 2009.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-03-26 is amended as follows:

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

1. Each boiler used or proposed to be used within this state, except boilers exempt in North Dakota Century Code section 26.1-22.1-06, must be thoroughly inspected as to their construction, installation, condition, and operation as follows:

...

- c. Steam traction engines must be inspected at least once every twelve months. Inspections must alternate between internal inspections, external inspections, and hydrostatic tests. ~~External inspections, made with the boiler under pressure, will be made at the discretion of the inspector.~~

...

- ~~2. The only reports normally required by the chief boiler inspector will be reports of inspections made as a certificate inspection. Certificate inspections must be made during the period of thirty days prior to and thirty days after the expiration date of the certificate. Noncertificate inspections, when required by the provisions of this section, must be documented in such a manner that reports of these inspections may be furnished to the state insurance department upon the request of the chief boiler inspector made between certificate inspections. The chief boiler inspector encourages reports to be made at any time adverse conditions are found, or when difficulty is encountered getting cooperation from the owner or user.~~

...

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

Section 45-12-10-01 is amended as follows:

45-12-10-01. Construction and installation standards - Exceptions. Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1, ~~2~~, or 3, ~~2004~~ 2007 edition or section VIII, division 2, 2004 edition, and bear the "U" stamp as proof of such construction.

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

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

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

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14