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TITLE 4

OFFICE OF MANAGEMENT AND BUDGET

JULY 2004

CHAPTER 4-07-01

4-07-01-01. History, functions, organization of the ~~central personnel division~~ human resource management services.

- 1. History of the ~~central personnel division~~ human resource management services.**
 - a. The 1975 legislative assembly passed a Central Personnel System Act, codified as North Dakota Century Code chapter 54-44.3. The Act created the central personnel division as well as the state personnel board. The division was to establish and maintain classification and compensation plans as well as establish general policies and rules, which were to be binding on the affected agencies, relating to a unified system of personnel administration for the employees in the classified service of the state.
 - b. From its beginning in 1975, the central personnel division developed general personnel policies in response to the requirements for a unified system of personnel administration, requests from the state personnel board, requests from agencies or other officials in the executive branch, changed requirements in state or federal laws, and various decisions of the courts. These policies were discussed at meetings of the state personnel board. If a particular policy was approved by the board, the division would then act to include it within the North Dakota personnel policies manual. Policies approved and adopted in this way were then distributed to all state agencies.
 - c. The policies included in the North Dakota personnel policies manual were to be followed by all agencies with classified employees. More specifically, merit system agencies were to strictly follow the policies, but nonmerit system agencies were advised that the policies formed a "base" for the development of the agencies own policies and procedures.

- d. In July of 1981 then Governor Allen Olson issued executive order number 1981-10. That executive order portrayed the North Dakota personnel policies manual as providing the assurance that classified employees would be treated fairly and uniformly if the policies were followed. The executive order identified the state personnel board as the agency ~~which that~~ would hold public meetings to receive comments and approve revisions to the policies. Governor Olson also ordered that agencies headed by a gubernatorial appointee adhere to and follow the policies, including the statewide appeal mechanism.
 - e. However, by late 1986 that manner of personnel policy implementation and its "legality" and effect on various agencies had been challenged before the North Dakota supreme court. By 1990 in order for the division to carry out its statutory purpose of establishing a unified system of personnel administration for the classified service of the state, it was apparent that certain policies had to be adopted as rules in accordance with North Dakota Century Code section 28-32-02.
 - f. In 2003 the legislative assembly approved changing the name of the central personnel division to human resource management services.
2. **Functions of the ~~central personnel division~~ human resource management services.** The division establishes, maintains, and revises classification and compensation plans. It assigns position classifications and pay grades and establishes and maintains required records for all employees in the classified service. The division certifies appeals on employee grievances relating to demotion, suspension without pay, reduction-in-force, forced relocation, reprisal action, discrimination, merit system qualification, and dismissal. It also certifies appeals from applicants for positions in the classified service who allege discrimination. It assists appointing authorities and agencies with selection and grievance procedures. The division coordinates and conducts training programs. It ensures salaries are paid consistent with the state's classification system, compensation plan, and salary administration policy, and consults with state agencies regarding salary administration. It establishes and administers a cooperative education or internship program open to college students. The division provides information, consultative advice, tools and methodology, and other services to promote the development of a unified system of ~~personnel~~ human resource administration. The division also serves as secretariat to the state personnel board.
3. **Organization of the ~~central personnel division~~ human resource management services.**

- a. ~~The central personnel division~~ Human resource management services is a division of the office of management and budget. The division is separate from the state personnel board, although the division and board work closely together on classification and pay grade issues. The division and the board each adopts its own rules.
- b. ~~The central personnel division~~ Human resource management services has a director and a staff. The director is appointed by and serves at the pleasure of the director of the office of management and budget. The director is responsible for the performance of the division as it exercises its duties and functions. ~~The director is assisted by a~~ A staff of professional; and administrative, and clerical employees assists the director. The staff are assigned to one of the following areas: administration, classification and compensation, employment services, and training and development.

History: Effective March 1, 1991; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-11, 54-44.3-12

4-07-01-02. Organization and functions subject to chapter 28-32. The portions of ~~the central personnel division's~~ human resource management services' organization and functions that are subject to North Dakota Century Code chapter 28-32 are those that involve its authority to adopt policies and rules relating to a unified system of personnel administration which impose requirements on other agencies. ~~The central personnel division~~ Human resource management services has the authority to adopt policies, rules, and procedures in three areas:

1. Subsection 1 of North Dakota Century Code section 54-44.3-12 provides the authority to establish general policies, rules, and regulations which are binding on the agencies affected, including those grant-aided agencies that receive federal funds. The rules referred to in this regard must ensure fairness, enhance greater uniformity in personnel management matters, and include rules on establishing and maintaining the classification and compensation plans.
2. Subsection 7 of North Dakota Century Code section 54-44.3-12 provides the authority to develop procedures that must be followed by all state agencies and institutions regarding salary administration for all employees in the classified service.
3. Subsection 13 of North Dakota Century Code section 54-42-03 54-44.3-12 provides the authority for the ~~North Dakota merit system council, of which the division is a part,~~ director of human resource management services to adopt ~~general policies, rules, and regulations which are binding on the agencies affected.~~ Those agencies are

~~commonly known as the merit system agencies. The rules referred to in this regard cover many aspects of personnel administration for those grant-aided agencies which receive federal funds subject to the approval of the board, to ensure compliance with and resolve compliance issues relating to agencies required by state or federal law or rule to be subject to a merit personnel system.~~

History: Effective March 1, 1991; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12(1), 54-44.3-12(7), ~~54-42-03~~

4-07-01-03. Methods the public may use to obtain information. The public may obtain information, furnish information, or make requests to ~~the central personnel division~~ human resource management services concerning any of its functions or rules by writing to:

~~Central Personnel Division~~ Human Resource Management Services
Capitol Building 14th Floor
600 East Boulevard Avenue, Dept. 113
Bismarck, ~~North Dakota~~ ND 58505-0120

Telephone inquiries may be made by calling 701-328-3290 between eight a.m. and five p.m. Monday through Friday.

History: Effective March 1, 1991; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-12

CHAPTER 4-07-02

4-07-02-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 54-44.3, and sections 54-06-30 and 54-06-31, except:

1. "Class" or "classification" means a group of positions, regardless of location, which are ~~alike~~ enough alike in duties and responsibilities to be called by the same descriptive title, to be given the same pay range under similar conditions, and to require substantially the same qualifications.
2. "Classification plan" means the listing of all the classes that have been established, the ~~specification~~ description for those classes, and the process and procedures developed to maintain the plan.
3. "Equity increase" means a salary increase provided to a classified employee to mitigate either a serious internal agency inequity or a documented, ~~proven~~, external ~~inequity~~ market condition.
4. "General salary increase" means a salary increase provided to classified employees by specific legislative appropriation.
5. "Hiring rate" means the salary level assigned to an employee upon initial employment with an agency.
6. "Pay grade" means the number assigned to a classification which corresponds with one specific range of pay rates.
7. "Performance increase" means a salary increase provided to a classified employee in recognition of documented performance which is consistently superior or which consistently exceeds performance standards.
8. "Probationary increase" means a salary increase provided to a classified employee upon the successful completion of their applicable probationary period.
9. "Promotional increase" means a salary increase provided to a classified employee when the employee is assigned to a position in a different class which has a higher pay grade than the employee's previous position, and the assignment is not a result of a reclassification of the employee's position.
10. "Reclassification adjustment" means a salary change applied to a classified employee when the employee's position is reallocated to a different classification ~~which~~ that has a different pay grade.

11. "Responsibility level or workload increase" means a salary increase provided to a classified employee when either of the following conditions are met:
 - a. The level of duties and responsibilities assigned to the employee is permanently changed, is documented, and is independent of any change in classification.
 - b. A substantial, documented, increase in workload is assigned to a position.
12. "Salary range" means the range of pay rates, from minimum to maximum that are assigned to a pay grade, and which are often divided into quartiles for reference.
13. "Temporary increase" means a salary increase provided to a classified employee when the employee is assigned temporarily to perform a higher level of responsibilities on an acting or interim basis.

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

4-07-02-02. Scope of chapter. This chapter applies to all state agencies, departments, institutions, and boards and commissions ~~which~~ that employ individuals in positions classified by ~~the central personnel division~~ human resource management services, except those agencies headed by an elected official, and except those institutions in the university system. Elected officials and institutions in the university system may, at their option, agree to the application of chapter 4-07-02 to their specific agency. Sections 4-07-02-05, 4-07-02-06, 4-07-02-12, and 4-07-02-17 apply to local government agencies that employ individuals in positions classified by human resource management services.

History: Effective March 1, 1991; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

4-07-02-05. Salaries must be within the assigned salary range. ~~The central personnel division~~ Human resource management services shall assign a pay grade and a salary range to each approved class in the classification plan. Unless otherwise provided by ~~the central personnel division~~ human resource management services, the salary level of a classified employee must be within the assigned salary range.

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7), 54-44.3-15

4-07-02-06. Exceptions. Exceptions to the requirements of chapter 4-07-02 normally require prior written approval from the director of the ~~central personnel division~~ human resource management services. In emergency situations exceptions may be provided verbally. Appointing authorities shall describe their justification for the exception and the impact that denying the exception would have on the agency or the state. Written documentation in justification of the exception must be provided by the appointing authority at the earliest practical time following a verbal approval.

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12(1), 54-44.3-12(7)

4-07-02-08. Hiring rate. The hiring rate for a newly hired employees employee must be within the first quartile half of the salary range, ~~except that an appointing authority may assign a hiring rate up to the midpoint of the salary range if either of the following requirements are met:~~

1. ~~The~~ When establishing an entry salary, an appointing authority should consider the employee's job-related qualifications ~~exceed the established minimum qualifications.~~
2. ~~The agency is unable, the agency's ability to recruit qualified candidates who would accept a salary within the first quartile of the salary range employees, the overall relationship of state employees' salaries to market salaries, and internal equity with existing employees' salaries.~~

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-09. Documents needed for hiring rate above the first quartile. Repealed effective July 1, 2004. ~~If an appointing authority offers a hiring rate above the first quartile of the salary range, documentation must be maintained on the factors used to determine that rate and on the consideration given to existing salary relationships within an agency.~~

History: Effective March 1, 1991.

General Authority: ~~NDCC 54-44.3-12(1)~~

Law Implemented: ~~NDCC 54-44.3-01, 54-44.3-12(7)~~

4-07-02-10. Probationary increase. An appointing authority may grant an increase of up to five percent, ~~or up to fifty dollars if the hiring rate was less than one thousand dollars,~~ upon an employee's successful completion of a probationary

period. The size of the increase may vary depending on factors that include performance, internal equity, and budget appropriations.

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-11. Responsibility level or workload increase. An appointing authority may grant a responsibility level or workload salary increase if all of the following requirements are met:

1. The increase does not exceed ~~ten~~ twenty percent per biennium for an employee.
2. Consideration is given to the effect granting the increase would have on internal equity.
3. The change in workload or responsibility is documented and on file within the agency.

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-12. Reclassification adjustment. An appointing authority may make an adjustment to a salary as a result of a reclassification according to the following:

1. If the pay grade is higher following a reclassification action, then an increase up to five percent above the minimum of the new salary range may be provided. The salary must be at least equivalent to the minimum of the new salary range.
2. If the pay grade is lower following a reclassification action, then either of the following apply:
 - a. The employee's salary may remain the same if it is within the lower salary range.
 - b. The employee's salary may be reduced to within the lower range to equitably relate to the salaries of other employees in the same or related classes.
3. If the employee's salary is above the maximum of the salary range for the new job grade, then either of the following apply:
 - a. The salary of the employee may remain above the new maximum when the reclassification is a result of a program change, a reorganization, or is a result of a management need not

associated with the employee's performance. The salary may remain above the maximum as long as the employee remains in the classification. No further increases in salary may be granted the employee as long as the salary remains above the maximum, except those legislatively authorized.

- b. The salary must be reduced at least to the maximum of the new range if the lower classification results from the removal of duties and responsibilities from the employee as a result of substandard performance or for disciplinary reasons.

4. If the pay grade is not changed, no salary adjustment shall be made.

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-07, 54-44.3-12(7)

4-07-02-15. Equity increase. An appointing authority may grant an equity increase if all of the following requirements are met:

1. The increase ~~must~~ does not exceed ~~ten~~ twenty percent in a ~~per~~ biennium for an employee.
2. At the time the increase is granted, documentation must be submitted to ~~the central personnel division~~ human resource management services that includes all of the following:
 - a. A definition of the inequity.
 - b. An explanation of what created the inequity.
 - c. A statement that an additional inequity will not result.
 - d. ~~A statement of what nonmonetary alternatives were considered.~~
 - e. The relevant available market data in cases of external equity.
3. The agency must consider the overall relationship of state employees' salaries to market salaries and avoid creating internal inequities.

History: Effective March 1, 1991; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-18. Bonuses. A recruitment, retention, or performance bonus may be provided according to North Dakota Century Code chapters 54-06-30 and 54-06-31.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

4-07-02-19. Recruitment bonus. A recruitment bonus may be provided by an agency if the employee receiving the bonus was not employed by a state agency immediately preceding employment with the hiring agency, except when a recruitment bonus is provided to an employee for a referral program outlined in the agency's recruitment policy. If application of this rule would result in significant impact on the agency or negative fiscal consequences to the state, an exception may be sought under section 4-07-02-06.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

4-07-02-20. Retention bonus. A retention bonus may be given as an incentive to retain an employee in state government unless the employee is leaving to work for another state agency. If application of this rule would result in significant impact on the agency or negative fiscal consequences to the state, an exception may be sought under section 4-07-02-06.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

CHAPTER 4-07-03

4-07-03-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by the ~~central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12, 54-44.3-20

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except "classification plan" means the listing of all the classes that have been established, the ~~specifications~~ descriptions for those classes, and the process and procedures developed to maintain the plan.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-03. Official class title. The official class title must be used to designate positions or employees when entering such information on payroll and personnel records, or in other communications related to ~~personnel~~ human resource administration processes. However, any suitable or common title to designate persons or positions may be used when communicating externally, or when the purpose of the communication is not related to ~~personnel~~ human resource administration.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-04. Interpretation of class ~~specifications~~ descriptions. Class ~~specifications are generally descriptive of~~ descriptions represent the duties and conditions typical of the class. Neither an appointing authority nor an employee may interpret class ~~specifications~~ descriptions as restrictive, except for the specified minimum qualification requirements. The inclusion of particular phrases in the ~~specifications~~ descriptions that list the duties performed may not be interpreted to exclude other duties of a similar kind and quality. An appointing authority may, at any time, require an employee to perform any of the duties that are in the class ~~specifications~~ descriptions or any other appropriate duties.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-05. Classification or reclassification request. A request to have a position reviewed for classification or reclassification must be submitted by the appointing authority to ~~the central personnel division~~ human resource management services for review, if at least one of the following reasons apply:

1. A new position has been authorized.
2. A significant amount of responsibilities are newly assigned, reassigned, or changed for a position.
3. A position has not been reviewed for at least three years and different duties and responsibilities have been assigned to the position.
4. A position is classified in a class or class series that has been revised and the duties and responsibilities assigned to the position are no longer similar appropriate to the revised assigned class or class series.
5. A position is vacant, has not been reviewed for at least seven years, and will be filled.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-06. Information and forms required. A classification or reclassification request must include all information specified by ~~the central personnel division~~ human resource management services. The request must be submitted on the form specified by the division.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-06.1. Certain classification decisions may be delegated. The ~~central personnel division~~ Human resource management services may delegate to an agency the responsibility for decisions on certain position classification assignments. Decisions are limited to ~~levels within a classification series~~ those classes as specified by the division.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12

4-07-03-07. An employee may request a review. An employee may request that an appointing authority submit the employee's position to ~~the central personnel division~~ human resource management services for review if the

employee demonstrates that one of the reasons in section 4-07-03-05 applies to the employee's position.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-08. An appointing authority shall consider an employee's request. An appointing authority shall consider an employee's request to submit the employee's position to ~~the central personnel division~~ human resource management services for review. The appointing authority shall, within sixty calendar days, determine if any of the reasons in section 4-07-03-05 apply. If any of the reasons apply, the appointing authority shall submit the request to ~~the central personnel division~~ human resource management services for review. If none of the reasons apply, the appointing authority shall respond to the employee.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-09.1. ~~Central personnel division~~ Human resource management services may initiate a classification review. If ~~the central personnel division~~ human resource management services becomes aware of a potentially inappropriate classification assignment, the division may initiate a classification review and request updated documentation of the position.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12

4-07-03-10. ~~Central personnel division~~ Human resource management services shall notify the appointing authority and employee. Within sixty calendar days of receiving a request to review a position, ~~the central personnel division~~ human resource management services shall notify in writing the agency appointing authority and the employee ~~in writing~~ of the division's decision and the right to request reconsideration. The human resource management services director may extend the timeframe if:

1. The request requires creating a new or revising an existing class description; or
2. The division is required to obtain additional information in order to properly process the request.

In cases of extended timeframes, human resource management services will notify the appointing authority.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-11. Request for reconsideration of classification decision. An appointing authority or an employee may request reconsideration of a classification assigned to a position by submitting a written notice to ~~the central personnel division~~ human resource management services within fifteen working days from the date the initial classification decision was mailed by ~~the central personnel division~~ human resource management services. The request for reconsideration must state the specific issue and reasons for the request and the desired outcome. ~~The central personnel division~~ Human resource management services shall review the information contained in the request and provide a decision in writing to the parties within sixty calendar days from the date the request for reconsideration was received by the division.

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-03-12. Grandfathering. When a current employee affected by a class or class series review does not meet new or revised qualifications as stated on the class description, the employee may be grandfathered into that employee's current position at the appropriate job class level without loss of pay or status. The employee must meet minimum qualifications as stated on the class descriptions of subsequent position reclassification actions in accordance with section 4-07-03-10.2.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-04

4-07-04-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by the ~~central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-04-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Class" means job or job title representing a group of tasks, duties, and responsibilities.
2. "compensation Compensation plan" means the listing of all the pay grades used in the classified service and the pay ranges assigned to each grade.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-03. Class evaluation process. The director, ~~central personnel division~~ human resource management services, shall develop, implement, and maintain a class evaluation process to evaluate and assign an appropriate pay grade to all classes in the classification plan.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-03.1. Correcting class evaluation interpretation inconsistencies. ~~The central personnel division~~ Human resource management services may correct inconsistencies in class evaluations as related evaluation interpretations occur. If revisions result in grade changes, ~~the central personnel division~~ human resource management services shall notify affected employees and appointing authorities of the proposed change and provide an opportunity to submit related documentation. After review of any documentation received, ~~the central personnel division~~ human resource management services shall provide notification as provided in section 4-07-04-09.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-04. A written request to review a pay grade. A written request to review a pay grade may be submitted to ~~the central personnel division~~ human resource management services by the appointing authority only if one of the following reasons apply:

1. The duties and responsibilities of the class have changed.
2. The appointing authority is experiencing recruiting problems due to the assigned pay grade.
3. The appointing authority is experiencing retention problems due to the assigned pay grade.
4. The appointing authority can provide employment market data that shows an extreme variance between market pay and the classified salary range.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-05. Additional information required. An appointing authority requesting a pay grade review shall furnish additional information to ~~the central personnel division~~ human resource management services at the time the request is made. The additional information must include:

1. A statement of the problem.
2. Up-to-date job descriptions/position information questionnaires.
3. Any available statistical data that relates to the problem encountered, i.e., turnover rate, recruiting costs, training costs, etc.
4. Details of efforts to resolve the problem through alternative methods.
5. Any available analysis of the current use of the salary range assigned to the existing pay grade.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-06. Information and forms required. Repealed effective July 1, 2004. A request to review a pay grade must contain all information specified by the

~~central personnel division. A request must be submitted on the form specified by the division.~~

History: Effective ~~September 1, 1992.~~

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-07. An employee may request a review. An employee may request that an appointing authority submit the pay grade assigned to the employee's class to ~~the central personnel division~~ human resource management services for review if the employee demonstrates that one of the reasons in section 4-07-04-04 applies to the employee's classification.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-08. An appointing authority shall consider an employee's request. An appointing authority shall consider an employee's request to submit the pay grade assigned to the employee's class to ~~the central personnel division~~ human resource management services for review. The appointing authority shall, within sixty calendar days, determine if any of the reasons in section 4-07-04-04 apply and if the information required in section 4-07-04-05 is available. If any of the reasons apply and if the information is available, the appointing authority shall submit the request to ~~the central personnel division~~ human resource management services for review. If none of the reasons apply, the appointing authority shall respond to the employee.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-09. ~~Central personnel division~~ Human resource management services shall notify affected appointing authority and employee. Within sixty calendar days of receiving a request to review a pay grade, ~~the central personnel division~~ human resource management services shall notify in writing the affected agency appointing authority and the employee ~~in writing~~ of the division's decision and the right to ~~appeal~~ request reconsideration. The appointing authority shall communicate pay grade assignments to the employees. The human resource management services director may extend the time when the nature of the request requires extensive review and a comment period in order to properly process the

request. In cases of time extensions, human resource management services shall notify the appointing authority.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-09.2. Request for reconsideration of pay grade assignment.

An appointing authority or an employee may request reconsideration of a pay grade assigned to a class by submitting a written request to ~~the central personnel division~~ human resource management services within fifteen working days from the date the initial pay grade decision was mailed by ~~the central personnel division~~ human resource management services. The request for reconsideration must state the specific issue, reason for the request, and desired outcome. ~~The central personnel division~~ Human resource management services shall review the information contained in the request, solicit other information and input as appropriate, and provide a written decision to the parties within sixty calendar days from the date of the request for reconsideration. The human resource management services director may extend the time when the nature of the request requires extensive review and a comment period in order to properly process the request. In cases of time extensions, human resource management services shall notify the appointing authority.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-11. Pay grade exception. Upon receipt of a request to review a pay grade from an appointing authority or an employee the director, ~~central personnel division~~ human resource management services, may assign a pay grade that is higher than that determined by the application of the class evaluation system. This may be done when the pay grade assigned to a class has not resolved significant problems in the recruiting or retention of qualified individuals for a class. When a pay grade exception is assigned to a class, the grade must be identified as such and the appointing authority and all employees in the class must be notified.

History: Effective May 1, 1994; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-04-12. Periodic review. Classes assigned a pay grade exception are subject to periodic review by ~~the central personnel division~~ human resource management services. Such classes ~~must~~ shall be reviewed no less than once every five years to verify the appropriateness of the assigned pay grade. The director, ~~central personnel division~~ human resource management services, shall notify the respective appointing authorities and all employees in the class that a

review is being conducted. The appointing authority and employees may submit information for the review.

History: Effective May 1, 1994; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-05

4-07-05-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-05-01.1. Definitions. The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapter 54-44.3, except:

1. "Closing date" means a date by which applications must be received or postmarked as specified.
2. "External recruiting" means that applications for filling a vacant position under an appointing authority shall be accepted from current employees of the appointing authority and persons not employed by the appointing authority.
3. "Internal recruiting" means that applications for filling a vacant position under an appointing authority shall only be accepted from current employees of the appointing authority and employees eligible for reinstatement by the appointing authority.
4. "Promotion" means a personnel action that results in the advancement of an employee to a position in a different class ~~which~~ that has a higher pay grade than the employee's previous position.
5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by ~~the central personnel division~~ human resource management services at the time the personnel action occurs.
6. "Reinstatement" means a personnel action that involves the reemployment of a previous employee of the appointing authority, who resigned or was separated while in good standing in a classified position.
7. "Transfer" means a personnel action that results in the reassignment of an employee from one position to a different position that has the same pay grade as the employee's previous position and that does not result in a break in service.

8. "Underfill" means to fill a classified position by employing, promoting, reinstating, or transferring an individual into a classified position at a lower class than originally announced.
9. "Vacancy announcement" means an announcement that a particular position is vacant and that the appointing authority intends to recruit to fill it.

History: Effective July 1, 1995; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-05-02. Promotion. An appointing authority may promote a regular or probationary employee to fill a vacant classified position in accordance with section 4-07-05-05.1.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-05-02.1. Reinstatement. An appointing authority may reinstate a former employee who was hired through a competitive process and who has successfully completed a required probationary period to fill a vacant position. ~~The employee being reinstated must be assigned to a position at the same regular, permanent, probationary, or temporary status as at the time employment was terminated.~~ The reinstatement must be effective within three years from the date of the employee's separation.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-05-02.2. Transfer. An appointing authority may transfer a regular or probationary employee from ~~a~~ one classified position to another classified position in accordance with section 4-07-05-05.1.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-05-03. Minimum qualifications. Except as provided in section 4-07-05-06, ~~and~~ an appointing authority may employ, promote, reinstate, or transfer a person into or to a position in the classified service provided that person possesses qualifications that at least meet the minimum qualifications for that

class as ~~they are~~ stated in the class ~~specifications~~ descriptions and successfully completes any examination requirement specified by the appointing authority.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-05-04. Notifying ~~central personnel~~ human resource management services. An appointing authority shall notify ~~the central personnel division~~ human resource management services of each vacant classified, nontemporary position that the appointing authority intends to fill through external recruitment. The notification must be submitted prior to beginning the recruiting effort and may be in the form of a completed vacancy announcement, letter, or memo and transmitted electronically or by mail. An appointing authority ~~who~~ that lists vacancies with job service North Dakota need not provide notification to ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-05-05.1. Internal recruiting. When an appointing authority proceeds to fill a vacant classified, nontemporary position by recruiting an individual who is a current employee of the appointing authority, the appointing authority shall ensure that all employees occupying classified positions of the appointing authority have the opportunity to know of and apply for the position. An appointing authority may specify a work unit or work units within the agency from which applicants may be considered. However, there is no requirement for a vacancy announcement when the transfer of an employee to a vacant position is necessary to provide a reasonable accommodation for an employee under the Americans with Disabilities Act, or to avoid a reduction-in-force during a reorganization.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-05-05.2. Temporary employees and interns. An appointing authority may consider a current temporary ~~employees~~ employee or ~~individuals~~ individual who ~~have~~ has completed an approved internship with the agency as an internal ~~applicants~~ applicant provided ~~they meet~~ the applicant meets the following requirements:

1. A temporary employee must have been selected on an open and competitive basis at the time of employment to the current temporary position with the agency.

2. An intern must have completed a documented internship with the agency within a two-year period immediately prior to the employment date.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-05-06. Underfill. When no fully qualified candidates are available after an internal or external recruiting effort, an appointing authority may underfill a position if each of the following requirements are met:

1. The duration of the underfill does not exceed ~~one year~~ two years. ~~In cases where~~ If special circumstances require a period exceeding ~~one year~~ two years, an appointing authority shall request written approval from ~~the central personnel division~~ human resource management services.
2. The applicant selected possesses the appropriate license or meets other applicable statutory requirements.

History: Effective July 1, 1995; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-05-08. Vacancy announcement contents. Each vacancy announcement must include the following information:

1. Class or working title.
2. Position number.
3. Salary ~~range~~ or projected hiring range.
4. Closing date.
5. Duty location of position (city).
6. Procedures for applying.
7. Summary of work.
8. Minimum qualifications and special requirements.
9. ~~Additional qualifications for which an applicant may be given preference.~~
10. Whether recruitment is internal or external.

Additional preferred qualifications may be listed on the vacancy announcement at the discretion of the appointing authority, or a reference to the position description may be made.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-05-09. Vacancy announcement requirements.

1. A vacancy announcement may not contain minimum qualifications that are less than the established minimum qualifications on the class ~~specification~~ description, but ~~they~~ it may contain more specific requirements.
2. When advertising for required education on a vacancy announcement, an appointing authority may:
 - a. Narrow the range of appropriate degrees.
 - b. Specify the additional training or experience needed for working in an upper level of a class series.
3. An appointing authority shall define the type and length of experience that substitutes for a college degree, if a substitution statement is used in the minimum qualifications of the class ~~specification~~ description.
4. ~~An appointing authority shall define the terms "related field" or "related experience" if used in the minimum qualifications.~~
5. An appointing authority wishing to consider applicants for underfill in the initial vacancy announcement shall indicate such and state the required minimum qualifications for the underfill.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

CHAPTER 4-07-06

4-07-06-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by the ~~central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-06-02. Probationary period. Each newly hired or reinstated employee shall serve ~~one~~ a probationary period ~~at the each~~ time of the employee's initial hiring into a classified position in an agency. ~~An employee who is rehired or reinstated into the agency after a break in service may, at the discretion of the appointing authority, serve an additional probationary period.~~ Temporary service at the same level and type of work may be considered toward the probationary period.

History: Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1)

4-07-06-04. Advising a new employee. An appointing authority shall advise in writing each newly hired or rehired employee of the applicable probationary period prior to the time the employee begins work.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1)

CHAPTER 4-07-07

4-07-07-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-07-03.1. Compliance with Fair Labor Standards Act. The state of North Dakota, as an employer, is required to abide by the Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.] concerning wage and hour provisions. The appointing authority is responsible for compliance with provisions of the Act, including the determination of exempt or nonexempt status or overtime issues. ~~The central personnel division will~~ Human resource management services may assist in this analysis.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-07-07. Holiday hours accrual for a part-time regular employee. An employee who occupies a part-time regular position must accrue holiday hours proportionately.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-07-08. Leave status and fringe benefits. A probationary or regular employee who is absent from work in a paid leave status continues to earn fringe benefits, including annual leave and sick leave.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-08

4-07-08-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-10

4-07-10-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-11

4-07-11-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by the central personnel division human resource management services.

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-11-03. Reduction-in-force. An appointing authority, after giving written notice to a classified employee, may cause an employee to lose ~~their~~ his or her employment due to a reduction-in-force. Prior to initiating a reduction-in-force, an appointing authority shall carefully conduct a written analysis of the affected employees in the agency or in a division or unit within the agency to determine those employees who will be subject to the reduction-in-force. ~~The appointing authority shall use all of the following four factors in the required analysis:~~ Affected employees means those employees in the same classification identified to be reduced in force within the agency, division, or unit within the agency. The appointing authority shall consider a comparison of the knowledge, skills, number of years and months an employee has in the classified service, other experience, and level of performance employees have with the knowledge, skills, and experience that the agency has determined it will need to accomplish the work to be done following the reduction-in-force.

- ~~1. The acquired knowledge and demonstrated skills of the employees compared to the work to be done. Employees lacking the necessary knowledge and skills are subject to the reduction-in-force.~~
- ~~2. The level of demonstrated work performance. Employees performing consistently at a lower performance level compared to other employees are subject to the reduction-in-force.~~
- ~~3. The length of service of the employees. Appointing authorities should list the number of years and months employees have been in the classified service. Employees with the fewer years of service are subject to the reduction-in-force.~~
- ~~4. The extent of training needed to ensure that reassigned employees would be fully productive if they were given different job assignments. Employees requiring the greater amount of training are subject to the reduction-in-force.~~

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-11-07. Reemployment following a reduction-in-force. An individual who has lost employment due to a reduction-in-force ~~must~~ shall be offered reemployment by the former employing agency if the following conditions are present:

1. A regular position vacancy, in the same classification or lower classification in the same series, occurs in the former employing agency, and the appointing authority decides to fill the vacancy by appointing someone other than a current employee.
2. The individual meets the ~~minimum~~ qualifications ~~established for the particular position~~ determined to be necessary for successful performance of the position by the agency and successfully completes any examination specified by the agency, including an oral interview.
3. No more than one year has elapsed since the individual lost employment due to the reduction-in-force.
4. The individual is not currently employed in a regular position in state service.

History: Effective May 1, 1994; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-11-08. Applicant status following a reduction-in-force. An individual who has lost employment due to a reduction-in-force shall for one year from the date of the reduction-in-force be considered an internal applicant for all positions within the former employing agency for which that individual applies pursuant to policies and practices established by that agency.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-12

4-07-12-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06; and 54-44.3; and section 54-52-01, except:

1. "Annual leave" means an approved absence from work with pay.
2. "Regular employee" means a person who has completed the probationary period and who is in a position classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-04. Annual leave accrual schedule. Agencies are advised that the following annual leave accrual schedule is recommended for use by each agency subject to this chapter:

<u>Years of Service</u>	<u>Hours Earned Per Month</u>
zero through three	eight
four through seven	ten
eight through twelve	twelve
thirteen through eighteen	fourteen
over eighteen	sixteen

An agency adopting or using a different accrual schedule shall promptly file a copy of that schedule with ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14, 54-44.3-12(1)

4-07-12-08. Annual leave limit. ~~The accrual of annual leave is limited in that no~~ No more than two hundred forty hours of accrued annual leave may be carried forward beyond ~~December thirty-first~~ April thirtieth of each year. If an ~~agency~~ a political subdivision that employs individuals in positions classified by human resource management services uses a cutoff date other than ~~December thirty-first~~ April thirtieth, then the ~~agency~~ political subdivision may continue to do so as long as the same cutoff date is used for all of the agency's employees who occupy positions that are classified by human resource management services, and the two-hundred-forty-hour limit is observed.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-09. Change of cutoff date. Repealed effective July 1, 2004. An agency may not change the cutoff date it uses relating to the limit of annual leave accrual without first notifying the agency's employees.

History: Effective ~~September 1, 1992.~~

General Authority: ~~NDCC 54-44.3-12~~

Law Implemented: ~~NDCC 54-44.3-12(1)~~

4-07-12-10. Pay during employment. An employee may not be paid for unused annual leave while the employee remains in the service of the agency, except when for the following reasons:

1. The employee either takes a long-term leave of absence;
2. The employee goes on educational leave; or
3. The employee moves to temporary employment; or
4. Human resource management services approves a written request from an agency for an exception to this section for a business-related reason.

When an employee is transferring from one agency to another, the employee must be paid for the difference in hours between what the employee has accumulated and the number of hours the gaining agency will accept. When an employee is leaving the service of the agency, the employee must be paid for all accrued hours of annual leave.

History: Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-11. Credit for temporary service. A temporary employee who becomes regular must be given credit for the employee's length of service as a temporary employee for the purpose of determining the annual leave accrual rate

provided there was no break in service beyond one year. An agency may not grant annual leave hours to a temporary employee.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-13. Assumption of accrued annual leave. An appointing authority employing an individual from another state agency may accept all or only a part of the employee's accrued annual leave hours. Agencies covered by the North Dakota merit system may accept all or a part of accrued annual leave hours of a county social service board employee in a position classified by ~~the central personnel division~~ human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-13

4-07-13-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-13-04. Sick leave accrual rate. Agencies are advised that the following sick leave accrual schedule is recommended for use by each agency subject to this chapter:

Years of Service

zero to all

Hours Earned Per Month

eight

An agency adopting or using a different accrual schedule shall promptly file a copy of that schedule with ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14, 54-44.3-12(1)

4-07-13-12. Assumption of accrued sick leave. An appointing authority employing an individual from another state agency shall accept all of the employee's accrued sick leave hours. Agencies covered by the North Dakota merit system may accept all accrued sick leave hours of a county social service board employee in a position classified by ~~the central personnel division~~ human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-14

4-07-14-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by the ~~central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-15

4-07-15-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-16

4-07-16-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-17

4-07-17-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-18

4-07-18-01. Scope of chapter. This chapter applies to all state agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-18-02. Requirement for service award program. Each agency, department, institution, board and commission shall recognize certain service anniversaries of classified employees by implementing and administering a service award program. Service awards may be postponed or withheld if there are documented problems with an employee's performance.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-18-04. Length of service required to receive award. An employee must have completed ~~the equivalent of five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, or forty, forty-five, or fifty~~ years of full-time employment with the state in order to receive a service award. An employee who leaves employment with the state and then returns, again begins to accumulate time. That time must be added to the employee's previous service and applied to any future service award.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-18-05. Service award types. The types of service awards that are given to employees must be provided as follows:

1. Following the completion of five years; certificate or plaque, and a gift not to exceed a value of twenty-five dollars.
2. Following the completion of ten years; certificate or plaque, and a gift not to exceed a value of fifty dollars.
3. Following the completion of fifteen years; certificate or plaque, and a gift not to exceed a value of seventy-five dollars.
4. Following the completion of twenty years; certificate or plaque, and a gift not to exceed a value of two hundred dollars.

5. Following the completion of twenty-five years; certificate or plaque, and a gift not to exceed a value of two hundred twenty-five dollars.
6. Following the completion of thirty years; certificate or plaque, and a gift not to exceed a value of two hundred fifty dollars.
7. Following the completion of thirty-five years; certificate or plaque, and a gift not to exceed a value of two hundred seventy-five dollars.
8. Following the completion of forty years; certificate or plaque, and a gift not to exceed a value of ~~two~~ three hundred dollars.
9. Following the completion of forty-five years; certificate or plaque, and a gift not to exceed a value of four hundred dollars.
10. Following the completion of fifty years; certificate or plaque, and a gift not to exceed a value of five hundred dollars.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-18-06. Retirement awards. A retirement award ~~must~~ shall be provided to an employee who has a minimum of fifteen years of state service, and who has not been previously recognized for a retirement by the state, as follows:

1. A ~~plaque with bronzed retirement certificate or bronzed letter~~ signed by the governor and/or a plaque.
2. A gift with a value not to exceed two hundred dollars.
- 3.

A farewell coffee party; may be provided that upon agreement of the employee agrees to participate and the agency. Retirement awards may be withheld if there are documented problems with an employee's performance.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-18-07. Cash. An agency may not provide cash to an employee as part of a service or retirement award program. An agency may, however, provide a gift certificate.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-19

4-07-19-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-19-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Cause" means conduct or factors related to a regular employee's job duties, job performance, or working relationships that is detrimental to the discipline and efficiency of the service in which the employee is or was engaged.
2. "Demotion" means an involuntary reduction in the current base salary or grade level where the newly assigned grade level forecloses pay adjustments of a regular employee resulting from reassignment for cause to a position in a lower class.
3. "Dismissal" means an involuntary termination of a regular employee's employment.
4. "Progressive discipline" means the disciplinary actions imposed to correct a regular employee's behavior, beginning with a less severe appropriate action and progressing to a more severe appropriate action, for repeated instances of poor job performance or for repeated violations of the same or similar rules or standards.
5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by ~~the central personnel division~~ human resource management services at the time of the disciplinary action.
6. "Suspension with pay" means a forced paid leave of absence.
7. "Suspension without pay" means ~~an enforced~~ a forced unpaid leave of absence.

- 7- 8. "Working days" means Monday through Friday exclusive of holidays, unless otherwise defined by an agency.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-19-04. Use of progressive discipline. Progressive discipline must be used to correct a regular employee's job performance problems or for a violation of rules or standards, ~~except when~~ unless an infraction or a violation of a serious nature is committed, including insubordination, theft, falsification of pay records, or assaulting or threatening to harm a supervisor or coworker, patient, or client, and for which the imposition of less severe disciplinary action would be inappropriate.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-19-04.2. Suspension with pay. A suspension with pay may be used during an investigation or pending disciplinary action.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-19-05. Appointing authority shall provide a written preaction notice. An appointing authority shall provide a written preaction notice when the suspension without pay, demotion, or dismissal of a regular employee is being considered. The preaction notice must include the following:

1. A statement that the appointing authority intends to take disciplinary action ~~which that~~ may result in demotion, suspension without pay, or dismissal of the employee.
2. An explanation of the alleged charges against the employee.
3. A provision for the employee to respond in writing within a ~~specified timeframe~~ minimum of five working days.
4. A statement regarding the employee's status until a final decision is made.
5. A statement that a written notice of the final action taken will be provided to the employee.

The appointing authority shall determine the method of delivery that best guarantees the employee's receipt of the preaction notice.

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-20

4-07-20-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1), 54-44.3-12.2

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

1. A provision that allows an employee to grieve an employer action of demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment. The provision must require the employee to begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of reprisal. The provision must also require that in the case of reprisal the employee shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action.
2. Specific steps to be followed in processing the grievance, limitations on the amount of time the parties have to respond, and any procedures for extending time limitations.
3. A requirement that the parties must respond to the issues raised in the grievance.
4. A method of counting time that is in working days.
5. Provisions that allow an employee a reasonable amount of time to process a grievance without loss of pay during regular working hours.
6. ~~A provision allowing a waiver of the agency grievance procedure by mutual agreement of the employee and appointing authority. The provision must require the agreement to be signed by both parties within fifteen working days of the employer action.~~
7. An option that if the appointing authority misses an established deadline in the grievance procedure, the grievance may be advanced to the next step.

8: 7. The use of a standard grievance form.

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1), 54-44.3-12.2

4-07-20-02.1. Waiver of agency grievance procedure. A waiver of the agency grievance procedure is allowed by mutual agreement of the employee and appointing authority. Each party must sign the waiver within fifteen working days of the employer action. Upon obtaining the waiver, the employee may appeal directly to human resource management services in accordance with section 4-07-20.1-08.

History: Effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20-03. Absence of established written agency grievance procedure. In the absence of an established written agency grievance procedure, the aggrieved employee may appeal an employer action as covered in subsection 1 of section 4-07-20.1-02 and section 4-07-20.2-04 directly to ~~the central personnel division~~ human resource management services by following the applicable appeal procedures outlined in section 4-07-20.1-08 or 4-07-20.2-07. ~~The central personnel division~~ Human resource management services shall act upon the appeal in the same manner as an appeal processed through an agency grievance procedure. This avenue of appeal does not negate the requirements for an agency grievance procedure.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1), 54-44.3-12.2

CHAPTER 4-07-20.1

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

1. "Employer action" means an action taken by an appointing authority that affects a regular employee through a demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal.
2. "Forced relocation" means the involuntary transfer or reassignment of a regular employee from one work location in the state to another work location in the state that requires the employee to move to a different place of residence. Telecommuting and other alternative work location agreements are not considered forced relocations.
3. "Reduction-in-force" means the loss of employment by a regular employee as a result of a reduction in funding, lack of work, curtailment of work, or reorganization.
4. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by ~~the central personnel division~~ human resource management services at the time the employer action occurred.
5. "Reprisal" means an unfavorable employment-related action taken against a regular employee by an appointing authority for appealing to ~~the central personnel division~~ human resource management services or the state personnel board; for exercising the employee's rights under the Public Employees Relations Act of 1985, North Dakota Century Code chapter 34-11.1; for testifying before a legislative committee; or for requesting timely assistance under the employee assistance program.
6. "Waiver" means a written agreement between a regular employee and the appointing authority not to proceed with the agency grievance procedure and to permit an appeal to be made directly to ~~the central personnel division~~ human resource management services.
7. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-03. A regular employee may file a grievance regarding an employer action. A regular employee may, in accordance with the respective agency's grievance procedure, file a grievance regarding demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal. A grievance must be processed through the agency grievance procedure prior

to submitting an appeal to ~~the central personnel division~~ human resource management services, unless a waiver is agreed upon as provided for in section 4-07-20.1-05.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-04. Commencement of agency grievance procedure - Time limitations. The employee shall begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of reprisal. The employee grieving reprisal action shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to ~~the central personnel division~~ human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-05. Waiver of agency grievance procedure. A waiver of the agency grievance procedure is allowed by mutual agreement of the employee and appointing authority. The waiver must be signed by both parties within fifteen working days of the employer action. Upon obtaining the waiver, the employee may appeal directly to ~~the central personnel division~~ human resource management services in accordance with section 4-07-20.1-08.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-06. A regular employee may appeal to the central personnel division human resource management services. A regular employee may appeal an employer action to ~~the central personnel division~~ human resource management services if:

1. The employee has processed a grievance through the agency grievance procedure and is dissatisfied with the result;
2. The employee and the appointing authority have agreed to a waiver of the agency grievance procedure; or
3. The agency has not established a grievance procedure or has failed to respond to a grievance in a timely manner.

No other employer actions except as defined in this chapter or otherwise specifically provided by administrative rule are appealable to human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-07. Limitations for reduction-in-force appeal. A regular employee may appeal a reduction-in-force appeal may be made only on the basis that the factors agency did not utilize a uniform comparative analysis as required by section 4-07-11-03 were not followed or that the reduction-in-force was conducted in a discriminatory manner that would violate the state's policy against discrimination as stated in North Dakota Century Code section 14-02.4-01. A former regular employee who was reduced in force may appeal a denial of reemployment only on the basis that the agency did not follow section 4-07-11-07 or that the denial of reemployment was conducted in a discriminatory manner that would violate the state's policy against discrimination as stated in North Dakota Century Code section 14-02.4-01. The assessment of whether an individual meets the qualifications necessary for successful performance shall remain with the agency.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-08. Procedure for appeal to the central personnel division human resource management services.

1. The employee shall file the properly completed prescribed appeal form with the director, central personnel division human resource management services. The appeal form must be delivered, mailed, or transmitted by facsimile and must be received in the central personnel division human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. The date of service of the notice shall be considered to be the date the notice was mailed or actual notice. The agency shall prepare a certificate of mailing or, a certificate or admission of delivery in person, or other reliable means, to show proof of the date of mailing or actual delivery.
2. The director, central personnel division human resource management services, shall within two working days submit a written request to the director, office of administrative hearings, to conduct a hearing on behalf of the division and shall forward a copy of the appeal form to the appointing authority.

3. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the administrative law judge shall prepare ~~findings of fact and conclusions of law, if an appropriate; issue a final decision order~~ dismissing the appeal; which shall be final, and provide a copy of them ~~it~~ to the parties. The administrative law judge may, for good cause shown, waive the time limitations for filing an appeal. Good cause means those circumstances that reasonably and without any fault on the part of the appellant prevented the filing of an appeal in a timely fashion. In no event may an appeal be deemed timely after sixty days have elapsed from the date of the employer action.
4. The administrative law judge shall consider whether ~~the central personnel division~~ human resource management services has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the internal agency grievance process. If the administrative law judge is unable to establish whether ~~the central personnel division~~ human resource management services has jurisdiction over the subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.
5. If the administrative law judge determines that ~~the division~~ human resource management services does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.
6. If it is determined that ~~the division~~ human resource management services has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.
7. The administrative law judge shall notify the employee and the appointing authority of the final decision by sending each of them a copy of the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by subsection 3 of North Dakota Century Code section 28-32-13 28-32-39. The parties shall implement the final decision within any time periods specified by the administrative law judge.
8. The administrative law judge shall return the completed appeal file to ~~the central personnel division~~ human resource management services.

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

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

CHAPTER 4-07-20.2

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

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

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

1. "Applicant" means a person who has applied for a position classified by ~~the central personnel division~~ human resource management services and who has complied with the application procedures required by the employing agency.
2. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by ~~the central personnel division~~ human resource management services at the time the alleged action occurred.
3. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

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

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-05. ~~A regular employee shall file an~~ Completion of agency grievance process prior to appeal to the central personnel division human resource management services. A regular employee shall ~~file an~~ complete the agency grievance process prior to submitting an appeal to ~~the central personnel division~~ human resource management services for an appeal hearing, unless a waiver is granted as provided for in section 4-07-20.2-06. The employee shall begin the agency grievance procedure within fifteen working days from the date of the alleged discriminatory action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to ~~the central personnel division~~ human resource management services. If an agency does not have an established written grievance procedure, the employee shall submit the appeal to ~~the central personnel division~~ human resource management services within fifteen ~~workings~~ working days from the date of the alleged discriminatory action.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

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

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-07. Procedure for appeal to ~~the central personnel division~~ human resource management services.

1. The employee shall file the properly completed prescribed appeal form with the director, ~~central personnel division~~ human resource management services. The appeal form must be delivered, mailed, or transmitted by facsimile and must be received in the ~~central personnel division~~ human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. The date of service of the notice shall be considered to be the date the notice was mailed or actual notice. The agency shall prepare a certificate of mailing ~~or~~ a certificate or admission of delivery in person, or other reliable means to show proof of the date of mailing or actual delivery. An applicant shall file the appeal form by delivery, mail, or transmittal by facsimile, and the form must be received in the ~~central personnel division~~ human resource management services office by five p.m. within fifteen working days of the alleged discriminatory action.

2. The director, ~~central personnel division~~ human resource management services, shall within two working days submit a written request to the director, office of administrative hearings, to conduct a hearing on behalf of ~~the division~~ human resource management services and shall forward a copy of the appeal form to the affected appointing authority.
3. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the administrative law judge shall prepare findings of fact and conclusions of law, if an appropriate; issue a final decision order dismissing the appeal; which shall be final, and provide a copy of them ~~it~~ to the parties. The administrative law judge may, for good cause shown, waive the time limitations for filing an appeal. Good cause means those circumstances that reasonably and without any fault on the part of the appellant prevented the filing of an appeal in a timely fashion. In no event may an appeal be deemed timely after sixty days have elapsed from the date of the employer action.
4. The administrative law judge shall consider whether ~~the central personnel division~~ human resource management services has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the internal agency grievance process. If the administrative law judge is unable to establish whether ~~the central personnel division~~ human resource management services has jurisdiction over the subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.
5. If the administrative law judge determines that ~~the division~~ human resource management services does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.
6. If it is determined that ~~the division~~ human resource management services has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.
7. The administrative law judge shall notify the employee or the applicant and the affected appointing authority of the final decision by sending each of them the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by subsection 3 of North Dakota Century Code section 28-32-13 ~~28-32-39~~. The parties shall implement

the final decision within any time periods specified by the administrative law judge.

8. The administrative law judge shall return the completed appeal file to ~~the central personnel division~~ human resource management services.
9. Any party to the appeal may review the recordings of the hearing by making a request to ~~the central personnel division~~ human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

CHAPTER 4-07-21

4-07-21-01. Scope of chapter. This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

CHAPTER 4-07-24

4-07-24-01. Scope of chapter. This chapter applies to applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of personnel human resource administration.

History: Effective September 1, 1992; amended effective July 1, 1995; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-24-01.1. Definitions. The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapter 54-44.3, except "regular employee" means a person who has completed the probationary period and who is or was in a position classified by ~~the central personnel division~~ human resource management services at the time the personnel action occurs.

History: Effective November 1, 1996; amended effective January 1, 1998; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-24-08. Merit system application appeals to ~~the central personnel division~~ human resource management services.

1. If an applicant is a regular employee and does not agree with the response of the agency appointing authority, the applicant may further appeal the disqualification to ~~the central personnel division~~ human resource management services. A letter of appeal must be addressed to the Director, ~~Central Personnel Division Human Resource Management Services~~, 600 East Boulevard Avenue, Dept. 113, Bismarck, ND 58505-0120, and must be postmarked no later than fifteen working days from the date of the agency appointing authority's response to the appeal. The letter of appeal must specify the basis upon which the applicant relies to assert that the applicant meets the minimum qualifications for the position.
2. Upon receipt of the appeal letter, the director, ~~central personnel division~~ human resource management services, shall certify the appeal and submit a written request to the director, office of administrative hearings, to conduct the hearing in accordance with this section.
3. If the applicant and the appointing authority agree in writing, an appeal taken under this section may be disposed of informally as provided in this subsection. The administrative law judge shall notify the applicant and the appointing authority to provide documentation upon which each relies to assert its position on the appeal. Each party

may also provide a memorandum of support for its position and may request oral argument before the administrative law judge at the time it submits its memorandum. If either party requests oral argument before the administrative law judge, the administrative law judge shall notify the parties of the time, date, and location of the oral argument. After oral argument, if any, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and ~~the central personnel division~~ human resource management services. If the applicant and the appointing authority do not agree to informal disposition of the appeal, the administrative law judge shall conduct a hearing in accordance with this section. After the hearing, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and ~~the central personnel division~~ human resource management services.

History: Effective August 1, 1995; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 28-32-05.1, 54-44.3-12

Law Implemented: NDCC 28-32-05.1, 54-44.3-12

CHAPTER 4-07-25

4-07-25-04. Reexamination schedule. An applicant who has taken an examination may retake the examination according to procedures established by the employing agency solely at the agency discretion. The employing agency shall then use the highest of the examination scores.

History: Effective September 1, 1992; amended effective May 1, 1994; July 1, 1995; July 1, 2004.

General Authority: NDCC ~~54-42-03~~, 54-44.3-12

Law Implemented: NDCC ~~54-42-03~~, 54-44.3-12

CHAPTER 4-07-34

4-07-34-03. Oversight and audit procedures. ~~The central personnel division~~ Human resource management services shall conduct annual audits or oversight reviews of the policies, procedures, and practices for the following purposes:

1. To ensure compliance with the federal merit system principles.
2. To respond to any complaint relating to an agency's recruitment, selection, or employment procedures.

The reviews may ~~consist of, but not limited to,~~ include a periodic or selective audit of payroll records, personnel records, or other employment-related records. ~~The central personnel division~~ Human resource management services shall provide a notice of ten working days prior to an audit or oversight review, unless the audit or review is the result of a complaint provided for in subsection 2.

History: Effective July 1, 1995; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC ~~54-42-03~~, 54-44.3-12

Law Implemented: NDCC ~~54-42-03~~, 54-44.3-12

TITLE 7
AGRICULTURE COMMISSIONER

JULY 2004

CHAPTER 7-12-02
ANHYDROUS AMMONIA NURSE TANK AND STORAGE CONTAINER LOCK
PILOT PROGRAM

Section

<u>7-12-02-01</u>	<u>Definitions</u>
<u>7-12-02-02</u>	<u>Identification of a Critical Methamphetamine Use Zone</u>
<u>7-12-02-03</u>	<u>General Requirements</u>
<u>7-12-02-04</u>	<u>Enforcement</u>
<u>7-12-02-05</u>	<u>Penalty</u>

7-12-02-01. Definitions.

1. "Approved locking device" means a device approved by the insurance commissioner that locks and completely covers a nurse tank or applicator tank liquid withdrawal valve or a storage container main stop valve, including the valve stem and handle, thereby preventing the opening of the valve. The insurance commissioner will maintain a list of approved locking devices.
2. "Empty" means no liquid product is present in a nurse tank, applicator tank, or storage container.
3. "Equipped with" means an approved locking device is on hand and can be installed when required.
4. "Installed" means an approved locking device is actually installed on the liquid withdrawal valve and it is locked to prevent unauthorized opening.
5. "Owner or operator" means the owner or operator of an anhydrous ammonia storage facility and includes persons employed by or acting as the agent of the owner or operator.

6. "Unattended" means a person is not present to monitor the transfer and storage of anhydrous ammonia.

History: Effective April 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.2-11

7-12-02-02. Identification of a critical methamphetamine use zone. The designated critical methamphetamine use zone is Williams County and McKenzie County. The provisions of this chapter apply only to activities within Williams County and McKenzie County.

History: Effective April 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.2-11

7-12-02-03. General requirements.

1. An owner or operator of an anhydrous ammonia storage facility may not fill a nurse tank or applicator tank unless the tank is equipped with an approved locking device.
2. Unless an anhydrous ammonia nurse tank or applicator tank is empty, an owner or operator of an anhydrous ammonia storage facility may not store an unattended nurse tank or applicator tank at a facility unless the tank has an approved locking device installed. The insurance commissioner may exempt an anhydrous ammonia storage facility from this requirement upon a showing that the facility is equipped with an alternative security device such as fencing or electronic surveillance.
3. Unless an anhydrous ammonia nurse tank or applicator tank is empty, a person in possession of the tank outside of an anhydrous ammonia storage facility must install an approved locking device on the tank if the tank is left unattended overnight.
4. Unless a locking device is integral to the liquid withdrawal valve, a person transporting a nurse tank or applicator tank must remove the locking device during transit.
5. An anhydrous ammonia storage facility owner or operator must be present at the pickup of a nurse tank or applicator tank at an anhydrous ammonia storage facility unless the tank is empty or unless an approved locking device is installed on the tank.
6. A person in possession of a nurse tank or an applicator tank may not drop off the tank at an anhydrous ammonia storage facility if the owner or operator is not present unless the tank is empty or unless an approved locking device is installed on the tank.

7. Anhydrous ammonia may not be transferred from an anhydrous ammonia bulk delivery vehicle to a nurse tank or applicator tank unless the tank is equipped with an approved locking device.
8. A storage container must have approved locking devices installed on the main container stop valves whenever the storage facility is unattended, unless the container is empty.

History: Effective April 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.2-11

7-12-02-04. Enforcement.

1. The insurance commissioner may bring an action to enjoin the violation or threatened violation of the provisions of this chapter in the district court of the county in which the violation occurs or is about to occur.
2. The insurance commissioner may issue a cease and desist order to any person allegedly violating the provisions of this chapter.
3. The insurance commissioner may collect a civil penalty by a civil action in any appropriate court.
4. The act, omission, or failure of any officer, agent, or other person acting for or employed by any person is deemed to be the act, omission, or failure of the person as well as that of the person employed.
5. The insurance commissioner or the insurance commissioner's authorized agent may inspect a nurse tank, an applicator tank, or a storage container at any reasonable time at any location to assure compliance with this section.

History: Effective April 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.2-11

7-12-02-05. Penalty. A person who violates any provision of these rules is subject to a civil penalty not to exceed one hundred dollars for a first violation and not to exceed five hundred dollars for a second violation. Thereafter, the penalty provided for in North Dakota Century Code section 19-20.2-10 applies. The civil penalty may be imposed by the insurance commissioner through an administrative hearing and may be in addition to any criminal punishment.

History: Effective April 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.2-11

TITLE 13

DEPARTMENT OF FINANCIAL INSTITUTIONS

JUNE 2004

CHAPTER 13-02-21
DISCLOSURE OF CUSTOMER INFORMATION BY FINANCIAL INSTITUTIONS

Section

<u>13-02-21-01</u>	<u>Definitions</u>
<u>13-02-21-02</u>	<u>Authorization</u>
<u>13-02-21-03</u>	<u>Joint Marketing</u>
<u>13-02-21-04</u>	<u>Customer Direction</u>

13-02-21-01. Definitions. As used in this chapter, the terms "customer", "customer information", and "financial institution" have the same meaning as is given to them in North Dakota Century Code section 6-08:1-01.

History: Effective June 1, 2004.

General Authority: NDCC 6-01-04

Law Implemented:

13-02-21-02. Authorization. A financial institution that has not received a customer's express consent or opt-in election may disclose customer information to a third party only as provided by subsections 1 through 11 of North Dakota Century Code section 6-08.1-02, North Dakota Century Code section 6-08.1-03, and as follows:

1. To effect, administer, or enforce a transaction requested or authorized by the customer or in connection with servicing or processing a financial product or service requested or authorized by the customer;
2. To maintain or service the customer's account with the financial institution or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
3. In connection with a proposed or actual securitization, secondary market sale, including sales of servicing rights, or a similar transaction related to a transaction of the customer;
4. With the consent or at the direction of the customer;

5. To protect the confidentiality or security of the financial institution's records pertaining to the customer, the service or product, or the transaction therein;
6. To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;
7. For required institutional risk control or for resolving customer disputes or inquiries;
8. To persons holding a legal or beneficial interest relating to the customer;
9. To persons acting in a fiduciary or representative capacity on behalf of the customer;
10. To provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;
11. To the extent specifically permitted or required under other provisions of North Dakota law, federal law, and in accordance with the Right to Financial Privacy Act of 1978, to federal law enforcement agencies, including a federal functional regulator, the secretary of the treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 [12 U.S.C. 1951-1959], a state insurance authority, or the federal trade commission, self-regulatory organizations, or for an investigation on a matter related to public safety;
12. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act or from a consumer report reported by a customer reporting agency;
13. In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure concerns solely customers of such business or unit; or
14. To comply with federal, state, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

A financial institution may make a disclosure of necessary customer information under this section even though a customer has advised the financial institution that the customer does not consent to the disclosure.

History: Effective June 1, 2004.

General Authority: NDCC 6-01-04

Law Implemented:

13-02-21-03. Joint marketing. A financial institution may not disclose customer information to a nonaffiliated third party under a "joint marketing agreement" as that term is defined by section 502(b)(2) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)] unless the financial institution has first obtained its customer's written consent for the disclosure. A customer's written consent is not required for marketing that is undertaken by a financial institution on its own behalf or in conjunction with a nonaffiliated party where the financial institution does not share customer information with a nonaffiliated party.

History: Effective June 1, 2004.

General Authority: NDCC 6-01-04

Law Implemented:

13-02-21-04. Customer direction. A financial institution that has received a customer's "opt-in" election after the financial institution has notified the customer of its information sharing practices and policies as required by the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(1)] has obtained the customer's direction to share customer information in accordance with and as limited by the customer's opt-in election. This section does not limit the means by which a financial institution may obtain a customer's direction to share customer information with a third party.

History: Effective June 1, 2004.

General Authority: NDCC 6-01-04

Law Implemented:

CHAPTER 13-03-18
DISCLOSURE OF CUSTOMER INFORMATION BY FINANCIAL INSTITUTIONS

Section

<u>13-03-18-01</u>	<u>Definitions</u>
<u>13-03-18-02</u>	<u>Authorization</u>
<u>13-03-18-03</u>	<u>Joint Marketing</u>
<u>13-03-18-04</u>	<u>Customer Direction</u>

13-03-18-01. Definitions. As used in this chapter, the terms "customer", "customer information", and "financial institution" have the same meaning as is given to them in North Dakota Century Code section 6-08.1-01.

History: Effective June 1, 2004.

General Authority: NDCC 6-01-04

Law Implemented:

13-03-18-02. Authorization. A financial institution that has not received a customer's express consent or opt-in election may disclose customer information to a third party only as provided by subsections 1 through 11 of North Dakota Century Code section 6-08.1-02, North Dakota Century Code section 6-08.1-03, and as follows:

1. To effect, administer, or enforce a transaction requested or authorized by the customer or in connection with servicing or processing a financial product or service requested or authorized by the customer;
2. To maintain or service the customer's account with the financial institution or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
3. In connection with a proposed or actual securitization, secondary market sale, including sales of servicing rights, or a similar transaction related to a transaction of the customer;
4. With the consent or at the direction of the customer;
5. To protect the confidentiality or security of the financial institution's records pertaining to the customer, the service or product, or the transaction therein;
6. To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;
7. For required institutional risk control or for resolving customer disputes or inquiries;
8. To persons holding a legal or beneficial interest relating to the customer;

9. To persons acting in a fiduciary or representative capacity on behalf of the customer;
10. To provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;
11. To the extent specifically permitted or required under other provisions of North Dakota law, federal law, and in accordance with the Right to Financial Privacy Act of 1978, to federal law enforcement agencies, including a federal functional regulator, the secretary of the treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 [12 U.S.C. 1951-1959], a state insurance authority, or the federal trade commission, self-regulatory organizations, or for an investigation on a matter related to public safety;
12. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act or from a consumer report reported by a customer reporting agency;
13. In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure concerns solely customers of such business or unit; or
14. To comply with federal, state, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

A financial institution may make a disclosure of necessary customer information under this section even though a customer has advised the financial institution that the customer does not consent to the disclosure.

History: Effective June 1, 2004.

General Authority: NDCC 6-01-04

Law Implemented:

13-03-18-03. Joint marketing. A financial institution may not disclose customer information to a nonaffiliated third party under a "joint marketing agreement" as that term is defined by section 502(b)(2) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)] unless the financial institution has first obtained its customer's written consent for the disclosure. A customer's written consent is not required for marketing that is undertaken by a financial institution on its own behalf or in

conjunction with a nonaffiliated party where the financial institution does not share customer information with a nonaffiliated party.

History: Effective June 1, 2004.

General Authority: NDCC 6-01-04

Law Implemented:

13-03-18-04. Customer direction. A financial institution that has received a customer's "opt-in" election after the financial institution has notified the customer of its information sharing practices and policies as required by the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(1)] has obtained the customer's direction to share customer information in accordance with and as limited by the customer's opt-in election. This section does not limit the means by which a financial institution may obtain a customer's direction to share customer information with a third party.

History: Effective June 1, 2004.

General Authority: NDCC 6-01-04

Law Implemented:

TITLE 20
STATE BOARD OF DENTAL EXAMINERS

JULY 2004

CHAPTER 20-01-01

20-01-01-01. Organization and functions of state board of dental examiners.

1. **History and functions.** In 1895 a five-member state board of dental examiners was created to examine dentists as to their qualifications and to license and register qualified dentists.
2. **Board membership.** The board consists of seven members appointed by the governor. Five members must be licensed dentists, one member must be a licensed hygienist, and one member must be a consumer. Members of the board serve five-year terms. No member may serve more than ten years or two 5-year terms of office.
3. **Board members.** Members of the board are elected by the board to fill the individual positions of president, president-elect, and secretary-treasurer. The position of executive director has been created to assist the secretary-treasurer.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive director of the board:

~~Dr. Wayne A. Mattern, D.D.S.~~ Rita M. Kunz, RDH, B.A.
State North Dakota Board of Dental Examiners
Box 7246
Bismarck, ND 58507-7246
www.nddentalboard.org
~~701-223-1474~~ 701-258-8600

History: Amended effective October 1, 1988; November 1, 1988; July 1, 1993; May 1, 1996; June 1, 2002; July 1, 2004.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 20-01-02

20-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Anxiolysis" means diminution or elimination of anxiety.
2. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.
- 2- 3. "Board certified" means the dentist has been certified in a specialty area in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
- 3- 4. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
- 4- 5. "Certified dental assistant" means a dental assistant who has satisfactorily completed the educational requirements specified by the commission on dental accreditation of the American dental association for dental assistants or has two years of full-time work experience, and who has passed and currently holds the dental assisting national board (DANB) certification examination for dental assistants.
- 5- 6. "Combination inhalation - enteral conscious sedation" (combined conscious sedation) means conscious sedation using inhalation and enteral agents.

When the intent is anxiolysis only, and the appropriate dosage of agents is administered, then the definition of enteral or combined inhalation-ental conscious sedation (combined conscious sedation), or both, does not apply.

Nitrous oxide/oxygen when used in combination or with sedative agents may produce anxiolysis, conscious or deep sedation, or general anesthesia.

- 6- 7. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a

written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.

- ~~7-~~ 8. "Conscious sedation" means depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. The drugs or technique, or both, should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.
- ~~8-~~ 9. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation. Examination for calculus and instrumentation must be done by the dentist or hygienist.
- ~~9-~~ 10. "Deep sedation" is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently or to respond purposefully to physical stimulation or verbal command, and is produced by pharmacological or nonpharmacological method, or combination thereof.
- ~~10-~~ 11. "Dental assistant" means a person who under the direct supervision of a dentist renders assistance to a dentist or dental hygienist as described in article 20-03.
- ~~11-~~ 12. "Dental hygienist" means any person who is a graduate of a school of dental hygiene with a minimum of two academic years of dental hygiene curriculum approved or provisionally approved by the commission on dental accreditation of the American dental association and who is registered and licensed by the North Dakota state board of dental examiners.
- ~~12-~~ 13. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.
- ~~13-~~ 14. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment

facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.

- ~~14:~~ 15. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.
- ~~15:~~ 16. "General anesthesia" means an induced state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or nonpharmacological method, or a combination thereof.
- ~~16:~~ 17. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis and treatment plan. The dentist is not required to be in the treatment facility. Limitations are contained in North Dakota Century Code section 43-20-03.
- ~~17:~~ 18. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.
- ~~18:~~ 19. "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.
- ~~19:~~ 20. "Modified general supervision" means that the dentist must personally evaluate the patient, diagnose the conditions to be treated, and plan and authorize treatment. The dentist must personally evaluate the patient at each visit, but need not be present when treatment is initiated or remain until procedures are completed on a patient of record who has been seen in the office in the previous twelve months.
- ~~20:~~ 21. "Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist.
- ~~21:~~ 22. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

- ~~22-~~ 23. "Personal supervision" means a level of supervision indicating that the dentist or dental hygienist is personally treating a patient and authorizes the dental hygienist or dental assistant to aid the treatment by concurrently performing a supportive procedure.
- ~~23-~~ 24. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the ~~annual~~ biennial registration.
- ~~24-~~ 25. "Qualified dental assistant" means a dental assistant who has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week, has completed a board-approved infection control seminar and passed the x-ray and infection control portions of the DANB examination, and has applied to the board and paid the certificate fee determined by the board.
- ~~25-~~ 26. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program approved or provisionally approved by the commission on dental accreditation of the American dental association, or who has completed two years of full-time work experience as a dental assistant and has completed dental assistant national boards, or who has completed a course in dental assisting which is approved by the North Dakota board of dental examiners, and who is registered by the North Dakota ~~state~~ board of dental examiners.
- ~~26-~~ 27. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's ~~annual~~ biennial registration certificate.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-20-02, 43-20-12, 43-28-06

CHAPTER 20-02-01

20-02-01-05. Permit for anesthesia use.

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia by dentists. The standards specified in this chapter shall apply equally to general anesthesia and parenteral sedation, but do not apply to sedation administered through inhalation. A dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use general anesthesia or conscious sedation on any patient unless such dentist has a permit, currently in effect, issued by the board, initially for a period of twelve months and renewable ~~annually~~ biennially thereafter, authorizing the use of such general anesthesia or conscious sedation.
2. An applicant may not be issued a permit initially as required in subsection 1 unless:
 - a. The dental examiners approve the applicant's facility after an inspection conducted by an individual or individuals designated by the dental examiners;
 - b. The dental examiners are satisfied that the applicant is in compliance with the American dental association policy statement: THE USE OF CONSCIOUS SEDATION, DEEP SEDATION AND GENERAL ANESTHESIA FOR DENTISTS (October 2000); and
 - c. The initial application includes payment of a fee in the amount determined by the dental examiners.
3. The dental examiners may renew such permit ~~annually~~ biennially, provided:
 - a. Application for renewal is received by the dental examiners before the date of expiration of such permit;
 - b. Payment of a renewal fee in the amount to be determined by the dental examiners is received with such application; and
 - c. An onsite evaluation of the dentist's facility may be conducted by an individual designated by the dental examiners, and the dental examiners must approve the results of each such evaluation.

History: Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

CHAPTER 20-03-01

20-03-01-01. Duties. A dental assistant may perform the services listed in subsections 1 through 6 under direct supervision of a licensed dentist. A dental assistant may perform the duties set forth in subsections 7 through ~~30~~ 33 under direct supervision only if the dental assistant is a registered dental assistant. A qualified dental assistant may perform the duties set out in subsections 1 through 7 under direct supervision.

1. Take and record pulse, blood pressure, and temperature.
2. Take and record preliminary dental and medical history for the interpretation by the dentist.
3. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
4. Receive removable dental prosthesis for cleaning or repair.
5. Take impressions for study casts.
6. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).
7. Take dental radiographs.
8. ~~Remove sutures.~~
9. Apply anticariogenic agents topically.
9. Apply desensitizing solutions to the external surfaces of the teeth.
10. Dry root canal with paper points.
- ~~40:~~ 11. Place and remove rubber dams.
- ~~41:~~ ~~Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.~~
12. ~~Place and remove orthodontic wires or appliances that have been activated by the dentist.~~ Place and remove matrix bands and wedges.
13. ~~Place, tie, and remove ligature wires and elastic ties.~~ Take occlusal bite registration for study casts.
14. ~~Preselect and prefit orthodontic bands.~~ Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.

15. Fabricate, adjust, place, and recement, or remove a temporary crown, bridge, or onlay, or temporary restorative material. This applies only to a ~~tooth or teeth~~ dentitions actively under treatment for which a permanent restoration is being fabricated.
16. ~~Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.~~ Adjust permanent crowns outside of the mouth.
17. ~~Place and remove periodontal dressings, dry socket medications, and packing.~~ Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.
18. ~~Place orthodontic elastic-type separators.~~ Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.
19. ~~Place temporary restorative material.~~ Apply pit and fissure sealants if criteria set out in section 20-03-01-04 of these rules are met. Adjust sealants with slow-speed handpiece.
20. ~~Remove arch wires.~~ Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.
21. ~~Cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment, under general supervision.~~ Polish restorations.
22. ~~Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.~~ Place and remove periodontal dressings, dry socket medications, and packing.
23. ~~Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.~~ Remove sutures.
24. ~~Acid-etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.~~ Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
25. ~~Take impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for fixed or removable orthodontic appliances, athletic mouth guards, splints, bleaching trays, and rapid palatal expanders bite splints, flippers, and removable prosthetic repairs.~~
26. ~~Apply desensitizing solutions to the external surfaces of the teeth. Preselect and prefit orthodontic bands.~~

27. ~~Place and remove matrix bands and wedges.~~ Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
28. ~~Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the teeth.~~ Place and remove arch wires or appliances that have been activated by a dentist.
29. ~~Apply pit and fissure sealants.~~ Cut arch wires and remove or replace loose bands, loose brackets, or other orthodontic appliances.
30. ~~Dry root canal with paper points.~~ Acid-etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.
31. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.
32. Take face bow transfers.
33. Take intraoral and extraoral photographs.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-12

20-03-01-02. Prohibited services. A dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administering of local or general anesthetics.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. Placing or ~~contouring~~ of a final restoration.
6. ~~Any intraoral procedure which would lead to the fabrication of any appliance, with the exception of taking impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for athletic mouth guards, splints, bleaching trays, or rapid palatal expanders.~~ Contouring a final restoration, excluding a crown which has not been cemented by a dentist.

7. Activating any type of orthodontic appliance.
8. Cementing or ~~removing~~ bonding orthodontic bands or brackets that have not been previously placed by a dentist.
9. ~~Direct bonding or removal of orthodontic brackets.~~
- ~~10. Apply pit and fissure sealants unless the assistant has complied with section 20-03-01-04.~~
- ~~11. Placing bases or cavity liners.~~
- ~~12. 10. Scaling, root planing, or gingival curettage.~~
- ~~13. 11. Measuring the gingival sulcus with a periodontal probe.~~

History: Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000; June 1, 2002; July 1, 2004.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-12

20-03-01-03. Annual registration of dental assistants performing expanded duties.

1. Any individual engaged in performing expanded duties in the practice of dental assisting in the state of North Dakota (those duties set out in subsections 7 through ~~30~~ 33 of section 20-03-01-01) must register with the board of dental examiners by submitting an application accompanied by a fee determined by the board. Thereafter, on a yearly basis, before expiration, every dental assistant performing expanded duties shall transmit to the board a registration fee determined by the board and evidence of completion of continuing education requirements, together with other pertinent information as required. At least thirty days before the certificate of registration expiration date, the executive director of the board shall send to every dental assistant performing expanded duties a written notice stating the amount and due date of the fee. A late fee determined by the board shall be assessed if the registration renewal application and fee are not received by the board before expiration.
2. An initial certificate of registration may be issued by the board to a dental assistant when:
 - a. The dental assistant has applied to the board and paid the registration fee determined by the board; and
 - b. The dental assistant possesses one of the following professional qualifications:

- (1) The dental assistant is currently dental assistant certified by the dental assisting national board;
 - (2) The dental assistant has completed a course in dental assisting from a school of dental assisting accredited by the commission on dental accreditation of the American dental association; or
 - (3) The dental assistant has completed a course in dental assisting which is approved by the North Dakota board of dental examiners.
3. Every registered dental assistant performing expanded duties shall provide the board a current business mailing address. A registered dental assistant may not practice in this state for more than thirty days after a change of business address without providing the board with written notice of the new address by first-class mail.
4. Each year registered dental assistants performing expanded duties shall submit to the board with the annual registration evidence of attendance or participation in continuing dental education acceptable to the board. To remain in good standing, a registered dental assistant performing expanded duties must complete at least eight hours of continuing education each year. The board shall suspend the registration of any person who fails to comply with this section.
5. An initial certificate of qualification to take dental radiographs (allows subsections 1 through 7 in section 20-03-01-01) may be issued by the board to a dental assistant when:
 - a. The dental assistant has applied to the board and paid the certificate fee determined by the board.
 - b. The dental assistant has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week.
 - c. The dental assistant has completed a board-approved infection control seminar and passed the x-ray and infection control portions of the dental assisting national board examination.
6. A dental assistant who is not registered or qualified may, at the direction of a licensed dentist, perform only basic dental assisting services listed in subsections 1 through 6 of section 20-03-01-01.

7. Current certification in cardiopulmonary resuscitation and infection control shall be required for registration of all dental assistants.

History: Effective October 1, 1993; amended effective May 1, 1996; July 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

CHAPTER 20-04-01

20-04-01-01. Duties. A dental hygienist may perform the following services under the general, direct, indirect, or modified general supervision of a dentist.

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth, including anticariogenic agents and desensitizing solutions.
4. Take impressions for study casts.
5. Take and record preliminary medical and dental histories for the interpretation by the dentist.
6. Take and record pulse, blood pressure, and temperature.
7. Provide oral hygiene treatment planning.
8. Take dental radiographs.
9. Apply therapeutic agents subgingivally for the treatment of periodontal disease.
- 8: 10. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).
- 9: 11. Receive removable dental prosthesis for cleaning and repair.
- ~~10: Remove sutures.~~
- ~~11: Apply anticariogenic agents topically.~~
12. Dry root canal with paper points.
13. Place and remove rubber dams.
- ~~13: Place and remove orthodontic wires or appliances, or both, that have been activated by the dentist.~~
14. ~~Tie ligature wires or elastic ties, or both.~~ Place and remove matrix bands or wedges.

15. ~~Preselect and prefit orthodontic bands.~~ Take occlusal bite registration for study casts.
16. ~~Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.~~ Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
17. ~~Fabricate, adjust, place, and recement, or remove a temporary crown or, bridge, onlay, or temporary restorative material.~~ This applies only to a tooth or teeth dentitions actively under treatment for which a permanent restoration is being fabricated.
18. ~~Place and remove periodontal dressings.~~ Adjust permanent crowns outside of the mouth.
19. ~~Place orthodontic elastic-type separators.~~ Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.
20. ~~Remove ligature wires or elastic ties, or both.~~ Apply pit and fissure sealants. Adjust sealants with slow speed handpiece.
21. ~~Remove arch wires.~~ Place and remove periodontal dressings, dry socket medications, and packing.
22. ~~Cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment, under general supervision.~~ Remove sutures.
23. ~~Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.~~ Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
24. ~~Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.~~ Administer local anesthesia under the direct supervision of a dentist if criteria in section 20-04-01-03 are met.
25. ~~Apply etching solutions to teeth and etch enamel and place pit and fissure sealants.~~
26. ~~Take impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental hygienists may take impressions for fixed or removable orthodontic appliances, athletic mouth guards or rapid palatal expanders, or both, bleaching trays, bite splints, flippers, and removable prosthetic repairs.~~
26. Preselect and prefit orthodontic bands.

27. Apply desensitizing solutions to the external surfaces of the teeth. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
28. Apply therapeutic agents subgingivally for the treatment of periodontal disease. Place and remove arch wires or appliances that have been activated by a dentist.
29. Place and remove matrix bands. Cut arch wires and remove or replace loose bands, loose brackets, or other orthodontic appliances.
30. Provide oral hygiene treatment planning. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
31. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.
32. Take face bow transfers.
33. Take intraoral and extraoral photographs.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

20-04-01-02. Prohibited services. A dental hygienist may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administering of local or general anesthetics, except topical and local anesthetic, as permitted under these rules.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. ~~Placing or contouring of~~ Place a final restoration.
6. ~~Any intraoral procedure which would lead to the fabrication of any appliance, with the exception of taking impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental hygienists may take impressions for athletic mouth guards.~~ Contour a final restoration, excluding a crown which has not been cemented by a dentist.

7. Activating any type of orthodontic appliance.
8. Cementing or ~~removing~~ bonding orthodontic bands or brackets that have not been previously placed by a dentist.
9. ~~Direct bonding or removal of orthodontic brackets.~~
10. Placing bases or cavity liners.

History: Effective February 1, 1992; amended effective October 1, 1993; July 1, 2004.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

20-04-01-03. Duties of dental hygienists. A dental hygienist may perform the following services under the direct supervision of a dentist:

1. A licensed dental hygienist may apply for a permit to administer local anesthesia to a patient who is at least eighteen years old, under the direct supervision of a licensed dentist. To be considered for a permit, a hygienist must have successfully completed a didactic and clinical course in local anesthesia within the last twenty-four months sponsored by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association resulting in the dental hygienist becoming clinically competent in the administration of local anesthesia.
2. A licensed dental hygienist applying for a local anesthesia permit who has been permitted to administer local anesthesia and who has continuously administered local anesthesia during the past three years must provide verification of the permit and continuous use to the North Dakota board of dental examiners. Verification may consist of:
 - a. A letter from the accredited school with the school seal affixed. Photocopies will not be accepted.
 - b. A notarized copy of the certification of the local anesthesia course completed.
 - c. A notarized letter stating that the licensed dental hygienist has administered local anesthesia within the last three years.
 - d. A notarized copy of the dental hygiene transcript with the local anesthesia course recorded.
3. A licensed dental hygienist requesting a permit to administer anesthesia who cannot provide verification as required in subsection 2 must retake and successfully pass a didactic and clinical course in local anesthesia

sponsored by a dental or dental hygiene program accredited by the
commission on dental accreditation of the American dental association.

History: Effective July 1, 2004.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

CHAPTER 20-05-01

20-05-01-01. Fees. The following fees apply to the services listed:

1. The nonrefundable fee to process an application for a license to practice for an applicant who has completed a clinical board examination within the time period allowed by the state board of dental examiners is two hundred dollars for a dentist and fifty-five dollars for a dental hygienist.
2. The nonrefundable fee to process an application for a license by a review of the applicant's professional credentials without additional clinical examination is four hundred fifty dollars for a dentist and one hundred sixty-five dollars for a dental hygienist.
3. The nonrefundable annual fee to process an application for a temporary license to practice dentistry is one hundred sixty dollars.
4. The fee for annual registration for registered or qualified dental assistants is thirty-five dollars. The certificate of registration biennial renewal fee is two hundred twenty dollars for a dentist and one hundred ten dollars for a dental hygienist.
5. In addition to the fee for renewal, the penalty for late renewal of the biennial certificate of registration is two hundred twenty dollars for dentists, one hundred ten dollars for dental hygienists, and thirty-five dollars for late renewal of the annual certificate of registration for dental assistants.
6. The fee to replace or provide a duplicate copy of a dental or dental hygiene license is forty-five dollars.
7. The fee to reactivate a retired dental or dental hygiene license is the sum of each year's annual renewal fee since the license was retired plus one hundred dollars. Maximum number of years will be five (maximum fee five hundred fifty dollars for dentists; three hundred twenty-five dollars for hygienists).
8. The nonrefundable annual fee to process an application by a Moorhead, Minnesota, dentist for a restricted dental license to treat emergency dental patients at board-approved settings is ~~one hundred~~ fifty dollars.
9. The annual registration fee for renewal of a restricted dental license to treat emergency dental patients at board-approved settings is fifty dollars.
10. The fee for an onsite facility inspection to obtain a permit for anesthesia use will be at a rate similar to compensation paid board members for services rendered to the state of North Dakota.

11. The fee for initial application and ~~annual~~ biennial renewal of a permit to use general anesthesia or conscious sedation is ~~fifty~~ one hundred dollars.
12. The fee for a volunteer dental license is thirty-five dollars annually.

History: Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-27

TITLE 33
STATE DEPARTMENT OF HEALTH

MAY 2004

CHAPTER 33-30-01

33-30-01-01. Organization of the board of environmental health practitioner licensure.

1. **History and function.** The 1985 legislative assembly passed legislation to license environmental health practitioners, codified as North Dakota Century Code chapter 43-43. This chapter authorized the secretary of state to carry out all functions necessary to licensure and to utilize the services of an advisory board as needed. The 1987 legislative assembly transferred this licensing function from the office of the secretary of state to the state health officer. The 2003 legislative assembly provided the authority to create specialty licenses within the practice of environmental health. The board's responsibility is advisory only. All statutory power is vested with the state health officer.
2. **Board membership.** The board consists of five members - the state health officer or an appointed agent; the commissioner of the North Dakota department of agriculture or an appointed agent; the president of the North Dakota environmental health association or an appointed agent; one member from a district or a local health unit who is a licensed environmental health practitioner; and one consumer. The environmental health practitioner and consumer must be appointed by the state health officer.
3. **Officers.** The state health officer shall serve as chairperson. The state health officer may appoint an executive secretary as necessary.
4. **Inquiries.** Inquiries may be addressed to:

State Health Officer
Capitol Building State Department of Health
600 East Boulevard Avenue

History: Effective February 1, 1988; amended effective May 1, 1994; May 1, 2004.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-01-02. Scope of practice. This article applies to persons whose duties in environmental health and food safety require the application of scientific knowledge to recognize, evaluate, and control food and environmental hazards to preserve and improve environmental factors for the achievement of the health, safety, comfort, and well-being of the consuming public. It is the intent of the advisory board that these rules apply to all persons engaged in the practice of environmental health and the supervisors of those persons. Exempt are those supervisors employed on May 1, 2004.

History: Effective May 1, 2004.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-01-03. Definitions.

1. "Board eligible" means having completed an application for licensure, paid the required fee, and met the necessary education requirements.
2. "Certified food safety professional" means a person who, by education and experience in food safety, is qualified, licensed, and limited to inspecting retail food, food service, food production or food manufacturing facilities, or conducting plan reviews for such establishments.
3. "Continuing education unit" means ten contact hours earned in continuing education courses, seminars, workshops, and college courses. Ten hours of contact equals one continuing education unit.
4. "Environmental health practitioner" means a person who, by environmental health science education and experience, is qualified and licensed to practice environmental health.

History: Effective May 1, 2004.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

CHAPTER 33-30-02

33-30-02-03. Fees. The following fees must be paid in connection with environmental health practitioner and certified food safety professional applications, renewals, and penalties:

1. Application fee for an environmental health practitioner and certified food safety professional license - \$50.00.
2. Renewal fee for an environmental health practitioner and certified food safety professional license - \$15.00.
3. Late renewal penalty fee per month - \$2.00.
4. Duplicate or changed license fee - \$10.00.

Licensure and renewal fees for a partial licensure period must be assessed on a prorated basis.

History: Effective February 1, 1988; amended effective January 1, 1993; May 1, 2004.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-04. Qualifications and requirements for licensure as an environmental health practitioner.

1. Complete an application for licensure and pay the required application fee.
2. Have received a baccalaureate degree in an accredited environmental health curriculum or a baccalaureate in the physical, chemical, or biological sciences, including at least thirty semester or forty-five quarter credits in a physical, chemical, or biological science, or a degree beyond baccalaureate in environmental health or in a physical, chemical, or biological science.
3. Pass the national ~~environmental health practitioner registry exam~~ registered environmental health specialist/registered sanitarian (REHS/RS) examination administered by the national environmental health association or equivalent. Persons meeting the licensure requirements in subsections 1 and 2 who have not yet passed the environmental health ~~practitioner registry exam~~ REHS/RS examination will be considered board eligible. A person who is board eligible may work in the field of environmental health but such work must be under the direction and supervision of a licensed environmental health practitioner. A person who is board eligible may work under a licensed environmental health practitioner for no more than a total of ~~three~~ five years after which such person may

work in the field of environmental health only after passing the national ~~environmental health practitioner registry exam~~ REHS/RS examination. Environmental health practitioners licensed prior to January 1, 1993, will be exempt from the ~~exam~~ examination requirement.

History: Effective February 1, 1988; amended effective January 1, 1993; May 1, 2004.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

33-30-02-04.1. Qualifications and requirements for licensure as a certified food safety professional.

1. The candidate must complete an application for licensure and pay the required application fee.
2. The candidate must meet at least one of the following criteria:
 - a. A baccalaureate degree in an accredited environmental health or food science curriculum or a baccalaureate in physical, chemical, or biological sciences, including at least thirty semester hours or forty-five quarter credits in a physical, chemical, or biological science, or a degree beyond baccalaureate in environmental health or in a physical, chemical, or biological science;
 - b. A high school diploma or GED and:
 - (1) Five years of progressive experience in food safety work; and
 - (2) Successful passage of the certified professional food manager (CPFM) or food safety managers certification examination (FSMCE); or
 - c. An associate degree and:
 - (1) Four years of progressive experience in food-related work; and
 - (2) Successful passage of the certified professional food manager (CPFM) or food safety managers certification examination (FSMCE).
3. The candidate must pass the national certified food safety professional (CFSP) examination administered by the national environmental health association or equivalent. Persons meeting the requirements in subsections 1 and 2 who have not yet passed the CFSP examination will be considered board eligible. A person who is board eligible may work in the field of food safety but such work must be under the direction and supervision of a licensed certified food safety professional, doctor

of veterinary medicine, medical doctor, doctor of osteopathy, dentist, registered sanitarian, or registered environmental health specialist. A person who is board eligible may work under the supervision of those previously listed for no more than a total of five years after which such person may work in the field of food safety only after passing the CFSP examination.

History: Effective May 1, 2004.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-04

CHAPTER 33-30-05

33-30-05-03. Hearings and disciplinary proceedings - Appeals.

1. Upon receipt of a written and signed complaint that alleges that a licensee practicing in this state has engaged in unprofessional conduct as defined under section 33-30-05-02 and which sets forth information about which a reasonable person might believe that further inquiries should be made, the state health officer shall investigate the matter.
2. If the investigation reveals grounds to support the complaint, the advisory board shall initiate a disciplinary action by serving upon the licensee by certified mail a complaint setting forth the allegations upon which the action is based specifying the issues to be determined.
3. If a written response contesting the allegations is not received by the board within twenty days of service of the complaint, the allegations are deemed admitted and appropriate disciplinary sanctions are to be imposed.
4. If a disciplinary action has been initiated as provided in subsection 2, the state health officer may offer to meet with the licensee informally for the purpose of determining whether the disciplinary action, including imposition of appropriate sanctions, can be resolved by mutual agreement.
5. If an informal agreement cannot be reached, or the state health officer elects not to offer the licensee an opportunity for informal resolution of the matter, the licensee is entitled to a hearing under North Dakota Century Code chapter 28-32. Appeal from the board's final decision may be taken in accordance with North Dakota Century Code section 28-32-15.
6. Employers of ~~environmental health practitioners~~ persons licensed under this article will be notified of any action taken with respect to an ~~environmental health practitioner's~~ said license.

History: Effective January 1, 1993; amended effective May 1, 2004.

General Authority: NDCC 43-43-04

Law Implemented: NDCC 43-43-07

JULY 2004

CHAPTER 33-06-01

33-06-01-01. Reportable conditions. All reports and information concerning reportable conditions are confidential and not open to inspection. The following designated reportable conditions must be reported to the state department of health by the persons designated in chapter 33-06-02. If any reportable condition is designated by an asterisk, an appropriate sample or isolate must be submitted to the division of microbiology (public health laboratory) in addition to the required report.

1. Anthrax*.
2. Arboviral infection.
3. Botulism*.
- ~~3-~~ 4. Brucellosis*.
- ~~4-~~ 5. Campylobacter enteritis*.
- ~~5-~~ 6. Cancer, all invasive and in situ carcinomas (except basal and squamous cell skin carcinomas or carcinoma in situ of the cervix uteri).
7. All CD4 test results.
- ~~6-~~ 8. Chickenpox (varicella).
- ~~7-~~ 9. Chlamydial infections.
- ~~8-~~ 10. Cholera*.
9. 11. Clostridium perfringens intoxication.
- ~~10-~~ 12. Creutzfeldt-Jakob disease.
- ~~11-~~ 13. Cryptosporidiosis.

- ~~42-~~ 14. Diphtheria*.
- ~~43-~~ Encephalitis (arboviral encephalitides only)-
- ~~44-~~ 15. Enteric E. coli infection (includes E. coli 0157:H7 and infections caused by other enterohemorrhagic, enteropathogenic, or enteroinvasive E. coli)*.
- ~~45-~~ 16. Enterococcus, vancomycin resistant (VRE)*.
- ~~46-~~ 17. Foodborne or waterborne outbreaks.
- ~~47-~~ 18. Giardiasis.
- ~~48-~~ 19. Glanders*.
- ~~49-~~ 20. Gonorrhea.
- ~~20-~~ 21. Hantavirus*.
- ~~21-~~ 22. Haemophilus influenzae infection (invasive infection with haemophilus influenzae isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
- ~~22-~~ 23. Hemolytic uremic syndrome.
- ~~23-~~ 24. Hepatitis (specify type).
- ~~24-~~ 25. Human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS)*. (Any positive HIV test result.)
- ~~25-~~ 26. Human immunodeficiency virus (HIV) nucleic acid test result (detectable or nondetectable).
- ~~26-~~ 27. Influenza.
- ~~27-~~ 28. Lead blood level greater than or equal to 10 ug/dl.
- ~~28-~~ 29. Legionellosis.
- ~~29-~~ 30. Listeriosis*.
- ~~30-~~ 31. Lyme disease.
- ~~31-~~ 32. Malaria*.
- ~~32-~~ 33. Measles (rubeola)*.
- ~~33-~~ 34. Melioidosis*.

- ~~34-~~ 35. Meningitis, bacterial (all bacterial species isolated from cerebrospinal fluid)*.
- ~~35-~~ 36. Meningococcal disease (invasive infection with neisseria meningitidis isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
- ~~36-~~ 37. Mumps.
- ~~37-~~ 38. Nipah viral infections.
- ~~38-~~ 39. Nosocomial outbreaks in institutions.
- ~~39-~~ 40. Pertussis*.
- ~~40-~~ 41. Plague*.
- ~~41-~~ 42. Poliomyelitis*.
- ~~42-~~ 43. Psittacosis.
- ~~43-~~ 44. Q fever*.
- ~~44-~~ 45. Rabies (animal or human*).
- ~~45-~~ 46. Rocky Mountain spotted fever.
- ~~46-~~ 47. Rubella*.
- ~~47-~~ 48. Salmonellosis*.
- ~~48-~~ 49. Scabies outbreaks in institutions.
50. Severe acute respiratory syndrome (SARS).
- ~~49-~~ 51. Shigellosis*.
- ~~50-~~ 52. Smallpox.
- ~~51-~~ 53. Staphylococcus aureus, methicillin resistant (MRSA), all sites. All isolates from blood, cerebral spinal fluid, or other normal sterile site must be forwarded to the North Dakota public health laboratory.
- ~~52-~~ 54. Staphylococcus aureus, vancomycin resistant (VRSA) (any staphylococcus aureus isolate demonstrating intermediate or greater resistance to vancomycin of MIC greater than or equal to 8 ug/ml)*.
- ~~53-~~ 55. Staphylococcus enterotoxin B intoxication.

- ~~54- 56.~~ Streptococcal infections (invasive infection of streptococcus group A or B or streptococcus pneumoniae isolated from blood, cerebral spinal fluid, or other normal sterile site)*.
- ~~55- 57.~~ Syphilis.
- ~~56- 58.~~ Tetanus.
- ~~57- 59.~~ Tickborne encephalitis viruses*.
- ~~58- 60.~~ Tickborne hemorrhagic fevers.
- ~~59- 61.~~ Toxic-shock syndrome*.
- ~~60- 62.~~ Trichinosis.
- ~~61- 63.~~ Tuberculosis (tuberculosis disease caused by mycobacterium tuberculosis or mycobacterium bovis)*.
- ~~62- 64.~~ Tularemia*.
- ~~63- 65.~~ Tumors of the central nervous system.
- ~~64- 66.~~ Typhoid fever*.
- ~~65- 67.~~ Unexplained critical illness or death in an otherwise healthy person.
- ~~66- 68.~~ Unusual cluster of severe or unexplained illnesses or deaths.
- ~~67- 69.~~ Viral hemorrhagic fevers.
- ~~68- 70.~~ Weapons of mass destruction suspected event.
- ~~69- 71.~~ Yellow fever*.

History: Amended effective May 1, 1984; December 1, 1986; January 1, 1988; January 1, 1989; October 1, 1990; January 1, 1991; February 1, 1992; May 1, 1994; January 1, 1995; July 1, 1996; February 1, 2000; August 1, 2002; March 1, 2003; July 1, 2004.

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

CHAPTER 33-07-01.1

33-07-01.1-20. Medical records services.

1. The general acute hospital shall establish and implement procedures to ensure that the hospital has a medical records service with administrative responsibility for medical records.
 - a. A medical record must be maintained and kept confidential, in accordance with accepted medical record principles, for every patient admitted for care in the hospital.
 - (1) Only authorized personnel may have access to the record.
 - (2) Written consent of the patient must be presented as authority for release of medical information.
 - (3) Medical records may not be removed from the hospital environment except upon subpoena or court order.
 - (4) If a hospital discontinues operation, it shall make known to the department where its records are stored. Records are to be stored in a facility offering retrieval services for at least ten years after the closure date. Prior to destruction, public notice must be made to permit former patients or their representatives to claim their own records. Public notice must be in at least two forms, legal notice and display advertisement in a newspaper of general circulation.
 - b. Records must be preserved in original or any other method of preservation, such as by microfilm, for a period of at least the tenth anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.
 - (1) If a patient was less than eighteen years of age at the time of last treatment, the hospital may authorize the disposal of medical records relating to the patient on or after the date of the patient's twenty-first birthday or on or after the tenth anniversary of the date on which the patient was last treated, whichever is later.
 - (2) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved.
 - (3) It is the governing body's responsibility to determine which records have research, legal, or medical value and to preserve such records beyond the above-identified timeframes until such time in the governing body's

determination the record no longer has a research, legal, or medical value.

- c. If a registered record administrator or accredited record technician is not in charge of medical records, a consultant registered record administrator or accredited record technician shall organize the service, coordinate the training of the personnel, and make at least quarterly visits to the hospital to evaluate the records and the operation of the service.
- d. Personnel must be available so that medical records services may be provided as needed.
- e. A system of identification and filing to ensure the prompt location of a patient's medical record must be maintained.
- f. Upon discharge, all clinical information pertaining to a patient's hospitalization must be centralized in the patient's medical record. The original of all reports must be filed in the medical record.
- g. Records must be retrievable by disease, operation, and licensed health care practitioner and must be kept up to date. For abstracting, any recognized system may be used. Indexing must be current within six months following discharge of the patient.
- h. The medical records must contain sufficient information to justify the diagnosis and warrant the treatment and end results. The medical records must contain the following information: identification data, chief complaint, present illness, past history, family history, physical examination, provisional diagnosis, treatment, progress notes, final diagnosis, discharge summary, nurses' notes, clinical laboratory reports, x-ray reports, consultation reports, surgical and tissue reports and applicable autopsy findings. Progress notes must be informative and descriptive of the care given and must include information and observations of significance so that they contribute to continuity of patient care.
 - (1) The chief complaint must include a concise statement of complaints that led the patient to consult the patient's licensed health care practitioner and the date of onset and duration of each.
 - (2) The physical examination statement must include all findings resulting from an inventory of systems.
 - (3) The provisional diagnosis must be an impression (diagnosis) reflecting the examining licensed health care practitioner's evaluation of the patient's condition based mainly on physical findings and history.

- (4) Progress notes must give a chronological picture of the patient's progress and must be sufficient to delineate the course and results of treatment. The condition of the patient determines the frequency with which they are made.
 - (5) A definitive final diagnosis must be expressed in terminology of a recognized system of disease nomenclature.
 - (6) The discharge summary must be a recapitulation of the significant findings and events of the patient's hospitalization and the patient's condition on discharge.
 - (7) The consultation report must be a written opinion signed by the consultant including the consultant's findings.
 - (8) All diagnostic and treatment procedures must be recorded in the medical record.
 - (9) Tissue reports must include a report of microscopic findings if hospital regulations require that microscopic examination be done. If only gross examination is warranted, a statement that the tissue has been received and a gross description must be made by the laboratory and filed in the medical record.
 - (10) When an autopsy is performed, findings in a complete protocol must be filed in the record.
 - (11) Complete records, both medical and dental, of each dental patient must be a part of the hospital record.
- i. All entries into the medical record must be authenticated by the individual who made the written entry.
- (1) All entries that the licensed health care practitioner personally makes in writing must be signed and dated by that licensed health care practitioner.
 - (2) Telephone and verbal orders may be used provided they are given only to qualified licensed personnel and reduced to writing and signed or initialed by a licensed health care practitioner responsible for the care of the patient ~~within forty-eight hours~~.
 - (3) In hospitals with medical students and unlicensed residents, the attending licensed health care practitioner shall countersign at least the history and physical examination and summary written by the medical students and unlicensed residents.

- (4) Signature stamps may be utilized consistent with hospital policies as long as the signature stamp is utilized only by the licensed health care practitioner whose signature the signature stamp represents. Written assurance must be on file from the licensed health care practitioner to indicate that the practitioner is the sole user of the signature stamp.
- (5) Electronic signatures may be utilized if the hospital's medical staff and governing body adopt a policy that permits authentication by electronic signature. The policy must include:
 - (a) The categories of medical staff and other staff within the hospital who are authorized to authenticate patients' medical records using electronic signatures.
 - (b) The safeguards to ensure confidentiality, including:
 - [1] Each user must be assigned a unique identifier that is generated through a confidential access code.
 - [2] The hospital shall certify in writing that each identifier is kept strictly confidential. This certification must include a commitment to terminate the user's use of that particular identifier if it is found that the identifier has been misused. Misused means that the user has allowed another individual to use the user's personally assigned identifier, or that the identifier has otherwise been inappropriately used.
 - [3] The user must certify in writing that the user is the only individual with user access to the identifier and the only individual authorized to use the signature code.
 - [4] The hospital shall monitor the use of the identifiers periodically and take corrective action as needed. The process by which the hospital will conduct the monitoring must be described in the policy.
 - (c) A process to verify the accuracy of the content of the authenticated entries, including:
 - [1] A system that requires completion of certain designated fields for each type of document before the document may be authenticated, with no blanks, gaps, or obvious contradictory

statements appearing within those designated fields. The system must require that correction or supplementation of previously authenticated entries must be made by additional entries, separately authenticated and made subsequent in time to the original entry.

[2] The system must make an opportunity available to the user to verify that the document is accurate and that the signature has been properly recorded.

[3] As a part of the quality improvement activities, the hospital shall periodically sample records generated by the system to verify the accuracy and integrity of the system.

(d) A user may terminate authorization for use of an electronic signature upon written notice to the staff member in charge of medical records or other person designated by the hospital's policy.

(e) Each report generated by the user must be separately authenticated.

(f) A list of these codes must be maintained under adequate safeguards by hospital administration.

j. Current records and those on discharged patients must be completed promptly.

(1) Past history and physical examination information must be completed within twenty-four hours following admission.

(2) All reports or records must be completed and filed within a period consistent with current medical practice and not longer than thirty days following discharge.

(3) If a patient is readmitted within a month's time for the same conditions, reference to the previous history with an interval note and physical examination suffices.

2. Primary care hospitals are subject to the medical records services requirements for general acute hospitals in this section.

3. Specialized hospitals are subject to the medical records services requirements for general acute hospitals in this section.

History: Effective April 1, 1994; amended effective July 1, 2004.

General Authority: NDCC 23-01-03(3), 28-32-02

Law Implemented: NDCC 23-16-06, 31-08-01.2, 31-08-01.3

CHAPTER 33-07-03.2

33-07-03.2-01. Definitions. The following terms are defined for this chapter, chapter 33-07-04.2, and North Dakota Century Code chapter 23-16:

1. "Abuse" for the purposes of this chapter is defined in section 33-07-06-01.
2. "Adult day care" means the provision of facility services to meet the needs of individuals who do not remain in the facility overnight.
3. "Authentication" means identification of the individual who made the resident record entry by that individual in writing, and verification that the contents are what the individual intended.
4. "Bed capacity" means bed space designed for resident care.
5. "Department" means the state department of health.
6. "Discharge" means movement from a facility to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.
7. "Emanating services" means services which are provided from a facility to nonresidents.
8. "Facility" means a nursing facility.
9. "Governing body" means the individual or group in whom legal responsibility is vested for conducting the affairs of a private or governmental facility. Governing body includes, where appropriate, a proprietor, the partners of any partnership including limited partnerships, the board of directors and the shareholders or members of any corporation including limited liability companies and nonprofit corporations, a city council or commission, a county commission or social service board, a governmental commission or administrative entity, and any other person or persons vested with management of the affairs of the facility irrespective of the name or names by which the person or group is designated.
10. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.
11. "Licensee" means the legal entity responsible for the operation of a facility.

12. "Medical staff" means a formal organization of licensed health care practitioners with the delegated authority and responsibility to maintain proper standards of medical care.
13. "Misappropriation of resident property" means the willful misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent. Willful for the purpose of this definition means to do so intentionally, knowingly, or recklessly.
 - a. "Intentionally" means to do deliberately or purposely.
 - b. "Knowingly" means to be aware or cognizant of what one is doing, whether or not it is one's purpose to do so.
 - c. "Recklessly" means to consciously engage in an act without regard or thought to the consequences.
14. "Neglect" for the purposes of this chapter is defined in section 33-07-06-01.
15. "Nursing facility" means an institution or a distinct part of an institution established to provide health care under the supervision of a licensed health care practitioner and continuous nursing care for twenty-four or more consecutive hours to two or more residents who are not related to the licensee by marriage, blood, or adoption; and who do not require care in a hospital setting.
16. "Paid feeding assistant" means an individual who has successfully completed a department-approved paid feeding assistant training course and is paid to feed or provide assistance with feeding residents of a nursing facility.
- ~~17.~~ 18. "Rural area" means an area defined by the United States bureau of the census as a rural area.
- ~~47.~~ 18. "Secured unit" means a specific area of the facility that has a restricting device separating the residents in the unit from the residents in the remainder of the facility.
- ~~48.~~ 19. "Signature" means the name of the individual written by the individual or an otherwise approved identification mechanism used by the individual that may include the approved use of a rubber stamp or an electronic signature.
- ~~49.~~ 20. "Transfer" means movement from a facility to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving institutional setting.

- ~~20.~~ 21. "Writing" means the use of any tangible medium for entries into the medical record, including ink or electronic or computer coding, unless otherwise specifically required.

History: Effective July 1, 1996; amended effective May 1, 2001; July 1, 2004.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.2-03. Application for and issuance of license. An entity meeting the definition of nursing facility in this chapter must obtain a license from the department to operate in North Dakota. No person or entity shall establish or operate a facility without first having obtained a license.

1. Any person or entity who owns or leases a facility and desires to maintain or operate it shall apply to the department for a license in the form prescribed and shall obtain an initial license before accepting residents for care or treatment.
 - a. The department shall not approve an application for an initial license unless:
 - (1) The application and all required attachments and statements submitted by the applicant meet the requirements of this chapter and chapter 33-07-04.2.
 - (2) The department has conducted an inspection or investigation of the facility to determine compliance with this chapter and chapter 33-07-04.2.
 - (3) The department has completed an investigation into the fitness of the applicant and determined the applicant to be fit based on the following:
 - (a) Evidence provided by the applicant which identifies that financial resources and sources of revenue for the applicant's facility appear adequate to provide staff, services, and the physical environment sufficient to comply with North Dakota Century Code chapter 23-16, this chapter, and chapter 33-07-04.2;
 - (b) The applicant has furnished the department with a signed and notarized statement describing and dating every proceeding, within five years of the date of the application, in which the applicant was involved that resulted in a limitation, suspension, revocation, or refusal to grant or renew a nursing facility license or resulted in a ban on medicare or medicaid admissions or a medicare or medicaid decertification action; and

- (c) The applicant shall furnish a signed and notarized statement to the department describing every criminal proceeding within five years of the date of the application in which the licensee or any of its shareholders owning interest of five percent or more, officers, directors, partners, or other controlling or managing persons, has been convicted or nolo contendere plea accepted, of a criminal offense related to the operation, management, or ownership of a nursing facility.
 - b. The initial license shall be valid for a period not to exceed one year and shall expire on December thirty-first of the year issued.
- 2. The department shall issue a renewal license when a facility is in substantial compliance with the provisions of these licensing requirements, as determined by periodic unannounced onsite surveys conducted by the department and other information submitted by the facility upon the request of the department. Renewal licenses shall expire on December thirty-first of each year. The application for renewal must be received by the department with sufficient time prior to the beginning of the licensure period to process.
- 3. The department may issue a provisional license, valid for a specific period of time not to exceed ninety days, when there are one or more serious deficiencies or a pattern of deficiencies related to compliance with these licensing requirements.
 - a. A provisional license may be renewed at the discretion of the department, provided the licensee demonstrates to the department that it has made progress towards compliance and can effect compliance within the next ninety days. A provisional license may be renewed one time.
 - b. When a facility operating under a provisional license notifies the department that it has corrected its deficiencies, the department will ascertain correction. Upon finding compliance, the department shall issue a renewal license.
- 4. In the case where two or more buildings operated under the same management are used in the care of residents, a separate license is required for each building.
- 5. Each license is valid only in the hands of the entity to whom it is issued and is not subject to sale, assignment, or other transfer, voluntary or involuntary, nor is a license valid for any premises other than those for which originally issued. The license must be displayed in a conspicuous place within the facility.

6. The facility shall notify the department in writing thirty days in advance of any of the following changes:
 - a. Transfer or change of ownership.
 - b. Transfer of operating rights, including a lease of the facility where the lessor retains no control of the operation or management of the facility.
 - c. Change in bed capacity.
 - d. Change in the name of the facility.
7. The facility shall notify the department in writing within thirty days of a change in administrator or nurse executive.
8. The department will review all reported allegations of resident abuse, neglect, and misappropriation of resident property by an individual used in a nursing facility to provide resident services. If there is reason to believe, either through oral or written evidence, that an individual used by a nursing facility to provide services to residents could have abused or neglected or misappropriated a resident's property, the department will investigate the allegation or refer the allegation to the appropriate licensure authority for followup.
9. If the department makes a preliminary determination that an individual used by a nursing facility to provide services to residents abused or neglected or misappropriated resident property, the individual will be notified and provided the same appeal and review rights provided to nurse aides on the registry identified in sections 33-07-06-10 and 33-07-06-11.
10. The department will maintain a registry of individuals used by the nursing facility to provide services to residents that the department has investigated and validated findings of resident abuse, neglect, or misappropriation of resident property.

History: Effective July 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.2-16.1. Paid feeding assistants. Any individual employed by a facility, or under contract, to feed or assist with the feeding of nursing facility residents must either have successfully completed a department-approved paid feeding assistant training course or be a certified nurse aide.

1. Instructors of a department-approved paid feeding assistant course must meet the following requirements:

- a. The primary instructor of the program must be a licensed health care professional with experience in the feeding of nursing facility residents.
 - b. Certified nurse aides and paid feeding assistants may not be used as instructors in a department-approved paid feeding assistant course.
- 2. A department-approved paid feeding assistant course must have a curriculum which contains, at a minimum, eight hours of training.
- 3. The course must, at a minimum, include the following:
 - a. Feeding techniques.
 - b. Assistance with feeding and hydration.
 - c. Communication and interpersonal skills.
 - d. Appropriate responses to resident behavior.
 - e. Safety and emergency procedures, including the Heimlich maneuver.
 - f. Infection control.
 - g. Resident rights.
 - h. Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.
- 4. The instructor must verify in writing the successful completion of the course, including a competency evaluation of feeding skills, by the individual. The process for evaluation of successful completion of the course must be included in the materials submitted to the department for review and approval.
- 5. The nursing facility must maintain a record of all individuals used by the nursing facility as paid feeding assistants who have successfully completed a department-approved paid feeding assistant training course.
- 6. The nursing facility must ensure that paid feeding assistants feed only residents who have no complicated feeding problems. Complicated feeding problems include difficulty swallowing, recurrent lung aspirations, and tube or parenteral intravenous feedings.

7. The charge nurse must assess the residents to determine which residents may be fed by a paid feeding assistant. This assessment must be documented and the use of the paid feeding assistant to feed the resident must be included in the residents' plan of care.
8. The nursing facility must ensure that paid feeding assistants work under the supervision of a registered nurse or a licensed practical nurse. In an emergency, a paid feeding assistant must call a supervisory nurse for help using the resident call system if the nurse is not present during the feeding of a resident.
9. The nursing facility must ensure that the ongoing competency of paid feeding assistants is evaluated and documented at least annually.
10. The initial department approval of a paid feeding assistant course shall be determined based on the review of the information submitted by the nursing facility for compliance with these requirements.
11. The nursing facility must notify the department and receive approval of any subsequent changes in the curriculum or primary instructor of the course.
12. The department shall determine continued compliance with these requirements during an onsite visit to the nursing facility.
13. Failure to comply with these requirements may result in loss of department approval for a paid feeding assistant course to be offered by the nursing facility.

History: Effective July 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 23-16-01

CHAPTER 33-33-01

33-33-01-01. Definitions. As used in this chapter:

1. "Accessory building or structure" means a building or structure that is an addition to a mobile home or that supplements the facilities provided in a mobile home. It is not a self-contained, separate, habitable building or structure.
2. "Department" means the state department of health and consolidated laboratories.
2. "Occupied area" means the total of all of the lot area covered by a mobile home and roofed mobile home accessory buildings and structures on a mobile home lot.
3. "Service building" means a structure housing shower, bath, toilet, lavatory, and such other facilities as may be required by the North Dakota state plumbing code.

History: Effective August 1, 1988; amended effective October 1, 1990; July 1, 2004.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-02

33-33-01-03. ~~Lot sizing and spacing requirements~~ Fire and life safety requirements.

1. ~~The occupied area of a mobile home lot may not exceed seventy-five percent of the lot area. No portion of a mobile home, excluding the tongue, shall be located closer than ten feet [3 meters] side to side, eight feet [2.4 meters] end to side, or six feet [1.8 meters] end to end horizontally from any other mobile home, accessory building, or structure unless the exposed composite walls and roof of either structure are without openings and constructed of materials that will provide a one-hour fire-resistant rating or the structures are separated by a one-hour fire-rated barrier.~~
2. ~~Mobile home parks constructed after July 1, 1977, must be constructed so that no mobile home, attachment, or detached garage or carport may be located within fifteen feet [4.57 meters] of any other mobile home, attachment, or structure on a bordering lot. Other detached structures, in mobile home parks constructed after July 1, 1977, must be located to comply with the requirements of the appropriate local entity or jurisdiction, but must be located no less than five feet [1.53 meters] from the bordering lots or the boundary of the mobile home park. However, for mobile home parks constructed after July 1, 1977, the minimum distance between mobile homes end to end must be ten feet [3.05 meters]. Accessory buildings or structures shall be permitted~~

to be located immediately adjacent to a lot line when constructed of materials that do not support combustion and provided that such buildings or structures are not less than three feet [.9 meter] from an accessory building or structure on an adjacent lot. An accessory building or structure constructed of combustible materials shall be located no closer than five feet [1.53 meters] from the bordering lot line.

3. No mobile home, attachment, accessory building, or structure may be located so as to create hazard to the mobile home or park occupants or restrict emergency vehicles and personnel from performing necessary services.
4. ~~Mobile home parks constructed after August 1, 1984, must be constructed so that no mobile home, attachment, or structure is located closer than within fifteen feet [4.57 meters] of the right-of-way line of any street, nor within ten feet [3.05 meters] of any boundary of the mobile home park.~~
5. Streets must be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street. In all cases, streets must meet the following minimum requirements:
 - a. Two-way streets with parking on
both sides 34 feet [10.36 meters]
 - b. Two-way streets with parking on
one side only 27 feet [8.23 meters]
 - c. Two-way streets without parking 24 feet [7.32 meters]
 - d. One-way streets with parking on
both sides 27 feet [8.23 meters]
 - e. One-way streets with parking on
one side only 18 feet [5.49 meters]
 - f. One-way streets without parking 14 feet [4.27 meters]
- 6- 5. The street system must give an unobstructed access to the public street, highway, or access road.

History: Effective August 1, 1988; amended effective October 1, 1990; June 1, 1991; July 1, 2004.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-02, 23-10-07

33-33-01-04. Facilities provided.

1. Conversion of a mobile home park, trailer park, or campground from one type to another must be approved by the department.

2. Streets and walkways must be lighted to provide a minimum average maintained illumination of four-tenths foot-candles [4.31 lux], with a uniformity ratio of no greater than six to one.
3. Each lot in a mobile home park must be provided with an approved electrical service outlet.
4. Each lot in a mobile home park must be provided with an approved plumbing system.
5. A certification from the electrical and plumbing installer, stating all installations were made in accordance with state codes, ~~may~~ shall be required before issuance of the mobile home license.
6. No ~~shed or attachment~~ accessory building or structure may obstruct the exit ways of the mobile home.

History: Effective August 1, 1988; amended effective October 1, 1990; July 1, 2004.

General Authority: NDCC 23-01-03(2), 23-10-02

Law Implemented: NDCC 23-10-02, 23-10-07

CHAPTER 33-33-02

33-33-02-03. Spacing requirements.

1. No tent, recreational vehicle, or other attachment may be located within ten feet [3.05 meters] of any other tent, recreational vehicle, or part thereof. No recreational vehicle or tent in a trailer park or campground may be located ~~closer than fifteen feet [4.57 meters] of the right-of-way line of any street, roadway, or alley; nor may such recreational vehicle be located closer than ten feet [3.05 meters] from any boundary of the trailer park or campground~~ as to create a hazard to the recreational vehicle or tent or restrict emergency vehicles and personnel from performing necessary services.
2. Streets must be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street. In all cases, streets must meet the following minimum requirements:
 - a. Two-way streets with parking on
both sides 34 feet [10.36 meters]
 - b. Two-way streets with parking on
one side only 27 feet [8.23 meters]
 - c. Two-way streets without parking 24 feet [7.32 meters]
 - d. One-way streets with parking on
both sides 27 feet [8.23 meters]
 - e. One-way streets with parking on
one side only 18 feet [5.49 meters]
 - f. One-way streets without parking 14 feet [4.27 meters]
3. The street system must give an unobstructed access to the public street, highway, or access road.
4. Tenting areas must be designated for tents only.

History: Effective August 1, 1988; amended effective July 1, 2004.

General Authority: NDCC 23-10-02, 23-01-03(3)

Law Implemented: NDCC 23-10-07

TITLE 43
INDUSTRIAL COMMISSION

MAY 2004

CHAPTER 43-02-01

43-02-01-10. Bond. Any person engaged in coal exploration and evaluation, or who proposes to do so, shall submit to the commission and obtain its approval of a surety bond, in a form or cash bond. An alternate form of security may be approved by the commission after notice and hearing, conditioned as provided by law, and such bond shall be required for each permit area. The bond shall be in the amount of one hundred dollars for each testhole drilled in the permit area. Each such surety bond shall be executed by a responsible surety company, authorized to transact business in the state of North Dakota. A blanket bond in the amount of ten thousand dollars, conditioned as above provided, may be submitted to cover any number of testholes drilled in one or more permit areas. The blanket bond shall cover all permits issued in one year commencing on the date the first permit covered by the bond is issued.

Any person providing a blanket bond in lieu of several individual bonds is required to comply with the rules, regulations, and orders of the commission in the same manner as if the person had provided several individual bonds. Violation shall result in forfeiture of the blanket bond in its entirety, if the violation would have resulted in forfeiture had the action in question been covered by an individual bond.

For the purposes of the commission the bond required is a performance bond, as well as a plugging bond, and is to endure up to and including receipt by the state geologist of all basic exploration data required by law and approved plugging of all holes drilled.

The commission will in writing advise the principal and sureties on any surety bond as to whether the provisions of statutes and rules have been satisfied, and that liability under the bond may be formally terminated.

The state geologist is vested with the power to act for the commission as to all matters within this section.

Any state or federal agency engaged in coal exploration or evaluation shall be exempt from providing the bond.

History: Amended effective May 1, 2004.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

CHAPTER 43-02-02

43-02-02-11. Bond. Before any person receives a permit to explore for or produce subsurface minerals, the person shall submit to the commission and obtain its approval of a surety bond, in a form or cash bond. An alternate form of security may be approved by the commission after notice and hearing, conditioned as provided by law. Each such surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

1. The amount of the bond shall be commensurate with the number of wells and the type of project. The amount of a bond shall be as follows:
 - 1- a. Single shallow well or testhole - ~~five thousand~~ one hundred dollars.
 - 2- b. Blanket bond for ~~fifty or less~~ shallow wells or testholes - ~~fifty~~ ten thousand dollars.
 - 3- c. Single deep well - twenty-five thousand dollars.
 - 4- d. Blanket bond for ten or less deep wells - one hundred thousand dollars.
 - 5- e. Bond for strip mining - two thousand dollars per acre [.40 hectare].
2. Liability on the bond is conditioned on compliance with North Dakota Century Code chapter 38-12 and the rules and orders of the commission, and continues until either any of the following occurs:
 - 1- a. The testholes or wells have been satisfactorily plugged as provided in this chapter, the sites restored and approved by the state geologist, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.
 - 2- b. The mined lands or lands disturbed by any method of exploration or production of subsurface minerals have been restored and approved by the state geologist.
 - 3- c. The liability on the bond has been transferred to another bond and such transfer approved by the commission. The transferee of any well or the operator of any well is responsible for the plugging of any such well and for that purpose shall submit a new bond or produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. The original or prior bond may not be released as to the plugging responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such well. All liability on bonds continues until the plugging of such well or wells and the restoration of the surface is completed and approved.

The commission shall advise the surety and the principal when liability on a surety bond is terminated.

The state geologist is vested with the power to act for the commission as to all matters within this section.

History: Amended effective August 1, 1986; May 1, 2004.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-12. Permit required. A permit shall be required prior to commencement of operations for the exploration or evaluation of subsurface minerals. The state geologist may grant a permit for one year upon receipt of a permit application on a form provided by the commission, the furnishing of a bond as provided in section 43-02-02-11, and the payment of a fee of ~~twenty-five~~ one hundred dollars for each permit.

1. A permit shall be required for each deep well not included in an approved mining plan, and the application for such permit shall be accompanied by a plat prepared by a qualified person showing the exact location and elevation of the well.
2. A permit shall be required for each testhole drilling program exploring for subsurface minerals. The area to be explored shall be outlined on the application and the permit shall be valid only in the area so outlined.

The state geologist may deny an application for permit if the drilling of a well or other exploration operation would violate correlative rights or would cause, or tend to cause, waste, damage to the environment, damage to mineral-bearing formations, or damage to nonmineral resources. The applicant may appeal the decision of the state geologist to the commission.

History: Amended effective May 1, 2004.

General Authority: NDCC 38-12-03

Law Implemented: NDCC 38-12-03

CHAPTER 43-02-03

43-02-03-05. Enforcement of laws, rules, and regulations dealing with conservation of oil and gas. The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of North Dakota relating to the conservation of oil and gas. However, it shall be the responsibility of all the owners or operators to obtain information pertaining to the regulation of oil and gas before operations have begun.

The director may shut in, for no more than forty days, any well that is likely to cause a serious threat of pollution or injury to the public health or safety.

History: Amended effective May 1, 2004.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

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

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended.

No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

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

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

4. **Bond terms.** ~~The bond herein required~~ Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
5. **Transfer of wells under bond.** Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal ~~should~~ must proceed as follows:

- a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.

- c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. ~~This section shall apply to transfers of any such wells made prior to the effective date of this section as well as thereafter.~~ The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.

6. **Treating plant bond.** Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval; of a surety; bond or cash bond

conditioned. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

7. **Bond termination.** The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
8. **Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-08, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling a well, including reentering a plugged and abandoned well, or the risk and cost of reentering an existing well to drill deeper or a horizontal lateral. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.
2. a. The invitation to participate in drilling must contain the following:

- a- (1) The location of the proposed or existing well and its proposed depth and objective zone.
 - b- (2) An itemization of the estimated costs of drilling and completion.
 - c- (3) The approximate date upon which the well will be spudded or reentered.
 - d- (4) The time within which the invitation must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.
 - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
3. b. ~~A valid acceptance of the invitation~~ An election to participate must be in writing.
4. c. An invitation to participate and an ~~acceptance of the invitation~~ election to participate must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
5. d. An election to participate is only binding upon an owner electing to participate if the well is spudded or reentry operations are commenced within ninety days after the date the owner extending the invitation to participate sets as the date upon which a response to the invitation is to be received. It also expires if the permit to drill or reenter expires without having been exercised. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
6. ~~The right to a risk penalty expires if the owner seeking it does not spud the well within ninety days after the date set by the owner as the date upon which a response to the invitation is to be received. It also expires if the permit to drill expires without having been exercised.~~
2. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-09.4.

provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the unit expense. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.

a. The invitation to participate in the unit expense must contain the following:

- (1) A description of the proposed unit expense, including the location, objectives, and plan of operation.
- (2) An itemization of the estimated costs.
- (3) The approximate date upon which the proposal will commence.
- (4) The time within which the invitation must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.
- (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.

b. An election to participate must be in writing.

c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.

d. An election to participate is only binding upon an owner electing to participate if the unit expense is commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which a response to the request invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.

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

History: Effective December 1, 1996; amended effective May 1, 2004.

General Authority: NDCC 38-08-04

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

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

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

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

Production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees

Fahrenheit [26.67 degrees Celsius]. After cementing, the casing shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals]. If, at the end of thirty minutes, this pressure has dropped one hundred fifty pounds per square inch [1035 kilopascals] or more, the casing shall be repaired. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

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

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-22. Defective casing or cementing. In any well that appears to have defective casing or cementing, the operator shall report the defect to the director on a sundry notice (form 4) ~~and shall~~. Prior to attempting remedial work on any casing, the operator must obtain approval from the director and proceed with diligence to conduct tests, as approved or required by the director, to properly evaluate the condition of the well bore and correct the defect. The director may allow the well bore condition to remain if correlative rights can be protected without endangering potable waters. The well shall be properly plugged if requested by the director.

Any well with open perforations above a packer shall be considered to have defective casing.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-48.1. Central production facility - Commingling of production.

1. The director shall have the authority to approve requests to consolidate production equipment at a central location.
2. Commingling of production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities in which production from two or more wells is commingled that may be approved by the director.

- a. A central production facility in which all production going into the facility has common ownership (working interests, royalty interests, and overriding royalties).
 - b. A central production facility in which production going into the facility has diverse ownership.
3. The commingling of production in a central production facility from two or more wells having common ownership may be approved by the director provided the production from each well can be accurately determined at reasonable intervals. Commingling of production in a central production facility from two or more wells having diverse ownership may be approved by the director provided the production from each well is accurately metered prior to commingling. Commingling of production in a central production facility from two or more wells having diverse ownership that is not metered prior to commingling may only be approved by the commission after notice and hearing.
- a. Common ownership central production facility. The application for permission to commingle oil and gas in a central production facility with common ownership must be submitted on a sundry notice (form 4) and shall include the following:
 - (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well and flow lines from each well that will produce into the facility.
 - (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
 - (3) ~~A current or most recent division order or title opinion showing the ownership of each well to be commingled.~~ An affidavit executed by a person who has knowledge as to the state of title indicating ownership is common.
 - (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed at least once every three months.

A copy of all tests are to be filed with the director on form 11 within thirty days after the tests are completed.
 - b. Diverse ownership central production facility. The application for permission to commingle oil and gas in a central production facility

having diverse ownership must be submitted on a sundry notice (form 4) and shall include the following:

- (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.
- (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
- (3) The name of the manufacturer, size, and type of meters to be used. The meters must be proved at least once every three months and the results reported to the director within thirty days following the completion of the test.
- (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed monthly.

A copy of all tests are to be filed with the director on form 11 within thirty days after the tests are completed.

4. Any changes to a previously approved central production facility must be reported on a sundry notice (form 4) and approved by the director.

History: Effective May 1, 1992; amended effective September 1, 2000; May 1, 2004.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-49. Oil spills, ~~tanks~~ production equipment, dikes, and seals.

Storage of oil in underground or partially buried tanks or containers is prohibited. ~~Oil may be stored in surface~~ Surface oil tanks ~~providing they are~~ and production equipment must be devoid of leaks and in good condition. Unusable tanks and production equipment must be removed from the site or repaired and placed into service, within a reasonable time period, not to exceed one year. Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.

Dikes must be erected around oil tanks at any new production facility within thirty days after the well has been completed. Dikes must be erected and maintained around oil tanks at production facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the total capacity of the largest tank plus one day's

fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

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

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

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-50. Tank cleaning permit. No tank bottom waste shall be removed from any tank used for the storage or sale of crude oil ~~or a tank in which crude oil accumulates~~ without prior approval by the director. Verbal approval may be given. ~~All tank bottom waste must be disposed of in a manner authorized by the director and in accordance with all applicable local, state, and federal laws and regulations.~~ Prior approval to remove tank bottom waste from tanks not used for the storage or sale of crude oil is not required.

Within thirty days of ~~completion~~ the removal of the tank bottom ~~cleaning waste of any tank used for the storage or sale of crude oil~~, the owner or operator shall submit a report (form 23) showing an accurate gauge of the contents of the tank and the amount of merchantable oil determinable from a representative sample of the tank bottom by the standard centrifugal test as prescribed by the American petroleum institute's code for measuring, sampling, and testing crude oil.

Within thirty days of the removal of the tank bottom waste of any permanent tank not used for the storage or sale of crude oil, the owner or operator shall submit a sundry notice (form 4) detailing the cleaning operation.

All tank bottom waste must be disposed of in a manner authorized by the director and in accordance with all applicable local, state, and federal laws and regulations. Nothing contained in this section shall apply to reclaiming of pipeline break oil or the treating of tank bottoms at a pipeline station, crude oil storage terminal, or refinery or to the treating by a gasoline plant operator of oil and other catchings collected in traps and drips in the gas gathering lines connected to gasoline plants and in scrubbers at such plants.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; May 1, 2004.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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

1. All saltwater liquids or brines produced with oil and natural gas shall be processed, stored, and disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over or pool on the surface of the land or infiltrate the soil.
2. Underground ~~disposal~~ injection of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
3. Surface tanks facilities are an acceptable facility provided that:
 - a. They are devoid of leaks and constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unusable tanks and injection equipment must be removed from the site or repaired and placed into service, within a reasonable time period, not to exceed one year.
 - b. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility built or rebuilt on or after July 1, 2000. Dikes must be erected around saltwater tanks at any new facility within thirty days after the well has been completed. Dikes must be erected and maintained around saltwater tanks at saltwater handling facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas.
4. The operator shall take steps to minimize the amount of solids stored at the facility.

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-60.1. Valuation of flared gas. The value of gas flared from an oil well in violation of North Dakota Century Code section 38-08-06.4 ~~must~~ shall be deemed ~~ninety-five cents per thousand cubic feet [28.32 cubic meters]~~ (MCF). This

valuation will be periodically reviewed by the industrial commission determined by the commission after notice and hearing.

History: Effective October 1, 1990; amended effective May 1, 1992; May 1, 1994; May 1, 2004.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-06.4

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

1. Applications for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-03-48.1, must be ~~accompanied by an affidavit~~ signed by the applicant or the applicant's representative. The affidavit application must contain or refer to attachments that contain all the information required by law as well as ~~all~~ the information the applicant wants the commission to consider in deciding whether to grant the application. The affidavit application must designate an employee or representative of the applicant to whom the commission can direct inquiries regarding the application. ~~Two copies of the application and affidavit and any accompanying materials must be submitted, unless the director consents to fewer copies.~~
2. The applications referred to in subsection 1 will be advertised and scheduled for hearing as are all other applications received by the commission. The applicant, however, unless required by the director, need not appear at the hearing scheduled to consider the application, although additional evidence may be submitted prior to the hearing. ~~The affidavit referred to in subsection 1 will be made an exhibit in the case unless the applicant fails to appear at the hearing after requested to do so by the director.~~ Any interested party may appear at the hearing to oppose or comment on the application. Any interested party may also submit written comments on or objections to the application prior to the hearing date. Such submissions ~~will~~ may be part of the record in the case.
3. The director is authorized, on behalf of the commission, to grant or deny the applications referred to in subsection 1.
4. In any proceeding under this section, the applicant, at the hearing, may supplement the ~~affidavit required in subsection 1~~ record by offering testimony and exhibits in support of the application.

5. In the event the applicant is not required by the director to appear at the hearing and an interested party does appear to oppose the application or submits a written objection to the application, the hearing officer shall continue the hearing to a later date, keep the record open for the submission of additional evidence, or take any other action necessary to ensure that the applicant, who does not appear at the hearing as the result of subsection 2, is accorded due process.

History: Effective May 1, 1992; amended effective May 1, 1994; May 1, 2004.

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

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

43-02-03-88.2. Hearing participants by telephone. In any hearing, the commission may, at its option, allow telephonic communication of witnesses and interested parties. The procedure shall be as follows:

1. Telephonic communication of an applicant's witness will only be considered if a written request is made ~~at the time the application is filed with the commission~~ least two business days prior to the hearing date.
2. Telephonic communication of an interested party will only be considered if said party notifies the applicant and the commission in writing at least three business days prior to the hearing date. Such notice shall include the subject hearing, the name and telephone number of the ~~participant~~ interested party, and the name and telephone number of the ~~applicant's~~ interested party's attorney or representative that will be present at the hearing.
3. In the event an objection to any party's telephonic communication is received, the examiner may disallow such communication by telephone and may reschedule for an in-person hearing. The commission will notify all parties whether or not the request to participate by telephone is granted or denied.
4. All parties participating by telephone shall have an attorney or representative present at the hearing who shall be responsible for actually calling said party once the case is called for hearing, for providing the commission at the time of the hearing with any documentary evidence requested to be included in the record, and for any other matters necessary for the party to participate by telephone.
5. All parties participating by telephone shall file an affidavit verifying the identity of such party. The record of such telephonic communication shall not be considered evidence in the case unless said affidavit is received by the examiner prior to an order being issued by the commission. The commission shall provide a form affidavit. The commission has the discretion to refuse to consider all or any part of the information received from any party participating by telephone.

6. For all hearings allowing communication by telephone, the commission shall provide a hearing room equipped with a speaker telephone.
7. The cost of telephonic communication shall be paid by the party requesting its use.

History: Effective July 1, 2002; amended effective May 1, 2004.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 28-32-11

CHAPTER 43-02-05

43-02-05-04. Permit requirements.

1. No underground injection may be conducted without obtaining a permit from the industrial commission after notice and hearing. ~~An application for a permit for underground injection shall be submitted to the commission at least thirty days prior to the hearing.~~ The application shall be on a form 14 provided by the commission and shall include at least the following information:
 - a. The name and address of the operator of the injection well.
 - b. The surface and bottom hole location.
 - c. Appropriate geological data on the injection zone and the confining zones including geologic names, lithologic descriptions, thicknesses, and depths.
 - d. The estimated bottom hole fracture pressure of the top confining zone.
 - e. Average and maximum daily rate of fluids to be injected.
 - f. Average and maximum requested surface injection pressure.
 - g. Geologic name and depth to base of ~~all~~ the lowermost underground sources of drinking water which may be affected by the injection.
 - h. Existing or proposed casing, tubing, and packer data.
 - i. A plat depicting the area of review, (~~one-fourth-mile~~ one-quarter mile [402.34 meters] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
 - j. ~~A tabulation of data on all wells of public record within the area of review that penetrated the proposed injection zone. Include the following data: location, date drilled, total depth, well type, construction, record of plugging or completion, and any additional information the commission may require.~~
 - k. The need for corrective action on wells penetrating the injection zone in the area of review.
 - l. k. Proposed injection program.

- m. L. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwater wells within a one mile [1.61 kilometers] radius. Location of the wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.
 - n. M. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
 - o. N. List identifying all source wells or sources of injectate.
 - p. O. A legal description of the land ownership within the area of review.
 - q. P. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.
 - r. Q. All logging and testing data on the well which has not been previously submitted.
 - s. R. Schematic drawings of the injection system, including current well bore construction and proposed well bore and surface facility construction.
 - t. S. Sundry notice detailing the proposed procedure.
2. Permits may contain such terms and conditions as the commission deems necessary.
 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
 4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
 5. No person shall commence construction of an underground injection well until the commission has issued a permit for the well.

6. Permits are transferable only with approval of the commission.
7. Permits may be modified by the commission.
8. ~~Before a permit for underground injection will be issued~~ injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.
10. A permit shall automatically expire one year after the date it was issued, unless operations have commenced to complete the well as an injection well.
11. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996; May 1, 2004.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-06. Construction requirements.

1. All injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in construction of each new injection well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, all of the following factors shall be considered:
 - a. Depth to the injection zone.
 - b. Depth to the bottom of all underground sources of drinking water.
 - c. Estimated maximum and average injection pressures.
 - d. Fluid pressure.
 - e. Estimated fracture pressure.
 - f. Physical and chemical characteristics of the injection zone.
2. Appropriate logs and other tests shall be conducted during the drilling and construction of injection wells. Any well drilled or converted to an injection well shall have a log run from which the quality of the cement

bond can be determined. Cement bond logs shall contain at least the following elements: a gamma ray curve; a casing collar locator curve; a transit time curve; an amplitude curve; and a variable density curve. A descriptive report interpreting the results of these logs and tests shall be prepared by a qualified log analyst and submitted to the commission if deemed necessary by the director.

3. All injection wells must be equipped with tubing and packer set at a depth approved by the director.

History: Effective November 1, 1982; amended effective May 1, 1992; July 1, 1996; May 1, 2004.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-07. Mechanical Integrity.

1. Prior to commencing operations, the operator of a new injection well must demonstrate the mechanical integrity of the well. All existing injection wells must demonstrate continual mechanical integrity and be tested at least once every five years. An injection well has mechanical integrity if:
 - a. There is no significant leak in the casing, tubing, or packer; and
 - b. There is no significant fluid movement into an underground source of drinking water or an unauthorized zone through vertical channels adjacent to the injection bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
 - a. Pressure test with liquid or gas.
 - b. Monitoring of positive annulus pressure following a valid pressure test.
 - c. ~~Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate: Radioactive tracer survey.~~
 - d. ~~Spinner survey.~~
 - e. ~~Radioactive tracer survey.~~
3. One of the following methods must be used to establish the absence of significant fluid movement:

- a. ~~Well~~ A log from which cement can be determined or well records demonstrating the presence of adequate cement to prevent such migration.
- b. ~~The results of a~~ Radioactive tracer survey, temperature log, or noise log.

History: Effective November 1, 1982; amended effective May 1, 1990; July 1, 1996; May 1, 2004.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-12. Reporting and monitoring requirements.

1. The operator of an injection well shall meter or use an approved method to keep records and shall report monthly to the industrial commission, oil and gas division, the volume and nature, i.e., produced water, makeup water, etc., of the fluid injected, the injection pressure, and such other information as the commission may require. The operator of each injection well shall, on or before the fifth day of the second month succeeding the month in which the well is capable of injection, file with the director a sworn statement showing the amount of injection by each well upon forms furnished therefor, or approved computer sheets. The operator shall retain all records required by the industrial commission for at least ~~five~~ six years.
2. Immediately upon the commencement or recommencement of injection, the operator shall notify the oil and gas division of the injection date.
3. The operator shall place accurate gauges on the tubing and the tubing-casing annulus. Accurate gauges shall also be placed on any other annuluses deemed necessary by the director.
4. The operator of an injection well shall keep the well and injection system under continuing surveillance and conduct such monitoring and sampling as the commission may require.
5. The operator of an injection well shall report any noncompliance with regulations or permit conditions to the director orally within twenty-four hours followed by a written explanation within five days. The operator shall cease injection operations if so directed by the director.
6. Within ten days after the discontinuance of injection operations, the operator shall notify the oil and gas division of the date of such discontinuance and the reason therefor.
7. Upon the completion or recompletion of an injection well or the completion of any remedial work or attempted remedial work such as plugging back, deepening, acidizing, shooting, formation fracturing,

squeezing operations, setting liner, perforating, reperforating, tubing repairs, packer repairs, casing repairs, or other similar operations not specifically covered herein, a report on the operation shall be filed on a form 4 sundry notice with the director within thirty days. The report shall present a detailed account of all work done, including the reason for the work, the date of such work, the shots per foot and size and depth of perforations, the quantity of sand, crude, chemical, or other materials employed in the operation, the size and type of tubing, the type and location of packer, the result of the packer pressure test, and any other pertinent information or operations which affect the status of the well and are not specifically covered herein.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996; May 1, 2004.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-14. Area permits.

1. The commission, after notice and hearing, may issue ~~a~~ an area permit ~~on an area basis, rather than for each well individually, provided that the permit is for providing for the permitting of individual injection wells if the proposed injection wells are:~~
 - a. ~~Described and identified by location in permit applications, if they are existing wells;~~
 - b. ~~Within the same well field, facility site, reservoir, project, or similar unit in the same state;~~
 - c. ~~Of similar construction;~~
 - d. ~~Of the same class; and~~
 - e. ~~Operated by a single owner or operator.~~
2. ~~Area permits~~ An area permit application shall specify include at least the following information:
 - a. ~~The area within which underground injections are authorized; and name and address of the operator.~~
 - b. The requirements for construction, monitoring, reporting, operation, and plugging for all wells authorized by the permit. A plat depicting the area of review (one-quarter mile [402.34 meters] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes,

and water wells. The plat should also depict faults if known or suspected.

- c. Appropriate geological data on the injection zone and the confining zones, including geologic names, lithologic descriptions, thicknesses, and depths.
 - d. Estimated fracture pressure of the top confining zone.
 - e. Estimated maximum injection pressure.
 - f. Geologic name and depth to base of the lowermost underground source of drinking water which may be affected by the injection.
 - g. Proposed injection program.
 - h. List identifying all source wells or sources of injectate.
 - i. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
 - j. Legal description of the land ownership within and one-quarter mile [402.34 meters] adjacent to the proposed area permit.
 - k. Affidavit of mailing certifying that all landowners have been notified.
 - l. Representative example of landowner letter sent.
 - m. Schematic of the proposed injection system.
 - n. Schematic drawing of a typical proposed injection well bore construction.
3. ~~The An area permit may authorize~~ authorizes ~~the permittee director to construct and operate new~~ approve individual injection wells well permit applications within the permit permitted area provided. The application shall be on a form 14 provided by the commission and shall include at least the following information:
- a. ~~The permittee notifies the director when and where the new well has been or will be located~~ name and address of the operator of the injection well.
 - b. ~~The additional well meets the area permit criteria~~ surface and bottom hole location.

- c. The cumulative effects of drilling and operation of additional injection wells are acceptable to the director. Average and maximum daily rate of fluids to be injected.
- d. Existing or proposed casing, tubing, and packer data.
- e. Plat depicting the area permit and one-quarter mile [402.34 meters] adjacent detailing the location of all anticipated injection wells and all current producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults if known or suspected.
- f. The need for corrective action on wells penetrating the injection zone in the area of review.
- g. Location of the two nearest freshwater wells by quarter-quarter, section, township, and range within a one-mile [1.61 kilometers] radius and the dates sampled. A quantitative analysis from a state-certified laboratory of the samples must be submitted with the application or within thirty days of sampling. This requirement may be waived by the director in certain instances.
- h. All logging and testing data on the well which has not been previously submitted.
- i. Schematic drawings of the current well bore construction and proposed well bore and surface facility construction.
- j. Sundry notice detailing the proposed procedure.
- 4. The director is authorized to approve individual injection well permit applications within an area permit provided:
 - a. The additional well meets the area permit criteria.
 - b. The cumulative effects of drilling and operating additional injection wells are acceptable to the director.
- 5. If the director determines that any additional well does not meet the area permit requirements, the director may modify or terminate the permit or take enforcement action.
- 5- 6. If the director determines the cumulative effects are unacceptable, the permit may be modified.
- 7. Area and individual injection well permits may contain such terms and conditions as the commission deems necessary.

8. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
9. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
10. No person shall commence construction of an underground injection well until the commission has issued a permit for the well.
11. Area and individual injection well permits are transferable only with approval of the commission.
12. Individual injection well permits may be modified by the commission.
13. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
14. Individual injection well permits shall automatically expire one year after the date issued, unless operations have commenced to complete the well as an injection well.
15. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 2004.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

CHAPTER 43-02-07

43-02-07-08. Bond. Before any person receives a permit to drill, bore, excavate, or construct a geothermal energy extraction facility, the person shall submit to the commission and obtain its approval of a surety bond, on a form or cash bond. An alternate form of security may be approved by the commission after notice and hearing, conditioned as provided by law. At the discretion of the state geologist, an installation or facility bond may be required for the substantial modification of a geothermal energy extraction facility in existence prior to December 1, 1992. The state geologist has the discretion to waive the requirement for a facility bond if the applicant is an instrumentality of the state. Each such bond must be executed by a responsible surety company authorized to transact business in this state.

The amount and type of the bond is as follows:

1. Shallow-well and horizontal-loop facilities.

- a. The state geologist has the discretion to require a facility ~~surety~~ bond in the amount of fifteen thousand dollars for any shallow-well or horizontal-loop facility that, for any reason, constitutes a special threat to important ground water resources or the environment, or otherwise poses a significant public health hazard.
- b. An installation ~~surety~~ bond in the amount of ten thousand dollars is required of installers of all shallow-well and horizontal-loop facilities. This is a blanket bond and must cover all permits for shallow-well and horizontal-loop facilities issued in one year commencing on the date the first permit covered by the bond is issued. Alternately, at the discretion of the state geologist, an installation ~~surety~~ bond in the amount of one hundred dollars for each well (loop) installed per year may be submitted.
- c. ~~In lieu of the installation surety bond in subdivision b, the state geologist has the discretion to accept a cash bond of two thousand five hundred dollars for the installation of up to twenty loops per year for shallow-well closed-loop facilities.~~
- d. The geothermal system installer must comply with North Dakota Century Code chapter 38-19 and all rules and orders of the commission as a condition of the installer's bond. Any violation of either North Dakota Century Code chapter 38-19 or the rules or orders of the commission makes the installer liable under the bond and the bond shall be subject to immediate forfeiture. The installer remains liable under the installation bond until construction of the geothermal energy extraction facility has been completed and the work has been approved by the state geologist. At the discretion of the state geologist, the installer's liability under the bond may be terminated at an earlier date when it can be demonstrated that only minor interior work remains to be completed and when

completion of this work is subject to inordinate delays beyond the control of the geothermal system installer.

2. **Deep-well facilities.** A facility bond is required for all deep-well facilities. The amount of the facility bond must be a five thousand dollar bond for a deep-well facility with one supply well. The bond must increase in five thousand dollar increments for each additional supply well and each injection well.

The owner of a geothermal energy extraction facility is responsible for obtaining the facility bond in subdivision a of subsection 1 and subsection 2.

The owner of the geothermal energy extraction facility who is required to obtain a facility ~~surety~~ bond under either subdivision a of subsection 1 or subsection 2 must comply with North Dakota Century Code chapter 38-19 and all rules and orders of the commission as a condition of the owner's bond. Any violation of either North Dakota Century Code chapter 38-19 or the rules or orders of the commission makes the owner liable under the facility ~~surety~~ bond, and the bond shall be subject to immediate forfeiture. The owner of the geothermal energy extraction facility remains liable under the bond until either of the following occurs: (1) the wells or loop systems have been satisfactorily plugged as provided in this chapter, the sites disturbed by any method of production of geothermal energy have been reclaimed in a manner approved by the state geologist, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved; or (2) the liability on the bond has been transferred to another bond and such transfer approved by the commission.

The commission shall advise the surety and the principal when liability on a surety bond is terminated.

The state geologist is authorized to act for the commission as to all matters within this section.

History: Effective March 1, 1984; amended effective October 1, 1990; December 1, 1992; April 1, 1994; May 1, 1994; May 1, 2004.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

CHAPTER 43-02-08

43-02-08-01. Definitions. The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Commercial quantities" means production exceeding in value current operating costs.
2. "Condensate recovered in nonassociated production" means a liquid hydrocarbon recovered from a well classified as a gas well by the commission.
3. "Maximum efficient rate" means the maximum economic rate of production of oil which can be sustained under prudent operations, using sound engineering practices, without loss of ultimate recovery.
4. "Operator" means any person who owns a fee interest or an interest in an oil and gas leasehold, and has the right to produce oil therefrom.
5. "Qualifying period" means any preceding consecutive twelve-month period beginning after December 31, 1972, that the qualified maximum total production from a property did not exceed the production levels as specified in subsection 2 of section 43-02-08-03.
6. "Well depth":
 - a. For a vertical or directional well means the lowest measured depth of the midpoint between the highest and lowest perforations (measured in feet from ground level the kelly bushing) producing from the pool during the qualifying period. In the event there is more than one vertical or directional well on a property producing from the same pool during the qualifying period, "well depth" means the average depth of the midpoints between the highest and lowest perforations lowest measured depths producing from the pool of all vertical and directional wells in the property.
 - b. For a horizontal well means the measured depth of the terminus of the horizontal lateral (measured in feet from the kelly bushing) producing from the pool during the qualifying period. In the event there is more than one horizontal well on a property producing from the same pool during the qualifying period, "well depth" means the average measured depth of the termini of the horizontal laterals producing from the pool of all of the horizontal wells on the property.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1994; May 1, 2004.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-02.1. Property determination. For purposes of this chapter, property will be determined by reference to the geographical boundaries of the right to produce crude oil as such right existed on January 1, 1972, provided such right was in production in commercial quantities on that date. If such right was not in production in commercial quantities on January 1, 1972, the determination of property will be made by reference to the geographical boundaries of the right to produce crude oil when crude oil is first produced thereafter in commercial quantities. For purposes of determining what constitutes a property, the director shall recognize as separate properties the following:

1. A unit, where the unit is the aggregation of separate interests into a single right to produce. For the purposes of property determination, a unit means the total geographical area incorporated in a unitization agreement approved by order of the commission. In cases where a property has been unitized, portions of the property outside the unit boundary are separate properties.
2. Separate and distinct reservoirs, as defined by orders of the commission.
3. Noncontiguous tracts. (Tracts abutting solely at a corner are considered noncontiguous tracts.)
4. A single well, or any portion of a property which has been developed and produced separately. Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property unless approved by the commission after notice and hearing or unless such property lies within a unitized common source of supply.

History: Effective September 1, 1987; amended effective May 1, 1992; May 1, 2004.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-03. Director shall determine stripper well property status.

1. Upon receipt of an application for stripper well property determination, the director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well property status will be determined on the basis of the qualified maximum total production of oil from the property. In order to qualify production from a property as maximum total production, each oil-producing well on the property must have been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period. A property meets the requirements of a stripper

well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:

- a. Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - b. Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
 - c. Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day.
3. Within thirty days of the receipt of a complete application for stripper well property status, or a reasonable time thereafter, the director shall either grant or deny the application. ~~The application must be submitted to the commission within twelve months after the end of the stripper well property's qualification period.~~
 4. If an application for stripper well property status is denied, the director shall enter a written determination denying the application and specify the basis for the denial. If an application for stripper well property status is granted, the director shall enter a written determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the director by mail to the applicant and all other persons submitting ~~written~~ comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the property, and the purchaser of the crude oil of the determination of the director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; July 1, 1996; May 1, 2004.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

CHAPTER 43-02-09

43-02-09-02. Exemption from taxes. Production from a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production, upon which a workover project has been performed, is exempt from taxes imposed pursuant to North Dakota Century Code chapter 57-51.1 for twelve months beginning with the first day of the third calendar month after the completion of a workover project if:

1. The commission has received a notice of intention to begin a workover project in accordance with section 43-02-09-03.
2. A workover project is performed on the well.
3. The cost of the workover project exceeds sixty-five thousand dollars, or if the average daily production is increased at least fifty percent during the first two months after completion of the workover project, based upon a comparison to the average daily production for the latest six calendar months of continuous production prior to the filing of the notice of intention to begin a workover project.

For the exemption from the oil extraction tax for workover projects pursuant to North Dakota Century Code section 57-51.1-03, the reentry of a plugged and abandoned well is a workover project provided the cost of the operation exceeds sixty-five thousand dollars. ~~The application must be submitted to the commission within twelve months after the completion of the workover project.~~

History: Effective May 1, 1990; amended effective May 1, 1994; July 1, 1996; May 1, 2004.

General Authority: NDCC 57-51.1-03

Law Implemented: NDCC 57-51.1-03

CHAPTER 43-02-11

43-02-11-01. Definitions. The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters chapter 38-08 and 57-51.1, except:

1. ~~"Horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well after March 31, 1995. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered and recompleted as a horizontal well after March 31, 1995.~~ horizontal reentry well.
2. ~~"Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].~~ horizontal well.
3. ~~"New well" means a well that was spudded and completed after April 27, 1987.~~ new well, shallow gas, shallow gas zone, and
4. ~~"Two-year inactive well" means a well as defined under North Dakota Century Code section 57-51.1-01. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well~~ two-year inactive well shall be as defined under North Dakota Century Code chapter 57-51.1.

History: Effective July 1, 1996; amended effective July 1, 2002; May 1, 2004.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51-01, 57-51.1-03

43-02-11-02.1. Application to certify as a shallow gas well. Any operator desiring to certify a shallow gas well for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51 shall submit to the director an application for certification of the well. The operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the well qualifies and is entitled to the tax exemption provided in North Dakota Century Code section 57-51-02.4.

History: Effective May 1, 2004.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51-01

43-02-11-08. Application for tax exemption for a shallow gas well. The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well if different.

2. The name and number of the well and the legal description of the surface location of the well for which a determination is requested.
3. The date the well was spudded and its completion date.
4. The name and the depth to the bottom of the productive strata or formation.
5. An affidavit stating that all working interest owners of the property and all purchasers of the gas produced from the well have been notified of the application by certified or registered mail.

If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective May 1, 2004.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

CHAPTER 43-02-12

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

1. Any person applying to the commission for an exploration permit must have a certificate to conduct geophysical exploration pursuant to subsection 3 of North Dakota Century Code section 38-08.1-03.1. A person may not commence geophysical exploration activities in this state without first obtaining an exploration permit from the commission. An application for an exploration permit must be submitted to the commission at least three business days before commencing operations and include the following:
 - a. The name, permanent address, and telephone number of the geophysical contractor and the geophysical contractor's local representative.
 - b. The name, permanent address, and telephone number of the drilling and hole plugging contractor, if different from the seismic contractor.
 - c. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
 - d. The bond number, type, and amount for the geophysical company.
 - e. The geophysical exploration method (i.e., shot hole, nonexplosive, 2D, or 3D).
 - f. The number, depth, and location of the seismic holes and the size of the explosive charges, if applicable.
 - g. The anticipated starting date of seismic and plugging operations.
 - h. The anticipated completion date of seismic and plugging operations.
 - i. A description of hole plugging procedures.
 - j. A description of the identifying marks that will be on the ~~hat~~ or nonmetallic plug to be used in the plugging of the seismic hole.
 - k. A preplot map displaying the proposed seismic source points and receiver lines and specifically identifying all source points that do not comply with section 43-02-12-05.
 - l. A fee of one hundred dollars.

2. The permit holder shall notify the commission at least twenty-four hours, excluding Saturdays and holidays, before commencing geophysical activity.
3. The permit holder shall immediately notify the commission of any revisions to an approved seismic permit.

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

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-04.1

43-02-12-05. Distance restrictions - Shot hole operations - Nonexplosive methods. Seismic shot hole operations may not be conducted less than ~~one thousand three hundred twenty~~ six hundred sixty feet [402.34 201.17 meters] from water wells, buildings, underground cisterns, pipelines, and flowing springs.

Nonexplosive exploration methods may not be conducted less than three hundred feet [91.44 meters] from water wells, buildings, underground cisterns, pipelines, and flowing springs.

Variances may be granted to this section by written agreement between the permit holder and the ~~operator~~ owner of the ~~land~~ subject property and must be available to the director upon request.

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

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-08

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

Any person plugging a seismic hole must submit a plugging report and an affidavit of plugging detailing the line number, shot point number, hole depth, drill type, hole condition (wet, dry), bentonite used (sacks, capsules), and the depth at

which the surface plug was set, and all other information necessary to describe the conditions of the shot hole.

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

General Authority: NDCC 38-08.1

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

43-02-12-07. Drilling and plugging requirements.

1. Prior to commencement of any drilling or plugging operations, the director may require a field meeting with the geophysical contractor and subcontractors.
2. Except in those circumstances in which the director allows otherwise, all seismic shot holes must be plugged the same day as they were drilled and loaded. Any blown out shot holes must be plugged as soon as reasonably practicable, unless, upon application, the director grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped until final plugging.
3. If the number of drilling rigs on a proposed project exceeds the director's capacity to provide appropriate inspection, the director may limit the number of drilling rigs.
4. Bentonite materials used in seismic hole plugging must be derived from naturally occurring untreated, high swelling sodium bentonite which consists principally of the mineral montmorillonite.
5. A durable ~~nonrusting metal or plastic tag~~ nonmetallic plug must be set at a depth of approximately three feet [91.44 centimeters] below the surface of every shot hole. The plug must be designed to fit the hole and shall be imprinted with the name mark of the operator responsible for the plugging, the mark of the permitholder, and its permit the permitted project number.
6. Unless the contractor can prove to the satisfaction of the commission that another method will provide better protection to ground water and long-term land stability, seismic shot hole plugging shall be conducted in the following manner:
 - a. When water is used in conjunction with the drilling of seismic shot holes or when water is encountered in the hole, the shot holes are to be filled with coarse ground bentonite approximately three-fourths of one inch [19.05 millimeters] in diameter from the top of the charge up to a depth above the final water level. Cuttings shall be added from the top of the bentonite to the surface. All cuttings added above the nonmetallic plug shall be tamped.

- b. When drilling with air only, and in completely dry holes, a plugging may be accomplished by returning the cuttings to the hole. A small mound must be left over the hole for settling allowance.
- c. Any Remaining cap leads must be cut off below ground level and any drilling fluid or cuttings which are deposited on the surface around the seismic hole will be spread out in such a manner that the growth of natural grasses or foliage will not be impaired.
- d. The existing cap leads must be cut off below ground level. Any markings, including lath, pin flags, flagging, or any other debris left on the project area, including the powder magazine, must be removed and lawfully disposed of.

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

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-02, 38-08.1-06, 38-08.1-06.1

TITLE 59.5
HUMAN RESOURCE MANAGEMENT SERVICES

JULY 2004

CHAPTER 59.5-01-01

59.5-01-01-01. Organization of state personnel board.

1. **History and functions.** The 1975 legislative assembly passed a Central Personnel System Act, codified as North Dakota Century Code chapter 54-44.3. The Act created the state personnel board which oversees the development and administration of a unified system of personnel administration for the classified service of the state.

The board is an administrative agency separate from the ~~central personnel division~~ human resource management services of the office of management and budget, although the board and the division work closely together. The board adopts its own rules, but also reviews the division's rules. Additionally, the board can review and change pay ranges and classifications assigned to positions. The board may approve positions not to be included in the classified service.

The state personnel board also serves as the North Dakota merit system council. In this capacity the board regulates the personnel policies and practices of the state agencies which are by statute subject to the merit system. The board's regulation of merit system agencies includes approving rules established by the director of human resource management services serving as the director of the merit system council, and conducting hearings on complaints arising from ~~those rules~~ compensation and pay grade.

2. **Board membership.** The board is composed of the director of the ~~central personnel division~~ human resource management services who is the chairperson, ~~one member appointed by the board of higher education, one member,~~ two members appointed by the governor, one of whom must have a professional human resource background; and two members elected by classified employees. The terms of all members, except the chairperson, are six years. Any vacancy in office is filled for the unexpired term in the same manner as the selection of the person vacating the office.

3. **Meetings.** The board organizes annually at its ~~the~~ first meeting of each fiscal year. It elects a vice chairman to serve for a term of one year. ~~The board meets~~ It shall meet at least ~~six times~~ once a year and at such times and places as are specified by call of the chairman or any three members of the board. All meetings are open to the public with reasonable notice provided by ~~the central personnel division~~ human resource management services. Three members constitute a quorum for the transaction of business. Three favorable votes are necessary for the passage of any resolution or taking of any official action by the board at any meeting.
4. **Board office.** All requests for information or forms required by the rules and all submissions of appeal materials must be mailed to this address postage prepaid:

State Personnel Board
c/o Director, ~~Central Personnel Division~~ Human Resource
Management Services
600 East Boulevard Avenue, Dept. 113
Bismarck, ~~North Dakota~~ ND 58505-0120

History: Effective December 1, 1985; amended effective February 1, 1991; January 1, 1992; April 1, 1994; November 1, 1996; July 1, 2004.

General Authority: NDCC ~~54-42-03~~, 54-44.3

Law Implemented: NDCC 54-44.3

CHAPTER 59.5-03-02

59.5-03-02-01. Scope of chapter. This chapter applies to all employees who have satisfactorily completed their probationary period and who are in positions classified by ~~the central personnel division~~ human resource management services. Additionally, this chapter applies to state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective December 1, 1985; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-07(1)

Law Implemented: NDCC 54-44.3-07(3)

59.5-03-02-01.1. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except that:

1. "Regular employee" means a person who has completed the probationary period and who is in a position classified by ~~the central personnel division~~ human resource management services.
2. "Working days" means Monday through Friday exclusive of holidays.

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-07(1)

Law Implemented: NDCC 54-44.3-07(3)

59.5-03-02-02. Classification appeal procedure.

1. A regular employee or an appointing authority may appeal a classification decision made by ~~the central personnel division~~ human resource management services if one of the following is alleged:
 - a. ~~The central personnel division~~ Human resource management services did not give due consideration to information presented.
 - b. ~~The central personnel division~~ Human resource management services did not follow chapter 4-07-03.
 - c. The decision of ~~the central personnel division~~ human resource management services was made in a discriminatory manner as defined in North Dakota Century Code section 14-02.4-01.

The appeal to the state personnel board must be received by ~~central personnel division~~ human resource management services staff by the close of business fifteen working days from the date of the written

decision of the division. The appeal must be in writing and state the reason for the appeal.

2. Upon receipt of a written appeal, the director, ~~central personnel division~~ human resource management services, as secretary to the board, shall schedule the appeal for hearing before the board. The director, on behalf of the state personnel board, shall notify the employee and appointing authority in writing of the board hearing date at least ten working days prior to the board hearing date.
3. ~~The central personnel division~~ Human resource management services shall provide each member of the state personnel board, the employee, and the agency appointing authority with a copy of each document to become a part of the appeal file. The appeal file must consist of, but is not limited to, copies of the following:
 - a. The original classification/reclassification request under appeal and all attachments and responses.
 - b. The appeal form and all attachments.
 - c. All written correspondence relating to the original classification request and appeal, including written requests for extension and notices of extensions granted or denied.
 - d. The written appeal commencing the appeal before the state personnel board.
 - e. Other directly relevant and significant documents submitted by the employee, appointing authority, or ~~the central personnel division~~ human resource management services.
4. ~~The central personnel division~~ Human resource management services shall disseminate the appeal file to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next scheduled board meeting date.
5. The employee, appointing authority, and their representatives may appear at the board meeting for the hearing of their classification appeal. The employee, appointing authority, or their representatives shall first make an oral presentation relative to the matter under appeal followed by ~~the central personnel division~~ human resource management services. The board chairperson shall ensure that all parties have ample opportunity to present their views relating to the classification appeal. New information presented at the hearing may delay the decision of the board.

6. If the board determines by a preponderance of the evidence that the appeal has merit based on reasons stated in subsection 1, the board shall:
 - a. Remand the appeal to ~~the central personnel division~~ human resource management services for further review;
 - b. Uphold the decision of ~~the central personnel division~~ human resource management services; or
 - c. Change the classification of the subject position based on the record and information before it.
7. ~~The central personnel division~~ Human resource management services shall notify the employee and appointing authority in writing of the board's decision within five working days following the date the board makes its decision regarding the appeal. Decisions which result in a classification either higher or lower than that previously established by ~~the central personnel division~~ human resource management services are effective on the date specified by the appointing authority.
8. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees.

History: Effective December 1, 1985; amended effective May 1, 1994; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-07(1)

Law Implemented: NDCC 54-44.3-07(3)

CHAPTER 59.5-03-02.1

59.5-03-02.1-01. Scope of chapter. This chapter applies to all employees who have satisfactorily completed their probationary period and who are in positions classified by ~~the central personnel division~~ human resource management services. Additionally, this chapter applies to state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by ~~the central personnel division~~ human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-07(1)

Law Implemented: NDCC 54-44.3-07(3)

59.5-03-02.1-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except that:

1. "Regular employee" means a person who has completed the probationary period and who is in a position classified by ~~the central personnel division~~ human resource management services.
2. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-07(1)

Law Implemented: NDCC 54-44.3-07(3)

59.5-03-02.1-03. Pay grade appeal procedure.

1. A regular employee or an appointing authority may appeal to the state personnel board the pay grade assigned to a class by ~~the central personnel division~~ human resource management services if one of the following is alleged:
 - a. ~~The central personnel division~~ Human resource management services did not give due consideration to information presented.
 - b. ~~The central personnel division~~ Human resource management services did not follow chapter 4-07-03.
 - c. The decision of ~~the central personnel division~~ human resource management services was made in a discriminatory manner as defined in North Dakota Century Code section 14-02.4-01.

The appeal to the state personnel board must be received by ~~central personnel division~~ human resource management services staff by the close of business fifteen working days from the date of the written decision of the division. The appeal must be in writing and state the reason for the appeal.

2. Upon receipt of a written appeal, the director, ~~central personnel division~~ human resource management services, as secretary to the board, shall schedule the appeal for hearing before the board. The director, on behalf of the state personnel board, shall notify the employee and appointing authority in writing of the board hearing date at least ten working days prior to the board hearing date.
3. ~~The central personnel division~~ Human resource management services shall provide each member of the state personnel board, the employee, and the agency appointing authority a copy of each document to become a part of the appeal file. The appeal file must include copies of the following:
 - a. The original pay grade review request under appeal and all attachments and responses.
 - b. The written appeal and all attachments.
 - c. All written correspondence relating to the original request and appeal, including written requests for extension and notices of extensions granted or denied.
 - d. The written appeal commencing the appeal before the state personnel board.
 - e. Other directly relevant and significant documents submitted by the employee, appointing authority, or ~~the central personnel division~~ human resource management services.
4. ~~The central personnel division~~ Human resource management services shall disseminate the appeal file to all participating parties at least ten working days prior to the board hearing date. Documents submitted by any participant after the appeal file is disseminated may cause the board to delay the hearing, generally to the next scheduled board meeting date.
5. The employee, appointing authority, and their representatives may appear at the board meeting for the hearing of the pay grade appeal. The employee, appointing authority, or their representatives shall first make an oral presentation relative to the matter under appeal, followed by ~~the central personnel division~~ human resource management services. The board chairperson shall ensure that all parties have ample opportunity to present their views relating to the pay grade appeal. New information presented at the hearing may delay the decision of the board.
6. If the board determines by a preponderance of the evidence that the appeal has merit based on reasons stated in subsection 1, the board shall:

- a. Remand the appeal to ~~the central personnel division~~ human resource management services for further review;
 - b. Uphold the decision of ~~the central personnel division~~ human resource management services; or
 - c. Change the pay grade of the subject class based on the record and information before it.
7. ~~The central personnel division~~ Human resource management services shall notify the employee and appointing authority in writing of the board's decision within five working days following the date the board makes its decision regarding the appeal. A decision that results in a pay grade either higher or lower than that previously established by ~~the central personnel division~~ human resource management services is effective on the date specified by the appointing authority.
8. The employee's agency shall reimburse the appealing employee for the required time, travel, meals, and lodging expenses to appear before the board. The reimbursement may not exceed the amounts allowed state employees.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-07(1)

Law Implemented: NDCC 54-44.3-07(3), 54-44.3-12

CHAPTER 59.5-04-01

59.5-04-01-02. Classification plan review. Periodically, but not less than annually, ~~the central personnel division~~ human resource management services shall notify the board of additions and deletions to the currently approved classification plan as instituted by ~~the central personnel division~~ human resource management services. In addition, the board may approve positions not to be included in the classified service when deemed inappropriate by ~~the central personnel division~~ human resource management services.

History: Effective December 1, 1985; amended effective July 1, 2004.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3-07

59.5-04-01-03. Compensation plan review. After the legislative session, but prior to July first of the new biennium, the director, ~~central personnel division~~ human resource management services, shall submit a state compensation plan for each year of the biennium to the board for review, modification, and adoption. This plan must be developed by ~~the central personnel division~~ human resource management services based upon the funds appropriated by the legislative assembly for salaries.

History: Effective December 1, 1985; amended effective July 1, 2004.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3-12.1

TITLE 60
PESTICIDE CONTROL BOARD

JULY 2004

CHAPTER 60-03-01

60-03-01-02. Definitions. As used in this chapter, the following words shall have the meaning given to them below, unless otherwise made inappropriate by use and context. Words not defined in this section shall have the meaning given to them in North Dakota Century Code chapter 4-35.

1. "Act" means the North Dakota Pesticide Act.
2. "Board" means the North Dakota pesticide control board created pursuant to North Dakota Century Code section 4-35-02.
3. "Broadcast" means any intentional application of a pesticide over an area, such as a lawn, field, room, crawl space, or other such surface.
4. "Bulk pesticide" means any volume of pesticide that is intended to be repackaged, can be accurately metered, and can be transported or held in an individual container.
5. "Bulk pesticide facility" means any area, location, tract of land, building, structure, or premises used for the handling or storage of bulk pesticides.
6. "Certification" means ~~certification of dealers, commercial applicators, and private applicators provided for by North Dakota Century Code sections 4-35-09, 4-35-12, and 4-35-14~~ recognition by the board or its designee that a person is competent and thus authorized to use or supervise the use of restricted use pesticides.
7. "Commissioner" means the North Dakota agriculture commissioner.
8. "Compensation" means monetary payment for a specific service.
9. "Competent" means properly qualified to perform functions associated with pesticide applications, the degree of capability required being directly related to the nature of the activity and the associated

responsibility, including receiving proper training to know and understand the pesticide label, the product name and rate to be applied, proper application techniques, recordkeeping requirements, identifying workplace hazards, worker protection standards, and emergency response.

- ~~10.~~ 10. "Custom blend" means any diluted mixture of pesticide prepared by a dealer to the specifications of the end-user and not held in inventory.
- ~~40.~~ 11. "End-use labeling" means the written, printed, or graphic matter on, or attached to or accompanying the pesticide or device or any of its containers or wrappers.
- ~~41.~~ 12. "End-user" means the person who applies the pesticide.
- ~~42.~~ 13. "FIFRA" means Federal Insecticide, Fungicide, and Rodenticide Act of 1947.
- ~~43.~~ 14. "General use pesticide" means any pesticide formulation which is not classified for restricted use by the board.
- ~~44.~~ 15. "Handling" means the mixing, loading, application, repackaging, storage, transportation, distribution, sale, purchase, or disposal of pesticides.
- ~~45.~~ 16. "Mixture" means any diluted combination of pesticide with fertilizer, seed, or other medium.
- ~~46.~~ 17. "Mobile container" means a container used to transport pesticides.
- ~~47.~~ 18. "Operational area" means a permanent containment area where pesticides are transferred, loaded, unloaded, mixed, repackaged, or refilled; where pesticides are cleaned or rinsed from containers; or application, handling, storage, or transportation equipment.
- ~~48.~~ 19. "Permanent containment area" means:
- a. An aboveground pad or dike constructed of impervious material, such as sealed concrete, stainless steel, or other material as approved by the department of agriculture;
 - b. Bermed, curbed, sloped, or otherwise designed to contain spills, leaks, releases, or other discharges that are generated during the handling of pesticides or pesticide-containing materials;
 - c. Does not have a drain which exits the containment area; and
 - d. All seams and cracks must be sealed to prevent leakage.

~~19:~~ 20. "Pesticide-containing material" means:

- a. Any container of a pesticide product that has not been triple-rinsed or the equivalent of triple-rinsed;
- b. Any rinsate that is derived from a pesticide container, pesticide application equipment, or equipment washing;
- c. Any material that is used to collect or contain excess or spilled pesticide or rinsate;
- d. Any mixture of pesticide and diluent such as wash water, rinse water, or rainwater; or
- e. Material that is generated as a result of contact with or utilization of a pesticide in an application, containment, recovery, reuse, or treatment system. The term does not include personal protective equipment that contains pesticide residue.

20: 21. "Pesticide-producing establishment" means any site where a pesticide is manufactured, packaged, repackaged, prepared, processed, labeled, relabeled, or held for distribution.

21: 22. "Repackaging" means the transfer of a pesticide in an unaltered state from a container into a designated or dedicated refillable container.

22: 23. "Rinsate" means a dilute mixture of pesticide obtained by rinsing pesticide containers or from rinsing the inside and outside of spray equipment.

23: 24. "Spill kit" means a portable kit or other equipment that is designed to recover, minimize, contain, or absorb spills, leaks, releases, or other discharges of pesticides.

25. "Under the direct supervision" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied. The certified applicator must be able to arrive at the location of a supervised applicator within thirty minutes.

24: 26. "Use of a pesticide" means the loading, mixing, applying, storing, transporting, distribution, and disposing of a pesticide.

25: 27. "Use of a pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner that is not permitted by the label, except that the term does not apply to any of the following:

- a. Applying a pesticide at any dosage, concentration, or frequency that is less than that specified on the label, unless the label specifically prohibits deviation from the specified dosage, concentration, or frequency.
- b. Applying a pesticide against any target pest that is not specified on the label if the application is to the crop, animal, or site that is specified on the label.
- c. Employing any method of application that is not prohibited by the label unless the label specifically states that the product may be applied only by the methods specified on the labeling.
- d. Mixing a pesticide or pesticides with a fertilizer when the label does not prohibit such mixture.
- e. Any use of a pesticide that is in compliance with section 5, 18, or 24 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 [Pub. L. 104-170; Stat. 7 U.S.C. 136 et seq.].

History: Amended effective April 15, 1985; October 1, 1990; July 1, 1992; March 1, 2003; July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

60-03-01-03. Restricted use pesticides. The North Dakota restricted use pesticides shall be the same as those declared to be restricted use pesticides by the United States environmental protection agency and others declared at the discretion of the ~~pesticide control board~~ commissioner.

History: Effective August 1, 1978; amended effective February 1, 1982; October 1, 1990; July 1, 1992; July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

60-03-01-05.1. Commercial or public applicator and dealer.

1. A commercial or public applicator or dealer, or commercial applicator and dealer certificate shall be issued in accordance with North Dakota Century Code section 4-35-09 or 4-35-12 or sections 4-35-09 and 4-35-12 respectively, only to those persons who successfully complete the certification examination established by the board, and who pay the certification fee.
2. The board shall establish a certification examination which shall be administered by any North Dakota state university extension designate in accordance with North Dakota Century Code section 4-35-09 or 4-35-12. The examination shall be given by the North Dakota state university extension designate only to those persons who:

- a. Are eighteen years of age or older; ~~and~~
 - b. ~~Complete a certificate application in such form as the board shall require.~~ an application on forms and in the manner required by the board or its designee; and
 - c. Demonstrate competence in the application, use, and handling of pesticides.
3. Commercial or public applicators or dealer or commercial applicator and dealer certificates shall expire on April first following the third anniversary of the year of certification or recertification. Every commercially certified person shall be recertified by an approved seminar or an approved examination, or both if required by the board, at least every third year.
 4. Any person who fails an examination may retake such examination after three or more days.
 5. All commercial or public applicators must be certified in proper category of application.
 6. All dealers must be certified in the proper category of the labels.
 7. If the pesticide is labeled for more than one ~~of the certification target sites~~ pest, the dealer only needs to be certified in one of the categories.

History: Effective March 1, 2003; amended effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-03-09, 4-35-12, 4-35-14

60-03-01-05.2. Private applicator certification.

1. A private applicator certification shall be issued in accordance with North Dakota Century Code section 4-35-14 only to those persons who:
 - a. Are eighteen years of age or older; ~~and~~
 - b. Complete an application on forms and in the manner required by the board or its designee; and
 - c. Demonstrate competence in the application of pesticides.
2. ~~Competence to apply restricted use pesticides shall be demonstrated by a showing of any one of the following to the North Dakota state university extension designate in the applicant's area~~ The board designates the North Dakota state university extension service to provide training, administer testing, and issue certification to competent

private applicators. An individual seeking certification as a private applicator may demonstrate competence by:

- a. ~~Attendance at~~ Attending an approved educational seminar, signing of a certificate of attendance, and passing ~~an a written~~ an examination: administered by the board or its designee;
 - b. ~~Completion of~~ Completing a course of self-instruction and passing ~~an a written~~ an examination ~~at the North Dakota state university extension designate's office in the applicant's area:~~ administered by the board or its designee; or
 - c. ~~Completion of a take-home self-study program and passing an examination:~~
 - d. ~~Passing the dealer, public applicator, or commercial applicator certification examination and submitting the passing grade to the appropriate North Dakota state university extension designate board or its designee.~~
3. Persons purchasing, storing, or applying restricted use grain fumigants must be commercially trained and must pass a fumigation examination. At the option of the applicant upon successfully passing the examination, the certificate issued will be for either private or commercial application of restricted use fumigants. The fee for the private and commercial certification will be set by the North Dakota state university extension service.
 4. Every private applicator shall be recertified by attending an approved seminar or by taking an approved examination at least every third year. A certified private applicator must be recertified by attending an approved seminar or by taking an approved examination, or both if required by the board, at least every third year.
 5. Any person who fails an examination may retake such examination after three or more days. No more than three examinations may be given before requiring attendance at another initial training course.

History: Effective March 1, 2003; amended effective July 1, 2004.

General Authority: NDCC 4-35-06, 4-35-12

Law Implemented: NDCC 4-35-08, 4-35-14

60-03-01-05.3. Pesticide certification examination - Cheating.

1. An individual who seeks certification under section 60-03-01-05.1 or 60-03-01-05.2 may not, while taking a written examination, give or receive information or assistance to or from any other person, utilize the assistance of any electronic device capable of storing data, or consult any written materials unless expressly authorized in advance

by the board or its designee. The written examination and any other writings made during the examination period must be provided to the board or its designee at the end of the examination period.

2. Cheating by an applicant in applying for or taking the examination may result in the invalidating of examination grades, expulsion from the examination room, disqualification from taking the examination for a specified period of time, and other penalties the board may impose. When the board believes that cheating has occurred, the applicant or certified individual must be given notice and an opportunity to be heard pursuant to North Dakota Century Code chapter 28-32 before imposing any penalties.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06, 4-35-12

Law Implemented: NDCC 4-35-08, 4-35-09, 4-35-12, 4-35-14

60-03-01-05.4. Certification denial.

1. The board, or its designee, may refuse to issue a pesticide certification, including an applicant for reciprocal certification under North Dakota Century Code section 4-35-18, to an individual who has had that individual's certification suspended or revoked in the past three years in any state or province.
2. The board, or its designee, may require an additional demonstration of applicator qualification if the applicator has had a license suspended or revoked or has otherwise had a history of pesticide violations.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-08, 4-35-09, 4-35-12, 4-35-14, 4-35-18

60-03-01-06. Pesticide mixing, loading, and application - Storage - Transportation - Disposal.

1. **Mixing, loading, and application.**
 - a. All pesticides shall be used in accordance with the label.
 - b. Pesticide applications shall be made in a manner that prevents off-target discharges of pesticides.
 - c. Pesticide application or loading equipment that is designed to draw water from surface water shall have a properly functioning antisiphoning device attached to the inlet hose.

- d. Applications shall not occur when the atmospheric conditions favor the off-target drift of pesticides or prevent the proper deposition of pesticides to the target area.
- e. Pesticides shall be applied in a manner that minimizes the exposure to animals. Unless permitted by the labeling, an applicator shall take all reasonable precautions that will prevent a pesticide from being applied if unprotected persons are present within the application site or are present in adjacent areas when off-target drift may occur.
- f. Pesticide applicators and persons assisting with an application shall follow all safety precautions as specified on the container label.
- g. All equipment used in pesticide mixing, loading, and application must be operationally sound and properly calibrated to prevent adverse effects on the environment.
- h. Any commercial applicator who mixes, loads, or otherwise uses pesticides shall have immediate access to a spill kit at the loading site containing not less than two buckets, absorptive pillows, or another system for containing leaking nozzles or a pesticide spill. The spill kit requirement does not apply to a person who uses single containers of pre-mixed, ready-to-use pesticides.
- i. ~~All pesticides that require posting on the label under the environmental protection agency worker protection standard must be posted according to the environmental protection agency worker protection standard. In addition, the pesticides from the following list must be posted by the farm operator or the farm operator's cooperating designee, which may include commercial applicators:~~
 - (1) ~~Methyl parathion.~~
 - (2) ~~Ethyl parathion.~~
 - (3) ~~Dyfonate postemergence foliar applications.~~
 - (4) ~~Furadan postemergence foliar applications to corn, sorghum, and sunflowers.~~
 - (5) ~~Di-syston postemergence foliar application to corn and sorghum.~~

~~Any pesticide applicator applying pesticides from this list for a farm operator is required to inform the farm operator within twenty-four hours in advance of the pesticide application, allowing the farm~~

operator time to post the field before the application occurs. The farm operator is primarily responsible for posting the field. However, if the applicator does not contact the farm operator before the application, the applicator is responsible for posting the field. Pesticide applicators are responsible to inform farm operators if applications do not occur as scheduled.

There are two options for properly posting fields:

Option 1: The signs must be a minimum of eight inches by eleven inches [20.32 centimeters by 27.94 centimeters] with one-half-inch [1.270-centimeter] lettering and be easily readable. The signs must be posted at all normal entrances to the field and on all corners which are along normally traveled roads. These signs can be a maximum of one-half mile [.80 kilometer] apart. The signs must contain the following information: Danger - field sprayed with (pesticide name). The field is safe for reentry on (date).

Option 2: Flags used by aerial applicators when marking field areas that have been sprayed can be used for posting. Such flags must be at least four inches by eight feet [10.16 centimeters by 2.438 meters]. The lettering on the flags must be fluorescent with a white background and must be easily readable. The signs must be dropped outside the field boundaries within fifty feet [15.24 meters] of all normal entrances to the field and all corners along normally traveled roads. These signs can be a maximum of one-fourth mile [.402 kilometer] apart along normally traveled roads. The signs must contain the following language: DANGER - KEEP OUT -- THIS FIELD SPRAYED WITH A PESTICIDE. BEFORE ENTRY, CONTACT (business name and telephone number).

The business name and telephone number can be printed on the flag or, if the flag gives directions to refer to the attached cardboard, the business name and telephone number can be printed on the cardboard.

Along with the lettering a skull and crossbones must be printed on the flag in a larger size than the largest lettering. The lettering for "Danger - Keep Out" must be at least three-fourths of an inch [1.905 centimeters]. The lettering for the remaining wording must be at least three-eighths of an inch [.953 centimeter].

- i. The product labels, a legible reproduction of the labels, or a specimen label of the pesticides that are being applied must be at the application site during the time of application. Aerial applicators must have a label available at the loading site.

2. Storage.

- a. All pesticides, except bulk pesticides, shall be stored in their original container and in accordance with label recommendations. All labels of stored pesticides shall be plainly visible. All pesticide containers must have a proper label affixed to them.
- b. All pesticides shall be stored in dry, well-ventilated spaces, and in a manner that will not endanger humans, animals, or the environment, nor contaminate food or feed through a release or escape.
- c. If a storage area contains a floor drain, it must be sealed or self-contained.
- d. Pesticide storage areas must be marked at all entrances.
- e. Label-specific safety equipment for all pesticides stored must be available at the immediate storage site.
- f. Pesticides shall be secured in a manner to prevent children, unauthorized persons, or animals from gaining entry or access to the stored pesticides.

3. Transportation.

- a. All pesticides, except bulk pesticides, shall be transported in their original containers. All pesticides must be transported in a secure manner to avoid breakage of containers, spills, or any other manner of contamination.
- b. Pesticides shall not be transported with foodstuffs, feed, or any other product or material so as to pose a hazard to humans, animals, or the environment.
- c. Equipment contaminated in the transportation of pesticides shall be cleaned and decontaminated prior to any other use.

4. Disposal.

- a. Empty pesticide containers shall be stored in accordance with label recommendations and in a manner which will not endanger humans, animals, or the environment.
- b. Empty nonreturnable pesticide containers shall be triple-rinsed or equivalent on the day of their use. Secondary use of such containers which would endanger humans, animals, or the environment is prohibited.

- c. Pesticide containers shall be disposed of in accordance with label directions and in a manner which will not endanger humans, animals, or the environment.

History: Amended effective April 15, 1985; October 1, 1990; July 1, 1992; May 1, 1994; March 1, 1996; March 1, 2003; July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06, 4-35-20

60-03-01-07. Recordkeeping - Dealers and commercial or public and custom applicators and private applicators.

1. **Dealers.** Every pesticide dealer shall keep separate, accurate, and complete records of all purchases and sales of restricted use pesticides and all pesticides used under section 18 (emergency exemption) and section 24-c (special local needs) of FIFRA. The records shall include the following for each pesticide purchased or sold:
 - a. Purchases.
 - (1) Dealer's name and address.
 - (2) Pesticide name.
 - (3) Quantity of pesticide.
 - (4) Date pesticide was shipped or received.
 - (5) Distributor's name (person from whom the pesticide was received).
 - b. Sales.
 - (1) Dealer's name and address and identification of person making the sale.
 - (2) Name, address, certification number, and signature of private or commercial applicator.
 - (3) Date of sale.
 - (4) Trade name or common name and quantity of pesticide sold.
 - (5) Running inventory by product.
 - (6) Certification category and expiration date of the certification.
 - (7) Intended application site or intended crop of application for all pesticides used under section 18 of FIFRA.

(8) Dealers shall positively identify all purchasers of restricted use pesticide products.

2. **Commercial or public applicators.** Commercial or public applicators shall keep a record of all pesticide applications and of the use or disposal of all pesticide rinsate. A copy of the records must be provided to the client or the applicator must have on file a signed letter giving the applicator permission to keep the records for the client. The record shall include for each application:
- a. Name and address of the person for whom the pesticide was applied.
 - b. Legal description of the land, grain bin identification, railcar number, or other description of where the pesticide was applied.
 - c. Pest or pests controlled.
 - d. Starting and completion time the pesticide was applied (month, day, year, and hour).
 - e. Person who supplied the pesticide that was applied.
 - f. Specific trade name of the pesticide applied and environmental protection agency registration number of the ~~restricted~~ pesticide that was applied.
 - g. Direction and estimated velocity of the wind and the estimated temperature of the outdoor air at the time the pesticide was applied. This requirement shall not apply if a bait is used to attract the pest or pests or if the application is made indoors.
 - h. Amount of pesticide used, including:
 - (1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.
 - (2) Percentage or pounds [kilograms] of active ingredient.
 - (3) Pounds [kilograms] or gallons [liters] of tank mix applied per acre [.40 hectare].
 - i. Specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure to which the pesticide was applied.
 - j. Description of equipment used in application.
 - k. Certification number of applicator, if any, and signature.

- I. Right-of-way applicators must record weather conditions and geographic location in two-hour increments.
- ~~III. The registrant name that appears on the product label.~~
- 3. **Private applicators.** Private applicators shall keep a record of all restricted use, section 18 exemptions, and special local needs pesticide applications. The records must include for each application:
 - a. Legal description of the land, grain bin identification for fumigant or grain protectant applications, or other description of where the pesticide was applied.
 - b. Time the pesticide was applied (month, day, year, and hour of the day).
 - c. Specific trade name of the pesticide applied and environmental protection agency registration number of the restricted use pesticide that was applied.
 - d. Amount of pesticide used, including:
 - (1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.
 - (2) Total amount of chemical applied.
 - e. Specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure to which the pesticide was applied.
 - f. Certification number of applicator, if any, and applicator signature.

Records made pursuant to this section shall be completed and made available for inspection on the day the pesticide is applied.

History: Amended effective October 1, 1990; May 1, 1994; March 1, 1996; March 1, 2003; July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06, 4-35-16

60-03-01-07.1. Report of loss records. Any applicator receiving alleged pesticide damage claims shall notify the claimant, by certified mail, return receipt requested, of the verified report of loss notification required by North Dakota

Century Code sections 4-35-21.1, 4-35-21.4, and 4-35-21.5 and shall retain the return receipts and a photocopy of the notice for a period of three years.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-21

Law Implemented: NDCC 4-35-21, 4-35-21.1, 4-35-21.2

60-03-01-11. Storage and transportation of bulk pesticides.

1. The transportation and storage of all bulk pesticides must be in compliance with the manufacturer's requirements.
2. The transportation of bulk pesticides must meet all applicable standards of state and United States department of transportation rules and regulations.
3. A bulk pesticide storage ~~containers~~ container must be made of materials and so constructed to be compatible with the pesticide stored and the conditions of storage, including any specifications that may appear on the pesticide labels and labeling.
4. A bulk storage container and loading areas must be constructed and located on a site in a manner so that pesticides will not contaminate streams and water supplies.
5. A permanent bulk storage container must be equipped with a locking withdrawal valve or must be stored in a secure locked area. The valves or storage area must be locked during nonbusiness hours or while unattended.
6. A bulk pesticide storage container that ~~are~~ is going to be refilled with a different pesticide must be cleaned and rinsed according to both the repackager's and manufacturer's agreed-upon written instructions and all former labeling must be removed.
7. An outdoor permanent containment area must be constructed of sufficient size and material so as to contain any spilled or discharged materials. Minimum containment capacity shall be one hundred twenty-five percent of the single largest bulk pesticide storage container, or sufficient to recover and contain a volume of a four-inch rainfall, whichever is greater.
8. An indoor permanent containment area located within an enclosed structure must be constructed of sufficient size and material to contain any spilled or discharged materials, and approved by the pesticide

registrant. Minimum containment capacity shall be one hundred ten percent of the single largest bulk pesticide storage container.

History: Effective March 1, 2003; amended effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06, 4-35-15

CHAPTER 60-03-03
WORKER PROTECTION STANDARD

Section

<u>60-03-03-01</u>	<u>Scope and Purpose</u>
<u>60-03-03-02</u>	<u>Definitions</u>
<u>60-03-03-03</u>	<u>Adoption of Worker Protection Standard</u>

60-03-03-01. Scope and purpose. This chapter contains a standard designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

60-03-03-02. Definitions. Any term used in this chapter has the same meaning as defined in title 40, Code of Federal Regulations, section 170.3, unless defined in North Dakota Century Code chapter 4-35, in which case the North Dakota Century Code definition governs.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

60-03-03-03. Adoption of worker protection standard. The environmental protection agency worker protection standard regulations effective as of July 1, 2003, as provided under title 40, Code of Federal Regulations, part 170, but excluding sections 40 CFR 170.104, 170.130, 170.135, 170.203, and 170.230, are hereby adopted by the board and incorporated by reference and made a part of this title. Copies of title 40, Code of Federal Regulations, part 170, are available upon request by contacting the board at its inquiry address listed in section 60-01-01-01.

History: Effective July 1, 2004.

General Authority: NDCC 4-35-06

Law Implemented: NDCC 4-35-06

TITLE 61.5

STATE EXAMINING COMMITTEE FOR PHYSICAL THERAPISTS

JULY 2004

CHAPTER 61.5-01-01

61.5-01-01-01. Organization of the state examining committee for physical therapists.

1. **History.** The state examining committee for physical therapists was created in 1959 to assist the state board of medical examiners in the examination and registration of physical therapists in North Dakota. While it operated as a separate committee, it was by law an advisory committee to the state board of medical examiners. The forty-sixth legislative assembly in 1979 revamped most of North Dakota Century Code chapter 43-26 on physical therapists, and in the process made the committee a separate entity with complete jurisdiction over the examination and registration of physical therapists.
2. **Committee membership.** The committee consists of six persons appointed by the governor. Three committee members must be registered physical therapists, two members must be licensed physicians, and one member must be a nonhealth care professional. Committee terms are to be staggered and are for five years. Possible nominations to the committee will be solicited by the committee's secretary, who may be the executive officer, from all registered physical therapists in the state at the time notices for registration renewal are sent out.
3. **Meetings.** The committee shall hold at least one annual meeting, and such other meetings as may be called by the president. Any committee member who fails to attend two consecutive annual meetings shall have been deemed to have resigned unless the member has reasons satisfactory to the committee for being unable to attend.
4. **Compensation.** Committee members shall receive expenses from committee funds for each day or a portion thereof spent in committee work as provided for other state officers in North Dakota Century Code chapter 44-08.

5. **Secretary Executive officer.** The committee shall designate a ~~secretary~~ an executive officer, who does not have to be a committee member, but who must be a North Dakota licensed physical therapist, and shall compensate any person it hires to administer the committee's duties.

The committee's ~~secretary~~ executive officer is:

Ms. Lynn G. Kubousek
P.O. Box 69
Grafton, ND 58237
(701) 352-0125

History: Effective December 1, 1980; amended effective August 1, 1983; April 1, 1988; April 1, 1992; February 1, 1993; July 1, 2004.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1, 43-26-05

CHAPTER 61.5-01-02

61.5-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "A school of physical therapy or a program of physical therapist assistant training" is a nationally accredited program approved by the committee" is a curriculum approved by the American medical association or the American physical therapy association.
2. ~~"Athletic trainer" is a person who meets certification requirements established by the national athletic trainers association board of certification, and the North Dakota board of athletic trainers. An athletic trainer is affected by these rules only when working under the direction of a physical therapist as supportive personnel.~~
3. ~~"Committee" means the North Dakota state examining committee for physical therapists.~~
3. "Consultation by means of telecommunications" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or health care provider via telecommunications or computer technology from a distant location. It includes the transfer of data or exchange of educational or related information by means of audio, video, or data communications. The physical therapist may use telehealth technology as a vehicle for providing only services that are legally or professionally authorized. The patient's written or verbal consent will be obtained and documented prior to such consultation. All records used or resulting from a consultation by means of telecommunications are part of a patient's record and are subject to applicable confidentiality requirements.
4. ~~"Direction" means the requirement that the physical therapist maintain continuous verbal and written contact with supportive personnel, including onsite supervision as required by these rules and instruction adequate to ensure the safety and welfare of the patient. "Direct supervision" means the physical therapist is physically present on the premises and immediately available for direction and supervision. The physical therapist will have direct contact with the patient during each visit. Telecommunications does not meet the requirement for direct supervision.~~
5. "National examination" or "examination" means the examination adopted by the ~~American physical therapy association or the federation of state boards of physical therapy.~~
6. ~~"Onsite supervision" means personal direction or observation and requires that the registered physical therapist must be present on the premises at the time of treatment. "Onsite supervision" means the~~

supervising physical therapist is continuously onsite and present in the department or facility where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session in which supportive personnel are involved in components of care.

7. "Physical therapist" means a person who applies physical therapy.
8. "Physical therapist assistant" means a health care worker who assists the physical therapist in the provision of physical therapy. The physical therapist assistant must be a graduate of a physical therapist assistant associate degree program accredited by an agency recognized by the secretary of the United States department of education or the council on postsecondary accreditation. The physical therapist assistant must be licensed to practice in North Dakota.
9. "Physical therapy" means the art and science of a health specialty concerned with the prevention of disability and the physical rehabilitation for congenital or acquired disabilities resulting from, or secondary to, injury or disease. The practice of physical therapy means the practice of the health specialty, and encompasses physical therapy evaluation, treatment planning, instruction, and consultative services, including:
 - a. Performing and interpreting tests and measurements as an aid to physical therapy treatment.
 - b. Planning initial and subsequent treatment programs on the basis of test findings.
 - c. Administering treatment by therapeutic exercise, neurodevelopmental procedures, therapeutic massage, mechanical devices, and therapeutic agents which employ the physical, chemical, and other properties of air, water, heat, cold, electricity, sound, and radiant energy for the purpose of correcting or alleviating any physical or mental condition, or preventing the development of any physical or mental disability.
10. "Physical therapy aide" means a ~~nonlicensed or noncertified worker who has been trained by a physical therapist, and who performs tasks commensurate with that training~~ person trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.
11. "Student" is an individual who is currently engaged in the fulfillment of a physical therapy or physical therapist assistant educational program approved by the committee.

12. "Supportive personnel" are persons other than registered physical therapists who function in a physical therapy setting and assist with physical therapy care.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-01, 43-26-04, 43-26-06, 43-26-07, 43-26-10, 43-26-11(12)

CHAPTER 61.5-02-01

61.5-02-01-01. Frequency of examinations. ~~The committee shall administer examinations for physical therapists and physical therapist assistants at least once each year, or as often as deemed necessary. Computer-based examinations are available by appointment at designated sites in North Dakota.~~

History: Effective December 1, 1980; amended effective July 1, 2004.

General Authority: NDCC 43-26-05, 43-26-10

Law Implemented: NDCC 43-26-05

61.5-02-01-02. Location of examinations. The committee shall designate testing site locations within North Dakota, ~~as it deems proper, at which to conduct its examinations. Other testing sites are available in the United States, United States territories, and Canada.~~

History: Effective December 1, 1980; amended effective July 1, 2004.

General Authority: NDCC 43-26-05, 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

61.5-02-01-03. Repeating examinations. An applicant who fails an examination may repeat the examination, but must pay another examination fee each time the examination is repeated. An applicant may write the examination three times a maximum of four times within one calendar year. ~~These examinations must be taken on consecutively scheduled testing dates. After the third~~ fourth time, an applicant must wait one calendar year and show evidence of remediation approved by the committee before again taking the examination.

History: Effective December 1, 1980; amended effective April 1, 1992; July 1, 2004.

General Authority: NDCC 43-26-05, 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

61.5-02-01-04. Eligibility to take examination. An applicant must have graduated from an approved program prior to writing the examination. ~~An applicant, at the committee's discretion, may take the examination prior to graduation.~~

History: Effective April 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 43-26-05, 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

CHAPTER 61.5-02-02

61.5-02-02-01. General registration requirements for graduates of approved curricula. The following requirements apply to all applicants for registration who are graduates of physical therapy or physical therapist assistant curricula approved by the committee:

1. A completed application form.
2. Payment of the appropriate ~~application fee~~ fees as set by the committee.
3. An official transcript giving evidence of graduation from a curricula approved by the committee.
4. Passing scores on the national examination.
5. Completion of the juris prudence examination.
6. At the committee's discretion, an interview with the committee or designees thereof.

History: Effective December 1, 1980; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

61.5-02-02-02. ~~Additional registration requirements for graduates of approved curricula~~ Types of registration.

- ~~1. Applicant must pay an examination fee for the national examination as established by the committee.~~
 - ~~2. Applicant must pass the national examination.~~
 - ~~3. The committee may waive the requirement to take the national examination if the applicant is currently licensed in another state and has satisfactorily passed the examination of the American registry of physical therapists.~~
 - ~~4. If the applicant has not practiced physical therapy for five years or more, the applicant must take or retake the national examination.~~
1. Official registration.
 - a. By examination, general registration requirements must be met.
 - b. By endorsement, United States jurisdiction.
 - (1) General registration requirements must be met.

- (2) Verification of registration in good standing from the jurisdictions in which the applicant has been registered.
- (3) Copy of scores on the national examination transmitted by a score transfer service approved by the committee.
- (4) If the applicant has not practiced physical therapy for three or more years, the applicant must take or retake the national examination.

2. Foreign-educated applicant.

a. By examination.

- (1) A completed application form.
- (2) Payment of the appropriate fees as set by the committee.
- (3) Verification of documents by an agency recognized by the committee.
 - (a) Satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in a physical therapy education program approved by the committee.
 - (b) Graduated from a physical therapist education program that prepares the applicant to engage without restrictions in the practice of physical therapy.
 - (c) Proof that the applicant's school of physical therapy education is recognized by its own ministry of education.
 - (d) Pass the board-approved English proficiency examination if the applicant's native language is not English.
- (4) Passing scores on the national examination.
- (5) Completion of juris prudence examination.
- (6) At the committee's discretion, an interview with the committee or designees thereof.
- (7) Completion of a six-month preceptorship under the direct supervision of a physical therapist, registered and actively practicing in North Dakota.

b. By endorsement from another United States jurisdiction.

- (1) A completed application form.
- (2) Payment of the appropriate fees as set by the committee.
- (3) Verification of documents by an agency recognized by the committee.
 - (a) Satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in a physical therapy education program approved by the committee.
 - (b) Graduated from a physical therapist education program that prepares the applicant to engage without restrictions in the practice of physical therapy.
 - (c) Proof that the applicant's school of physical therapy education is recognized by its own ministry of education.
 - (d) Pass the board-approved English proficiency examination if the applicant's native language is not English.
- (4) Copy of passing scores on the national examination received by a score transfer service approved by the committee.
- (5) Completion of juris prudence examination.
- (6) Verification of registration in good standing from the jurisdictions in which the applicant has been registered.
- (7) At the committee's discretion, an interview with the committee or designees thereof.
- (8) Completion of a six-month preceptorship under the direct supervision of a physical therapist, registered and actively practicing in North Dakota.

- (9) If the applicant has not practiced physical therapy for three or more years, the applicant must take or retake the national examination.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-01, 43-26-04, 43-26-06, 43-26-07, 43-26-10, 43-26-11(12)

61.5-02-02-03. Registration requirements for graduates of foreign curricula. Repealed effective July 1, 2004.

- ~~1. A completed application form.~~
- ~~2. An application fee as established by the committee.~~
- ~~3. A photocopy of an original certificate or diploma verifying graduation from a physical therapy or physical therapist assistant curricula which is approved in the country in which the applicant received the education.~~
- ~~4. Evidence satisfactory to the committee to substantiate that the school or course from which the applicant was graduated had educational requirements comparable to programs approved by the American physical therapy association.~~
- ~~5. A letter from a physical therapist, registered and actively practicing in North Dakota, stating that the applicant will work under that physical therapist's direct supervision for a period of six months.~~
- ~~6. Applicant must pay an examination fee as established by the committee.~~
- ~~7. Applicant must take the first national examination offered by the committee following the applicant's arrival in the state.~~
- ~~8. Applicant must receive a passing score on the national examination.~~
- ~~9. Applicant may have national examination scores transferred by the testing agency if the applicant has taken the national examination in some other state.~~
- ~~10. If an applicant has satisfactorily completed the national examination and other requirements for registration in another state, and has had at least six months physical therapy or physical therapist assistant working experience in the United States, the applicant may be excused from the requirement of working with a physical therapist who is registered in North Dakota prior to registration by the state of North Dakota.~~

- ~~11. At the committee's discretion, an interview with the committee or any designee or designees thereof may be required.~~

History: ~~Effective December 1, 1980; amended effective April 1, 1992.~~

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

61.5-02-02-04. Types of registration. Repealed effective July 1, 2004.

~~1. Temporary registration:~~

- ~~a. Before beginning as a physical therapist or physical therapist assistant in North Dakota, an applicant must file with the committee a written application for registration and any other documents the committee may require. A temporary registration may then be issued. The committee may issue a temporary registration to a person who has applied for registration and is eligible to take the national examination. This temporary registration allows a person to work with onsite supervision by a physical therapist.~~
- ~~b. A temporary registration may be issued to:~~
- ~~(1) United States trained applicants for registration by examination upon receipt of a satisfactory application; the national examination fee and an official transcript of credits.~~
 - ~~(2) United States trained applicants for registration by endorsement upon receipt of satisfactory application; fee, official transcript of credits, copy of current registration and a copy of the letter to the interstate reporting service requesting the transfer of scores.~~
 - ~~(3) Foreign trained applicants for registration by examination upon receipt of all general requirements, providing all are satisfactory to the committee, and providing the application and national examination fees have been paid.~~
 - ~~(4) Foreign trained applicants for registration by endorsement upon receipt of all requirements, providing all are satisfactory to the committee.~~
- ~~c. The temporary registration may not exceed three months and may, at the committee's discretion, be renewed for an additional six months.~~
- ~~d. With respect to the application of those foreign educated applicants who must serve a preceptorship, the committee cannot make a final~~

determination until the preceptorship is completed, so the following provisions shall apply:

- (1) ~~If the applicant passes the first examination, the temporary registration is extended until the completion of the required, continuous preceptorship.~~
- (2) ~~If the applicant fails the first examination, the applicant is required to apply to take another examination. If the applicant passes the next possible examination, the temporary registration is extended until completion of the required, continuous preceptorship.~~
- (3) ~~If the applicant fails the next possible examination, the temporary registration may be extended at the committee's discretion.~~

2. ~~Additional requirements for registration by endorsement are:~~

- a. ~~Verification of registration from the physical therapy examining boards of all states in which the therapist was registered.~~
- b. ~~Copy of scores on the national examination transmitted by an interstate reporting service.~~

3. ~~Official registration. When all requirements have been met, an official registration shall be issued giving each registrant a permanent registration number.~~

History: Effective December 1, 1980; amended effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06, 43-26-08

61.5-02-02-05. Renewal of registration.

1. Registrations shall be renewed annually by January thirty-first.
2. If a registrant fails to receive the renewal notice, it is the responsibility of the registrant to contact the committee before the January thirty-first deadline.
3. Any registrant who fails to make application for renewal of registration by January thirty-first will, at the committee's discretion, pay a late renewal fee as prescribed in section 61.5-02-03-01.
4. A registration expires if not renewed by January thirty-first.
5. If a registration has expired for more than a year, the registrant is not eligible for renewal, but must apply for registration. However,

registrants whose registrations have lapsed and who have been unregistered for more than one year but less than ~~five~~ three years from the last renewal may not be required to take the national examination, provided the continuing education requirements have been met.

6. All licensed physical therapists may be required to file with the committee a notarized statement indicating they have read these administrative rules.

History: Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-01, 43-26-09, 43-26-11(12)

61.5-02-02-06. Exceptions to registration.

1. ~~North Dakota Century Code chapter 43-26 excludes from the necessity of registration physical therapy students and aides who work under the direct supervision of registered physical therapists.~~ The following persons are exempt from North Dakota physical therapy registration requirements when engaged in the following activities:
 - a. A person in a professional education program approved by the board who is pursuing a course of study leading to a degree as a physical therapist and who is satisfying supervised clinical education requirements related to the person's physical therapy education while under onsite supervision of a licensed physical therapist.
 - b. A physical therapist who is practicing in the United States armed services, United States public health service, or veterans administration pursuant to federal regulation for state licensure of health care providers.
 - c. A physical therapist who is licensed in another jurisdiction of the United States or a foreign-educated physical therapist credentialed in another country if that person is performing physical therapy in connection with teaching or participating in an educational seminar of no more than sixty days in a calendar year.
 - d. A physical therapist who is licensed in another jurisdiction of the United States if that person is providing consultation by means of telecommunication to a physical therapist licensed under North Dakota Century Code chapter 43-26.
2. If aides or students provide physical therapy services other than under direct supervision of a registered physical therapist, they are in violation of North Dakota Century Code chapter 43-26.

3. Upon application to the committee, a physical therapist currently registered in good standing in another state or jurisdiction, and who is not subject to any pending disciplinary proceeding, may practice physical therapy in North Dakota without obtaining registration from the committee provided the practice is limited to no more than thirty full or partial days per year. The one-year period starts on the date the written application is approved by the committee. Prior to any such limited practice, the physical therapist must apply to the committee, using forms provided by the committee, and pay an application fee of twenty-five dollars. The application must include:
 - a. Verified documentation from the appropriate registration authority identifying the requirements for registration in that jurisdiction, confirming that the physical therapist is registered and in good standing in that jurisdiction, and confirming that the physical therapist is not subject to any pending disciplinary proceedings.
 - b. The dates, locations, and scope of practice the physical therapist intends to perform in North Dakota.
 - c. The purpose of the physical therapist's limited North Dakota practice and the physical therapist's employer.
 - d. Other information required by the committee.

History: Effective December 1, 1980; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-08, 43-51-05, 43-51-06

61.5-02-02-07. Registration refused, revoked, ~~or~~ suspended, or restricted.

1. The committee may refuse, suspend, restrict, or revoke a registration on the grounds stated in North Dakota Century Code section 43-26-11.
2. The committee may refuse to grant registration to any applicant who begins practice as a physical therapist or as a physical therapist assistant prior to being registered to practice in North Dakota.

History: Effective December 1, 1980; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-11

CHAPTER 61.5-02-03

61.5-02-03-01. Fees.

1. Application fee - not refundable - ~~\$35.00~~ \$150.00.
2. ~~Professional examination service examination fee - \$35.00.~~
3. ~~Reexamination fee for professional examination service examination - \$35.00.~~
4. Annual renewal fee - ~~\$10.00~~ \$60.00 for physical therapist and \$40.00 for physical therapist assistant.
5. ~~3.~~ Late renewal fee - ~~\$25.00~~ \$50.00.

History: Effective December 1, 1980; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06, 43-26-08, 43-26-09, 43-26-10

CHAPTER 61.5-03-02

61.5-03-02-02. Credit standards. The following credit standards apply to any continuing education course that is intended to meet the continuing education requirements for physical therapists or physical therapist assistants:

1. The educational activities must have significant intellectual or practical content dealing primarily with matters directly related to the practice of physical therapy or to the professional responsibility or ethical obligations of the participants.
2. Each person making a presentation at a continuing education course must be qualified by practical or academic experience to teach the subject the person covers.
3. Participants shall attend educational activities in a classroom or other setting suitable for the activity. Video, motion picture, or sound presentations may be used.
4. Credit may not be given for entertainment or recreational activities or programs, employment orientation sessions, holding an office or serving as an organizational delegate, meeting for the purpose of making policy, or noneducational association meetings.
5. Credit may not be given for meals, keynote speeches, introductory or preliminary sessions, postsession activities, and similar events associated with continuing education programs.
6. A person teaching an approved continuing education course must be awarded additional credit for preparation time not to exceed a ratio of five to one between preparation time and presentation time respectively. Presentation time counts as contact hours for continuing education purposes. This credit may be taken for only one course annually.
7. ~~One-half of the required coursework for any reporting period~~ Coursework may be acquired through self-study, ~~which involves electronic recordings (whether video or sound) or correspondence work~~, provided that the ~~recordings must be~~ coursework is accompanied by appropriate written materials.

History: Effective April 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-09

CHAPTER 61.5-03-03

61.5-03-03-01. Verification of compliance.

1. At the January license renewal deadline immediately following their two-year continuing education cycle, registrants shall provide a signed and notarized statement provided by the committee listing the continuing education courses taken and indicating compliance with the required twenty-five hours of continuing education. The committee, in its discretion, may require additional evidence necessary from a registrant to verify compliance.
2. The committee shall periodically select a sample of the registered physical therapists and may request evidence of the continuing education to which they have attested. Documentation may come directly from the registrant or from state or national organizations that maintain those types of records.
3. A person who claims extenuating circumstances in not being able to meet the continuing education requirements shall petition the committee for consideration of those special conditions.
4. As of January 31, 1992, registrants registering in North Dakota for the first time from other states or countries who do not have twenty-five hours of continuing education credits within the last two years will be required to complete thirteen hours of continuing education within a year of their initial registration in North Dakota, and will thereafter be on the two-year continuing education cycle provided in these rules. ~~Effective January 31, 1992, the same requirement will be mandated for any North Dakota resident who seeks reregistration after having allowed his or her previous registration to lapse.~~

History: Effective April 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-09

CHAPTER 61.5-04-01

61.5-04-01-01. Violations. Complaints and problems about alleged violations of North Dakota Century Code chapter 43-26 shall be forwarded to the committee for its consideration. The committee shall review and, if necessary, investigate all complaints and allegations that come before it concerning North Dakota Century Code chapter 43-26 violations. The committee may seek the advice and assistance of legal counsel in this review and investigation process. The committee may direct its ~~secretary~~ executive officer, or other personnel, to act either directly, on its behalf, or to assist others, in filing complaints of North Dakota Century Code chapter 43-26 violations with state's attorneys, and to provide assistance and information as required by state's attorneys. The committee may seek the advice of legal counsel concerning the use of injunctions as a means of preventing or stopping North Dakota Century Code chapter 43-26 violations, and may direct legal counsel, on its behalf, to use such remedies.

History: Effective December 1, 1980; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-13

CHAPTER 61.5-05-01

61.5-05-01-02. Physical therapist assistants. The physical therapist assistant shall perform specific physical therapy duties under the supervision of a physical therapist who is properly credentialed in the jurisdiction in which the physical therapist assistant practices.

1. Performance of service in general.
 - a. The physical therapist assistant may initiate or alter a treatment program only with prior evaluation by, and approval of, the supervising physical therapist.
 - b. The physical therapist assistant, with prior approval by the supervising physical therapist, may adjust the specific treatment procedure in accordance with changes in the patient's status.
 - c. The physical therapist assistant may interpret data only within the scope of the physical therapist assistant's education.
 - d. The physical therapist assistant may respond to inquiries regarding a patient's status to appropriate parties within the protocol established by the supervising physical therapist.
 - e. The physical therapist assistant shall refer inquiries regarding patient prognosis to a supervising physical therapist.
 - f. Documentation other than the initial note and the discharge summary can be written by a physical therapist assistant.
2. Service in home health, long-term care, and school settings.
 - a. A qualified physical therapist must be accessible by communication to the physical therapist assistant at all times while the physical therapist assistant is treating the patient.
 - b. An initial visit must be made by a qualified physical therapist for evaluation of the patient and establishment of a plan of care.
 - c. A joint visit by the physical therapist and physical therapist assistant or a conference between the physical therapist and physical therapist assistant must be made prior to or on the first physical therapist assistant visit to the patient. The physical therapist must complete the initial evaluation.
 - d. At least once every sixth physical therapist assistant visit or at least once every thirty calendar days, whichever occurs first, the physical therapist must visit the patient. Following each onsite visit

by a physical therapist, the medical/education record must reflect a documented conference with the physical therapist assistant outlining treatment goals and program modification. The physical therapist must make the final visit to terminate the plan of care.

- e. A supervisory onsite visit must include:
 - (1) An onsite functional assessment.
 - (2) Review of activities with appropriate revisions or termination of plan of care.
 - (3) Assessment of utilization of outside resources.
- 3. Service in hospitals or other clinical settings require constant onsite supervision.
 - a. All duties must conform with section 61.5-05-01-01.
 - b. A joint treatment with the physical therapist and physical therapist assistant or after a direct treatment by the physical therapist with a conference between the physical therapist and physical therapist assistant must occur at least once per week.

History: Effective December 1, 1994; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-03. Athletic trainers. Repealed effective July 1, 2004. The athletic trainer who works in physical therapy settings shall practice only under the onsite supervision of a physical therapist and is classified as supportive personnel.

- ~~1. The athletic trainer may initiate a treatment program established by a physical therapist after consultation with the supervising therapist. The physical therapist must complete the initial evaluation.~~
- ~~2. The athletic trainer, after consultation with the supervising physical therapist, may adjust the specific treatment procedure in accordance with changes in a patient's status.~~
- ~~3. The athletic trainer may interpret data only within the scope of the athletic trainer's education.~~
- ~~4. The athletic trainer may respond to inquiries from appropriate parties regarding a patient's status, within the protocol established by the physical therapist and the athletic trainer.~~

5. ~~A joint treatment with the physical therapist and athletic trainer or a conference between the physical therapist and athletic trainer must occur at least once per week.~~
6. ~~The athletic trainer shall refer inquiries regarding patient prognosis to the supervising physical therapist.~~
7. ~~Documentation written by the athletic trainer must be cosigned by the supervising physical therapist.~~

History: Effective December 1, 1994.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-04. Physical therapy aides. The physical therapy aide may assist the physical therapist in the following activities:

1. Carry out established procedures for the care of equipment and supplies.
2. Prepare, maintain, and clean up treatment areas and maintain a supportive area.
3. Transport patients, records, equipment, and supplies in accordance with established policies and procedures.
4. ~~Perform predetermined general office procedures.~~
5. Assemble and disassemble equipment and accessories.
6. ~~5.~~ Under the ~~onsite~~ direct supervision of a physical therapist, assist in preparation for and perform ~~established treatment protocols~~ routine tasks as assigned.

History: Effective December 1, 1994; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-05. Supervision ratios. A physical therapist, at any one time, may supervise a maximum of three supportive personnel if no more than two ~~of the~~ supportive personnel are licensed physical therapist assistants.

History: Effective December 1, 1994; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09, 43-26-11

61.5-05-01-06. Supportive personnel identification. All supportive personnel shall wear an identification badge identifying them as a physical therapist assistant, ~~certified athletic trainer,~~ or physical therapy aide, or as

appropriate. Supportive personnel shall not use any term that implies they are licensed physical therapists.

History: Effective December 1, 1994; amended effective July 1, 2004.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09, 43-26-11

TITLE 67.1

EDUCATION STANDARDS AND PRACTICES BOARD

JULY 2004

CHAPTER 67.1-01-01

67.1-01-01-01. Organization of the education standards and practices board.

1. **History.** The autonomous education standards and practices board was established by legislation in 1993. The board came into existence effective January 1, 1995, and assumed its duties on July 1, 1995. The board has its origins in the teacher professional practices commission which served in an advisory capacity to the superintendent of public instruction for teacher certification, teacher preparation program approval, and professional development.
2. **Board organization.** The education standards and practices board consists of ten members appointed by the governor. The board membership includes four classroom teachers from public schools, one classroom teacher from a private school, two school board members, two school administrators, and one dean of a college of education. The superintendent of public instruction or designee serves as an ex officio, nonvoting member. The administrator's professional practices board is a subset of the education standards and practices board which includes the two school administrator members, two school board members, and two teacher members selected by the full board. The term of office of the board members is three years, commencing on July first of the year of their appointment. Members may serve only two consecutive terms.
 - a. **Officers.** The officers are a chairperson, vice chairperson, and secretary, who will be the board executive director. The officers will be elected for one-year terms at the reorganization meeting, which will be the first meeting called following July first of each year.
 - (1) The duties of the chairperson include:
 - (a) Recognize members, state motions, and confine debate to the motion under discussion;

- (b) Call for special meetings upon the request of a majority of the board in writing;
 - (c) Assist the director in preparing an agenda to be sent with the announcement of the next meeting;
 - (d) Designate board members to attend special meetings at board expense;
 - (e) Appoint standing committees and subcommittees;
 - (f) Be responsible for communicating all statements on the actions of the board in the execution of its duties; and
 - (g) Perform other duties as deemed necessary by the board.
- (2) The duties of the vice chairperson include:
- (a) Preside when the chairperson is absent or when called to the chair by the chairperson;
 - (b) Perform the duties of the chairperson until a new chairperson is elected in case of a vacancy in the office of the chairperson;
 - (c) Be acquainted with the duties and responsibilities of the chairperson; and
 - (d) Perform other duties as deemed necessary by the board.
- (3) The duties of the executive director include:
- (a) Record attendance of the board members;
 - (b) Keep an accurate record of all proceedings and distribute them to the members;
 - (c) Assist the chairperson in the preparation and distribution of the agenda;
 - (d) Notify all board members ten days in advance of any meeting;
 - (e) Send out all mailings and notices required by the board;
 - (f) Prepare a financial statement for each regular meeting and coordinate vouchers;

- (g) Release statements to the media, subject to board approval; and
 - (h) In the absence of the chairperson and the vice chairperson, call the meeting to order and preside while a temporary chairperson is elected.
 - b. Board members. Board members will have regular and functional attendance at all regular meetings. The chairperson will recommend to the governor that board members missing three consecutive meetings be replaced. Board members will send any materials for inclusion in mailings to the chairperson and director. Members will prepare input for each regular meeting. They will file a written report with the director after attending any subcommittee meetings.
3. **Meetings.** The education standards and practices board shall hold a minimum of four meetings annually. The year, for purposes of the board, begins July first and ends the last day of June during the ensuing calendar year. The meetings shall be scheduled by the membership at large, or at the call of the chairperson, or may be held upon the request in writing by a majority of the board members. The meetings may be held only after ten days' prior notice. A majority of the members constitutes a quorum that will have the authority to act upon any items of business properly placed before the board. Members should notify the secretary if unable to attend. Meetings will be conducted according to Robert's rules of order.
4. **Board compensation.** Each member of the board is entitled to receive compensation in the amount of sixty-two dollars and fifty cents per day and to reimbursement for expenses as provided by law for other state officers while attending meetings or performing duties directed by the board. A member of the board may not lose the member's regular salary and may not be required to refuse the compensation to which the member is entitled under this section for serving on the board.
5. **Contact information.** Licensure application packets and additional information about the rules of licensure of the education standards and practices board may be obtained by writing or calling:

Education Standards and Practices Board
600 East Boulevard Avenue, Dept. 202
Bismarck, ND 58505-0080
Phone: 701-328-2264
Fax: 701-328-2815

Requests for initial application packets should be made in writing and accompanied by the ~~twenty-five~~ thirty dollar initial application packet fee.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 28-32-02

Law Implemented: NDCC 15.1-13-02, 15.1-13-03, 15.1-13-04, 15.1-13-05, 15.1-13-06, 15.1-13-07, 15.1-13-29, 28-32-02

67.1-01-01-02. Duties of the education standards and practices board.

1. **Standards for professional ethics, performance, and practices.** The board continuously reviews the North Dakota educator's code of ethics and rules, standards, and procedures pertaining to licensure, teacher education program approval, and professional development of educators. As part of the education standards and practices board, the board will solicit input from the teaching profession and representatives of school administrators, school board members, teacher educator professors, and other interested citizens. The board will be responsible for the interpretation of the North Dakota educator's code of ethics with requests for interpretation being placed in writing.
2. **Consideration of written complaints relative to code violations.** Requests for an inquiry against any North Dakota licensed educator from any interested citizen will be heard by the board. The inquiry must be requested in writing. Any educator named in an inquiry will be notified and will be informed of the procedures that will be taken.
3. **Board-initiated complaints.** The education standards and practices board may initiate proceedings against any North Dakota licensed educator for cause as stated in North Dakota Century Code sections 15.1-13-25 and 15.1-13-26 or for violations of the educator's code of ethics.
4. **Complaint process.** A complaint by a citizen against a teacher or administrator is made by submitting a request for inquiry form to the office of the education standards and practices board.
 - a. A patron, a professional, or a district representative may obtain the request for inquiry forms and procedural guidelines from the office of the education standards and practices board.
 - b. The formal complaint process will begin when the requesting party returns the completed request for inquiry form to the secretary of the education standards and practices board. The form must be signed by the complainant. Supporting All supporting documentation may must be included as indicated in the procedural guidelines at the time the request for inquiry is submitted.

- c. The education standards and practices board secretary, upon receipt of the request for inquiry form, shall transmit a copy with the supporting documentation to the affected educator by certified mail.
- d. The affected educator may submit a clear and concise answer to the complaint within twenty ~~calendar~~ working days from the day the certified mail is delivered. The answer must be sent to the secretary of the education standards and practices board and may include supporting documentation. If the affected educator fails to file an answer, the allegations in the complaint will be deemed admitted and the board shall proceed to a hearing pursuant to North Dakota Century Code sections 15.1-13-24 and 15.1-13-25.
- e. Upon receipt of the response from the affected educator, or passage of the deadline for a response, the education standards and practices board secretary will place the request for inquiry on the agenda of the next meeting of the education standards and practices board or administrator's professional practices board for preliminary discussion.
- f. At the education standards and practices board meeting, the education standards and practices board or administrator's professional practices board will review the written documents presented. No testimony will be heard at this time. Based upon the paper review, the board will determine the following:
 - (1) To dismiss the case.
 - (2) To seek additional information.
 - (3) To issue a warning or reprimand, or both.
 - (4) To initiate formal disciplinary action.
- g. If the application for licensure is denied, or if the board determines to initiate formal disciplinary action that may result in suspension, revocation, or other appropriate disciplinary action, the applicant may request, in writing, a hearing. The hearing will be conducted according to the Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32. Parties may be represented and provide testimony at the administrative hearing.
- h. Denial and revocation of an educator's professional license for convictions of crimes against children or sexual offenses:
 - (1) Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching license and the education standards and practices board

or administrator's professional practices board shall revoke immediately the teaching license of an individual who has been found guilty of a crime against a child or a sexual offense.

- (2) An individual who is denied an educator's professional license or who has had a license revoked under this section may file a request with the education standards and practices board office for a due process hearing in accordance with this section and the Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32.
- (3) The education standards and practices board may impose a fee against a licenseholder to reimburse the education standards and practices board for all or part of the costs of the administrative actions that result in disciplinary action against the licenseholder under this subdivision.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-08, 15.1-13-09

Law Implemented: NDCC 15.1-13-08, 15.1-13-24, 15.1-13-25, 15.1-13-26, 15.1-13-29

67.1-01-01-03. Fine for practicing without a license. The education standards and practices board may impose a fine against any individual without a valid license who is under contract in any position requiring a valid professional educator's license.

1. The fine imposed will be fifty dollars per day the individual practices without a valid license, up to a total fine of two hundred fifty dollars.
2. The effective date of the fine will be the first day after the educator's license has expired or the first day practicing before obtaining a valid license.
3. The educator will have five days after notification from the board to submit to the education standards and practices board all required information for license renewal before additional disciplinary action will be taken.
4. ~~The fine must be paid by the educator prior to receiving the educator's initial or renewed license.~~ The license will be issued upon receiving the completed application and all documentation will be submitted to the board for its review.

History: Effective March 1, 2000; amended effective August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-17

Law Implemented: NDCC 15.1-13-17

CHAPTER 67.1-02-02

67.1-02-02-02. Initial licenses.

1. Initial teacher licensure for in-state graduates or graduates of out-of-state programs requires a minimum of a bachelor's degree from a state agency-approved teacher education program. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in this section and the North Dakota standards for teacher education program approval:
 - a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.
 - b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific kindergarten through grade twelve majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcribed by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors. Majors must include a minimum of thirty-two semester hours of coursework specific to the major beyond the introductory level.
 - (1) The secondary content-specific major must include a minimum of four semester hours in special methods of teaching at the secondary level and special methods of teaching in the specific content area. Effective July 1, 2006, all initial secondary licensure applicants grades seven through twelve in the core academic areas will need to meet or exceed the cut scores for the praxis II as set by the education standards and practices board.
 - (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas, and special methods of teaching at the middle level. Study of these areas must total a minimum of ten semester hours with at least two semester hours of special methods of teaching at the middle level and twenty clock hours of middle level classroom field experience. Effective July 1, 2006, all initial middle licensure applicants grades five through eight in the core academic areas will need to meet or exceed the cut

scores for the praxis II as set by the education standards and practices board.

- (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school mathematics, science, social studies, reading, and language arts. Effective July 1, 2006, all initial elementary licensure applicants grades one through six will need to meet or exceed the cut scores for the praxis II elementary test 0011 and the praxis II principles of learning and teaching test 0522.
 - (4) Kindergarten through grade twelve preparation programs in special education, foreign language, art, music, physical education, business education, and computer education must include a minimum of four semester hours of special methods of teaching inclusive of kindergarten through grade twelve and special methods of teaching in the specific content area.
 - (5) The early childhood major must include study of child development, birth through age eight, and include special methods of teaching at the early childhood level.
- c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels. The professional education component, including student teaching, must be completed under the supervision of a teacher training institution approved by the education standards and practices board in North Dakota or the appropriate state, provincial, or similar jurisdictional authority for out-of-state institutions.
- d. Student teaching exception - Internship. An applicant who graduated from a state-approved teacher education program prior to January 1, 1988, which did not include a minimum of ten weeks of full-time student teaching may qualify under one of the two options under this subdivision. These options are available only if the applicant has met all other requirements for licensure of

the education standards and practices board and North Dakota Century Code sections 15.1-18-02 and 15.1-18-03, except the requirement of ten weeks of student teaching.

- (1) The applicant must document a minimum of eight full weeks of student teaching at the appropriate level in the major field of study under the supervision of a state-approved teacher education program and document five years of successful teaching within the last ten years; or
 - (2) An applicant who can document a minimum of eight weeks of successful student teaching but cannot document a minimum of five years of successful teaching experience must either complete the additional student teaching hours or may choose to complete an internship under the supervision of a state-approved college of teacher education to fulfill the additional hours.
 - (a) The internship contact hours in the classroom must consist of classroom time blocks not less than one-half day and when added to the applicant's existing student teaching hours total a minimum of ten weeks of full-time equivalent student teaching and supervised internship experience.
 - (b) The internship must occur in a regular kindergarten through grade twelve classroom setting and allow the intern to experience the full range of curriculum and classroom operations.
 - (c) The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.
- e. Teaching minors. A teaching minor may only be earned or added to a teaching major. An individual may not be licensed or change grade levels of licensure with only a teaching minor unless the individual has met the requirements in section 67.1-02-03-03.3.

A teaching minor is defined as a minimum of sixteen semester or twenty-four quarter credit hours in a single designated academic area. These sixteen semester or twenty-four quarter credit hours must be in courses for which the institution gives credit toward graduation in the major.

2. An applicant must have a minimum overall grade point average of 2.50. The education standards and practices board will use the college-figured grade point average if all previous college coursework is on the transcript. If the student has transferred from another institution,

and the grade point average calculated by the institution granting the degree is only for those credits at that institution, the education standards and practices board will refigure the grade point average using all previous college coursework.

3. An applicant shall provide three positive recommendations. Two of the recommendations must be secured from the most recent employing board, credentialed supervisors, or administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, the recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant.
4. Verification of eligibility for home state licensure may be requested.
5. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.
6. An application fee of ~~twenty-five~~ thirty dollars must accompany a request for an initial application form.
7. A fee of ~~sixty~~ seventy dollars must accompany the application for initial licensure for in-state and out-of-state graduates. An additional fee of one hundred seventy-five dollars for transcript review from out-of-state graduates must also accompany the licensure application.
8. All initial licenses are valid for only two consecutive years.
9. Fingerprinting. In addition to completing the licensure application process outlined in this section, an applicant applying for licensure in North Dakota for the first time after August 1, 1997, must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14.
 - a. An applicant graduating from a North Dakota teacher preparation program may obtain the fingerprinting materials from college officials. Previous graduates and out-of-state graduates must contact the education standards and practices board directly for the fingerprinting materials. Fingerprint screening reports from other agencies are not available to the education standards and practices board. Applicants must complete the process with cards and release forms designating the education standards and practices board as the agency to receive the report.
 - b. The applicant must have the fingerprinting done by an authorized law enforcement agency such as a sheriff's office, police department, or campus police. Both cards are to be completed

with a ten-finger check. The criminal record inquiry authorization form must also be completed, including an original signature. The fingerprint cards and authorization form must be returned directly to the education standards and practices board office.

- c. Unofficial, incomplete, altered, or damaged cards and forms will not be accepted.
 - d. The applicant is responsible for all local, state, and federal law enforcement agency fees related to the fingerprint background check.
 - e. The applicant is advised to allow a minimum of eight weeks for the fingerprint screening process. An applicant must hold a valid North Dakota license to be employed or permitted to teach in North Dakota. Individuals who have completed all requirements for the professional educator's license except final completion of the fingerprint background check may obtain a provisional license under section 67.1-02-04-04.
 - f. Fingerprint screening reports must be recent and may only be used for licensure for six months from the date the report is received by the education standards and practices board.
10. Reeducation for initial licensure. Applicants who hold nonteaching degrees in content areas taught in public schools may receive initial licensure by completing the professional education requirements at a state-approved program authorized to recommend applicants for licensure in that area. This reeducation may be completed at the undergraduate or graduate level. The institution with the approved program must document that the applicant's specialty area degree is equivalent to its approved program's specialty area requirements in subdivisions b and c of subsection 1, and recommend the applicant for licensure. Applicants applying under this section must file a completed application form as other initial applicants, comply with the fingerprint background check in subsection 9, and pay all applicable fees.
11. Preprofessional skills test. On July 1, 2002, all initial applicants for licensure will be required to submit their test scores for the PPST in reading, writing, and mathematics. Beginning July 1, 2003, all applicants for initial licensure will need to submit their test scores for the PPST in reading, writing, and mathematics which meet or exceed the state cut score.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-08, 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12, 15.1-13-14

67.1-02-02-04. Two-year and five-year renewals.

1. Two-year renewal license.

- a. A two-year renewal license will be issued to applicants with less than eighteen months of successful contracted teaching in North Dakota who ~~meet the renewal requirements and~~ pay the required ~~fees~~ fee of fifty dollars and submit the same recommendations as are required by paragraph 3 of subdivision a of subsection 2. The two-year renewal fee is forty dollars.
- b. A two-year reentry license will be issued to an applicant reentering the profession after an absence of five years. An applicant reentering the profession must complete eight semester hours of reeducation credit during the applicant's first two years of contracted employment as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is ~~sixty~~ seventy dollars.
- c. A two-year reentry license will be issued to an applicant from out of state who has had an absence from the profession of more than five years, or to an applicant who cannot submit four semester hours of credit taken during each of the past two five-year periods if employed in education out of state. Such an applicant must meet the requirements of North Dakota initial licensure as stated in section 67.1-02-02-02 and must also complete the requirements for reentry education as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is ~~sixty~~ seventy dollars.
- d. A two-year renewal license will be issued for substitute teaching. A substitute teacher must maintain a valid teaching license using the two-year renewal cycle, but is not required to submit reeducation hours unless the person signs a contract. The fee for this two-year renewal is ~~forty~~ fifty dollars.
- e. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

2. Five-year renewal license.

- a. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota license.
 - (1) All five-year license applications must be accompanied by a fee of one hundred twenty-five dollars.

- (2) Succeeding five-year renewals require evidence of thirty teaching days of contracted service and completion of a minimum of four semester hours of reeducation credit to avoid reverting to entry status.
 - (3) Three recommendations are required. Two of the recommendations must be secured from the most recent employing board, credentialed supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from credentialed supervisors or administrators, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant.
- b. A renewal applicant who has completed the four semester hours of credit but has not been contracted for at least thirty days under the five-year license will revert to the two-year renewal cycle.
 - c. Probationary license. An applicant who has failed to complete the four semester hours of reeducation credit, whether the application has been contracted or not, will either not be renewed, or may agree to be placed on a two-year probationary license. Eight semester hours of reeducation semester credit must be supplied as a condition of the two-year probationary license. A second probationary license will not be issued.
 - d. If recommendations are not adequate to issue a five-year license, the education standards and practices board shall provide a hearing following North Dakota Century Code chapter 28-32. Following the hearing procedure, the education standards and practices board shall make a determination whether to issue a renewal to the applicant or deny relicensure.
 - e. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-09, 15.1-13-10, 15.1-13-11

67.1-02-02-05. Professional development for license renewal. The succeeding renewal of the five-year license requires verification of a minimum of four semester hours or six quarter hours of college or university credit earned within the dates of the license, contracted teaching of a minimum of thirty days, and three recommendations as outlined in subsection 2 of section 67.1-02-02-04.

Applicants not meeting these requirements will be processed as indicated under that section. Professional development coursework submitted for renewal may be either undergraduate or graduate credit and must be either in professional education or applicable to the applicant's licensed major, minor, or endorsement areas. Applicants who are working toward an added degree or endorsement may use coursework applicable to that expanded area of study for renewal.

In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-09, 15.1-13-10

67.1-02-02-07. Multicultural education and Native American studies.

North Dakota education standards and practices board licensure requires a minimum of two semester hours in multicultural education, including Native American studies and strategies for teaching and assessing diverse learners.

1. North Dakota graduates applying for licensure meet these requirements through completion of education standards and practices board-approved programs that include coursework addressing the multicultural education and Native American studies standard. Teacher preparation programs may meet these requirements through general education, specific content major, professional education requirements, or a combination thereof.
2. Out-of-state applicants must provide evidence documenting successful completion of the requirement to the education standards and practices board within ~~two years of contracted employment in North Dakota~~ the interim reciprocal licensure requirements in chapter 67.1-02-04.
3. Substitute teachers may defer completion of the requirement until a contracted position is accepted. Individuals who graduate prior to September 1, 1980, are exempt from multicultural requirements under North Dakota Century Code section 15.1-13-10.

History: Effective July 1, 1995; amended effective October 1, 1998; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10

67.1-02-02-09. Reentry. An applicant who has been out of teaching for a period of more than five years must earn a total of eight semester hours or twelve quarter hours of college or university credit in the area in which the teacher wishes to renew licensure during the first two years of reentry contracted service. Substitute teachers are exempt from the eight semester hour requirement until the individual accepts a contracted position. The fee for the two-year reentry license is ~~sixty~~

seventy dollars. Reentry applicants should also refer to information in subsection 1 of section 67.1-02-02-04, regarding two-year and five-year renewals.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-09, 15.1-13-10, 15.1-13-11

CHAPTER 67.1-02-03

67.1-02-03-01. Elementary endorsement. Reeduction of a licensed teacher for elementary schoolteaching may be accomplished by completing a state-approved elementary teacher education program of twenty-six semester hours or forty quarter hours, including a regular classroom student teaching experience of six quarter hours or a minimum of five consecutive weeks between kindergarten through grade six, or the clinical practice option described in section 67.1-02-04-07. The coursework must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school reading, language arts, mathematics, science, and social studies along with additional appropriate elementary education coursework.

Reeduction Prior to July 1, 2006, reeducation for the elementary endorsement must be completed prior to or within two years of assignment to teach at the elementary level. Effective July 1, 2006, all elementary endorsement applicants grades one through six will need to meet or exceed the cut scores for the praxis II elementary test 0011 and the praxis II principles of learning and teaching test 0522.

A verified successful college-supervised internship with credit may be substituted for student teaching under this section. The internship option within the elementary endorsement is available only:

1. To an individual who has graduated from a state-approved teacher education program that has as part of its approved preparation a year of college-supervised internship at the elementary level; or
2. To an individual licensed by the North Dakota education standards and practices board to teach kindergarten through grade twelve in accordance with North Dakota Century Code sections 15.1-18-03 and 15.1-18-02 who has already successfully completed a minimum of five weeks of full-time student teaching at the elementary level in the individual's specialty area. The total internship contact hours in the classroom must be equivalent to a minimum of five weeks of full-time student teaching and consist of classroom time blocks not less than one-half of one day.

The internship must occur in a regular kindergarten through grade six classroom setting and allow the intern to experience the full range of curriculum and classroom operations. Individuals performing elementary endorsement internships work under the supervision of licensed teachers and must not be assigned in lieu of regularly employed teachers. Individuals completing the internship option who are doing so to meet the requirements for elementary principalship must not intern with classroom teachers they would be supervising or evaluating in their role as principal. The internship must be approved by the education standards and practices board and transcribed through a state-approved teacher education institution.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

Specialty area endorsement in art, foreign language, or music for elementary teachers grades one through six. Elementary teachers with a major or major equivalency defined in section 67.1-02-03-01 in elementary education will be considered highly qualified to teach art, foreign language, or music grades one through six. Elementary teachers with a major, minor, or minor equivalency endorsement in art, foreign language, or music will be considered highly qualified in art, foreign language, or music grades one through six.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-02

67.1-02-03-02. Kindergarten endorsement. Reeduction of elementary teachers for kindergarten schoolteaching may be accomplished by presenting a minimum of eight semester hours or twelve quarter hours of kindergarten coursework in curriculum, methods, materials, skills, and activities for the kindergarten child. The applicant must have a minimum of one year full-time equivalent successful teaching experience in kindergarten or grade one or student teaching of four semester hours or six quarter hours or a minimum of five consecutive weeks applicable to the endorsed area. Reeduction for the kindergarten endorsement must be completed prior to or within two years of assignment to teach at the kindergarten level.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-02

67.1-02-03-03. Secondary endorsement. Reeduction for secondary schoolteaching may be accomplished in one of the following ways:

1. By completing the minimum requirements for a degree in secondary education, including student teaching in grades seven through twelve or the clinical practice option as described in section 67.1-02-04-07, and a North Dakota-recognized content area major; ~~or.~~
2. An individual who already has a North Dakota-recognized content area major meeting the state-approved teacher education standards may

complete the secondary endorsement by presenting a minimum of ~~eight~~ twenty-two semester hours or ~~twelve quarter hours~~ of secondary education professional courses for the endorsement in addition to the major or minor field. The applicant must have a minimum of one year successful teaching experience in grades seven through twelve or have supervised student teaching as part of the above program or the clinical practice option as described in section 67.1-02-04-07.

3. An individual who has a bachelor's degree in elementary education with a transcribed recognized content minor may complete the secondary methods coursework and a minimum of five weeks of student teaching in grades seven through twelve or the interim licensure clinical practice option under section 67.1-02-04-07.

Reeducation for the secondary endorsement must be completed prior to assignment to teach in the secondary content area. Effective July 1, 2006, all applicants for a secondary endorsement must complete the praxis II test meeting or exceeding the cut scores set by the education standards and practices board.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-03

67.1-02-03-04. Middle school endorsement for grades five through eight. The middle school endorsement is mandatory for teachers licensed for grades seven through twelve to qualify for work with grades five and six in the subject fields of their licensure and voluntary for work with students in grades seven and eight. Elementary teachers licensed to teach grades one through six must complete the middle school endorsement to teach in grades seven and eight. Endorsement for teaching in middle school is available on a voluntary basis to teachers licensed to teach elementary grades one through eight or to specialty areas licensed to teach grades one through twelve under paragraph 1, 3, or 4 of subdivision b of subsection 1 of section 67.1-02-02-02. A review of past coursework will be conducted and a program of studies needed for completion will be established. The middle school endorsement requires a minimum of ten semester hours, including all of the following:

1. Development of young adolescents.
2. Philosophy and curriculum (foundations) of middle school education.
3. Teaching reading and other study or learning skills in the content areas.

4. Methods or strategies of teaching in the middle grades, two semester hours minimum.
5. Reeducation for the middle level endorsement must include a twenty clock-hour field experience in grades five through eight in a school setting where middle level philosophy has been implemented, or successful teaching in grades five through eight in a school setting where middle level philosophy has been implemented.

Reeducation for the middle school endorsement must be completed prior to or within two years of assignment to teach at the middle level, grades five through eight.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-18-02

67.1-02-03-05. Bilingual education or English as a second language endorsement. English as a second language endorsement. Reeducation for a ~~"bilingual education or~~ "English as a second language" endorsement for any licensed teacher may be accomplished by presenting at least sixteen semester hours or twenty-four quarter hours of college coursework in all of the areas following areas: in subsections 1 through 5.

Bilingual education endorsement. Reeducation for a bilingual education endorsement for any licensed teacher may be accomplished by completing all the requirements for the English as a second language endorsement in subsections 1 through 5 and meeting the additional requirements related to bilingual education in subsections 6 and 7.

1. Foundations. Four semester hours or six quarter hours of college coursework, including the following:
 - a. Multicultural education, which involves a knowledge of ethnic groups in North Dakota and the United States, and different instructional methods to use with different ethnic and language groups.
 - b. ~~Foundations of bilingual education, which involves models of bilingual education; research on the effectiveness, or lack thereof, of bilingual education; history of bilingual education; and significant laws and court decisions affecting language minority students.~~ Foundations of second language instruction, including history.

models of instruction, research, and significant laws and court decisions affecting language minority students.

2. Linguistics. Six semester or nine quarter hours of college coursework, including the following areas:
 - a. Linguistics, which involves the nature of language, organizational principles of language (phonology, morphology, syntax, and semantics), principles of language change, and development of language families.
 - b. Psycholinguistics, which involves first and second language, oral and written acquisition processes, and learning theories.
 - c. Sociolinguistics, which involves basic sociocultural variables in language use and language learning, types of bilingual and multilingual educational situations, and social determinants of dialect and style.
3. Methods. Two semester or three quarter hours of college coursework, including the following:
 - a. ~~Methods~~ methods of teaching English as a second language to students, which involves an exploration of historical and current instructional approaches in teaching English as a second language, from the grammar-translation method to the natural method.
 - b. ~~Methods of teaching bilingual education, which involves an understanding of instructional programs in bilingual education, such as immersion, transitional, early entry, and late entry.~~
4. Assessment. Two semester hours or three quarter hours of college coursework from assessment and testing of culturally diverse students, which involves a study of culturally appropriate assessment tools and methods of identifying and assessing limited English proficient students.
5. Field experience. Two semester or three quarter hours of college coursework in field teaching experience with limited English proficient students in a bilingual or English as a second language setting.
6. Methods of teaching bilingual education, which involves an understanding of instructional programs in bilingual education, such as immersion, transitional, early entry, and late entry.
7. A minimum of sixteen semester hours or twenty-four quarter hours in a language other than English or documented proficiency in a language other than English.

Reeducation for the bilingual education or English as a second language endorsement must be completed within two years of assignment to teach bilingual education or English as a second language. The applicant shall file a plan with the education standards and practices board upon becoming employed as a bilingual or English as a second language teacher, outlining how the endorsement will be completed within the two-year period. The bilingual or English as a second language endorsement enables the applicant to teach bilingual or English as a second language grades kindergarten through twelve. Applicants teaching other content material must hold licensure appropriate to the teaching of that content at the assigned grade levels in compliance with North Dakota Century Code sections 15.1-18-03 and 15.1-18-02 and this article.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espb/form, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10

67.1-02-03-06. Minor equivalency endorsement.

1. Nothing in this section may be interpreted to affect the validity of minor equivalencies issued by the department of public instruction prior to September 1, 1998.
2. The applicant wishing to apply under the minor equivalency endorsement option must be licensed by the education standards and practices board to teach under North Dakota Century Code section 15.1-18-02 or 15.1-18-03. The minor equivalency endorsement will be issued for the same grade levels as the individual's primary licensure, the same as for minors transcribed by colleges of teacher education. Those whose primary licensure is secondary may use the endorsement to teach the new content area in grades seven through twelve. Those whose primary licensure is elementary (grades one through six or one through eight) or middle school (grades five through eight) may use the endorsement for additional content expertise at those levels but may not use it to teach at the high school level without a complete secondary endorsement.
3. The applicant must request a minor equivalency endorsement form from the education standards and practices board, complete it, and return it to the education standards and practices board with official transcripts and the review fee of ~~fifty~~ seventy-five dollars.

4. Once the transcripts have been reviewed, if all requirements have been met, the minor equivalency endorsement will be added to the teaching license. A new teaching license will be issued.
5. If the requirements have not been met, the education standards and practices board will return the minor equivalency endorsement form listing the additional requirements to be completed. No additional fee will be charged when the requirements have been met and the minor equivalency endorsement is added to the teaching license.
6. Two levels of content area endorsements are available to be added to the existing North Dakota professional educator's license. A listing of all the minor equivalency endorsement content areas available and specific areas of study required within each equivalency can be obtained by contacting the office of the education standards and practices board.
 - a. The ME16 level requires a minimum of sixteen semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices board. The ME16 level will be reviewed when the applicant applies for renewal licensure. The coursework for the ME24 level must be completed within five years of the application date for the ME16 level. If the ME24 level coursework is not completed within five years, the ME16 level will be removed from the license.
 - b. The ME24 level requires a minimum of twenty-four semester hours of content-specific coursework, including the areas of study approved and required by the education standards and practices board. The ME24 level also must include the special methods of teaching in the content area. The ME24 level is considered equivalent to a full teaching minor.
7. All coursework for the minor equivalency endorsement must be beyond the introductory level general studies courses as defined in section 67.1-02-02-02 and be transcribed by an approved teacher education program.
8. All coursework must be transcribed by a state-approved college of teacher education program.
9. The minor equivalency endorsement must be completed prior to contracted teaching in the content area.
10. Effective July 1, 2006, minor equivalencies will continue to be available in the noncore academic areas. If a teacher chooses to complete a minor equivalency in the core academic areas, the teacher will need

to complete the praxis II content-based test in addition to the minor equivalency.

History: Effective March 1, 2000; amended effective August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-18-03

67.1-02-03-07. Major equivalency endorsements.

1. **High, objective, uniform state standard of evaluation.** College transcribed majors, the major equivalency licensure options described in this section, and alternative licenses issued in compliance with chapter 67.1-02-04 will be aligned with the North Dakota standards for program approval in section 67.1-02-01-05 as the state of North Dakota criterion-based measure of assurance that all teachers are highly qualified.
2. **Core academic areas.** For purposes of this section, English, reading and language arts, mathematics, science, foreign languages, music, visual arts, history, civics and government, geography, and economics are considered core academic areas. All other areas are considered noncore academic areas.
3. **Major equivalency endorsement.** A major equivalency endorsement is a licensure option in which an individual already licensed to teach in North Dakota may add qualifications to the license by demonstrating the individual has competency equivalent to the North Dakota program approval standards and other licensure requirements in section 67.1-02-02-02 for the new area.
 - a. **The minimum number of semester hours or equivalent competency documentation for a major equivalency is thirty-two semester hours, with the exception of composite majors, which require forty-two semester hours. Competency equivalent to a major in early childhood education, elementary education, middle level education, or secondary education academic majors must include evidence of appropriate:**
 - (1) **Content area preparation;**
 - (2) **Teaching methods and strategies; and**
 - (3) **Applied experience at the appropriate grade levels, i.e., field experience, clinical practice, or student teaching.**

Endorsements issued by the education standards and practices board may be used toward demonstration of competency.

- b. North Dakota-licensed individuals who wish to add a major equivalency to an existing professional educators' license may demonstrate the new content area competency through the following options approved by the education standards and practices board:
- (1) Undergraduate or graduate, or both, coursework equivalent to a major and aligned with the North Dakota program approval standards;
 - (2) An advanced degree in the major area which by itself, or in combination with other coursework, meets or exceeds the requirements for preparation in the major at the undergraduate level;
 - (3) Until July 1, 2006, a minor or minor equivalency in the area with successful completion of a portfolio which may include, but not consist entirely of, evidence of successful teaching experience in the area and a one hundred dollar review fee;
 - (4) A minor or minor equivalency in the area with successful completion of a content test meeting or exceeding the minimum scores determined by the education standards and practices board;
 - (5) Until July 1, 2006, existing North Dakota licensure in the area with a minimum of three years of successful teaching experience in the area, and successful completion of a portfolio documenting competency;
 - (6) Existing North Dakota licensure in the area with a minimum of one year of successful teaching experience in the area, and successful completion of a content-based competency test approved by the education standards and practices board; or
 - (7) National board for professional teaching standards certification in the major area.
4. **Major equivalency endorsement - Requirements.** To be considered for a major equivalency, individuals teaching in the areas of early childhood education, elementary education, middle level education, and secondary education academic areas must be licensed in accordance with the laws and administrative rules of the education standards and practices board and must meet the provisions in North Dakota Century Code chapter 15.1-18, which include holding a major or major equivalency in the core content areas in which they are teaching, and a major, major equivalency, minor, or minor equivalency in noncore areas in which they are teaching.

a. Major equivalency endorsement for elementary teachers grades one through six. Beginning July 1, 2006, all elementary teachers new to the profession and all early childhood education teachers whose licensure will include grades one through three must pass a content-based test and teaching skills test in elementary education approved by the education standards and practices board. Elementary teachers already licensed in North Dakota prior to July 1, 2006, are considered highly qualified on the basis of holding a major or endorsement in elementary education or a major in early childhood education which qualifies to teach grades one through three.

b. Major equivalency endorsement for middle level teachers grades five through eight. Individuals teaching in a middle school must meet the education standards and practices board grade level requirements in section 67.1-02-03-04, and hold a minimum equivalent of sixteen semester hours of content area preparation and methods in the subject area specializations in which they are teaching. New middle school teachers must, beginning July 1, 2006, hold a minimum equivalent of twenty-four semester hours of content area preparation and methods in the subject area specializations in which they are teaching or may demonstrate major equivalency in subject areas through options allowed in subdivision b of subsection 3.

The semester hours of content area preparation and methods of this subdivision for the subject area specialization must include the following specific semester hour preparation as listed in the following subject areas:

(1) English and language arts.

(a) Coursework in speech or debate; and

(b) Six semester hours in reading;

(2) Mathematics. Coursework in college algebra;

(3) Science.

(a) Life science. Six semester hours in life science or biology; and

(b) Earth science. Six semester hours in earth science or geology; and

(4) Social studies.

(a) Geography. Six semester hours in geography; and

- (b) History. Six semester hours in history, including North Dakota studies.
- c. Major equivalency endorsement for secondary teachers grades seven through twelve. To be considered highly qualified, secondary teachers must hold a major or major equivalency in the core content areas in which they are teaching, and a major, major equivalency, minor, or minor equivalency in noncore areas in which they are teaching.
- d. Major equivalency endorsement for teachers in science grades seven through twelve. Secondary teachers with majors in biology, chemistry, earth science, or physics (minimum of thirty-two semester hours) or physical science and other composite science degrees (minimum of forty-two semester hours) will be licensed to teach in each specific science discipline in which the individual has the minimum preparation for that specific science discipline aligned with the North Dakota standards for the areas (twelve semester hours).
- e. Major equivalency endorsement for teachers in social studies grades seven through twelve. Secondary teachers with majors in history (thirty-two semester hours), geography (thirty-two semester hours), civics and government (thirty-two semester hours), economics (thirty-two semester hours), or composite social studies (forty-two semester hours) will be licensed to teach in each specific social studies discipline in which the individual has a minimum number of semester hours aligned with the North Dakota standards for the area: history (eighteen semester hours), geography (twelve semester hours), civics and government (twelve semester hours), and economics (twelve semester hours), or a minimum of six semester hours aligned with the North Dakota standards for any other specific social studies disciplines.
- f. Major equivalency endorsement for English and language arts teachers grades seven through twelve. Secondary teachers with majors in English and language arts (thirty-two semester hours) will be licensed to teach in additional areas of speech, journalism, or drama and theater arts if the individual has a minimum preparation of six semester hours aligned with the North Dakota standards for that specialization. Individuals who hold majors, major equivalencies, minors, or minor equivalencies in speech, journalism, or drama and theater arts will also be licensed to teach those specializations.
- g. Major equivalency endorsement for music teachers grades seven through twelve. Teachers with majors in the field of music (minimum of thirty-two semester hours) will be licensed to teach at grade levels consistent with their preparation as stated in the rules

for initial licensure in section 67.1-02-02-02 and in specializations of instrumental or choral music in which they have a minimum of eight semester hours aligned with the North Dakota program approval standards for that specialization. The eight semester hours may not include hours in private or group lessons or participation in music ensembles.

The applicant must request the endorsement form from the education standards and practices board or from www.state.nd.us/espbfom, complete it, and return to the board office with the official transcripts and the review fee of seventy-five dollars.

History: Effective July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-03-08. Career and technical educator endorsements. The applicant wishing to apply for the career and technical educator endorsements must be licensed by the education standards and practices board to teach under North Dakota Century Code section 15.1-18-02 or 15.1-18-03. Prior to applying for the career and technical educator endorsement, the applicant must be approved by the career and technical educator state supervisor of special needs or diversified occupations through the review of college transcripts, development of a program of study, and completion of the career and technical educator endorsement form. The form, transcripts, and review fee of seventy-five dollars should be forwarded to the education standards and practices board office. Applicants may apply for the career and technical educator endorsements in career and technical resource educator endorsement, career and technical basic skills educator endorsement, career and technical teacher-student mentor endorsement, or diversified occupations endorsements.

History: Effective July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

CHAPTER 67.1-02-04

67.1-02-04-01. Interim licenses for teacher shortages. Interim licenses will be issued under the following conditions:

1. Consideration for interim licenses will not be granted until after August ~~fifteenth~~ first in any year.
2. Interim licenses may be issued only in areas where documented shortages of regularly licensed teachers exist as determined by the education standards and practices board. Shortage areas must be determined by the education standards and practices board based upon the ratio of regularly licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting interim licensure. In cases where near shortages exist, the board must give additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly licensed teachers.
3. The request for an interim license must be initiated by a school. The school board or administration must make the request in writing to the education standards and practices board for consideration of an interim license, indicating intent to offer a contract if licensure can be arranged. The request must document that a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means.
4. The candidate must write a letter indicating willingness to accept the position if offered.
5. Complete official transcripts of all college work must be sent to the education standards and practices board.
6. The applicant must have proficiency and hold minimum qualifications of a content area bachelor's degree in the content area to be assigned. If an applicant already qualifies for teacher licensure in another content area, interim licensure may not be used to teach in a new content area while obtaining new content area requirements.
7. Renewal of interim licenses will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced by documented efforts to obtain a licensed person for the position.

8. Renewal of the interim license, if permitted, is contingent upon presentation of at least eight semester hours or twelve quarter hours of additional college credit toward completion of the requirements for regular licensure as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.
9. The fee for the interim license is one hundred fifty dollars for each year the license is issued.
10. Interim licensure is to address documented shortage areas only. Interim licensure may not be issued to applicants who have failed to meet the deadlines or conditions of their regular licensure renewal.
11. Initial applicants for interim licensure must also submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02.
12. Upon completion of all of the requirements for regular licensure stated in section 67.1-02-02-02, an individual holding an interim license may apply for a regular two-year initial license and begin accruing the eighteen months of successful teaching time required to move into the five-year cycle according to sections 67.1-02-02-02 and 67.1-02-02-04.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-04-02. Interim licenses for substitute teachers. Interim licensure may be granted for substitute teachers who meet the initial requirements as outlined in subsections 1 through 6 and subsection 10 of section 67.1-02-04-01 when a shortage of regularly licensed substitutes exists. The interim license fee for substitute teachers is ~~thirty~~ forty dollars for one year. Renewal is contingent upon continued request from the school employing the substitute. Individuals who hold an interim substitute licensure and wish to accept a full-time or part-time contract must do so under the reentry requirements in sections 67.1-02-02-04 and 67.1-02-02-09, including reeducation hours.

History: Effective October 16, 1998-April 14, 1999; amended effective June 1, 1999; March 1, 2000; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11

67.1-02-04-04. Provisional licenses. Provisional licenses will be issued for a period of forty days under the following conditions:

1. Consideration for provisional licenses will not be granted until after August fifteenth in any year.

2. Provisional licenses can only be issued to those individuals who have met all of the other requirements for a license except for the final clearance of the bureau of criminal investigation and the federal bureau of investigation.
3. The school wishing to hire the individual has submitted to the education standards and practices board a letter of need and intent to hire.
4. The individual has submitted a letter to the education standards and practices board indicating no criminal background and the intent to accept the position.
5. The provisional license may be issued for forty days and may be renewed indefinitely at the discretion of the education standards and practices board and continued request of the school.
6. There is a one-time fee for the provisional license of ~~twenty~~ twenty-five dollars.
7. Once the criminal background investigation has been completed, the education standards and practices board may issue the license for which the individual is qualified with its respective fees and conditions.

History: Effective March 1, 2000; amended effective July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-13, 15.1-13-14

67.1-02-04-05. Interim reciprocal licensure. North Dakota has conditional reciprocity with other states. To receive interim reciprocal licensure, an applicant must first hold a valid, current regular teaching certificate or license from another state, province, or similar jurisdiction.

1. **Interim reciprocal entrance requirements.** Those who apply to the education standards and practices board, meet the minimum reciprocity requirements, and submit a satisfactory plan for completing the remaining North Dakota requirements will be issued a two-year interim reciprocal license which has a fee of ~~sixty~~ seventy dollars. The minimum reciprocity qualifications are:
 - a. A bachelor's degree that includes a major that meets the issuing jurisdiction's requirements in elementary education, middle level education, or a content area taught in public high school;
 - b. Completion of a professional education sequence from a state-approved teacher education program, including supervised student teaching;
 - c. Fingerprint background check as required of all initial applicants; and

- d. Submission and education standards and practices board approval of a plan to complete all remaining requirements for full North Dakota licensure as stated in section 67.1-02-02-02.
2. **Remaining North Dakota requirements.** An applicant will be notified of remaining requirements for full North Dakota licensure by the education standards and practices board. All out-of-state applicants shall submit transcripts for review by the same criteria as North Dakota applicants. The applicant must provide official copies of transcripts from all the institutions of higher education the applicant has attended. The nonrefundable fee for the transcript review process is one hundred seventy-five dollars.
- a. The transcript review fee may be deferred for the two-year substitute license. The fee is due upon application for the initial license and signing a North Dakota teaching contract.
 - b. The school district where the applicant will be a substitute must apply in writing for the deferment.
3. **Renewals.** The interim reciprocal license is renewable once, provided adequate progress toward completing the remaining requirements is documented and approved by the education standards and practices board. ~~Individuals who are only substituting may hold and renew the interim reciprocal license and defer the remaining requirements until they come under part-time or full-time contract.~~

History: Effective March 1, 2000; amended effective August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14, 15.1-13-20, 15.1-13-21

67.1-02-04-06. Trade, industry, technical, and health occupations interim license. Applicants entering the profession of teaching in the areas of trade, industry, technical, and health occupations in compliance with the standards prescribed by the state board for ~~vocational career~~ and technical education under North Dakota Century Code section ~~15-20.1-03.8~~ 15-20.1-03 are issued restricted trade, industry, technical, and health occupations interim licensure by the education standards and practices board under North Dakota Century Code section 15.1-13-10. Applicants for the initial trade, industry, technical, and health occupations interim license pay the ~~twenty-five~~ thirty dollar initial application fee and a ~~sixty~~ seventy dollar fee for the first two-year license, and must also submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14.

The trade, industry, technical, and health occupations interim license is renewable upon satisfactory completion of reeducation requirements prescribed and verified by the state board for ~~vocational career~~ and technical education, submission of a completed application for renewal, positive recommendations, and

payment of the license fee. Subsequent two-year or five-year renewal licenses will be issued in accordance with the renewal requirements in section 67.1-02-02-04. An applicant issued a restricted trade, industry, technical, and health occupations license may teach or substitute teach only in that licensed area and may move into a regular teaching license by completing the requirements for regular licensure under section 67.1-02-02-02.

The trade, industry, technical, and health occupations endorsement is required for those educators teaching occupational intent programs grades nine through twelve that meet the career and technical education standards or industry standards, or both. A review of past coursework and experience will be conducted and a program of studies needed for completion will be established. Reeducation for the trade, industry, technical, and health occupations endorsement must be completed prior to or within two years of assignment.

The applicant must request the endorsement form from the department of career and technical education, complete it, and return it with the official documentation, and review fee of seventy-five dollars.

History: Effective August 1, 2002; amended effective July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-04-07. Interim licensure clinical practice option. Applicants who have entered the profession of teaching through interim or emergency licensure under section 67.1-02-04-01, elementary, middle, or secondary endorsement under ~~section 67.1-02-03-03~~ chapter 67.1-02-03, or trade, industry, technical, and health occupations interim licensure under section 67.1-02-04-06 and are seeking to complete the requirements for regular licensure under section 67.1-02-02-02 may meet the student teaching requirement through a supervised clinical practice option meeting the following conditions:

1. The applicant requesting the clinical practice option must hold a valid regular elementary license, a valid interim or emergency license or a valid trade, industry, technical, and health occupations interim license and be employed under contract by an approved school during the clinical practice. The clinical practice option is not intended to be used by applicants who are not under contract and would not need release time from those contracts to complete a regular student teaching experience.
2. The clinical practice option must be approved by the education standards and practices board before it begins as part of the applicant's program of study toward regular licensure and must be conducted under the supervision of a state-approved college of teacher education. Criteria and evaluations for successful completion of the clinical experience must parallel and meet or exceed those the college of teacher education applies to student teaching experiences and

the clinical practice must be at the appropriate grade levels for the licensure sought.

3. The school employing the applicant and the applicant must submit letters to the education standards and practices board requesting the clinical practice option and verifying their support of the agreement.
4. The clinical practice option must require a minimum of ten weeks of close supervision, which includes an equitable combination of daily meetings with or observations of the applicant at the beginning of the experience, by an onsite teacher meeting the qualifications for cooperating teachers under section 67.1-02-01-02 and by the school building principal or other supervisor responsible for evaluations of teachers under North Dakota Century Code sections 15.1-15-01 and 15.1-15-04 and must include onsite visits by college supervisors which meet or exceed the requirements for student teacher supervision under section 67.1-02-01-03.
5. The clinical practice option includes mentoring of the applicant for at least one school year by the onsite cooperating teacher and may also include mentoring by an offsite content area specialist. The mentoring occurs outside of the applicant's regular teaching assignment time and meets or exceeds the contact that would occur in a ten-week, full-time student teaching experience.
6. Upon completion of the clinical practice option, documentation of evaluations and transcripts verifying successful completion of the clinical practice will be provided through the college of teacher education to the education standards and practices board.
7. Applicants holding valid interim or emergency licensure under section 67.1-02-04-01 or trade, industry, technical, and health occupations interim licensure under section 67.1-02-04-06 who have successfully completed all of the other requirements for regular two-year initial licensure under section 67.1-02-02-02, except for ten weeks of supervised student teaching, may use the successful clinical practice meeting the conditions of this section to fulfill the student teaching requirement.

History: Effective August 1, 2002; amended effective July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10

67.1-02-04-08. Interim licensure of applicants with a bachelor's degree from a teacher education program approved by another jurisdiction.

1. An applicant for an interim license under this section must submit the following:

- a. A completed application form.
 - b. An application fee of twenty-five dollars.
 - c. Official copies of transcripts from all institutions of higher education that the applicant has attended.
 - d. A written plan to meet the requirements for initial licensure set forth in section 67.1-02-02-02.
 - e. Two fingerprint cards and a signed criminal record inquiry authorization form in accordance with subsection 9 of section 67.1-02-02-02.
 - f. A nonrefundable fee of one hundred seventy-five dollars for transcript review. The transcript review fee may be deferred if the applicant will be substitute teaching. The school district where the applicant will be substitute teaching must apply in writing for the deferment. A deferred transcript review fee is due upon application for an initial license or signing a North Dakota teaching contract.
 - g. An interim license fee of seventy dollars.
 - h. Any other information the board may require.
2. A two-year interim license may be granted to applicants who meet the following requirements:
- a. The applicant has earned a bachelor's degree from a teacher education program approved by another jurisdiction. The bachelor's degree must include:
 - (1) A general studies component.
 - (2) A major in special education, elementary education, middle level education, or a content area taught in a public high school.
 - (3) A professional education sequence, including supervised student teaching or internship.
 - b. The applicant has a plan, approved by the board, to meet the requirements for initial licensure set forth in section 67.1-02-02-02.
 - c. The applicant has not engaged in conduct that is grounds for disciplinary action or denial of a license under North Dakota Century Code section 15.1-13-25 or 15.1-13-26 or North Dakota Administrative Code section 67.1-02-02-06.

3. An interim license granted under this section may be renewed once, if adequate progress, as determined by the board, is made to complete the requirements for initial licensure set forth in section 67.1-02-02-02.

History: Effective July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.13-14, 15.1-13-25, 15.1-13-26

CHAPTER 67.1-02-05

67.1-02-05-04. Endorsements, added degrees, and restrictions. The North Dakota educator's professional license is issued as described in section 67.1-02-02-02. This license qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. Added degrees and endorsements must be obtained through state-approved teacher education programs.

1. **Endorsements.** An individual holding a valid North Dakota teaching license may request endorsements in kindergarten, elementary, middle school, bilingual, secondary, or content area minor equivalency endorsements or any other endorsement issued by the education standards and practices board. Specific requirements appear in chapter 67.1-02-03, regarding reeducation. A one-time, nonrefundable review fee of fifty dollars must accompany the request to add an endorsement.
2. **New degrees.** A newly acquired major, minor, or new degree may be added between renewal periods by submitting official transcripts and paying the regular renewal fee of forty dollars for those renewing to two-year licenses or one hundred dollars for those renewing to five-year licenses. An additional two-year or five-year extension, respectively, is added to the license expiration date at the time of the addition of the new major, minor, or degree.
3. **Added qualifications on life certificates.** An individual who holds a life certificate under section 67.1-02-02-01 may add degrees or endorsements to the education standards and practices board licensure records by submitting official transcripts and paying the review fee of fifty dollars. An official duplicate of the life certificate showing the added degree will be issued to the life certificate holder at the time of the addition.

Official duplicate copies of lost life certificates or renewable licenses will be provided at a cost to the holder of twenty dollars.

4. **Restricted licenses.** Programs that include a specialized rather than a regular professional education core are issued licenses that restrict the holder to teaching in that specialty area.
 - a. Restricted licenses are issued to applicants with master's degrees in:
 - (1) School psychology. The kindergarten through grade twelve school psychology restricted license will be issued to those applicants who have a master's degree in school psychology from a national association of school psychology-accredited institution.

- (2) Speech-language pathology. The kindergarten through grade twelve speech-language pathology restricted license will be issued to those applicants who have a master's degree in speech-language pathology or communication disorders, one hundred hours of school-based practicum, and have graduated from a program accredited by the council on academic accreditation of the American speech and hearing association.
- b. Restricted licenses are issued to applicants with baccalaureate degrees in the following areas who do not also meet qualifications for regular early childhood, elementary, middle level, secondary, or kindergarten through grade twelve licenses as stated in section 67.1-02-02:
- (1) Mental retardation education. The mental retardation kindergarten through grade twelve restricted license will be issued to those people qualifying for a valid North Dakota teaching license in special education; ~~have a minimum of nineteen semester or twenty-eight quarter hours in mental retardation coursework and a practicum from an institution offering a major in special education~~ who hold a bachelor of science degree major in mental retardation.
- (2) Hearing-impaired education. The hearing-impaired kindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree major in education of the deaf with thirty-two hours of hearing-impaired qualifying coursework.
- (3) Visually impaired education. The visually impaired kindergarten through grade twelve restricted license will be issued to those applicants who have a bachelor of science degree with a major in visually impaired and twenty-one through twenty-three semester hours in qualifying visually impaired coursework.
- (4) Preschool and kindergarten handicapped. The prekindergarten handicapped restricted license will be issued to those applicants who have a baccalaureate degree in early childhood special education.
- (5) All other special education categories require regular elementary or secondary qualifications.
- (6) ~~Vocational Career~~ Career and technical education. The trade, industry, technical, and health occupations restricted license will be issued to applicants holding a baccalaureate level degree in ~~vocational career~~ career and technical education if that

degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02, and is restricted to teaching in grades seven through grade twelve.

- (7) Reserve officers training corps. The reserve officers training corps license will be issued pursuant to section 67.1-02-05-03.
- (8) Native American language instruction. The Native American language restricted license will be issued to those applicants holding a baccalaureate level degree in Native American language if that degree does not include the general education or regular professional education core as required for regular licensure under section 67.1-02-02-02.

c. Restricted licenses are issued to those nondegreed applicants in:

- (1) ~~Vocational~~ Career and technical education. Restricted licenses are issued for trade, industry, technical, and health occupations in accordance with section 67.1-02-04-06 and are restricted to teaching in grades seven through twelve.
- (2) North Dakota American Indian language instructors as pursuant to North Dakota Century Code section 15.1-13-22.

d. Teachers with restricted licenses may teach or substitute teach only in the restricted specified area.

5. National board certification.

a. Definitions:

- (1) "Board" means the education standards and practices board.
- (2) "Certification" means national board certification as provided by the national board.
- (3) "National board" means the national board for professional teaching standards.

b. Board duties. The board shall:

- (1) Inform teachers of the national board certification program and the scholarships and services the national board provides to teachers seeking certification.

- (2) Collect and review in the order received scholarship applications from individuals who are licensed to teach by the board or approved to teach by the board.
- (3) (a) Approve no more than seventeen applications per year;
 - (b) During each year of the biennium, reserve three of the available scholarships for individuals teaching at low-performing schools;
 - (c) During each year of the biennium award no more than two of the remaining fourteen available scholarships to applicants employed by the same school district;
 - (d) Require the recipient to serve during the school year as a full-time classroom teacher in a public or nonpublic school; and
 - (e) Require the recipient to participate in mentoring programs and teacher evaluation programs developed and implemented in the employing school or district.
- (4) Ensure that all scholarship recipients receive adequate information regarding level of commitment required to acquire certification.

If any individual who receives a scholarship under this section does not complete the certification process within the time allotted by the board, the individual must reimburse the state an amount equal to one-half of the amount awarded to the individual as a scholarship.

c. As a prerequisite, the applicant must:

- (1) Have acquired a baccalaureate degree from a state-approved or accredited teacher education program;
- (2) Hold a valid North Dakota educator's professional license;
- (3) Have successfully completed three years of teaching at one or more elementary, middle, or secondary schools in North Dakota; and
- (4) Currently be a North Dakota kindergarten through grade twelve public classroom instructor.

~~b.~~ d. The applicant may apply:

- (1) For the guide to national board certification, which includes the application process by contacting the education standards and practices board; and
- (2) For one-half of the application fee by submitting the completed application to the education standards and practices board by December first. Based upon availability of state funds, applications will be accepted and funded on a first-come, first-served basis.

e. e. Upon documented successful completion:

- (1) The national board for professional teaching standards certification may be added between renewal periods for a fee of one hundred dollars; and
- (2) An additional ten years is also added to the license expiration date at the time of the addition of national board for professional teaching standards certification; and
- (3) ~~Effective August 1, 2001, at the conclusion of each of the first four full school years after the individual obtains the national teacher certification, the applicant is entitled to receive an additional one thousand five hundred dollars subject to available appropriations if:~~
 - (a) ~~The individual served during the school year as a full-time classroom teacher in a public school in North Dakota; and~~
 - (b) ~~The individual participated in any efforts of the employing school district to develop and implement teacher mentoring programs and teacher evaluation programs.~~

History: Effective July 1, 1995; amended effective October 1, 1998; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-08, 15.1-13-10, 15.1-13-11, 15.1-13-12.1, 15.1-13-22, 15.1-18-02, 15.1-18-03; S.L. 2001, ch. 173, § 16

TITLE 71

PUBLIC EMPLOYEES RETIREMENT SYSTEM

MAY 2004

CHAPTER 71-01-01

71-01-01-01. Organization of public employees retirement board.

1. **History.** The 1965 legislative assembly created the public employees retirement system by legislation codified as North Dakota Century Code chapter 54-52. The starting date of the program was July 1, 1966. The board acts as the administering body to manage the public employees retirement system, the judges retirement system, the highway patrol retirement system, the national guard security officers and firefighters system, the uniform group insurance program, the deferred compensation plan, the prefunded retiree health program, and a pretax benefit program for public employees.
2. **Board membership.** The board consists of seven members. One member, the chairman, is appointed by the governor; one member is appointed by the attorney general from the attorney general's staff; one member is the state health officer; three members are elected by the active membership of the system; and one member is elected by the retired public employees.
3. **Executive director.** The executive director is appointed by the board and is responsible for the administration of the day-to-day activities of the retirement systems, the prefunded retiree health program, the uniform group insurance program, the deferred compensation program, and the pretax benefit program for public employees.

4. **Inquiries.** Inquiries regarding the board may be addressed to:

Executive Director
Box ~~1214~~ 1657
Bismarck, North Dakota 58502

History: Amended effective November 1, 1981; November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 71-01-02

71-01-02-05. Petition format.

1. The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters, as determined by the current North Dakota public ~~employee~~ employees retirement system's membership role; ~~their social security numbers;~~ and their mailing addresses. The nomination petition for the retiree member on the board must include the signature of at least twenty-five persons receiving retirement or deferred vested retirement benefits, as determined by North Dakota public employees retirement system's retirement membership role; ~~their social security numbers;~~ and their mailing addresses.
2. The nomination petition must include the following statement: "We, the petitioners, who are members of the North Dakota Public Employees Retirement System, nominate _____ for election to the North Dakota Public Employees Retirement System board."
3. The nomination petition must include a certification by the candidate, as follows: "I accept the nomination and if elected will fulfill the responsibilities as a member of the North Dakota Public Employees Retirement System board."
4. If there is not room for the required signatures on a single nomination petition, additional petitions may be used. Candidates may reproduce, at their own expense, blank nomination petitions that meet the format requirements without requesting additional petitions from the North Dakota public employees retirement system. All nomination petitions used must be certified and signed by the nominee when submitted to the North Dakota public employees retirement system office.

History: Effective April 1, 1992; amended effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

CHAPTER 71-01-03

71-01-03-04. Treatment, payment, or operations. The board of the public employees retirement system has determined that:

1. Information related to enrollment, participation, benefits, or contributions may be shared with participating employers or public employees retirement system contractors for purposes of maintaining a member's participation and benefits in the public employees retirement system programs. Such sharing of information is limited to that information that is necessary to assure that a member's participation and benefits are properly handled. All such information remains confidential whether in the possession of the public employees retirement system, its participating employers, or its contractors.
2. Information relating to eligibility for retirement benefits may be shared with the social security administration and such other organizations to ensure that the member is still alive and continues to be eligible.
3. Information necessary for the administration and operation of the program may be shared with the public employees retirement system attorney and consultants. To the extent such information is shared it remains confidential.

All other requests for information under this section must first be submitted to the executive director and then reviewed by the public employees retirement system board.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-26

CHAPTER 71-02-01

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
 - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
 - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
 - c. The member's mandatory contributions made after July 1, 1977.
 - d. The member's vested employer contributions made after January 1, 2000, pursuant to North Dakota Century Code section 54-52-11.1.
 - e. The interest on the sums determined under subdivisions a, b, c, and d, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.
 - f. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board.
3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.
4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
5. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.
6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.

7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
8. "Contribution" means the payment into the fund ~~of nine and twelve-hundredths percent~~ as a percentage of the salary of a member.
9. "Correctional officer" means a person who has completed a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation and is employed by a correctional facility as defined in North Dakota Century Code chapter 12-44.1.
10. "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county judge, county justice, or judge of county court prior to the general election in 1982, who meets all the eligibility requirements established under North Dakota Century Code chapter 54-52.
- ~~40-~~ 11. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application ~~for reemployment within ninety days of discharge under honorable conditions in accordance with the Uniformed Services Employment and Reemployment Rights Act.~~
- ~~41-~~ 12. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years, or indefinitely if the leave of absence is due to interruption of employment.
- ~~42-~~ 13. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.
- ~~43-~~ 14. "Office" means the administrative office of the public employees retirement system.
- ~~44-~~ 15. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system. For confidentiality purposes, "participating employer" means the person or group of persons with the ultimate authority over personnel decisions within the

agency or political subdivision with which the member is employed or the person's or group's official designee.

- ~~45-~~ 16. "Pay status" means a member is receiving a retirement allowance from the fund.
- ~~46-~~ 17. "Permanent and total disability" for members of the main retirement system and the national ~~guard~~ guard/law enforcement retirement plan means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. For members of the judge's retirement plan, "permanent and total disability" is determined pursuant to subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code.
- ~~47-~~ 18. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.
- ~~48-~~ 19. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
- ~~49-~~ 20. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
- ~~20-~~ 21. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.
- ~~24-~~ 22. "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.
- ~~22-~~ 23. "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.
- ~~23-~~ 24. "Substantial gainful activity" is to be based upon the totality of the circumstances including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.

~~24.~~ 25. "Termination of employment" means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.

26. "Termination of participation" means termination of eligibility to participate in the retirement plan.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

CHAPTER 71-02-02

71-02-02-01. Membership - General rule. Each eligible employee shall become a member of the public employees retirement system upon filing a membership form with the office, and the beginning of contributions to the fund. In addition, the following requirements apply:

1. A temporary employee must submit a completed participation agreement before becoming a member. Application must be completed within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member for the remainder of the plan year.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.
6. Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998; May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-01(3), 54-52-02.9, 54-52-05

CHAPTER 71-02-03

71-02-03-01. Service credit - General rule. A member receives credit for each month a contribution is made. Service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for prior service employment as defined in North Dakota Century Code section 54-52-01. For employees employed prior to July 1, 2004, service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for:

1. ~~Prior service employment.~~
2. Probationary employment prior to July 1, 1979, that was previously excluded from eligible employment.
3. ~~2.~~ Eligible employment between the ages of eighteen and twenty-one that was previously excluded by the age limitation of twenty-one for participation in the retirement program.
4. ~~3.~~ Summer months for eligible school employees for the period July 1, 1979, to July 1, 1982.
5. ~~4.~~ Former members of the teachers' fund for retirement, job service North Dakota, or highway patrolmen's retirement systems will be granted credit for previous service in these funds if they received a lump sum refund prior to September 1, 1976.

History: Amended effective September 1, 1982; November 1, 1990; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-01(11)(12)(16), 54-52-17

71-02-03-02.1. Purchase of additional service credit and repurchase of past service. In order to purchase additional credit or repurchase past service, a member, ~~or a participating member of an alternative retirement system,~~ must notify the office, in writing, of the service for which they wish to receive credit. In addition to the written request, the following information must be submitted if applicable:

1. Verification by the former employer of previous North Dakota or out-of-state public service, or service with the federal government.
2. Documentation of military service by submitting a DD214 or NGB22.
3. Certification of approval by the member's employer of any leave of absence and length of that leave.

4. ~~Verification of current average monthly salary and current service credit by the employer of members participating in an alternative retirement system.~~
5. Statement from employee or former employer that service credit being applied for does not qualify for retirement benefits under another retirement system.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.2. Payment. The total dollar amount for the purchase or repurchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments ~~are may be~~ subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.
2. The installment schedule may extend for ~~a maximum term of ten years or the number of years until the member meets normal retirement age, whichever is greater~~ as long as the employee is employed by a participating employer.
3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the member to initiate and terminate the payroll deduction.
4. Payments may only be received until the fifteenth of the month in which the member retires or takes a lump sum refund.
5. Payments are due by the fifteenth of the month to be credited for the month.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.3. Delinquent payment. If no payment is received within thirty days of the due date, the public employees retirement system shall send a letter to the member advising them of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on

closed accounts must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.4. Crediting purchased or repurchased service. Service purchased or repurchased will be credited in the following manner:

1. The member's record must be updated with the additional service credit once the account is paid in full.
2. If the member takes a refund, retires, or the member's account is closed due to delinquency, service credit must be granted by taking the months of service credit being purchased times the percentage paid. The percentage is determined by taking the total payments made toward the purchase divided by the total amount to be paid over the term of the purchase. Fractions of service credit must be rounded to the nearest whole month equal to a fraction is deemed to be a whole month of service credit.
3. For members converting service under the public employees retirement system to service under the judge's retirement system, each month of county judge service under the public employees retirement system will be converted to one month of judicial service credit.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.5. Costs. If purchasing under North Dakota Century Code section 54-52-02.6 or subdivision d of subsection 1 of North Dakota Century Code section 54-52-17.4, the cost will be the higher of the amount refunded to the member plus interest at the actuarial rate of return or the actuarial cost to provide the credit. All other types of service purchases must be actuarially determined. An actuarial cost must be calculated by applying actuarial factors to the amount of retirement and retiree health insurance credit being purchased by the member. The member's current age, average salary, and current credited service on record with the North Dakota public employees retirement system in the month in which the member's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit being purchased must be calculated using the benefit formulas in place at the time the written request

is received from the member. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The member's average salary shall be calculated as follows:

1. For members working full time with more than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17.
2. For members working full time with less than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17, but disregarding any month in which the member was paid less than a full-month salary. A full-month salary is the compensation the member and the member's employer agreed the member would be paid for working a full month.
3. For members who have not yet received a full-month salary, the member's average salary shall equal the member's full-month salary, as defined in subsection 2.
4. For members working part time, by using the applicable calculations found in subsections 1 and 2, but using a monthly salary equal to the equivalent of the salary the member would have received if the member was working full time.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the member, and all required documentation, a written cost confirmation must be prepared and mailed to the member. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter.

History: Effective July 1, 1994; amended effective June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-06. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The

certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member ~~begins employment with the new leaves employment with the former~~ employer. One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The employer and employee contributions rates used to calculate the cost must be the rate of the retirement program of the member at termination. ~~The cost to convert unused sick leave into service credit must be paid with aftertax employee contributions.~~

Payments may be accepted from the member as early as six months prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
2. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
3. ~~The sick leave conversion payment must be within the contribution limits of 26 U.S.C. 415(n) for the purchase of permissive service credit.~~
4. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of that date.

If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days of termination.

The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.8, 54-52-27

71-02-03-07. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to five years of service credit for an employee or purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees, the employer must create a program and an employer must document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to

the executive director of the public employees retirement system a letter indicating when the program is to be canceled

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.4, 54-52-29

71-02-03-08. Eligible sick leave. An employer or a member may only purchase unused sick leave that has not been previously purchased by a former employer or the member. Further, eligible sick leave may not exceed a total of eight hours times the number of months of permanent employment with the current employer or service in the retirement plan.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-27

CHAPTER 71-02-04

71-02-04-01. Retirement benefits - Application. Except as provided in section 71-02-04-02 for retirement options, a applications for retirement, surviving spouse, and disability benefits must be filed at the public employees retirement system office at least thirty days before the retirement date or before the commencement of benefits. A member shall file an application a photocopy of the member's birth certificate, and if a benefit election is an optional benefit under subsection 1 or 2 of section 71-02-04-04, the member must provide a photocopy of the spouse's birth certificate and marriage certificate with the office for retirement benefits at least thirty days before retirement date or before the commencement of retirement benefits. A surviving spouse shall file a photocopy of the surviving spouse's birth certificate, deceased spouse's birth certificate and certified copy of the death certificate, and marriage certificate if a benefit election is under subdivision b of subsection 6 of North Dakota Century Code section 54-54-17.

History: Amended effective November 1, 1990; July 1, 1994; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-02. Special retirement options - Application.

1. A member may elect a retirement option by filing an application with the office no less than thirty days prior to the beginning date of benefit payments. An application may be filed later than thirty days if approved by the executive director upon receiving sufficient evidence that the application was delayed by the member's employer.
2. A member may revoke the election of an optional benefit as provided in subsection 1 and make a new election, if such revocation is received in writing before the first retirement check is cashed but no later than fifteen days after the first retirement check has been issued. If the member changes the member's election less than fifteen days prior to the named beginning date of benefits, the first retirement payment may be delayed up to two months. Any delayed payment must be adjusted to include any deferred retirement payments.
3. A member may not revoke the elected benefit after receiving and cashing the first benefit check, unless, the member can provide sufficient evidence to the executive director that the factual basis by which the election was made later proved to be incorrect and such was due in part to representation or misrepresentations made by the employer or the office.

History: Amended effective November 1, 1990; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-04. Optional benefits. A member may elect, as provided in section 71-02-04-02, to receive one of the following optional benefits in lieu of the regular single life retirement benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse shall be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits shall terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member, the option shall be canceled and the member's benefit shall be returned to the single life amount. Payment of the single life amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted.
2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced retirement benefit during the member's lifetime and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse shall be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits shall terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member, the option shall be canceled and the member's benefit shall be returned to the single life amount. Payment of the single life amount shall commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted.
3. **Level social security option.** A member who retires prior to receiving social security benefits may elect the level social security option. Under this option, the member's monthly benefit is adjusted so the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent based on either of the following ages an age no earlier than sixty-two and no later than full retirement age as specified by the social security administration as chosen in writing by the member.

a. ~~Age sixty-two; or~~

- b. ~~Full retirement age as specified by the social security administration.~~

A member is not eligible for the level social security option if it results in a benefit payment of less than one hundred dollars per month.

A member shall submit an estimated benefit from social security that was computed no more than six months before commencement of retirement benefits.

4. **Five-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a five-year or ten-year certain feature, as designated by the member.

History: Amended effective September 1, 1982; November 1, 1990; July 1, 1994; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-07. Amount of early retirement benefit.

1. Except for members of the national ~~guard security police and firefighters~~ guard/law enforcement retirement system, the early retirement benefit shall be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than the age at which the member would be at the member's normal retirement date on the date the member's early retirement benefit commences.
2. For members of the national ~~guard retirement security police and firefighters~~ guard/law enforcement retirement system, the early retirement benefit must be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than age fifty-five on the date the member's early retirement benefit commences.

History: Amended effective September 1, 1982; June 1, 1996; April 1, 2002; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-09. Dual membership - Receipt of retirement benefits while contributing to the teachers' fund for retirement, the highway patrolmen's retirement system, or the teachers' insurance and annuity association of America-college retirement equities fund.

4. Dual members must select one of the following options:

- a. 1. Begin receiving retirement benefits from one plan prior to ceasing employment covered by the alternate plan, subject to termination of employment or termination of participation.
 - b. 2. Begin receiving retirement benefits from one plan and begin work in a job covered by the alternate plan.
 - e. 3. Continue as a dual member and begin receiving retirement benefits from both plans after ceasing employment.
- ~~2. For purposes of determining eligibility for benefits under subsection 2 of North Dakota Century Code section 54-52-17, an employee's years of service credit is the total of the years of service employment earned in the public employees retirement system and the years of service employment earned in:~~
- ~~a. The teachers' fund for retirement.~~
 - ~~b. The highway patrolmen's retirement system.~~
 - ~~c. The teachers' insurance and annuity association of America college retirement equities fund.~~
- ~~3. A member's combined service credit must not exceed twelve months per calendar year. If a member's combined months of service is less than twelve months, the member will be credited with a fractional year of service, determined by dividing the combined total by twelve.~~

History: Effective June 1, 1996; amended effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17, 54-52-17.2

Law Implemented: NDCC 54-52-17, 54-52-17.2

71-02-04-09.1. Dual membership limitations. The following limitations apply when a member elects an option under subsection 1 of section 71-02-04-09.

- 1. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing normal retirement benefits from one fund and use the same years, and any additional years, for reaching normal retirement from the alternate fund if the service credit is earned at different times.
- 2. If a dual member elects to receive retirement benefits as provided in subdivision a or b of subsection 1 of section 71-02-04-09, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.

3. ~~The final average salary used in calculating the retirement benefit must be certified in writing by the fund of last membership. The final average salary established at the time retirement benefits begin must be fixed for pension calculation purposes. Benefits may not be recalculated using salaries earned after the benefit effective date alternate retirement system. Months not employed are excluded for the purpose of computing the final average salary. If a dual member works less than thirty-six months at retirement, the final average salary is the average salary for total months of employment.~~

History: Effective June 1, 1996; amended effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17, 54-52-17.2

Law Implemented: NDCC 54-52-17, 54-52-17.2

71-02-04-11. Erroneous payment of benefits - Underpayments.

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within ~~thirty~~ sixty days of the discovery of the error, with interest at the rate of six percent from the time underpayment occurred.

History: Effective June 1, 1996; amended effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 39-03.1-25, 54-52-17

71-02-04-13. Reduced benefit option. A participating member may enter into an agreement with the retirement board to receive an actuarially adjusted monthly retirement benefit to accommodate the less than full payment for years of service credit necessary to meet the rule of eighty-five, if the following criteria are met:

1. The participating member is ~~at least fifty-five years old and has twenty or more years of credited service in the retirement system within seventy-two months of obtaining the rule of eighty-five.~~
2. ~~The amount of time to be purchased, or sick leave to be converted under section 71-02-03-06, does not exceed one hundred twenty months. The service cannot be purchased prior to the participating member drawing a retirement benefit because it would be in violation of 26 U.S.C. 415 or limits of purchasing additional service credit found under subsection 10 of North Dakota Century Code section 54-52-17.4.~~
3. ~~The service cannot be purchased, or the sick leave cannot be converted, prior to the participating member drawing a retirement benefit because it would be in violation of 26 U.S.C. 415. The~~

participating member must have completed all other types of purchases the participating member is eligible for prior to entering into the reduced benefit agreement.

4. The participating member's reduced benefit agreement must indicate a benefit option election. If a benefit election is an optional benefit under subsection 1 or 2 of section 71-02-04-04, the reduced benefit is payable over the lifetime of both the member and surviving spouse.

History: Effective June 1, 1996; amended effective July 1, 1998; April 1, 2002; May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 39-03.1-11.1, 54-52-17

CHAPTER 71-02-05

71-02-05-03. Cancellation of disability benefit. ~~If~~ When a member receiving a disability benefit ~~ceases to be eligible for disability benefits prior to the attainment of~~ attains normal retirement age, that member ~~is eligible to~~ may elect to terminate that member's disability benefits and draw retirement benefits as specified in North Dakota Century Code section 54-52-17.

History: Amended effective January 1, 1992; May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-06. Determination of disability - Procedures.

1. Application.

- a. If the member is unable or unwilling to file an application, the member's legal representative may file the member's disability application.
- b. For the main system and the national ~~guard~~ guard/law enforcement system, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience. For the judges' retirement plan, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to mentally or physically fulfill the duties and responsibilities of being a judge. A judge who is determined to be disabled pursuant to subdivision a of subsection 3 of North Dakota Century Code section 27-23-03 shall file an application documenting this determination and the effective date of the disability.
- c. The application must be filed with the ~~executive director~~ public employees retirement system and may not be filed earlier than one hundred twenty days before the expected termination date.

2. Medical consultant.

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.

- c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. In determining eligibility for judges not approved pursuant to the above, the medical director shall work with a review committee composed of one supreme court judge and a district court judge to review the proposed application. In order for the application to be approved, it must have the concurrence of the medical director and at least one judge. The executive director shall appoint two judges to serve on the review committee.
- d. ~~(1) If the applicant has terminated employment, the executive director shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the executive director shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.~~
- ~~(2) If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.~~

3. Medical examination.

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.
- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits.

If determined to be eligible for disability benefits, the member must be reimbursed up to four hundred dollars for the cost of medical examinations specifically requested by the medical adviser and the executive director.

4. Appeal.

- a. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.
- c. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the ~~plan administrator~~ public employees retirement system mailed the decision.
- ~~b-~~ d. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- ~~c-~~ e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to

the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.

5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.
6. **Redetermination and recertification.**
 - a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The executive director may waive the necessity for a recertification, based on the recommendation of the medical consultant.
 - b. The ~~executive director~~ public employees retirement system will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first day of the month benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.
 - c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
 - d. The medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts

warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.

- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002; May 1, 2004.

General Authority: NDCC 54-52-17

Law Implemented: NDCC 54-52-17, 54-52-26

71-02-05-07. Optional benefits. ~~An~~ For the main system and national guard/law enforcement retirement plans, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate ~~and is still living~~. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted.

2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted.
3. **Five-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a five-year or ten-year certain feature, as designated by the member.

History: Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-07.1. Judges' retirement plan optional benefits. For the judges' retirement plan, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. Under no circumstances is an option available if the calculation of the optional benefit to which the member is entitled results in an amount which is less than one hundred dollars.

1. **One hundred percent joint survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must

commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted.

2. **Five-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a five-year or ten-year certain feature, as designated by the member.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-09. Interest accrual on accumulated contributions for disabled annuitants. Effective January 1, 1998, interest must accrue on accumulated contributions as defined in article ~~74-04~~ 71-02 until the disabled annuitant reaches normal retirement age, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998; amended effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-06

71-02-06-01. Conditions for return.

1. The accumulated contributions of a member who terminates permanent employment:
 - a. Before accumulating three years of service credit shall be automatically refunded unless the member elects to remain in an inactive status.
 - b. After accumulating three years of service credit shall be refunded upon application filed with the executive director.
 - c. The termination date for purposes of processing an application for refund or rollover must be the last date for which a member receives salary except for a member who is on an approved leave of absence. For members who are paid salary in any month following actual separation from employment if the salary is received after the normal processing date, the termination date for purposes of processing the application must be the same date as the date that the last paycheck was issued as salary.
2. Retirement contributions must be returned if a membership enrollment application form ~~SFN-2564~~ has not been filed with the office. Contributions will be returned until proper membership enrollment forms have been filed.

History: Amended effective November 1, 1990; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06, 54-52-17

71-02-06-06. Employer payment of employee contributions.

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52-05 ~~may not be revoked for the remainder of the biennium. The option choice selected must remain in effect unless a change has been submitted to the board, in writing, by June fifteenth of each odd-numbered year shall be reported to the board a minimum of thirty-one days prior to the effective date.~~
2. An employer may not discriminate between eligible participating employees as to its contribution under North Dakota Century Code section 54-52-05.

History: Effective July 1, 1994; amended effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-05

71-02-06-07. Employer contribution - National ~~guard security officers and firefighters~~ guard/law enforcement. As part of its annual actuarial evaluation, the board shall determine the amount required to support the level of benefits for national ~~guard security officers and firefighters~~ guard/law enforcement specified in North Dakota Century Code section 54-52-17. The board shall set the employer's contribution rate on a biennial basis, but may adjust that rate if it is actuarially necessary to maintain appropriate funding levels.

History: Effective July 1, 1994; amended effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06.2

CHAPTER 71-02-07

71-02-07-02. Return to service - Retired member. The benefits of a retired member who returns to permanent employment shall be suspended without interest accruing on the suspended account. Upon subsequent termination, the member's benefit shall be recalculated as follows:

1. If the period of subsequent employment is less than two years, the member may elect:
 - a. A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at subsequent termination and for benefit payments received prior to reemployment; or
 - b. A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, ~~and~~ salary and service credits, and any benefit increases accrued during the period of subsequent employment.
2. If the period of subsequent employment is more than two years, the member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's age and salary earned during the period of reemployment together with total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.
3. If a member dies during subsequent employment, the member's initial retirement benefit election will apply. If a benefit election was an optional benefit under subsection 1 or 2 of section 71-02-04-04, then the member's benefit must be recalculated based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at death, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.

History: Amended effective November 1, 1990; July 1, 1998; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-11

71-02-11-01. Eligibility requirements. To be eligible to receive service credit with North Dakota public employees retirement system for military time under this chapter, a veteran must have had an interruption of ~~the veteran's~~ employment and been discharged under honorable conditions.

History: Effective September 1, 1991; amended effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: ~~38 USC 2021-2026~~ NDCC 54-52-17.4(5)

71-02-11-02. Award of service credit.

1. An individual with eligible time may receive up to sixty ~~months~~ months' credit upon proper application ~~for the following time periods.~~ A veteran eligible to receive service credit for military time must apply for and purchase that time ~~prior to receiving credit for retirement purposes within the lesser of three times the length of active duty or five years from the date of the veteran's return to covered employment.~~ Service credit will not be awarded until all required documentation is received by the North Dakota public employees retirement system, and payment of both the employer and the employee contributions is made in full.
 - a. ~~For periods of time between June 24, 1948, through August 1, 1961, up to four years of credited service for military time may be awarded.~~
 - b. ~~For periods of time after August 1, 1961, up to five years of service credit for military time may be awarded.~~
 - c. ~~Service credit for military time which exceeds the maximums listed above may be awarded if served at the request of the federal government or imposed pursuant to law. The member must provide proof that the extended service was not voluntary.~~
 - d. ~~Purchase maximums will be determined from the documentation provided by the member.~~
2. For persons employed by a political subdivision who will or have returned from an interruption of employment, the following applies:
 - a. If the employing political subdivision is not a participating employer in the North Dakota public employees retirement system and does not become one, no credit will be granted.
 - b. If the employing political subdivision joins the North Dakota public employees retirement system at a date later than the interruption of employment, and purchases prior service credit for its employees

while the applicant is still employed, service will be granted as provided in subsection 1 of section 71-02-11-02.

- c. If the employing political subdivision joins the North Dakota public employees retirement system while the applicant is still employed, and prior service is not purchased on behalf of the employees, no credit will be given.
- d. If a political subdivision joins the North Dakota public employees retirement system after an employee has terminated, no credit may be granted to said employee for interruption of employment.

History: Effective September 1, 1991; amended effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: ~~38-USC 2021-2026~~ NDCC 54-52-17.4(5)

71-02-11-03. Documentation requirements. The burden of proof will be on the member for providing documentation necessary to determine what military time is eligible for service credit. At a minimum, the following documentation is required before service credit will be awarded:

- 1. The member must provide a legible copy of military discharge papers (DD214, DD215, or NGB22).
- 2. The member must provide proof of the last day of employment prior to reporting for active duty and the first day of employment following the return from active duty. This information must be certified by the authorized agent of the employing agency using a "record of previous service" (~~SFN17028~~) or notice of change (~~SFN10766~~) if returning from leave of absence.
- 3. The members requesting service credit for extended military terms discussed under subdivision c of subsection 1 of section 71-02-11-02 must provide a legible copy of the appropriate military papers (DD214).
- 4. Members who elect to purchase military time must submit a completed purchase agreement (~~SFN17758~~).

History: Effective September 1, 1991; amended effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: ~~38-USC 2021-2026~~ NDCC 54-52-17.4(5)

71-02-11-04. Payment. The cost for purchase of eligible military service in the North Dakota public employees retirement system and the North Dakota highway patrolmen's retirement system is as follows:

- 1. ~~Employee contributions pertaining to the North Dakota public employees retirement system.~~

- a. ~~June 24, 1948 - June 30, 1966 - Military time which meets the eligibility requirements will be credited to the member's account at no cost.~~
- b. ~~July 1, 1966, and after - Military time which meets the eligibility requirements must be purchased at a cost of four percent times the monthly salary in the month in which the employee elects to purchase the military service, times the number of months being purchased.~~
- c. ~~The cost determined above may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under subsection 1, 2, or 3 of section 71-02-03-02.2. If retirement occurs before purchase is complete, service being purchased will not be credited to the account for retirement purposes until the payment is complete. If no payments have been made, no credit will be awarded. To prevent any delay in issuing the employee's first retirement check, purchase must be completed at least thirty days prior to retirement date.~~

2. ~~Employee contributions pertaining to the North Dakota highway patrolmen's retirement system:~~

- a. ~~Military time which meets the eligibility requirements must be purchased using the amount appropriate to the date military service was earned as specified below, times the monthly salary in the month in which the employee elects to purchase the military service, times the number of months being purchased.~~

~~| | |
|----------------------------------|---------------------------|
| (1) July 1, 1949 - June 30, 1951 | 3.5% |
| (2) July 1, 1951 - June 30, 1965 | 6% not to exceed \$ 18.00 |
| (3) July 1, 1965 - June 30, 1971 | 6% not to exceed \$ 24.00 |
| (4) July 1, 1971 - June 30, 1975 | 9% not to exceed \$ 67.50 |
| (5) July 1, 1975 - June 30, 1977 | 9% not to exceed \$ 76.50 |
| (6) July 1, 1977 - June 30, 1979 | 9% not to exceed \$112.50 |
| (7) July 1, 1979 - June 30, 1981 | 9% not to exceed \$135.00 |
| (8) July 1, 1981 - June 30, 1985 | 7% not to exceed \$133.00 |
| (9) July 1, 1985 to present | 10.3% |~~

- b. ~~The cost determined above may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under section 71-02-03-02.2. If retirement occurs before purchase is complete, service being purchased will not be credited to the account for retirement purposes until the payment is complete. If no payments have been made, no credit will be awarded. To prevent any delay in issuing the employee's first retirement check, purchase must be completed at least thirty days prior to retirement date.~~

3. ~~Employer contributions pertaining to the North Dakota public employees retirement system:~~

- ~~a. June 24, 1948 - June 30, 1966 - Military time which meets the eligibility requirements will be credited to the member's account at no cost.~~
- ~~b. July 1, 1966, and after - Military time which meets the eligibility requirements must be purchased at a cost of five and twelve-hundredths percent times the monthly salary in the month in which the employee elects to purchase the military service, times the number of months being purchased.~~
- ~~c. The employer cost, determined above, will be assessed to the member's most recent participating employer. Upon being billed by the North Dakota public employees retirement system, the participating employer will have thirty days in which to make payment in full. If, after sixty days, the employer has not made payment in full, a civil penalty on fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.~~
- ~~d. In the event the most recent participating employer no longer exists, the board shall review each biennium the outstanding obligation and determine whether sufficient actuarial margins exist to absorb this cost. If sufficient margins do not exist, the board shall seek legislative remedy through an appropriations bill.~~

4. ~~Employer contributions pertaining to the North Dakota highway patrolmen's retirement system:~~

- ~~a. Military time which meets the eligibility requirements must be purchased based on the amount appropriate to the date military service was earned as specified below, times the monthly salary in the month in which the employee elects to purchase the military service, times the number of months being purchased.~~

~~(1) July 1, 1949 - June 30, 1951 3.5%~~

~~(2) July 1, 1951 - June 30, 1965 6% not to exceed \$ 18.00~~

~~(3) July 1, 1965 - June 30, 1971 One and one-fourth of
employees contribution~~

~~(4) July 1, 1971 - June 30, 1975 9% not to exceed \$ 67.50~~

~~(5) July 1, 1975 - June 30, 1977 9% not to exceed \$ 76.50~~

~~(6) July 1, 1977 - June 30, 1979 9% not to exceed \$112.50~~

~~(7) July 1, 1979 - June 30, 1981 9% not to exceed \$135.00~~

~~(8) July 1, 1981 - June 30, 1985 12% not to exceed \$228.00~~

~~(9) July 1, 1985 to present 17.70%~~

- ~~b. The employer cost will be assessed to the North Dakota highway patrol. Upon being billed by the North Dakota public employees retirement system, payment must be received in full within thirty~~

~~days. If, after sixty days, the employer has not made payment in full, a civil penalty of fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after payment became due.~~

3. If the employer contributions are paid and the member becomes delinquent for required employee contributions, then the public employees retirement system will prorate the credit the employee contributions have paid for by the member and this credit will be added to the member's file.

History: Effective September 1, 1991; amended effective May 1, 2004.

General Authority: NDCC 39-03.1-06, 54-52-04

Law Implemented: NDCC 39-03.1-10, ~~54-52-06; 38 USC 2021-2026 54-52-17.4(5)~~

71-02-11-05. Retired members. Repealed effective May 1, 2004. Retired receiving members of the North Dakota public employees retirement system may be eligible for service as established in section 71-02-11-01. However, the following exceptions apply:

4. ~~Cost.~~

- ~~a. When calculating the cost of purchasing the employee's contribution for military time, the retiree's final average salary will be multiplied by four percent times the months of eligible military time if pertaining to the North Dakota public employees retirement system or as set forth in subdivision a of subsection 2 of section 71-02-11-04 if pertaining to the North Dakota highway patrolmen's retirement system. This amount may be paid as a lump sum, be deducted from the retroactive payment, or a combination of both.~~
 - ~~b. The employer's contribution shall be calculated by multiplying the retiree's final average salary by five and twelve-hundredths percent times the months of eligible military time if pertaining to the North Dakota public employees retirement system or as set forth in subdivision a of subsection 4 of section 71-02-11-04 if pertaining to the North Dakota highway patrolmen's retirement system. Payment of the employer contribution shall follow section 71-02-11-04.~~
2. The retiree's monthly benefit amount will be recalculated to reflect the service credit for eligible military time only after the proper application has been completed and payment in full has been received, if applicable. This benefit increase will be applied retroactively. The retroactive payment will be processed and paid to the retiree within twelve months. Interest will not be paid on the retroactive payment.

3. A retiree's monthly benefit will only be recalculated if there is an increase in service credit. The North Dakota public employees retirement system will not take away any erroneous service credit that may be discovered in this process.

History: Effective September 1, 1991.

General Authority: NDCC 54-52-04

Law Implemented: 38 USC 2021-2026

71-02-11-06. Deceased retirees or members. Repealed effective May 1, 2004.

1. A deceased retiree or member, for which no benefits are currently being paid to beneficiaries, will not qualify for a retroactive adjustment.
2. A beneficiary who is currently receiving public employees retirement system benefits, has the option to apply for service credit for military time on behalf of the deceased retiree or member. The only military time eligible for credited service is military time prior to July 1, 1966. To receive credit for military time, the beneficiary must follow the general eligibility requirements and procedures, as stated in section 71-02-11-02.
3. If a retiree or member dies after completing the application requirements for service credit for military time, but prior to receiving a retroactive adjustment, the retroactive payment would be payable to the retiree's stated beneficiary.

History: Effective September 1, 1991.

General Authority: NDCC 54-52-04

Law Implemented: 38 USC 2021-2026

CHAPTER 71-03-01

71-03-01-02. Bid specifications. Bid solicitations will be for:

1. Life insurance.
2. Hospital and medical coverages - fully insured contract.
3. Individual and aggregate stop-loss insurance.
4. Administrative services only.
5. ~~Third-party~~ Third-party administrators.
6. Dental insurance.
7. Vision insurance.
8. Long-term care insurance.
9. Other bids will be solicited at the ~~the~~ discretion of the board for the wellness program, cost containment programs, auditing services and such other services as may be determined by the board, from time to time, as necessary for the provision of these types of programs and services under the group insurance program.

History: Effective October 1, 1986; amended effective May 1, 2004.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-04

CHAPTER 71-03-03

71-03-03-02. Late enrollment. An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment and may be subject to a ~~twelve-month~~ six-month waiting period for preexisting conditions. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective June 1, 1996; July 1, 1998; May 1, 2004.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-05. Special enrollment for certain qualifying events. An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America-college retirement equities fund is, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide verification of distribution are eligible for coverage with the group health insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
 - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for medicare.
 - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for medicare.
 - c. The month in which the eligible employee terminates employment.
 - d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
 - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
 - f. The month in which the eligible employee or retiree is no longer eligible for employer-sponsored insurance, including coverage

provided under the Consolidated Omnibus Budget Reconciliation Act.

2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred. If an application is not submitted within thirty-one days of a qualifying event, the eligible individual must be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.
3. Other individuals eligible for the health insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's group health insurance plan at the time of the eligible retiree's death, if there is no lapse in coverage.
4. Individuals not eligible for the group health insurance plan include:
 - a. A former employee who received a refund of the employee's retirement account, including individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.
 - b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).
 - c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
 - d. A formerly deferred retiree who received a refund of the retiree's retirement account.
 - e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
 - f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
9. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined

benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

71-03-03-08. Continuation of life insurance after retirement. An employee who is enrolled in the group life insurance program may continue the basic and supplemental life insurance coverage upon retirement or disability if the employee is entitled to a retirement allowance from an eligible retirement system by making application and remitting timely payments to the board.

History: Effective October 1, 1986; amended effective June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-09. Leave without pay. An employee on an approved leave without pay may elect to continue coverage for the periods specified in the plans for life insurance, hospital and medical coverages by paying the full premium to the agency. An eligible employee electing not to continue coverage during a leave of absence is entitled to renew coverage for the first of the month following the month that the employee has returned to work if the employee submits an application for coverage within the first thirty-one days of returning to work. An eligible employee failing to submit an application for coverage within the first thirty-one days of returning to work or eligibility for a special enrollment period, may enroll during the annual open enrollment and may be subject to a ~~twelve-month~~ six-month waiting period for preexisting conditions. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; September 1, 1997; July 1, 1998; May 1, 2004.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

CHAPTER 71-03-05

71-03-05-03. Late premium for retirees. If the premium is not received by the due date, ~~a late premium reminder is included in the next month's billing. If the premium is not received by the next due date, coverage will be canceled and a special notice is will be~~ sent by certified mail. The notice advises the retiree that payment in full must be received within ninety days from the due date to reinstate coverage will be canceled retroactively to the last day of the period month following the last month for which payment was received if payment is not received by the first of the following month.

History: Effective October 1, 1986; amended effective November 1, 1990; May 1, 2004.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-05-04. Late premium for terminated employees. If the premium due for a terminated employee with continued coverage is not received by the ~~sixteenth of the month due date,~~ coverage will be canceled retroactively to the last day of the period for which payment was received following a thirty-day grace period. ~~There is no grace period.~~

History: Effective October 1, 1986; amended effective May 1, 2004.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 26.1-36-23

CHAPTER 71-03-06

71-03-06-02. Late enrollment. An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment and may be subject to a ~~twelve-month~~ six-month waiting period for preexisting conditions. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective June 1, 1996; amended effective July 1, 1998; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

CHAPTER 71-03-07

71-03-07-03. Collecting employee contributions. Each employer shall collect any employee contribution due and submit it with any employer contribution to the retirement board each month. When an employee on an approved leave of absence requests to continue in the group, the employer shall collect the full amount of the premium from the employee each month and remit it to the retirement board. ~~Each employer shall determine the amount of employee contributions, however, the level of contribution~~ The minimum employer contribution will be determined by the retirement board and must be consistently applied to all eligible employees.

History: Effective June 1, 1996; amended effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-07-06. Requirements for enrolling temporary employees and paid members of political subdivision boards, commissions, or associations. Each employer shall inform temporary employees and the paid members of its board, commission, or association of their right to the group insurance plan and the process necessary to enroll. Each employer shall provide each eligible member such forms as necessary to enroll in the group insurance plan. Each employer shall collect any member contribution due and submit it along with any employer contribution to the retirement board each month. ~~The board, commission, or association shall determine the amount of employer contribution. The employer contribution may be any amount equal to or less than the amount determined for eligible employees but may not exceed the employer contribution for eligible employees.~~ The minimum employer contribution will be determined by the retirement board. The political subdivision may not make a contribution for coverage for temporary employees. Each employer shall notify the retirement board when an eligible member is no longer eligible for the group insurance plan. The retirement board shall inform such member of options available for continuation of coverage.

History: Effective June 1, 1996; amended effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1

CHAPTER 71-04-01

71-04-01-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant in the participant agreement to receive benefits under the plan in the event the participant dies.
2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.
3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.
4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).
5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.
6. "Participant" is any employee of a participating employer who executes a participant agreement.
7. "Participant agreement" means a written agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the participant's deferral and participation in the plan.
8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.
9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.
10. "Retirement board" means the seven persons described in North Dakota Century Code chapter 54-52-03.
11. "Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes severance termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.

12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.
13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

CHAPTER 71-04-03

71-04-03-04. Change in beneficiary. The participant may change the primary or contingent beneficiary at any time by ~~completing a participant agreement and delivering the agreement to the retirement board offices contacting the participant's designated provider representative.~~

History: Effective April 1, 1989; amended effective May 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-03-06. Termination of participation. Participation in the plan may be terminated at any time by completion of a participant agreement indicating an elimination of monthly deferrals. ~~Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05.~~

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-03-07. Distribution of assets. Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05 or 71-04-08-01.

History: Effective May 1, 2004.

General Authority: NDCC 28-32-02, 54-52-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-04-04

71-04-04-01. Enrollment. The retirement board shall design and provide employees with a participant agreement to facilitate the enrollment in the plan. The participant agreement must provide for the collection of all information regarding identification of the employee, starting date of the deduction, the payroll period affected, name of the provider, ~~and listing of primary and contingent beneficiaries company, and the provider representative.~~

History: Effective April 1, 1989; amended effective September 1, 1997; May 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-01, 54-52.2-02, 54-52.2-05

71-04-04-02. Booklets. The retirement board shall, upon request of the employee, ~~provide~~ make available a descriptive booklet setting forth the enrollment requirements of the plan, explanation of the deferred compensation plan under section 457 of the Internal Revenue Code, and investment options under the plan.

History: Effective April 1, 1989; amended effective September 1, 1997; May 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-04-07. Separation from service. The retirement board shall design ~~and provide participants with a benefit selection form to facilitate payment of benefits under the plan. The benefit selection forms may allow the participant the ability to select from the various payment options granted by providers, and to determine the starting date of benefit payments:~~ notify the participant, provider company, and provider representative of the employee's separation from service and eligibility for payment of benefits.

History: Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-04-08. Authorization. The executive director or the executive director's designee is authorized to sign all provider agreements, employer agreements, payroll deduction authorizations, or benefit applications ~~or benefit selection forms~~ that meet the requirements under article 71-04 and under North Dakota Century Code chapter 54-52.2.

History: Effective July 1, 1994; amended effective May 1, 2004.

General Authority: NDCC 54-52.2-03.2

Law Implemented: NDCC 54-52.2-01, 54-52.2-02, 54-52.2-03.2

CHAPTER 71-04-05

71-04-05-03. Semiannual ~~Monthly~~ report. The employer shall provide the retirement board with a listing of ~~all employees actively participating in the deferred compensation plan. The listing must be prepared for January first through June thirtieth and July first through December thirty-first and remitted to the retirement board within thirty days after the end of the reporting period to which it relates. The listing must contain the employee's name, social security number, deductions for the previous reporting period, and provider used deferred compensation deductions for all employees participating in the deferred compensation plan by the eighth day of each month. The employer must use the deferred compensation transmittal of deduction form or the approved electronic format.~~

History: Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-05-06. Separation from service notice. The employer shall notify the retirement board within thirty days of an employee's separation from service. The retirement board shall then notify the former ~~employee of the employee's provider of the employee separation from service and eligibility for payment options under the plan and have the former employee complete a benefit selection form.~~

History: Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-04-06

71-04-06-06. Retirement board report. The provider shall deliver semiannual reports to the retirement board detailing the activity of each participant's account. The semiannual report must be delivered within ~~forty-five~~ thirty days of the end of the reporting period and must include an alphabetical listing of the participants, social security numbers of the participants, the provider's contract number for the participants (if any), type of account for each participant, beginning account balance forwarded from the previous reporting period, contributions made by the participants for the current reporting period, transfers and rollovers from other eligible plans during the reporting period, investment earnings or losses added to the account (if any for the reporting period), any withdrawals made during the reporting period, administrative charges assessed against the account during the reporting period, transfers and direct rollovers to other eligible plans during the reporting period, and the account balance at the end of the reporting period. The report columns must be totaled. The semiannual report must include active, inactive, and ~~retired participants~~ accounts in payout status, with the exception of accounts which have been annuitized, and be for all payroll divisions for the plan.

History: Effective April 1, 1989; amended effective November 1, 1990; July 1, 1994; May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-06-08. Benefit requests. The provider shall honor all requests for benefit or refund payments made ~~on the retirement board's benefit selection form and signed by the participant and the retirement board's authorized representative~~ upon notification of the employee's separation from service by the retirement board.

History: Effective April 1, 1989; amended effective May 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-06-11. Provider reporting failure - Penalty. Should the provider fail to deliver the required report within a ~~sixty-day~~ thirty-day period beyond the end of ~~a calendar~~ the reporting period, notice must be given by certified mail of the provider's failure to comply. The provider shall then have thirty days from the date of the certified letter to comply with the reporting requirement. If the provider fails to deliver the required report within the thirty-day period, the provider is in violation of the administrative agreement and shall lose active provider status as described under subsection 1 of section 71-04-04-09. If the provider has not filed the report within ~~five months of loss of active provider status~~ ninety days after the end of the reporting period, the provider shall lose provider status as described under subsection 2 of section 71-04-04-09. Loss of provider status results in all current contributions of active participants being suspended effective in the next payroll cycle. The retirement board will notify all participants of the company's failure to deliver the required reports. Current participants will be required to either select a new provider for future contributions, or have their account go into a dormant status

with the company losing provider status. ~~The provider will remain on loss of provider status for a period of twelve months. At the conclusion of the suspension period, the provider may reapply for active status by signing a new administrative agreement. The retirement board will then terminate the agreement with the provider.~~

History: Effective April 1, 1989; amended effective November 1, 1990; July 1, 1994; May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-04-08
QUALIFIED DOMESTIC RELATIONS ORDERS

Section

71-04-08-01

Payment in Accordance With Qualified Domestic Relations Orders

71-04-08-02

Qualified Domestic Relations Orders Procedures

71-04-08-01. Payment in accordance with qualified domestic relations orders. Retirement moneys must be paid in accordance with any qualified domestic relations order issued in compliance with North Dakota Century Code section 54-52.2-03.3.

History: Effective May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03.3

71-04-08-02. Qualified domestic relations orders procedures.

1. Upon receipt of a proposed domestic relations order, the executive director shall:
 - a. Send an initial notice to each person named therein, including the member and the alternate payee named in the order, with an explanation of the procedures followed by the fund.
 - b. Order the funds to which the alternate payee would be entitled by direction of the order segregated, if those funds are ascertainable from the proposed order.
 - c. Review the domestic relations order to determine if it is a qualified order as established by the model language format specified by the board.
2. The domestic relations order shall be considered a qualified order when the executive director notifies the parties the order is approved and a certified copy of the court order has been submitted to the public employees retirement system office.
3. If the order becomes qualified, the executive director shall:
 - a. Send a notice to all persons named in the order and any representative designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
 - b. Comply with the terms of the order.

- c. Direct the amount established for an alternate payee, in each plan to which the order applies, be paid in a lump sum within one hundred twenty days of the acceptance of the qualified domestic relations order or the entry of the order by the court.
- 4. If the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such an order, the executive director shall send written notification of termination of the review to all parties at least forty-five days prior to the end of the eighteen-month review period. At the end of the eighteen-month review period, the proposed order is deemed to be withdrawn and of no legal effect.
 - a. If a segregated account has been established for an alternate payee, the executive director shall distribute the amounts in the segregated account in the manner required in the absence of an order.
 - b. If determined after the expiration of the eighteen-month period, the order is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective May 1, 2004.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03.3

CHAPTER 71-04-09
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Section

<u>71-04-09-01</u>	<u>Eligibility Requirements</u>
<u>71-04-09-02</u>	<u>Documentation Requirements</u>
<u>71-04-09-03</u>	<u>Payment</u>
<u>71-04-09-04</u>	<u>Recording of Missed Contributions</u>

71-04-09-01. Eligibility requirements. To be eligible to make up contributions to the 457 deferred compensation plan for missed contributions during military time under this chapter, a veteran must have had an interruption of the veteran's employment and been discharged under honorable conditions.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.3

71-04-09-02. Documentation requirements. The burden of proof will be on the member for providing documentation necessary to determine what military time is eligible for makeup contributions. At a minimum, the following documentation is required:

1. The member must provide a legible copy of military discharge papers (DD214, DD215, or NGB22).
2. The member must provide proof of the last day of employment prior to reporting for active duty and the first day of employment following the return from active duty. This information must be certified by the authorized agent of the employing agency using a record of previous service or notice of change form if returning from leave of absence.
3. Members who elect to contribute missed contributions for military time must submit a completed missed contributions agreement.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.6-09.3

71-04-09-03. Payment. The payment for missed contributions for eligible military service under the deferred compensation plan may be paid in a lump sum or in installments pursuant to the rules established under section 71-04-05-02.

History: Effective May 1, 2004.

General Authority: NDCC 54-52.2-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.3

71-04-09-04. Recording of missed contributions. To determine eligibility for vesting of employer contributions pursuant to North Dakota Century Code

section 54-52-11.1, payments for missed contributions during military time under this chapter will be allocated to each month, beginning with the first month of missed contributions. Vested employer contributions will then be calculated pursuant to North Dakota Century Code section 54-52-11.1.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.3

CHAPTER 71-05-02

71-05-02-01.1. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit. A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. During this period, the member's account will be handled in the same manner as all early reduced retirement benefits. Upon receiving a disability determination, interest accrual on the member's account shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches normal retirement age. The disability benefit will be calculated and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-02. Determination of disability - Procedures.

1. Application.

- a. Application for disability benefits must be made within one year from the last date of covered employment on the form provided by the plan administrator.
- b. If the member is unable or unwilling to file an application, the member's employer or legal representative may file the member's disability application.
- c. The application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience.

2. Medical examination.

- a. The applicant for disability retirement must provide the plan administrator with medical examination reports.
- b. An initial medical examination should be completed by the member's attending or family physician on the medical examination form provided by the plan administrator. If deemed necessary by the board's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the medical consultant.

- c. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.

3. Medical consultant.

- a. The board will retain a medical doctor to act as its consultant on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant will be responsible to advise the plan administrator of the medical diagnosis and whether the condition is a permanent and total disability.

4. Decision and appeal.

- a. The plan administrator shall consider applications for disability benefits and shall make a written decision whether an applicant is entitled to benefits. The decision must be mailed to the applicant's address of record.
- b. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the plan administrator mailed the decision.
- c. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- d. If the applicant has terminated employment, the plan administrator shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the plan administrator shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- e. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in

writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.

- f. If the initial board decision is adverse to the applicant, after exhausting the administrative procedure under subdivisions b and c, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.

- 5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment, minus any early retirement benefits that have been paid.

6. **Redetermination and recertification.**

- a. ~~A disabled annuitant's eligibility must be recertified on July first following the second anniversary date of disability retirement. An additional recertification is required on July first five years thereafter. The plan administrator may require additional recertifications, or waive the necessity for a recertification, if the facts warrant this action.~~
- b. ~~The plan administrator will send a recertification form to the disabled annuitant to be completed and sent back to the fund.~~
- c. ~~The plan administrator may require the disabled annuitant to be reexamined by a doctor at the annuitant's own expense. The submission of medical reports by the member, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement.~~
- d. ~~The plan administrator will make the recertification decision and bring the matter to the board only if warranted.~~

- ~~e. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the plan administrator may do all things necessary to recover the erroneously paid benefits.~~
- a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The plan administrator may waive the necessity for a recertification based on the recommendation of the medical consultant.
- b. The plan administrator will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first of the month that benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.
- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the plan administrator.
- d. The medical consultant will make the recertification decision. The executive director may require additional recertifications. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The plan administrator shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to the date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided,

the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective November 1, 1990; amended effective June 1, 1992; June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-04. Optional benefits. An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit. These options are not available if the calculation of the optional benefit to which the member is entitled would result in an amount that is less than one hundred dollars.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary supplies a marriage certificate and death certificate and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member, the member's benefit must be returned to the single-life normal retirement amount. Payment of the single-life normal retirement amount must commence on the first day of the month following the spouse's death if written notification of death and, provided a death certificate have has been submitted.
2. ~~**Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, if the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member, the member's benefit must be returned to the single-life amount. Payment of the single-life amount must commence on the first day of the month following the spouse's~~

~~death if written notification of death and a death certificate have been submitted.~~

3. **Five-year or ten-year certain option.** A member may receive the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a five-year or ten-year certain feature, as designated by the member.

History: Effective July 1, 1998; amended effective May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11.4(d)

71-05-02-06. Cancellation of disability benefit. When a member receiving a disability benefit attains normal retirement age, that member may elect to terminate that member's disability benefit and draw retirement benefits as specified in North Dakota Century Code section 39-03.1-11.

History: Effective May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

CHAPTER 71-05-04

71-05-04-03. Repurchase of service credit and purchase of additional service credit. To purchase additional credit or repurchase past service, a contributor ~~or participating member of an alternative retirement system~~ must notify the public employees retirement system, in writing, of the service for which the person wishes to receive credit. In addition to the written request, the following information must be submitted, if applicable:

1. Documentation of military service by submitting a DD214 or NGB22.
2. Certification of approval by the member's employer of any leave of absence and length of that leave.

History: Effective October 1, 1991; amended effective June 1, 1996; April 1, 2002; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-03.1. Purchase of additional years of service. Repealed effective May 1, 2004. ~~A participating member who is a vested, permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by North Dakota Century Code section 39-03.1-11. The years of service purchased must be added to the years of service employment under subsection 4 of North Dakota Century Code section 39-03.1-11 for calculating the service benefit.~~

History: Effective April 1, 2002.

General Authority: NDCC 39-03.1-06

Law Implemented: ~~NDCC 39-03.1-08.2, 39-03.1-10.1~~

71-05-04-04. Payment. The total dollar amount for repurchase or purchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments ~~are~~ may be subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.
2. The installment schedule may extend for ~~a maximum term of ten years or the number of years until the contributor meets normal retirement age, whichever is greater~~ as long as the member is employed by the participating employer.
3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the contributor to initiate and terminate the payroll deduction.

4. Payments are due by the fifteenth of the month to be credited for the month.
5. Payments may only be received from a contributor until the fifteenth of the month in which the contributor's last retirement contribution is received.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-04.1. Costs. The cost to repurchase service credit must be calculated by applying actuarial factors to the amount of the retirement and retiree health insurance credit being purchased by the contributor or member of an alternative retirement system. The contributor's current age, average salary as calculated under subsection 2 of North Dakota Century Code section 39-03.1-11, and current credited service on record with the North Dakota public employees retirement system in the month in which the contributor's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit benefits being purchased must be calculated using the benefit formulas in place at the time the written request is received from the contributor. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the contributor ~~or member of an alternative retirement system~~, a written cost confirmation must be prepared and mailed to the individual. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter.

History: Effective June 1, 1996; amended effective May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-05. Delinquent payment. If a payment to be made pursuant to section 71-05-04-04 is not received within thirty days of the due date, the public employees retirement system shall send a letter to the contributor or member of an alternative retirement system advising the person of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on a closed account must be returned to the member. The member may submit written documentation as to the cause for the delinquency

to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-06. Crediting purchased or repurchased service. Service purchased or repurchased will be credited in the following manner:

1. The contributor's record must be updated with the additional service credit once the account is paid in full.
2. If the contributor or member of an alternative retirement system terminates, retires, or the contributor's account is closed due to delinquency, service credit shall be granted by taking the months of service credit being purchased times the percentage paid. The percentage is determined by taking the total payments made toward the purchase divided by the total amount to be paid over the term of the purchase. Fractions of service credit must be rounded to the nearest whole month equal to a fraction is deemed to be a whole month of service credit.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-08. Conversion of sick leave. To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer.

One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The cost to convert unused sick leave into service credit must be paid with after tax employee contributions.

Payments may be accepted from the member as early as six months prior to termination if the following requirements are met:

1. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
2. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
3. ~~The sick leave conversion payment must be within the contribution limits of 26 U.S.C. 415(n) for the purchase of permissive service credit.~~
4. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of that date.
5. 4. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member within sixty days of termination.
6. 5. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-30

71-05-04-09. Employer purchase of service credit or sick leave program. An employer may elect to purchase up to five years of service credit for an employee that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees the employer must create a program and document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.

5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

When a employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-10.2

CHAPTER 71-05-05

71-05-05-01. Normal and early retirement benefits - Application. Except as provided in section 71-05-05-02 for retirement options, ~~a member shall file an application with the office for normal or early retirement benefits at least thirty days before normal retirement date or before the commencement of early retirement applications for retirement, surviving spouse, and disability benefits must be filed at the public employees retirement system at least thirty days before normal or early retirement date or before the commencement of benefits.~~ A member shall file a photocopy of the member's birth certificate and, if the member is married, a photocopy of the member's spouse's birth certificate and marriage certificate. A surviving spouse shall file a photocopy of the surviving spouse's birth certificate, deceased member's birth certificate, and marriage certificate for a benefit election under subsection 6 of North Dakota Century Code section 39-03.1-11.

History: Effective October 1, 1991; amended effective May 1, 2004.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-02. Special retirement options - Application.

1. A member may elect a retirement option by filing an application with the office no less than thirty days prior to the beginning date of benefit payments. An application may be filed later than thirty days prior to the beginning date of benefit payments if approved by the plan administrator upon receiving sufficient evidence that the application was delayed by the member's employer.
2. A member may revoke the election of an optional benefit as provided in subsection 1 and make a new election if such revocation is received in writing before the first retirement check is cashed but no later than fifteen days after the first retirement check has been issued. If the member changes the member's election less than fifteen days prior to the named beginning date of benefits, the first retirement payment may be delayed up to two months. Any delayed payment must be adjusted to include any deferred retirement payments.
3. A member may not revoke the elected benefit after receiving and cashing the first benefit check, unless the member can provide sufficient evidence to the executive director that the factual basis by which the election was made later proved to be incorrect and such was due in part to representation or misrepresentations made by the employer or the retirement office.

History: Effective October 1, 1991; amended effective May 1, 2004.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-05-08. Retirement - Dual membership. If a member elects to begin drawing monthly benefits while continuing to participate in the public employees retirement system or, teachers' fund for retirement, or the teachers' insurance and annuity association college retirement equities fund, the provisions of section 71-02-04-09 must apply.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-14.1(1)(c)

Law Implemented: NDCC 39-03.1-14.1

71-05-05-11. Erroneous payment of benefits - Underpayments.

1. An "underpayment" means a payment of money by the public employees retirement system that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within ~~thirty~~ sixty days of the discovery of the error, with interest at the rate of six percent from the time underpayment occurred.

History: Effective April 1, 2002; amended effective May 1, 2004.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-25

CHAPTER 71-05-07

71-05-07-01. Return to service - Retired member. The benefits of a retired member who returns to permanent employment must be suspended. Upon final retirement, the member's benefit must be recalculated as follows:

1. If the period of subsequent employment is less than two years, the member may elect:
 - a. A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at final retirement and for benefit payments received prior to reemployment; or
 - b. A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, ~~and~~ salary and service credits, and any benefit increases accrued during the period of subsequent employment.
2. If the period of subsequent employment is more than two years, the member's benefit must be based on the benefit provisions in effect at final retirement and shall include the member's age and salary earned during the period of reemployment together with total service earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.
3. If a member dies during subsequent employment, the member's initial retirement benefit election will apply. If the benefit election was an optional benefit under section 71-05-02-04, then the member's benefit must be recalculated based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at death, benefit payments received prior to reemployment, salary and service credits, and any benefit increases accrued during the period of subsequent employment.

History: Effective October 1, 1991; amended effective May 1, 2004.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

CHAPTER 71-06-01

71-06-01-06.1. Retroactive payment of the retiree health insurance credit. Retroactive payments will be as reflected in chapters 71-02-04 and 71-02-05.

Retroactive payments will be made to the date the member was eligible for the disability benefits, in coordination with the first month the member was responsible for payment of the public employees retirement system group health insurance.

The date of eligibility for the retiree health insurance credit will be determined:

1. For a deceased, active member's surviving spouse, when the application for retirement benefits is received.
2. For a deceased retiree's surviving spouse, eligibility for the retiree health insurance credit is applied the first of the month following the member's date of death.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.1-03.3

CHAPTER 71-07-01

71-07-01-02. Summary plan document. ~~The executive director must annually prepare a summary plan document. Each employee participating in the pretax benefits program must be given a summary plan document. Upon request of the employee, the retirement board shall make available a descriptive booklet setting forth the enrollment requirements of the plan and explanation of the pretax benefits program under section 125 of the Internal Revenue Code.~~

History: Effective April 1, 1992; amended effective May 1, 2004.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.3-02

CHAPTER 71-08-06
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Section

<u>71-08-06-01</u>	<u>Eligibility Requirements</u>
<u>71-08-06-02</u>	<u>Award of Service Credit</u>
<u>71-08-06-03</u>	<u>Documentation Requirements</u>
<u>71-08-06-04</u>	<u>Payment</u>
<u>71-08-06-05</u>	<u>Refund of Overpayments</u>

71-08-06-01. Eligibility requirements. To be eligible to receive service credit with the defined contribution plan for military time under this chapter, a veteran must have had an interruption of the veteran's employment and been discharged under honorable conditions.

History: Effective May 1, 2004.

General Authority: NDCC 54-52.6-04, 54-52-02

Law Implemented: NDCC 54-52.6-09.3

71-08-06-02. Award of service credit. An individual with eligible time may receive up to sixty months' credit upon proper application. A veteran eligible to receive service credit for military time must apply for and purchase that time within the lesser of three times the length of active duty or five years from the date of that person's return to covered employment after an honorable discharge. Service credit will not be awarded until all required documentation is received by the North Dakota public employees retirement system and payment of both the employer and the employee contributions is made in full.

History: Effective May 1, 2004.

General Authority: NDCC 54-52.6-04, 54-52-04

Law Implemented: NDCC 54-52.6-09.3

71-08-06-03. Documentation requirements. The burden of proof will be on the member for providing documentation necessary to determine what military time is eligible for service credit. At a minimum, the following documentation is required before service credit will be awarded:

1. The member must provide a legible copy of military discharge papers indicating an honorable discharge (DD214, DD215, or NGB22).
2. The member must provide proof of the last day of employment prior to reporting for active duty and the first day of employment following the return from active duty. This information must be certified by the authorized agent of the employing agency using a record of previous service or notice of change if returning from leave of absence.
3. The members requesting service credit for extended military terms discussed under subdivision c of subsection 1 of section 71-02-11-02 must provide a legible copy of the appropriate military papers (DD214).

4. A member who elects to purchase military time must submit a completed purchase agreement.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.3

71-08-06-04. Payment. The payment for purchase of eligible military service in the defined contribution plan may be as follows:

1. Payment may be paid in a lump sum or in installments pursuant to the rules established for purchase or repurchase payment under subsection 3, 4, or 5 of section 71-02-03-02.2. If no payments have been made, no credit will be awarded.
2. The employer cost will be assessed to the member's most recent participating employer. Upon being billed by the public employees retirement system, the participating employer will have thirty days in which to make payment in full. If, after sixty days, the employer has not made payment in full, a civil penalty of fifty dollars will be assessed, and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.
3. If the employer contributions are paid and the member becomes delinquent for required employee contributions, then the public employees retirement system will prorate the credit the employee contributions have paid for by the member and this credit will be added to the member's file.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.3

71-08-06-05. Refund of overpayments. If an employee purchased military service pursuant to North Dakota Century Code chapter 54-52.6 at a cost higher than determined in this chapter, overpayments may be refunded. Upon verification that the previously purchased military service meets the general eligibility requirements under section 71-08-06-01, a refund may be issued according to the following guidelines:

1. For a purchase paid in a lump sum:
 - a. If eligible military time was July 1966 or after, five and twelve-hundredths percent times the salary which the purchase was computed on, times months of eligible military time, will be refunded.
 - b. Interest on the refund amount will be paid at an annual rate of seven and five-tenths percent compounded monthly. Interest will

be calculated from the month the public employees retirement system received the lump sum payment to the month in which the refund is made.

- c. The refund will be calculated and issued within one hundred eighty days of receiving all necessary documentation.

2. For a purchase paid in installments:

- a. If the employee is currently making installment payments, the purchase amount will be recalculated using four percent of salary times eligible months of military time being purchased. Any excess funds resulting from the recalculation will be applied toward the outstanding amount due. Should the payments made to date exceed the new contract amount, a refund of the difference will be issued within one hundred eighty days.
- b. If an eligible employee or retiree has paid the installment contract in full, the purchase amount will be recalculated using four percent of salary times eligible months of military time being purchased. A refund of the difference between the payments actually made and what the payments should have been on the new contract amount will be made within one hundred eighty days of receiving the necessary documentation. Interest on the refund amount will be calculated at an annual rate of seven and five-tenths percent, compounded monthly, from the month in which the purchase was paid in full to the month in which the refund is issued.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.3

CHAPTER 71-08-07

ADDITIONAL CONTRIBUTIONS

Section

71-08-07-01

Additional Employer Contributions

71-08-07-02

Eligible Sick Leave

71-08-07-01. Additional employer contributions. An employer may elect to provide additional employer contributions to an employee's account in an amount not exceeding the equivalent of a purchase of up to five years of service credit for that employee or the purchase of an employee's unused sick leave that meets the requirements of section 71-08-06-02. Before offering such a program to its employees, an employer must create a program and document it in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all additional employer contributions will not exceed the equivalent of a purchase of service credit as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the employee's retirement or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member and the amount of service credit to be purchased or sick leave to be converted and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases

in writing to the public employees retirement system and be the focal point for communications between the public employees retirement system, the employer, and the employee.

8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.

When an employer files the above letter with the public employees retirement system, the employer may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.2

71-08-07-02. Eligible sick leave. An employer may provide additional contributions equal to the purchase of an employee's unused sick leave only to the extent that it has not been previously purchased by a former employer or the member. Further, eligible sick leave may not exceed a total of eight hours times the number of months of permanent employment with the current employer or service in the retirement plan.

History: Effective May 1, 2004.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09.2

