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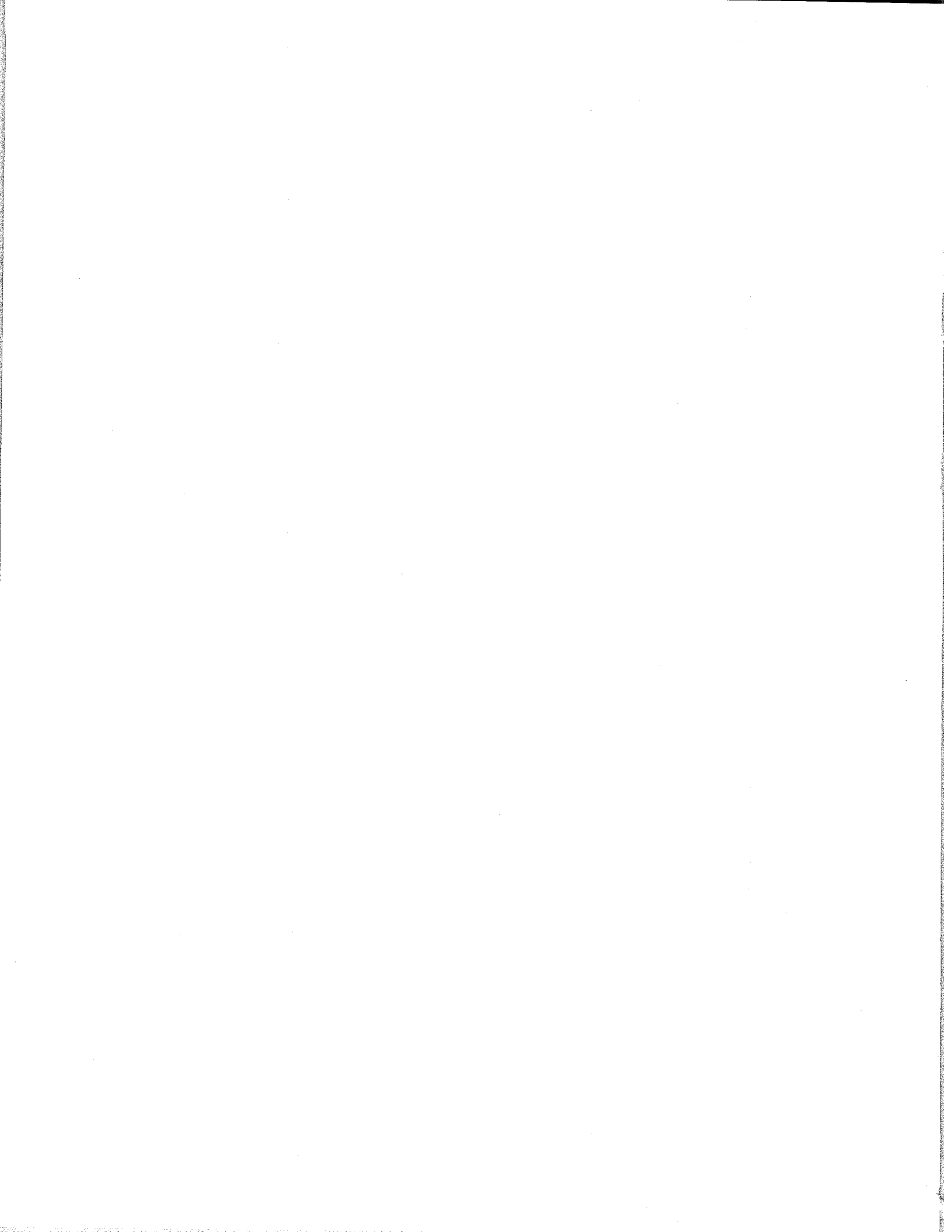


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TITLE 45
INSURANCE COMMISSIONER

JANUARY 2008

CHAPTER 45-02-02

45-02-02-02. Applications for licenses.

1. Resident insurance producers' applications.

- a. An application must be completed in accordance with the instruction sheet and submitted either electronically or with a paper filing on a commissioner-approved application form.
- b. ~~An applicant for an insurance producer's license by a business entity must have an active certificate of authority with the North Dakota secretary of state's office.~~
- e. An applicant licensed in another state within the preceding ~~twelve months~~ ninety days who moves to this state must provide, with the application, proof of clearance from the state in which the insurance producer is currently or was most recently licensed as a resident insurance producer.
- d. c. An application form is required to add an additional line of insurance.
- e. d. Every application submitted to the department through either a paper or electronic filing must be accompanied by the appropriate fee made payable to either the commissioner or the commissioner's designee.

2. Nonresident insurance producers' applications.

- a. An application for a nonresident insurance producer's license must comply with subdivisions a, ~~b, d c,~~ and e d of subsection 1 and must contain a written designation of the commissioner and the commissioner's successors in office as that insurance producer's true and lawful attorney for purposes of service of process.

- b. An applicant for a nonresident insurance producer's license must have the state, which issued the agent's resident license, supply to the department a certificate showing the lines for which the agent is licensed and eligible to write in that state. This certification may be submitted by the national association of insurance commissioners' producer data base.
3. **Surplus lines insurance producers' applications.** A surplus lines insurance producer's application must be submitted in accordance with chapter 45-09-01.
4. **Consultants' applications.**
 - a. An application for a consultant's license must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.
 - b. No person holding a license as an insurance producer or surplus lines insurance producer may obtain and simultaneously hold a license as a consultant. If the applicant holds such licenses at the time of application, the licenses must be terminated prior to obtaining a consultant's license.
5. **Temporary license applications.**
 - a. An application for a temporary insurance producer's license must be submitted in accordance with section 45-02-02-02.
 - b. The application must be accompanied by a written statement of the reasons for requesting the issuance of a temporary license.
 - c. A temporary license will not be granted for the sole reason that the applicant has failed to pass the insurance producers' examination and desires to be licensed until such time as a passing examination score is obtained.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987; April 1, 1996; January 1, 2000; December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-12, 26.1-26-13

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

1. An applicant must qualify for lines of authority by passing the examination set out in subsection 6 5.
2. The examination is administered under a contract with a testing service.

3. An applicant must present a photo identification card at the test center prior to being admitted for testing. ~~If the applicant does not have a photo identification card, permission to take the test may be specially obtained upon application to the insurance department.~~
4. ~~At the test center, an applicant must present either proof of completion of prelicensing courses or a waiver from the department.~~
5. There are two basic parts to each examination:
 - a. Part One is the part of the examination developed as a test of general knowledge for the lines of insurance and there are four such Part Ones:
 - (1) 01 Life and annuity
 - (2) 02 Accident and health
 - (3) 03 Property
 - (4) 04 Casualty
 - b. Part Two is the part of each examination which tests the applicant's knowledge of North Dakota law.
6. 5. An applicant applying to conduct insurance in the following lines must pass the following examinations:

a. Life and annuity	01 Life and annuity
b. Accident and health	02 Accident and health
c. Property	03 Property
d. Casualty	04 Casualty
e. Variable life and annuity	01 Life and annuity
6. An examination score is valid for one year after the date of the examination for a license applicant who has not completed the application process and who has not obtained licensure. After one year from the date of the examination, an applicant must retake the required examination.
7. An examination is valid for as long as a person continuously holds a valid insurance producer's license issued by the North Dakota insurance department and for twelve months following cancellation of a license, with the exception that an examination ceases to be valid immediately upon the suspension or revocation of the license unless the order of suspension or revocation specifies otherwise.

8. An applicant for a consultant license must take and pass the insurance producer's examination for the lines in which the applicant wishes to consult.

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

General Authority: NDCC 26.1-26-49

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

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

1. Consultants' exemption.
 - a. If an applicant holds an insurance producer's license in North Dakota, the applicant is exempt from the testing requirements for the lines held on that license within the last twelve months; however, the applicant must terminate all other licenses prior to obtaining a consultant's license.
 - b. Upon application, it may be shown that the educational background or work experience record is an adequate basis to grant an exemption from testing. A narrative must be included with the application.
2. An applicant applying for a license for title insurance is exempt from any examination requirement but must meet the following qualifications:
 - a. The applicant must be a licensed abstractor or attorney; or
 - b. The applicant must have a minimum of eighty hours of training provided by an insurer licensed in the line of title insurance. A certification by the insurer that the training has been completed must accompany the application.
3. An applicant for a license to write the following products travel and baggage insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier is exempt from examination requirements:
 - a. ~~Baggage insurance sold by a ticket-selling agent of a common carrier for travel with that carrier.~~
 - b. ~~Travel insurance sold by a ticket-selling agent operating within a transportation terminal.~~

4. An applicant for a license to write the following products need only take the reduced examination required for that specific product:
 - a. Bail bonds.
 - b. Credit including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of credit insurance.
 - c. Crop or crop hail. Crop or crop hail insurance is insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions, or perils provided by the private insurance market, or that is subsidized by the federal crop insurance corporation, including multiperil crop insurance.
 - d. Legal expense, including prepaid legal service.
 - e. Personal lines. Personal lines is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

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

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-25

45-02-02-07. Renewal procedure for appointments.

1. On or before ~~March fifteenth~~ December first of each year, a preliminary renewal list of the insurance producers appointed by that company, together with an instruction letter, will be furnished by the department to each company.
2. ~~The company shall designate on that list which insurance producers it does not wish to renew, and return the list to the department within the timeframe set out in the cover letter.~~ On or before March fifteenth of each year, an electronic renewal invoice will be made available through the national association of insurance commissioners' subsidiary to all companies with active appointments.

3. The insurer shall pay the appropriate fee for all appointments which are renewed, along with on the renewal list invoice prior to May first.

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

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-08, 26.1-26-32

45-02-02-13. Change of address. The change of address required by North Dakota Century Code section 26.1-26-33 must be provided to the department electronically or on a letter or form separate from the application or appointment forms and submitted solely for that purpose.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-33

CHAPTER 45-02-04

45-02-04-01. Purpose. Insurance continuing education courses must promote educational activities that advance one's professional expertise and keep the individual abreast with the insurance industry. Routine meetings, luncheons, and gatherings not advertised and developed as insurance continuing education events will not qualify for insurance continuing education credit.

History: Effective July 1, 1986; amended effective January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the insurance commissioner.
2. ~~"Continuing education" means an accredited educational experience derived from participation in approved lectures, seminars, and correspondence courses in areas related to insurance. This education shall be designed to improve the professional skills of the participant and upgrade the standard of all insurance licensees to better serve the public.~~
3. "Coordinator" means an individual who is responsible for monitoring insurance continuing education offerings and who serves as the liaison for students, instructors, and the commissioner.
4. ~~3.~~ "Instructor" means an individual who teaches, lectures, or otherwise instructs an insurance continuing education offering.
5. ~~"Insurance education" means prelicensure education and continuing education.~~
6. ~~4.~~ "Insurance continuing education" means an accredited educational experience derived from participation in approved lectures, seminars, and correspondence courses in areas related to insurance. This education must be designed to improve the professional skills of the participant and upgrade the standard of all insurance licensees to better serve the public.
5. "Insurance lines of authority" for insurance continuing education purposes include life and annuity insurance, accident and health insurance, property insurance, and casualty insurance, personal lines insurance, and crop hail insurance.
7. ~~6.~~ "Insurance producer or licensee" means a natural person licensed by this state for the type and kind of insurance being marketed and for which licensing examinations are required.

- 8- 7. "License" means the authorization issued to an individual by the insurance commissioner to act as an insurance producer.
- 9- 8. "License applicant" means a person not currently licensed or an insurance producer seeking a license for a line or lines of insurance for which the person is not currently licensed.
- 40- 9. "National insurance education program" means a curriculum dedicated to the continuance of insurance education, leading to a nationally accepted insurance designation, such as a chartered property casualty underwriter (CPCU), a chartered life underwriter (CLU), or a registered health underwriter (RHU).
- 41- ~~"Prelicensure education" means approved classroom education taken prior to sitting for the state licensing examination and completed within six months of filing the license application.~~
- 42- 10. "Provider" means a natural person, firm, institution, partnership, corporation, or association offering or providing insurance education.

History: Effective July 1, 1986; amended effective December 1, 2001; January 1, 2006; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-03. General rules.

1. **Course requirements.** The insurance continuing education course requirements include an educational presentation involving insurance fundamentals, policies, laws, risk management, or other courses which are offered in a process of instruction approved by the commissioner as expanding skills and developing knowledge to better serve the insurance buying public.
2. **Nonapproved courses.** The following course content will not qualify for insurance continuing education credit:
 - a. Prelicensure training.
 - b. Prospecting.
 - c. Recruiting.
 - d. Sales skills and promotions.
 - e. Motivation.
 - f. Psychology.

- g. Communication skills.
- h. Supportive office and machine skills.
- i. Personnel management.

The above listing does not limit the commissioner's authority to disapprove any application which fails to meet the standards for course approval.

3. ~~Prelicensure course.~~ A ~~prelicensure course means a classroom program consisting of at least eight credit hours, per line of insurance, with course content, including:~~

a. ~~For property or casualty insurance, or both:~~

- (1) ~~North Dakota laws, rules, and regulations relating to property and casualty insurance;~~
- (2) ~~Insurance and insurance-related concepts;~~
- (3) ~~Policy provisions;~~
- (4) ~~Types of policies;~~
- (5) ~~Perils, exclusions, deductibles, and liability;~~
- (6) ~~Prospecting and evaluating needs;~~
- (7) ~~Serving clients; and~~
- (8) ~~Presentation and acceptance of the policy.~~

b. ~~For life and annuity or accident and health insurance, or both:~~

- (1) ~~North Dakota laws, rules, and regulations relating to life and annuity or accident and health insurance;~~
- (2) ~~Types of policies and coverages;~~
- (3) ~~Policy provisions, options, and benefits;~~
- (4) ~~Completing the application and delivering the policy;~~
- (5) ~~Taxes, retirement, and other insurance concepts;~~
- (6) ~~Group insurance; and~~
- (7) ~~Other provisions affecting insurance benefits.~~

- ~~4. **License applicant responsibility.** All license applicants shall present to the proctor, prior to sitting for insurance licensing examinations, a valid copy of the prelicensure report of compliance.~~
5. **Licensee responsibility.** Each licensee shall be responsible for maintaining original records of the licensee's insurance continuing education certificates of attendance for a period of one year from the last reporting deadline. Such records shall be made available to the commissioner upon request.
- ~~6. **Licensee seeking additional lines.** Effective January 1, 1986, prelicensure education will be required of a current resident insurance producer or consultant seeking authority in a line of insurance for which the person is not currently licensed.~~
7. ~~4.~~ **Correspondence course credit.** Credit received by an insurance producer for a correspondence course must be based on successful completion of the course as prescribed by the provider and approved by the commissioner.
8. ~~5.~~ **Reciprocity.** The commissioner may approve credit for insurance-related courses approved by the North Dakota real estate commission and the North Dakota state bar association for insurance continuing education purposes.
9. ~~6.~~ **Credit hour.** A credit hour means sixty minutes of time, of which at least fifty minutes must be instruction, with a maximum of ten minutes break.
- a. Credit hours for insurance continuing education will not be approved in increments of less than one-half hour.
- b. Neither students nor instructors may earn credit for attending or instructing at any subsequent offering of ~~a~~ an insurance continuing education course more than once during a reporting period.
10. ~~7.~~ **Course audit.** The commissioner or an authorized representative reserves the right to audit insurance continuing education offerings with or without notice to the provider.
11. ~~8.~~ **Class attendance.**
- a. No certificate of attendance will be issued to ~~a~~ an insurance continuing education participant who is absent for more than ten percent of the classroom hours.
- b. ~~Prelicensure courses must be attended in their entirety.~~
12. ~~9.~~ **Examinations.** Course examinations will not be required for insurance continuing education courses, unless required by the provider.

43. 10. **Textbooks.** Textbooks are not required for insurance continuing education courses. All course materials must contain accurate and current information relating to the subject matter being taught.

44. 11. **Approval of course offerings.** The commissioner requires providers of insurance continuing education courses to provide the following:

a. To the commissioner on a commissioner-approved form prior to course offerings:

(1) An application for course approval of an insurance continuing education course fifteen business days prior to course offering-;

(2) A complete course outline designating individual topics and the amount of time devoted to each area being taught-
(NOTE: ~~Prelicensure course outlines must include a copy of all textbooks, handouts, etc.~~);

(3) An application for coordinator approval-; and

(4) A fifty dollar per course filing fee-;

b. A class roster to the commissioner using a method prescribed by the commissioner fifteen days subsequent to completion of all insurance continuing education courses-; and

c. To course participants subsequent to course offerings:

(1) A provide a course attendance certificate (form SFN 10923) to all students successfully completing an approved insurance continuing education course.

(2) ~~A prelicensure report of compliance (10925) to all students successfully completing an approved prelicensure course.~~

Upon review by the commissioner, providers will receive a copy of the course application indicating approval or denial, credit hours assigned, and a course certification number. Course certification numbers must be used on all insurance continuing education certificates, correspondence, and advertisements.

45. 12. **Provider management responsibility.** Providers of insurance continuing education courses are responsible for the actions of their respective instructors and coordinators.

46. 13. **Course approval after the fact.** Credit may be granted for a course after the fact provided such courses are properly submitted and

approved by the commissioner. Subsequent approval depends on course content and is not automatic or guaranteed.

~~47.~~ 14. **Advertising.** Courses may not be advertised in any manner unless approval has been granted, in writing, by the commissioner.

a. All advertising relating to approved course offerings shall contain the following statement: "This course has been approved by the insurance commissioner for (insert hours) of insurance continuing education credit."

b. Advertising must be truthful, clear, and not deceptive or misleading.

~~48.~~ 15. **Approval of subsequent offerings.** After approval has been granted for the initial offering of a course, approval for subsequent offerings will be granted without the necessity of a new application if a notice of subsequent offering is filed with the commissioner at least fifteen days before the date the course is to be held.

~~49.~~ 16. **Fees.** Fees for courses must be reasonable and clearly identifiable to students. If a course is canceled for any reason, all fees must be returned within thirty days of cancellation.

~~20.~~ 17. **Adequate facility.** Each course of study must be conducted in a classroom or other facility which will adequately and comfortably accommodate the faculty and the number of students enrolled. The provider may limit the number of students enrolled in a course.

History: Effective July 1, 1986; amended effective January 1, 2000; December 1, 2001; January 1, 2006; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-04. General powers of commissioner. The commissioner may deny, censure, suspend, or revoke the approval of a provider, coordinator, instructor, or course if it is determined not to be in compliance with the statute or rules governing the offering of insurance continuing education courses. The commissioner may also refuse to approve courses conducted by specific providers if the commissioner determines that past offerings have not been in compliance with insurance continuing education laws and rules.

History: Effective July 1, 1986; amended effective January 1, 2006; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-05. Course coordinator.

1. **General requirement.** Each course of study must have at least one coordinator, approved by the commissioner, who is responsible for supervising the program and assuring compliance with the statutes and rules governing the offering of insurance continuing education courses.
2. **Qualifications.** Course coordinators shall possess at least one of the following qualifications:
 - a. A minimum of five years' experience during the immediately preceding five-year period as an active licensed insurance agent;
 - b. At least three years' full-time experience during the immediately preceding five-year period in the administration of an education program; or
 - c. A degree in education plus at least two years' insurance experience during the immediately preceding five-year period.
3. **Forms.** Applications for coordinator approval must be submitted on forms prescribed by the commissioner.
4. **Responsibilities.** Coordinators shall be responsible for, but not limited to, the following:
 - a. Assuring compliance with all laws and rules pertaining to insurance continuing education-;
 - b. Notifying the commissioner of any material change in course content-;
 - c. Assuring that students are provided with current, accurate information, and classroom facilities conducive to a sound learning environment-;
 - d. Evaluation of courses and instructors. The commissioner may request written evaluations of courses and instructors either by students or coordinators-;
 - e. Investigating complaints relating to course offerings and instructors, and forwarding all written complaints to the insurance department-;
 - f. Maintaining accurate records relating to course offerings, instructors, and student attendance for a period of five years from the date the course was completed-;

- g. Being available to instructors and students by providing the name of the coordinator and a telephone number at which the coordinator can be reached;
- h. Providing students with course attendance certificates on a form prescribed by the commissioner, within thirty days of course completion; and
- i. Notifying the commissioner, fifteen days in advance, of any changes in course offering dates and subsequent offering dates of an approved course.

History: Effective July 1, 1986; amended effective January 1, 2006; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-06. Instructors.

1. **General requirement.** Failure to have approved instructors teaching an approved insurance continuing education offering will result in loss of course approval.
2. **Qualifications.** Instructors shall possess the following qualifications:
 - a. Three years of recent experience in the subject area being taught;
 - b. A degree related to the subject area being taught; or
 - c. Two years of recent experience in the subject area being taught and sixty hours of coursework in the subject area being taught.
3. **Responsibilities.** Instructors shall be responsible for, but not limited to, the following:
 - a. Complying with all laws and rules pertaining to insurance continuing education;
 - b. Providing students with current and accurate information;
 - c. Providing a classroom atmosphere conducive to learning; and
 - d. Assisting students and responding to questions relating to course material.

History: Effective July 1, 1986; amended effective January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-10. License revocation. Persons subject to revocation of license for falsification of certificates or noncompliance of insurance continuing education statutes shall, when seeking recertification, be subject to the requirements of a new license applicant unless otherwise waived by the commissioner.

History: Effective July 1, 1986; amended effective January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-11. Reciprocity - Proof of good standing and filing of fee. A nonresident insurance producer who has satisfied the producer's home state's insurance continuing education requirements and is in good standing in the producer's home state shall electronically submit ~~a current letter of certification from the producer's home state~~ a uniform application for individual producer license renewal or continuation through the national association of insurance commissioners and pay a biennial continuation fee of twenty-five dollars as required in North Dakota Century Code section 26.1-26-20. ~~A letter of certification is not required if the home state participates in the national association of insurance commissioners' producer data base and the department can verify the license is in good standing in the insurance producer's home state.~~ The filing of the biennial fee must be in accordance with section 45-02-04-09.

History: Effective January 1, 1992; amended effective December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31.7

CHAPTER 45-03-10

45-03-10-04. Availability requirements. Availability of any insurance contract may not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, conditions, or type of coverage may not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions, or type of coverage vary as a result of the application of rate differentials permitted under the North Dakota insurance code. However, nothing in this section prohibits an insurer from taking marital status into account for purposes of defining persons eligible for dependent benefits, except with regard to legally recognized minor children. Specific examples of practices prohibited by this section include, but are not limited to, the following:

1. Denying coverage to females gainfully employed at home, employed part time, or employed by relatives when coverage is offered to males similarly employed.
2. Denying policy riders to females when the riders are available to males.
3. Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.
4. Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.
5. Denying disability income contracts to employed women when coverage is offered to men similarly employed.
6. Treating complications of pregnancy differently from any other illness or sickness under the contract.
7. Restricting, reducing modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.
8. Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.
9. Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract.
10. Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

11. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents' benefits.
- ~~12. Denying individual coverage to a married person who elects not to cover his or her spouse or other dependents, except that if any dependents other than the spouse are to be covered, all dependent children may be required to be covered.~~

History: Effective July 1, 1988; amended effective January 1, 2008.

General Authority: NDCC 26.1-04-08

Law Implemented: NDCC 26.1-04-03(7), 26.1-04-03(11)

CHAPTER 45-03-15

45-03-15-01. Accounting practices and procedures. Every insurance company doing business in this state shall file with the commissioner, pursuant to North Dakota Century Code section 26.1-03-07, the appropriate national association of insurance commissioners annual statement blank, prepared in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March ~~2005~~ 2007 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance.

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

General Authority: NDCC 28-32-02

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

45-03-15-02. Reporting of financial information. Every insurance company licensed to do business in this state shall transmit to the commissioner and to the national association of insurance commissioners its most recent financial statements compiled on a quarterly basis, within forty-five days following the calendar quarters ending March thirty-first, June thirtieth, and September thirtieth. The financial statements must be prepared and filed in the form prescribed by the commissioner and in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March ~~2005~~ 2007 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance. The commissioner may exempt any company or category or class of companies from the filing requirement.

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

General Authority: NDCC 28-32-02

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

CHAPTER 45-03-20

45-03-20-02. Definitions.

1. "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in all states in which they are licensed to practice.
2. "Audited financial report" means and includes those items specified in section 45-03-20-04.
3. "Indemnification" means an agreement of indemnity or a release from liability if the intent or effect is to shift or limit in any manner the potential liability of a person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.
4. "Insurer" means a licensed insurer as defined in North Dakota Century Code chapter 26.1-02.

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

General Authority: NDCC 28-32-02

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

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

1. The commissioner shall not recognize any person or firm as a qualified independent certified public accountant which is:
 - a. Is not in good standing with the American institute of certified public accountants and in all states in which the accountant is licensed to practice;
 - b. Has either directly or indirectly entered into an agreement of indemnification with respect to the audit of the insurer.
2. Except as otherwise provided herein in this chapter, an independent certified public accountant must be recognized as qualified as long as the independent certified public accountant conforms to the standards of the independent certified public accountant's profession, as contained in the code of professional ethics of the American institute of certified public accountants and rules and regulations and code of ethics and rules of professional conduct of the North Dakota board of accountancy, or similar code.
3. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a

delinquency proceeding commenced against the insurer under North Dakota Century Code chapter 26.1-06.1, the mediation or arbitration provisions shall operate at the option of the statutory successor.

4. A partner or other person responsible for rendering a report may not act in that capacity for more than seven consecutive years. Following any period of service, the person must be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:
- a. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
 - b. Premium volume of the insurer; or
 - c. Number of jurisdictions in which the insurer transacts business.

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

- 4- 5. The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:
- a. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;
 - b. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this chapter; or
 - c. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.

- 5- 6. The commissioner may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace

the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

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

General Authority: NDCC 28-32-02

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

45-03-20-08. Scope of examination and report of independent certified public accountant. Financial statements furnished under section 45-03-20-04 must be examined by an independent certified public accountant. The examination of independent certified public accountant shall examine the insurer's financial statements ~~must be conducted~~ in accordance with generally accepted auditing standards. ~~Consideration should also be given to other~~ The independent certified public accountant shall also consider procedures illustrated in the financial condition examiner's handbook promulgated by the national association of insurance commissioners as the independent certified public accountant deems necessary.

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

General Authority: NDCC 28-32-02

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

CHAPTER 45-04-07.2
PREFERRED MORTALITY TABLES

Section

45-04-07.2-01

Definitions

45-04-07.2-02

2001 CSO Preferred Class Structure Table

45-04-07.2-03

Conditions

45-04-07.2-01. Definitions.

1. "2001 CSO mortality table" means that mortality table consisting of separate rates of mortality for male and female lives developed by the American academy of actuaries commissioners standard ordinary task force from the valuation basic mortality table developed by the society of actuaries individual life insurance valuation mortality task force and adopted by the national association of insurance commissioners in December 2002. The 2001 CSO mortality table is included in the Proceedings of the National Association of Insurance Commissioners (2nd Quarter 2002) and supplemented by the 2001 CSO preferred class structure mortality table described in subsection 2. Unless the context indicates otherwise, the 2001 CSO mortality table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO table include the following:
 - a. "2001 CSO mortality table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO mortality table.
 - b. "2001 CSO mortality table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO mortality table.
 - c. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.
 - d. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.
2. "2001 CSO preferred class structure mortality table" means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO nonsmoker and smoker tables as adopted by the national association of insurance commissioners at the September 2006 national meeting and published in the Proceedings of the National Association of Insurance Commissioners (3rd Quarter 2006). Unless the context

indicates otherwise, the 2001 CSO preferred class structure mortality table includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

3. "Commissioner" means the insurance commissioner.
4. "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information, demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers, and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

History: Effective January 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-35-02

45-04-07.2-02. 2001 CSO preferred class structure table. At the election of an insurer for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this chapter, the 2001 CSO preferred class structure mortality table may be substituted in place of the 2001 CSO smoker or nonsmoker mortality table as the minimum valuation standard for policies issued on or after January 1, 2007. The election may not be made until an insurer demonstrates at least twenty percent of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO preferred class structure mortality table used in place of a 2001 CSO mortality table will be treated as part of the 2001 CSO mortality table only for purposes of reserve valuation pursuant to the requirements of the national association of insurance commissioners model regulation, regarding recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits model regulation as described in chapter 45-04-07.1.

History: Effective January 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-35-02

45-04-07.2-03. Conditions.

1. For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO mortality table to determine minimum reserves. At the time of election and annually after that, except for business valued under

the residual standard nonsmoker table, the appointed actuary of the insurer shall certify to the commissioner that:

- a. The present value of death benefits over the next ten years after the valuation date using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class is less than the present value of death benefits using the valuation basic mortality table corresponding to the valuation table being used for that class.
 - b. The present value of death benefits over the future life of the contracts using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class is less than the present value of death benefits using the valuation basic mortality table corresponding to the valuation table being used for that class.
2. For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter for business valued under the preferred smoker table, the appointed actuary of an insurer shall certify to the commissioner that:
- a. The present value of death benefits over the next ten years after the valuation date using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class is less than the present value of death benefits using the preferred smoker valuation basic mortality table corresponding to the valuation table being used for that class.
 - b. The present value of death benefits over the future life of the contracts using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class is less than the present value of death benefits using the preferred smoker valuation basic mortality table.
 - c. Unless exempted by the commissioner, every authorized insurer using the 2001 CSO preferred class structure table shall annually file with the commissioner, with the national association of insurance commissioners, or with a statistical agent designated by the national association of insurance commissioners and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the national association of

insurance commissioners or by a statistical agent designated by the national association of insurance commissioners and acceptable to the commissioner.

History: Effective January 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-35-02

CHAPTER 45-04-13
VIATICAL SETTLEMENT ADVERTISING

Section

45-04-13-01

Definitions

45-04-13-02

Applicability

45-04-13-03

Disclosure Requirements

45-04-13-01. Definitions.

1. "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, in this state, for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.
2. "Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract.
3. "Commissioner" means the North Dakota insurance commissioner.
4. "Viatical settlement broker" means a person who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.
5. a. "Viatical settlement contract" means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment.

transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

b. "Viatical settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy if:

(1) The loan proceeds are not used solely to pay:

(a) Premiums for the policy; or

(b) The costs of the loan, including interest, arrangement fees, utilization fees and similar fees closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(2) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or

(3) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

c. "Viatical settlement contract" does not include:

(1) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(2) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of the loan or, if there is a default on the loan and the policy is transferred, the further assignment of the policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation;

(3) A loan made by a lender that does not violate North Dakota Century Code chapter 26.1-20.1, provided that the premium finance loan is not described in subdivision a;

(4) An agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;

- (5) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
- (6) A bona fide business succession planning arrangement:
 - (a) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;
 - (b) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or
 - (c) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;
- (7) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
- (8) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this chapter.

6. "Viatical settlement investment agent" means a person who is an appointed or contracted agent of a licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement provider. A viatical settlement investment agent is an agent as defined in North Dakota Century Code section 10-04-02.

- a. A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or insured or have knowledge of the identity of the viator or insured.
- b. A viatical settlement investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement investment agent is an appointed or contracted agent.

7. "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state. "Viatical settlement provider" does not include:
- a. A bank, savings bank, savings and loan association, or credit union;
 - b. A licensed lending institution or premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws, that takes an assignment of a life insurance policy solely as collateral for a loan;
 - c. The issuer of the life insurance policy;
 - d. An authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
 - e. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
 - f. A financing entity;
 - g. A special purpose entity;
 - h. A related provider trust;
 - i. A viatical settlement purchaser; or
 - j. Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.
8. "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. A viator shall not be limited to an owner of a life insurance policy or a certificateholder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except when specifically addressed. "Viator" does not include:
- a. A licensee under this chapter;
 - b. A qualified institutional buyer as defined, respectively, in rule 144A adopted under the Federal Securities Act of 1933 [48 Stat. 74; 14 U.S.C. 77a et seq.], as amended;

- c. A financing entity;
- d. A special purpose entity; or
- e. A related provider trust.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-33.3-12

Law Implemented: NDCC 26.1-33.3-01, 26.1-33.3-12

45-04-13-02. Applicability.

1. This chapter applies to any advertisement of the business of viatical settlements intended for dissemination in this state and which advertisement is disseminated in any manner by or on behalf of a viatical settlement provider or viatical settlement broker required to be licensed under North Dakota Century Code section 26.1-33.3-02.
2. Every viatical settlement provider and viatical settlement broker required to be licensed under North Dakota Century Code section 26.1-33.3-02 shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, are the responsibility of the viatical settlement provider or viatical settlement broker. This requirement does not in any way prohibit enforcement of this chapter against individual agents, brokers, and agencies.
3. This chapter does not apply to viatical settlement investment agents or viatical settlement purchasers who are neither licensees nor required to be licensed under North Dakota Century Code chapter 26.1-33.3 nor to viatical settlement purchase agreements as defined in North Dakota Century Code section 26.1-33.3-01.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-33.3-12

Law Implemented: NDCC 26.1-33.3-01, 26.1-33.3-12

45-04-13-03. Disclosure requirements.

1. The advertising of viatical settlements must be done in a manner to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by viatical settlement licensees.
2. Every viatical settlement provider and viatical settlement broker shall establish and at all times maintain a system of control over the content,

form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement provider or viatical settlement broker, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement provider or viatical settlement broker who disseminates advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement provider or viatical settlement broker.

3. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.
4. Certain viatical settlement advertisements are deemed false and misleading on their face and are prohibited. False and misleading viatical settlement advertisements include the following representations:
 - a. "Guaranteed", "fully secured", "100 percent secured", "fully insured", "secure", "safe", "backed by rated insurance companies", "backed by federal law", "backed by state law", or "state guaranty funds", or similar representations;
 - b. "No risk", "minimal risk", "low risk", "no speculation", "no fluctuation", or similar representations;
 - c. "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers", "tax deferred", or similar representations;
 - d. Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;
 - e. "No sales charges or fees" or similar representations;
 - f. "High yield", "superior return", "excellent return", "high return", "quick profit", or similar representations; and

- g. Purported favorable representations or testimonials about the benefits of viatical settlement contracts as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.
5. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
- a. An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a free-look period that satisfies or exceeds legal requirements, does not remedy misleading statements.
- b. An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.
- c. An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract in order to maintain that policy unless that is the fact.
- d. An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.
- e. The words "free", "no cost", "without cost", "no additional cost", "at no extra cost", or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.
- f. Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In

using testimonials, appraisal, or analysis, a licensee under this chapter makes as its own all the statements contained therein and the statements are subject to all the provisions of this section.

- (1) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement, either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.
 - (2) An advertisement shall not state or imply that a viatical settlement contract has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
 - (3) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.
6. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
 7. An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents insurance producers, policies, services, or methods of marketing.
 8. The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract and if any specific viatical settlement contract is advertised the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.
 9. An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark,

slogan, symbol, or other devise or reference without disclosing the name of the viatical settlement licensee if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.

10. An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.
11. An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the insurance department to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.
12. An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.
13. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.
14. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves, or favors:
 - a. Any viatical settlement licensee or its business practices or methods of operation;
 - b. The merits, desirability, or advisability of any viatical settlement contract;

- c. Any viatical settlement contract; or
 - d. Any life insurance policy or life insurance company.
15. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average timeframe from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.
16. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-33.3-12

Law Implemented: NDCC 26.1-33.3-12

CHAPTER 45-04-14
MILITARY SALES PRACTICES

<u>Section</u>	
<u>45-04-14-01</u>	<u>Definitions</u>
<u>45-04-14-02</u>	<u>Scope</u>
<u>45-04-14-03</u>	<u>Practices Declared False, Misleading, Deceptive, or Unfair on a Military Installation</u>
<u>45-04-14-04</u>	<u>Practices Declared False, Misleading, Deceptive, or Unfair Regardless of Location</u>

45-04-14-01. Definitions.

1. "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component such as the national guard and reserve while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than thirty-one calendar days.
2. "Commissioner" means the North Dakota insurance commissioner.
3. "DoD personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees of the department of defense.
4. "Door to door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.
5. "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.
6. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate life insurance, including annuities.
7. "Insurer" means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.
8. "Known" or "knowingly" means the insurance producer or insurer had actual awareness or in the exercise of ordinary care should have known at the time of the act or practice complained of that the person solicited is a service member.

9. "Life insurance" means insurance coverage on human lives, including benefits of endowment, annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income.
10. "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.
11. "MyPay" is a defense finance and accounting service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.
12. "Service member" means any active duty commissioned or warrant officer or enlisted member of the United States armed forces.
13. "SGLI" means the United States department of veterans affairs servicemembers' group life insurance program of low cost group life insurance for servicemembers on active duty, ready reservists, members of the national guard, members of the commissioned corps of the national oceanic and atmospheric administration and the public health service, cadets and midshipmen of the four service academies, and members of the reserve officer training corps.
14. "Side fund" means a fund or reserve, excluding individually issued annuities, that is part of or otherwise attached to a life insurance policy by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:
 - a. Accumulated value or cash value or secondary guarantees provided by a universal life policy;
 - b. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
 - c. A premium deposit fund which:
 - (1) Contains only premiums paid in advance which accumulate at interest;
 - (2) Imposes no penalty for withdrawal;
 - (3) Does not permit funding beyond future required premiums;
 - (4) Is not marketed or intended as an investment; and
 - (5) Does not carry a commission, either paid or calculated.

15. "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.
16. "United States armed forces" means all components of the army, navy, air force, marine corps, and coast guard.
17. "VGLI" means the United States department of veterans affairs veterans' group life insurance program of post-separation insurance which allows servicemembers to convert their SGLI coverage to renewable term insurance.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-01-08, 28-32-02

Law Implemented: NDCC 26.1-04, 26.1-33-02

45-04-14-02. Scope.

1. This chapter applies to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States armed forces. This rule shall not apply to solicitations or sales involving:
 - a. Credit insurance;
 - b. Group life insurance or group annuities when there is no in-person, face-to-face solicitation of individuals by an insurance producer or when the contract or certificate does not include a side fund;
 - c. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or, when a term conversion privilege is exercised among corporate affiliates;
 - d. Individual stand-alone health policies, including disability income policies;
 - e. Contracts offered by SGLI or VGLI, as authorized by 38 U.S.C. section 1965 et seq.;
 - f. Life insurance contracts offered through or by a nonprofit military association qualifying under section 501(c)(23) of the Internal Revenue Code and which are not underwritten by an insurer; or
 - g. Contracts used to fund;

- (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA):
 - (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, as amended, if established or maintained by an employer:
 - (3) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the Internal Revenue Code:
 - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor:
 - (5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process: or
 - (6) Prearranged funeral contracts.
2. This chapter shall not abrogate the ability of nonprofit organizations or other organizations to educate members of the United States armed forces in accordance with department of defense DoD instruction 1344.07 - personal commercial solicitation on DoD installations or a successor directive.
 3. General advertisements, direct mail, and internet marketing shall not constitute solicitation. Telephone marketing shall not constitute solicitation provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this chapter shall be construed to exempt an insurer or insurance producer from this rule in any in-person, face-to-face meeting established as a result of the solicitation exemptions identified in this subsection.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-01-08, 28-32-02

Law Implemented: NDCC 26.1-04, 26.1-33-02

45-04-14-03. Practices declared false, misleading, deceptive, or unfair on a military installation.

1. The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person,

face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:

- a. Knowingly soliciting the purchase of any life insurance product door to door or without first establishing a specific appointment for each meeting with the prospective purchaser;
 - b. Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary;
 - c. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;
 - d. Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;
 - e. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;
 - f. Posting unauthorized bulletins, notices, or advertisements;
 - g. Failing to present DD form 2885, personal commercial solicitation evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD from 2885; or
 - h. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States armed forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the department of defense or any branch of the United States armed forces.
2. The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and are declared to be false, misleading, deceptive, or unfair:
- a. Using department of defense personnel, directly or indirectly, as a representative, or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or

- b. Using an insurance producer to participate in any United States armed forces-sponsored education or orientation program.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-01-08, 28-32-02

Law Implemented: NDCC 26.1-04, 26.1-33-02

45-04-14-04. Practices declared false, misleading, deceptive, or unfair regardless of location.

1. The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and are declared to be false, misleading, deceptive, or unfair:
 - a. Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States armed forces to direct a service member's pay to a third party for the purchase of life insurance, including using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium. This subdivision does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;
 - b. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:
 - (1) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act [12 U.S.C. 4301 et seq.] and the regulations adopted under it; and
 - (2) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;
 - c. Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement or equivalent or successor form as savings or checking and when the service member has no formal banking relationship as defined in subdivision b;
 - d. Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to

accept direct deposits from a service member with whom it has no formal banking relationship:

- e. Using department of defense personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;
 - f. Offering or giving anything of value, directly or indirectly, to department of defense personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;
 - g. Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for attending any event where an application for life insurance is solicited; or
 - h. Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.
2. The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair:
- a. Making any representation or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the United States government, the United States armed forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include "battalion insurance counselor", "unit insurance advisor", "servicemen's group life insurance conversion consultant", or "veteran's benefits counselor"; or
 - b. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States armed forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the United States government or the United States armed forces.

3. This section does not prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include chartered life underwriter (CLU), chartered financial consultant (ChFC), certified financial planner (CFP), master of science in financial services (MSFS), or masters of science financial planning (MS).
4. The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and are declared to be false, misleading, deceptive, or unfair:
 - a. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or
 - b. Excluding individually issued annuities or misrepresenting the mortality costs of a life insurance product, including stating or implying that the product costs nothing or is free.
5. The following acts or practices by an insurer or insurance producer regarding SGLI, or VGLI are declared to be false, misleading, deceptive or unfair:
 - a. Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI, or VGLI, which is false, misleading, or deceptive;
 - b. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive; or
 - c. Suggesting, recommending, or encouraging a service member to cancel or terminate the servicemember's SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States armed forces.
6. The following acts or practices by an insurer or insurance producer, or both, regarding disclosure are declared to be false, misleading, deceptive, or unfair:
 - a. Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

- b. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;
 - c. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;
 - d. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by section 10 of the Military Personnel Financial Services Protection Act [Pub. L. 109-290; 120 Stat. 1317; 10 U.S.C. 992]; or
 - e. Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:
 - (1) An explanation of any free look period with instructions on how to cancel if a policy is issued; and
 - (2) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first-year cost. A basic illustration that meets the requirements of chapter 45-04-01.1 shall be deemed sufficient to meet this requirement for a written disclosure.
7. The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive, or unfair:
- a. Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;
 - b. Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

- (1) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors, and dependents.
 - (2) "Other military survivor benefits" include the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE health care benefits, survivor housing benefits and allowances, federal income tax forgiveness, and social security survivor benefits.
- c. Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:
- (1) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty:
 - (2) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity, or final expiration; and
 - (3) Which by default diverts or transfers funds accumulated the side fund to pay, reduce, or offset any premiums due.
- d. Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits including endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance;
or
- e. Selling any life insurance product to an individual known to be a service member which excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, such as a double indemnity provision, which may be excluded.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-01-08, 28-32-02

Law Implemented: NDCC 26.1-04, 26.1-33-02

CHAPTER 45-05-05

45-05-05-11. Solicitation by nonresident. Repealed effective January 1, 2008. ~~Risk retention groups and admitted carriers may appoint either resident or nonresident representatives to solicit, negotiate, procure, or provide liability insurance for its members located or resident within this state. However, a risk retention group or purchasing group which purchases insurance from a surplus lines carrier must appoint a resident surplus lines broker pursuant to the requirements of North Dakota Century Code section 26.1-26-17.~~

History: ~~Effective October 1, 1989.~~

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

Law Implemented: ~~NDCC 26.1-46~~

45-05-05-12. Severability. If any section of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this chapter and the application of such section to other persons and circumstances shall not be affected thereby.

History: Effective October 1, 1989; amended effective January 1, 2008.

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

Law Implemented: NDCC 26.1-46

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

We, the undersigned President (or Chief Executive Officer) and Secretary, on behalf of _____, make
(Name of Purchasing Group)
application for registration in North Dakota as a Purchasing Group ("Group") and do hereby affirm that:

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

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

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

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

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

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

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

President or Chief Executive Officer

Secretary

Sworn to before me this _____
day of _____, 19 20 _____,

Notary Public
State of _____
My Commission Expires: _____

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

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

_____ (Name must include the phrase "Risk Retention Group")
located at _____

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

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

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

_____ the sole owner of the Group is

(Give name and address of organization)

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

6. The Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar, or common business,

trade, produce, services, premises or operations (Give general description of business or activities engaged in by Group members):

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

13. The Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner upon a finding of financial impairment, or in a voluntary dissolution proceeding.
14. The Group will comply with the laws of North Dakota concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.
15. The Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner alleging that the Group is in hazardous financial condition or is financially impaired.
16. The Group will provide the following notice, in 10-point type, in any insurance policy issued by the Group:

"NOTICE

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

17. The Group has submitted to the Insurance Commissioner, as part of this application and before it has offered any insurance in North Dakota, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner of its chartering state. The plan or study submitted herewith discloses the name of the state in which the Group is chartered, as well as the Group's principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the Insurance Commissioner any revisions of such plan or study to reflect any changes therein including, but without limitation, additional lines of liability insurance which the Group intends to offer, and any change in the designation of the Group's chartering state.
18. The Group has submitted to the Insurance Commissioner, as part of this application, a copy of the Group's annual financial statement submitted to the state in which it is chartered as an insurance company. The annual financial statement has been certified by an independent public accountant and contains a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. Hereafter, the Group will submit its annual financial statement to the Insurance Commissioner by March 1 of each year.
19. The Group will not solicit or sell insurance to any person in North Dakota who is not eligible for membership in the Group.

20. The Group will not solicit or sell insurance in North Dakota, or otherwise operate in this state, if the Group is financially impaired or is in a hazardous financial condition.

21. The name and address of the broker(s) or agent(s) licensed by the Insurance Commissioner through whom purchases in North Dakota will be effected are as follows:

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

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

President or Chief Executive Officer

Secretary

Sworn to before me this day of _____, 19 20__.

Notary Public, State of:
My Commission Expires:

EXHIBIT A

STATE OF NORTH DAKOTA
DEPARTMENT OF INSURANCE

REGISTRATION OF APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

KNOW ALL MEN BY THESE PRESENTS:

The (name of group), a [risk retention] [purchasing] group authorized to transact liability insurance under the Federal Liability Risk Retention Act of 1986 and Chapter 26.1-46 of the North Dakota Century Code, domiciled in the State of _____ and whose principal place of business is located at (address) _____ (city) _____ (state) _____ (zip code) does hereby constitute, designate and appoint the Insurance Commissioner of the State of North Dakota, and his the commissioner's successors in office, as its true and lawful agent to receive legal documents and service of process issued against said [risk retention] [purchasing] group in the State of North Dakota. This appointment shall be irrevocable, shall be binding upon the group, and its successors in interest, as to the assets and liabilities of the group and shall remain in full force and effect for so long as there is in force any contract or certificate insuring any member [of the risk retention group] [of the purchasing group] in the State of North Dakota or any obligation of the group arising out of its transactions in the State of North Dakota.

The [risk retention] [purchasing] group hereby designates the following person as the person to whom legal documents and process against it served shall be forwarded by the Insurance Commissioner:

_____, _____
(name) (title)
_____, _____
(company or group name) (street address)
_____, _____
(city) (state) (zip code)

IN WITNESS WHEREOF, the said [risk retention] [purchasing] group has caused this appointment to be duly executed this ____ day of _____, 19____.

(SEAL)

(name of group)
BY: _____
[President, Chief Executive Officer, Secretary, Partner, Trustee, or title of the officer or party who under the organization of the group has authority to bind the group with that person's signature]

State of _____)
County of _____) ss

The foregoing instrument was acknowledged and executed before me this
day of _____, 19 20.

NOTARY PUBLIC

(SEAL)

My Commission Expires: _____

CHAPTER 45-06-08

45-06-08-02. Mandated loss ratios - Factors to be considered.

Mandated loss ratio benefits under the policies specified in section 45-06-08-01 must return benefits to group policyholders in the aggregate of not less than ~~seventy-five~~ seventy percent of premium received and to individual policyholders in the aggregate of not less than ~~sixty-five~~ fifty-five percent of premium received. Association group business which is marketed to individuals and individually underwritten and issued is considered individual coverage for loss ratio purposes. These minimum standards must be on the basis of incurred claims experienced and earned premiums for the entire period for which rates are computed to provide coverage in accordance with accepted actuarial principles and practices. In evaluating the experienced loss ratio, due consideration must be given to all relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;
3. Experienced and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments, or dividends;
7. Renewability features;
8. Interest; and
9. Policy reserves.

History: Effective July 1, 1994; amended effective March 1, 2004; January 1, 2008.

General Authority: NDCC 26.1-36-37.2

Law Implemented: NDCC 26.1-36-37.2

**CHAPTER 45-09-01
SURPLUS LINES INSURANCE**

Section	
45-09-01-01	Definitions
45-09-01-02	Surplus Lines Insurance Producer Application
45-09-01-03	Surplus Lines Insurance Producer May Conduct Search
45-09-01-04	Presumption - Diligent Search
45-09-01-05	Other Acceptable Lines of Coverage
45-09-01-06	Surplus Lines Affidavit - Time for Filing
45-09-01-07	Surplus Lines Affidavit - Limits on Availability
45-09-01-08	Additional Policy Endorsement Requirement
45-09-01-09	Statement of Taxable Premiums

45-09-01-02. Surplus lines insurance producer application. The insurance commissioner will not issue a surplus lines insurance producer's license until the applicant has met the requirements of North Dakota Century Code section 26.1-26-17 and has completed and filed with the commissioner a completed application for a surplus lines insurance producer license. (Appendix I)

History: Effective January 1, 1982; amended effective December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-26-49, 26.1-44-09

Law Implemented: NDCC 26.1-26-17, 26.1-26-18

45-09-01-04. Presumption - Diligent search. A presumption that a diligent search has been made by the insured and that the insured was unable to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state is created when the insurance, contract, or bond is written in one of the categories set out in Appendix H I.

History: Effective January 1, 1982; amended effective December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

45-09-01-05. Other acceptable lines of coverage. The categories designated in Appendix H I are not to be considered as the only lines of coverage in which unauthorized insurers may be used. Other categories of coverage not listed may be acceptable because of special underwriting considerations, i.e., losses, high exposure, etc. Any exceptions must be fully explained on the surplus lines affidavit and approved by the insurance commissioner.

The securing of advantage as to lower premium rates or as to the terms of the insurance contract do not constitute justification nor are they special underwriting

considerations sufficient to allow the surplus lines broker to use an unauthorized company nor lines of coverage other than those designated in Appendix H I.

History: Effective January 1, 1982; amended effective December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

45-09-01-06. Surplus lines affidavit - Time for filing. Before a surplus lines insurance producer procures, affects, or issues any insurance policy, indemnity contract, or surety bond, the surplus lines insurance producer shall execute, personally sign, and file an affidavit in acceptable form with the office of the commissioner (~~Appendix III~~). An affidavit will be deemed filed with the commissioner if it is mailed to the commissioner's office within ~~fifteen~~ sixty days of the effective date of the policy.

History: Effective January 1, 1982; amended effective December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

45-09-01-09. Statement of taxable premiums. Surplus lines insurance producers are required by North Dakota Century Code section 26.1-44-06 to file annually a statement of taxable premiums received by that surplus lines insurance producer (~~Appendix IV~~).

History: Effective January 1, 1982; amended effective December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-06

APPENDIX I

STATE OF NORTH DAKOTA
DEPARTMENT OF INSURANCE
600 EAST BOULEVARD AVENUE
BISMARCK, ND 58505

APPLICATION FOR SURPLUS LINES INSURANCE PRODUCER'S LICENSE

FOR _____
(Surplus Lines Insurance Producer's Name)

~~Under the provisions of North Dakota Century Code chapters 26.1-26 and 26.1-44, application is hereby made for a surplus lines broker's license.~~

~~The applicant hereby affirms that applicant has read, and is familiar with, the provisions of North Dakota Century Code chapters 26.1-26 and 26.1-44, which govern the placement of insurance with nonadmitted companies, in particular the following requirements:~~

- ~~1. Licenses expire annually on April thirtieth, and must be renewed on or before May first if they are to continue uninterrupted.~~
- ~~2. On each risk placed under a surplus lines license, the surplus lines insurance producer must make affidavit, in a form acceptable to the insurance commissioner that after reasonable diligent search, the risk cannot be placed with a licensed company.~~
- ~~3. Each policy issued under a surplus lines license must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES INSURANCE PRODUCER LICENSE OF _____. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance producer shall properly complete the endorsement by typing or printing the surplus lines insurance producer's full name in the space provided and shall sign and date the endorsement.~~

4. ~~The surplus lines insurance producer is required to keep a separate record of business transacted under the surplus lines license, and on or before April first of each year, must file with the insurance commissioner a statement for the preceding calendar year ending on December thirty-first, giving the name of the insured to whom each policy has been issued, the name and home office of each company issuing any such policy, the amount of such insurance, the rates charged therefor, the gross premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, together with such other information and upon such form as required by the insurance commissioner.~~

5. ~~At the time of filing the above statement, the surplus lines insurance producer is required to pay the tax (current rate one and three-fourths percent) on the premium so written on risks or exposures located in this state.~~

6. ~~The surplus lines insurance producer is personally responsible for investigating the financial condition of the nonadmitted insurer before placing the insurance therewith. The company must have capital and surplus amounting to at least the amount required of a licensed carrier transacting the same class of business.~~

7. ~~Before a company can be qualified as a nonadmitted surplus lines outlet, it must appoint the insurance commissioner in writing to be its true and lawful attorney, upon whom legal process in any action or proceeding against it may be served.~~

8. ~~The insurance commissioner may inspect and examine at any time a surplus lines insurance producer's records of business transacted under the surplus lines license.~~

9. ~~The penalty for making a false affidavit includes revocation of license, and failure to make and file the required annual statement or to pay the taxes required prior to May first can result in a fine of twenty-five dollars per day for each day of the delinquency.~~

~~Remittance of ten dollars covering the statutory fee for issuance of the surplus lines license is attached hereto.~~

Signature _____

Print Name _____

Date	Business Address
	City, State, Zip Code
	Telephone Number

APPENDIX II I

Categories of Acceptable Surplus Lines Coverage

The following categories of surplus lines coverage are not the only lines which may be written in North Dakota. Other lines of coverage not on this list may be acceptable because of special underwriting considerations. Any exceptions must be fully explained on the surplus lines affidavit and approved by the insurance commissioner.

There is a presumption that the insured is unable, after diligent search, to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state if the coverage written is in an approved category.

These categories may be changed from time to time at the discretion of the insurance commissioner subject to provisions of North Dakota Century Code chapter 28-32, the Administrative Agencies Practice Act.

1. Fiduciary liability.
2. Professional liability (E & O) except for hospitals.
3. Directors and officers.
4. Ocean marine cargo, liability and hull.
5. Hazardous cargo and short-term trip transit.
6. Bridges (large).
7. Heavy woodworking property (unprotected, high-value sawmills).
8. Product liability (hazardous).
9. Ski lifts and tows' liability.
10. Fireworks, ammunition, fuse, cartridges, power, nitroglycerine, explosive gases.
11. Environmental impairment - pollution.
12. Kidnap ransom.
13. Oil and gas liability and marine.
14. Livestock mortality (high values and unusual).

15. Short tail (hole-in-one, 300 bowling score, etc.).
16. Large utilities (generation, transmission).
17. Building demolition and moving.
18. Mono line liquor legal liability.
19. Surcharged fire and allied lines excluding uncontrolled marine.
20. High-value substandard private passenger automobile.
21. Commercial automobile physical damage coverage in excess of rating organizations' filed rates.
22. Any excess liability coverages.
23. Day care liability insurance coverages.

History: Amended effective February 1, 1983; November 1, 1987; December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

APPENDIX III

Surplus Lines Affidavit

~~STATE OF NORTH DAKOTA)~~
~~_____) ss.~~
~~COUNTY OF _____)~~

~~_____ being first sworn on oath deposes and says:~~
~~Name of Surplus~~
~~Lines Insurance Producer~~

~~THAT the affiant is an insurance producer currently licensed under the North Dakota statutes, for the kind of insurance required;~~

~~THAT the insured is unable, after diligent search, to procure the insurance from a company authorized to do business in this state; and~~

~~THAT in order to procure the required insurance for the insured; it has been necessary to place part/all of same in a company/companies not licensed in this state.~~

- ~~1. Name of insured.~~
- ~~2. Address of insured.~~
- ~~3. D.B.A. - Name and address if different from above.~~
- ~~4. Location and description of risk.~~
- ~~5. Amount of coverage or limit of liability.~~
- ~~6. Date of application.~~
- ~~7. Term of policy.~~
- ~~8. Premium.~~
- ~~9. Surplus lines category # _____. (If no category applicable, describe the risk in greater detail providing justification for the use of an unauthorized carrier. The description and justification should be set out on a separate sheet of paper attached to and incorporated into the affidavit if there is insufficient room below.)~~
- ~~10. Name of producer if the business is placed with you by another insurance producer.~~
- ~~11. Unauthorized carrier used (complete name and address).~~

Signature of Surplus
Lines Insurance Producer

Subscribed and sworn to before me this
_____ day of _____, 20__ (Seal)

Notary Public

APPENDIX IV



STATEMENT OF TAXABLE PREMIUMS RECEIVED ON NORTH DAKOTA BUSINESS
NORTH DAKOTA INSURANCE DEPARTMENT
SFN 17419 (8-01)

Gross Direct Premiums received during calendar year _____, less return premiums, refunds, and abatements	\$
Less Dividends paid to policyholders or used in reduction of premiums	\$
Total: Taxable Premiums Balance	\$
Tax Liability (1 3/4% of Taxable Premiums)	\$

Surplus Lines Insurance Producer	Surplus Lines License Number
----------------------------------	------------------------------

I hereby certify that I am the above Surplus Lines Insurance Producer and that the foregoing is a true and correct statement.

Signature

CHAPTER 45-12-01

45-12-01-01. Definitions. As used in this article:

1. "Alteration" means a structural modification of or a departure from an original or existing construction.
2. "Apartments" means all multiple dwellings, including condominiums.
3. "Approved" means approved by the commissioner.
4. "A.S.M.E. Code code" means the ~~Boiler~~ boiler and ~~Pressure Vessel Construction Code~~ pressure vessel construction code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1, ~~2,~~ and 3), IX, and X, ~~2004~~ 2007 edition and section VIII, (division 2), 2004 edition, are hereby adopted by the commissioner and incorporated by reference as a part of this article. A copy of the ~~American Society of Mechanical Engineers Code~~ society of mechanical engineers code is on file at the office of the boiler inspection program. The ~~American Society of Mechanical Engineers Code~~ society of mechanical engineers code may be obtained from the American society of mechanical engineers headquarters at 3 park avenue, New York, New York 10016-5990.
5. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for heating or vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves, as provided under North Dakota Century Code section 26.1-22.1-01.
6. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate may be issued under North Dakota Century Code section 26.1-22.1-10.
7. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.
8. "Chief inspector" means the chief boiler inspector appointed by the commissioner to serve in the capacity as stated by law.
9. "Commissioner" means the insurance commissioner of North Dakota.
10. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector

qualified to take such action who has applied a stamping or marking designating its rejection.

11. "Deputy inspector" means a boiler inspector or inspectors employed by the commissioner to assist the chief inspector in making inspections of boilers.
12. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.
13. "External inspection" means an inspection made when a boiler is in operation.
14. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermic welding is also classed as fusion.
15. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it must be deemed the same as a power boiler.
16. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and includes all service-type and domestic-type water heaters not otherwise exempt by North Dakota Century Code section 26.1-22.1-06.
17. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.
18. "Internal inspection" means an inspection made when a boiler is shut down and handholes and manholes are opened for inspection of the interior.
19. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [103 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius] for water.
20. "Major repair" means a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in the national board inspection code.

21. "Miniature boiler" means any boiler that does not exceed any of the following limits:
 - a. Sixteen-inch [40.64-centimeter] inside diameter of shell.
 - b. Twenty square feet [1.86 square meter] heating surface.
 - c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.
 - d. One hundred pounds per square inch gauge [689.48 kilopascals] maximum allowable working pressure.
22. "National board" means the national board of boiler and pressure vessel inspectors, 1055 crupper avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American society of mechanical engineers code.
23. "National board inspection code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The national board inspection code, 2004 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 crupper avenue, Columbus, Ohio 43229.
24. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.
25. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamping, the American society of mechanical engineers stamp, or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.
26. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler which is not specifically exempt under North Dakota Century Code section 26.1-22.1-06 within North Dakota.
27. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [103 kilopascals] by the direct application of heat.
28. "Reciprocal commission" means a commission issued by the commissioner to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have

passed the written examination prescribed by the national board and are employed by an accredited national board owner/user inspection organization.

29. "Reinstalled boiler" means a boiler removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
30. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
31. "Repair" is a restoration of any damaged or impaired part to an effective and safe condition.
32. "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.
33. "Secondhand pressure vessel" means a pressure vessel of which both the location and ownership have been changed after primary use.
34. "Service-type or domestic-type water heater" means a fired water heater of either instantaneous or storage type, used for heating or combined heating and storage of hot water to be used exclusively for domestic or sanitary purposes, with temperatures not exceeding two hundred ten degrees Fahrenheit [98.68 degrees Celsius], and a heat input not in excess of two hundred thousand British thermal units [2.11×10^5 to the 8th power joules] per hour, and pressure not to exceed one hundred sixty pounds per square inch [1103.17 kilopascals].
35. "Special inspector" means an inspector regularly employed by an accredited national board authorized inspection agency or an inspector who has passed the national board examination and is employed by an accredited national board owner/user inspection organization.
36. "Standard boiler" means a boiler that bears the stamp of North Dakota or of another state that has adopted a standard of construction equivalent to that required by this article or a boiler that bears the national board stamping or American society of mechanical engineers stamp.
37. "State of North Dakota boiler construction code" is used to designate the accepted reference for construction, installation, operation, and inspection of boilers and will be referred to as this article. Anything not amended or specifically covered in this article must be considered the same as the American society of mechanical engineers code.

38. "Steam traction engines" means boilers on wheels which are used solely for show at state fairs and other exhibitions in which the public is invited to attend.

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-05

45-12-05-16. Factors of safety. The minimum factor of safety may not be less than four ~~and five-tenths~~ for existing installations. The commissioner authorizes an inspector to increase the factor of safety if the condition of the boiler or pressure vessel warrants it. If the owner or user does not concur with the inspector's decision, the owner or user may appeal to the commissioner who may request a joint inspection by the chief boiler inspector and the deputy inspector or special inspector. Each inspector shall render the inspector's report to the commissioner, and the commissioner shall render the final decision, based upon the data contained in all the inspector's reports.

History: Effective June 1, 1994; amended effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-10

45-12-10-02. Application of standards - Repairs. These rules apply only to new construction, except as noted below:

1. Reinstalled pressure vessels must meet the rules for new construction. Exception: National board registration is required only for those vessels ordered and constructed after November 1, 1987.
2. Repairs to unfired pressure vessels and to safety and safety relief valves for those vessels:
 - a. Repairs to safety valves and safety relief valves must be such that valve function is not impaired and the repaired valve will perform to the standards for which it was originally constructed. It is recommended that these repairs be made by a firm in possession of a valid "VR" certificate of authorization from the national board of boiler and pressure vessel inspectors.
 - b. Repairs to unfired pressure vessels must be such that vessels repaired will be returned to a safe and satisfactory operating condition, provided there is not deviation from the original design. It is recommended that these repairs be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.
 - c. The national board inspection code (~~ANSI/NB-23, 2004 edition~~) and the American petroleum institute code (ANSI/API-510, ~~1997~~ 2004 edition) cover repair and alteration procedures. ANSI/API-510 may be used to cover the maintenance inspection, repair, alteration, and rerating procedure for pressure vessels used by the petroleum and chemical process industries. It is intended that ANSI/NB-23 cover installations other than those covered by ANSI/API-510.
3. Alterations to unfired pressure vessels:
 - a. Alterations, as defined in ANSI/NB-23, must be made by a national board "R" certificate holder.
 - b. Alterations may also be made by an organization operating under the provisions of ANSI/API-510, provided the alteration is within the scope of ANSI/API-510.

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

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-12-11
HOBBY BOILER OPERATOR LICENSING

<u>Section</u>	
<u>45-12-11-01</u>	<u>Definitions</u>
<u>45-12-11-02</u>	<u>License Required</u>
<u>45-12-11-03</u>	<u>Existing Operator Licenses</u>
<u>45-12-11-04</u>	<u>Application</u>
<u>45-12-11-05</u>	<u>Term of the License</u>
<u>45-12-11-06</u>	<u>License Renewal</u>
<u>45-12-11-07</u>	<u>Hobby Boiler Operation</u>
<u>45-12-11-08</u>	<u>License Denial or Revocation</u>

45-12-11-01. Definitions.

1. "Commissioner" means the insurance commissioner.
2. "Hobby boiler" means a hand-fired steam boiler that operates above fifteen pounds per square inch [103.42 kilopascals] gauge pressure operated during a parade, an exhibition, or a threshing show where the public is invited and not otherwise exempt from North Dakota Century Code section 26.1-22.1-06.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-09, 26.1-22.1-14

45-12-11-02. License required.

1. Except as provided in subsection 3, no individual may operate a hobby boiler in this state unless licensed under this chapter.
2. The commissioner may not issue a hobby boiler license to an individual unless the individual:
 - a. Files a written application with the commissioner on a form prescribed by the commissioner;
 - b. Passes an examination developed by the commissioner and pays an examination fee of twenty-five dollars;
 - c. Provides evidence of the successful completion of one hundred twenty hours of apprenticeship training with a licensed hobby boiler operator. Training must include the following:
 - (1) Basic boiler, steam engine, and piping fundamentals;
 - (2) Initial firing of the boiler with wood or coal or both and warmup of the steam engine;

- (3) Basic operation of the boiler and steam engine to include operation of:
 - (a) Blower valve;
 - (b) Main steam valve;
 - (c) Throttle valve and governor;
 - (d) Injector and pump operation to include feedline stop and check valves;
 - (e) Gauge glass, gauge cocks, and water column;
 - (f) Safety valve and fusible plug basics;
 - (g) Blowdown valve use; and
 - (h) Steam engine operation and drain valves;
- (4) Normal shutdown procedures;
- (5) Emergency shutdown procedures;
- (6) Driving and steering to include the use of the reversing lever and stopping procedures; and
- (7) Lining up for belt operation.

Attendance at one hobby boiler training seminar approved by the commissioner may substitute for up to forty hours of apprenticeship training;

- d. Is at least sixteen years of age; and
 - e. Pays a twenty-five dollar license fee.
3. A license is not required under this chapter if the hobby boiler operator is not a resident of this state and is qualified by reason of possessing a valid license from another state or Canadian province and this license has been approved by the commissioner.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-09, 26.1-22.1-14

45-12-11-03. Existing operator licenses. An individual who has operated a hobby boiler within this state as of July 1, 2007, may receive a license without complying with subdivisions b and c of subsection 2 of section 45-12-11-02.

"Operated a hobby boiler" means demonstrated operating experience in boiler operations and maintenance that include sufficient training, observation, and personal participation to enable the individual to safely operate a hobby boiler.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-09, 26.1-22.1-14

45-12-11-04. Application. An individual applying for a hobby boiler operator license must complete an application in the form provided by the commissioner, pay any required fee, and provide a notarized affidavit signed by a licensed North Dakota hobby boiler operator attesting to the applicant's completion of one hundred twenty hours of training regarding the operation of a hobby boiler. The notarized affidavit need not be provided if it has already been provided by the applicant in connection with a previous application or if the applicant is applying for an existing operator license under section 45-12-11-03.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-09, 26.1-22.1-14

45-12-11-05. Term of the license. A hobby boiler operator license is valid for six years except that an initial license expires on January first of the year after the license has been in effect for five years.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-09, 26.1-22.1-14

45-12-11-06. License renewal. An individual may apply to renew a hobby boiler operator license for six years by submitting to the commissioner a renewal request along with a twenty-five dollar renewal fee in advance of the license expiration date.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-09, 26.1-22.1-14

45-12-11-07. Hobby boiler operation.

1. Notwithstanding any other provision of this section and with the exception of the operation of miniature boilers, two licensed operators or a licensed operator and an apprentice operator must be in attendance on a hobby boiler during a parade or plowing demonstration or during belt operation. At least one licensed operator must be in attendance on a hobby boiler at all other times except when it is considered safe for a hobby boiler operator to leave the hobby boiler as described in subsection 2.

2. A hobby boiler operator is required to be in attendance on a hobby boiler any time the steam pressure is above fifteen pounds per square inch [103.42 kilopascals] gauge and rising unless:
 - a. The water is above the one-third level in the gauge glass;
 - b. The fire is extinguished or banked;
 - c. All draft doors are closed;
 - d. The main steam outlet valve or dome valve is closed; and
 - e. The boiler pressure is at least twenty pounds per square inch [137.90 kilopascals] gauge below the safety valve set pressure and the boiler pressure is decreasing.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-09, 26.1-22.1-14

45-12-11-08. License denial or revocation.

1. The commissioner may deny an application for a hobby boiler operator's license if the applicable requirements of North Dakota Century Code chapter 26.1-22.1 and this chapter are not met or if an applicant is not capable of operating a hobby boiler in a safe manner.
2. The commissioner may revoke a hobby boiler operator's license if the applicable requirements of North Dakota Century Code chapter 26.1-22.1 and this chapter are not met, if an operator operates a hobby boiler carelessly or negligently or otherwise endangers the health and safety of others.
3. An applicant or licenseholder may appeal the denial or revocation of a license by filing a written appeal with the commissioner within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing may be conducted in the manner provided in North Dakota Century Code chapter 28-32.

History: Effective January 1, 2008.

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-09, 26.1-22.1-14

TITLE 67
DEPARTMENT OF PUBLIC INSTRUCTION

JANUARY 2008

CHAPTER 67-11-09

67-11-09-03. Credential standards. Each applicant for a teacher of students in early childhood special education credential must meet the standards in this section. The documentation on each standard must be verified by the department before an early childhood special education credential is issued.

1. ~~Prior to August 1, 2003, the standards are as follows:~~
 - a. ~~An applicant must hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or kindergarten education.~~
 - b. Areas of preparation of early childhood special education teachers include the coursework listed in this subdivision. The coursework must be taken primarily at graduate level from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subdivision. Because not all of these are course titles, applicants must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as early childhood special education teachers must hold a general elementary or kindergarten, or early childhood educator's professional license. The credential requires at least one practicum working with preschool children with disabilities, as outlined by the applicant's college or university. The practicum in working with preschool children with disabilities must be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement. Including the hours attributable to the practicum, the applicant must take the equivalent of at least twenty-four semester hours of graduate credit. The additional credits must include coursework in each of these areas:

- (1) a. Exceptional children and youth.
- (2) b. Assessment of preschool children with disabilities.
- (3) c. Child development.
- (4) d. Home and school relations or parents, the school, and community agencies.
- (5) e. Characteristics of preschool children with disabilities.
- (6) f. Methods and materials in education of preschool children with disabilities.
- (7) g. An additional course in education of preschool children with disabilities.

2. ~~After July 31, 2003, an~~ An applicant must:

- a. Have a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary ~~or~~ kindergarten, or early childhood education; and
- b. Meet education standards and practices board specialty area standards for early childhood special education as set out in North Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

History: Effective February 1, 2000; amended effective July 1, 2003; January 1, 2008.

General Authority: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

Law Implemented: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

CHAPTER 67-11-10

67-11-10-03. Credential standards. Each applicant for a teacher of students with emotional disturbance credential must meet the standards in this section. The documentation on each standard must be verified by the department before any special education credential is issued. The standards are as follows:

1. ~~Prior to August 1, 2003:~~
 - a. ~~An applicant must hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.~~
 - b. Areas of preparation of teachers in emotional disturbance include the coursework listed in this subdivision. The coursework must be taken primarily at the graduate level from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subdivision. Because not all of these are course titles, applicants must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as emotional disturbance teachers must hold either an elementary, middle level, or secondary educator's professional license. Emotional disturbance teachers with a secondary educator's professional license must have an elementary mathematics methods and an elementary reading methods course and must complete a practicum in emotional disturbance as outlined by the applicant's college or university. The final practicum in working with children with emotional disturbance must be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement. Including the hours attributable to the practicum, the applicant must take the equivalent of at least twenty-four semester hours of graduate credit. The additional credits must include coursework in each of these areas:
 - (1) Exceptional children and youth.
 - (2) Introduction to the area of emotional disturbance, which includes psychopathology of childhood and adolescence.
 - (3) Methods of teaching children with emotional disturbance.
 - (4) Developmental psychology.

- (5) Behavior management, which typically includes a study of student reaction to frustration, response to failure, emotional problems, and ways of managing problems in the classroom.
 - (6) Assessment and test interpretation of children and youth with disabilities. This course must contain considerable experience in the use of information from tests as they relate to curriculum, adjustment, and behavior.
 - (7) Methods and materials in specific learning disabilities. It is typical that the course will describe the intent of materials, modifying and adapting materials, problem-solving methods, interventions including behavior modification and other applied learning theory; or specific learning disability practicum.
 - (8) Interdisciplinary and community resources and consultation skills.
 - (9) Family or home school relations.
 - (10) Guidance or educational alternatives.
- e. b. For students completing a four-year undergraduate degree from a university with appropriate accreditation in this area, two additional graduate-level courses will be required and must include an advanced seminar in emotional disturbance and emotional disturbance practicum.

2. ~~After July 31, 2003, an~~ An applicant must have:

- a. A valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and
- b. Meet education standards and practices board specialty area standards for teachers of students with emotional disturbance as set out in North Dakota teacher education program approval

standards 2000 with 2002 revisions adopted effective August 1, 2002.

History: Effective February 1, 2000; amended effective July 1, 2003; January 1, 2008.

General Authority: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

Law Implemented: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

67-11-10-04. Types of credentials.

1. The professional credential is issued and is valid for the same period as the educator's professional license.
2. Tutor in training (~~available only until July 1, 2007~~). A letter of approval for a tutor in training is issued and is valid for one school year. The letter of approval may be renewed for up to three consecutive years. Persons seeking authorization to work under a tutor in training certification approval as an emotional disturbance teacher must:
 - a. Have an offer of employment or be employed as a teacher of students with emotional disturbance in a North Dakota school; and
 - b. Provide documentation of:
 - (1) Two school years of general education teaching experiences;
 - (2) Current teacher certification or licensure;
 - (3) A program of study based on the standards identified in section 67-11-10-03 outlined by a college or university with an accredited training program;
 - (4) Provide a document prepared by the school district that describes the need for the position and the plan of supervision of the tutor in training;
 - (5) A statement signed by the proposed supervisor who must be certified as an emotional disturbance teacher in North Dakota; and

- (6) A copy of current transcripts documenting successful completion of a minimum of eight semester hours of applicable coursework.

History: Effective February 1, 2000; amended effective July 1, 2003; January 1, 2008.

General Authority: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

Law Implemented: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

CHAPTER 67-11-13

67-11-13-03. Credential standards. Each applicant for a teacher of students with specific learning disabilities credential must meet the standards in this section. The documentation on each standard must be verified by the department before any special education credential is issued.

1. ~~Prior to August 1, 2003, the standards are as follows:~~

a. ~~An applicant must hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.~~

b. Areas of preparation of teachers in specific learning disabilities include the coursework listed in this subdivision. The coursework must be taken primarily at the graduate level from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subdivision. Because not all of these are course titles, applicants must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as specific learning disabilities teachers must hold either a general elementary, middle level, or secondary educator's professional license. Specific learning disabilities teachers with a secondary educator's professional license must have an elementary mathematics methods and an elementary reading methods course. The credential requires at least one practicum working with children with specific learning disabilities after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement. Including the hours attributable to the practicum, the applicant must take the equivalent of at least twenty-four semester hours of graduate credit. The additional credits must include coursework in each of these areas:

- (1) Exceptional children and youth.
- (2) Characteristics of specific learning disabilities.
- (3) Assessment and interpretation of children and youth with disabilities. This must contain considerable experience in the use of information from tests as they relate to curriculum, adjustment, and behavior.

- (4) Methods and materials in specific learning disabilities. It is typical that the course will describe the intent of materials, modifying and adapting materials, problem-solving methods, interventions including behavior modification, and other applied learning theory.
 - (5) Developmental psychology or language development and disorders.
 - (6) Behavior management. The course typically includes a study of student reaction to frustration, response to failure, emotional problems, and ways of managing problems in the classroom.
 - (7) Corrective reading. Undergraduate hours in corrective reading must include supervised practicum.
- (e) b. For students completing a four-year undergraduate degree from a university with appropriate accreditation in this area, two additional graduate-level courses will be required and must include an advanced seminar in specific learning disabilities and specific learning disabilities practicum.

2. ~~After July 31, 2003, an~~ An applicant must have:

- a. ~~An applicant must hold a~~ A valid North Dakota educator's professional license issued by the education standards and practices board based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary, middle level, or secondary education; and
- b. Meet education standards and practices board specialty area standards for this specialty as set out in North Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

History: Effective February 1, 2000; amended effective July 1, 2003; January 1, 2008.

General Authority: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

Law Implemented: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

67-11-13-04. Types of credentials.

- 1. The professional credential is issued and is valid for the same period as the educator's professional license.
- 2. Tutor in training (~~available only until July 1, 2007~~). A letter of approval is issued and is valid for one school year including the following summer.

The letter of approval may be renewed for up to three consecutive years. Persons seeking authorization to work under a tutor in training certification approval as a specific learning disabilities teacher must:

- a. Have an offer of employment or be employed as a specific learning disabilities teacher in a North Dakota school; and
- b. Provide documentation of:
 - (1) Two school years of general education teaching experiences;
 - (2) A current educator's professional license;
 - (3) A program of study based on the standards identified in section 67-11-13-03 outlined by a college or university with an accredited training program;
 - (4) Provide a document prepared by the school district that describes the need for the position and the plan of supervision of the tutor in training;
 - (5) A statement signed by the proposed supervisor who must be certified as a specific learning disabilities teacher in North Dakota; and
 - (6) A copy of current transcripts documenting successful completion of a minimum of eight semester hours of applicable coursework.

History: Effective February 1, 2000; amended effective July 1, 2003; January 1, 2008.

General Authority: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

Law Implemented: NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

CHAPTER 67-11-16

67-11-16-03. Credential standards. An applicant for a special education strategist credential must meet the standards set out in this section. The documentation on each standard must be verified by the department before a special education strategist credential is issued. The standards are as follows:

1. An applicant must hold a valid elementary, middle level, or secondary North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-17 and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or an endorsement in elementary, middle level, or secondary education.
2. Areas of preparation of teachers in special education strategist include the coursework listed in this subsection. The coursework must be taken primarily at the graduate level, from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subsection. Because not all of these are course titles, applicants must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as special education strategists must hold either an elementary, middle level, or secondary educator's professional license. Special education strategists with a middle level or secondary educator's professional license must have an elementary mathematics methods course and an elementary reading methods course and must complete a practicum as outlined by the applicant's college or university and required in subsection 3. The credential requires at least thirty semester hours of graduate credit. The credits must include coursework in each of these areas:
 - a. Exceptional children and youth;
 - b. Transition to adult life;
 - c. Assessment, program planning, special needs students;
 - d. Introduction to learning and behavior problems;
 - e. Practicum in school problems, special education;
 - f. Inclusive methods;
 - g. Behavior management for special needs students;
 - h. Collaborative relationships;
 - i. Special education law;

- j. Assistive technology; and
 - k. Advanced assessment.
3. Each candidate for a credential must also fulfill each of the following:
- a. For specific learning disability:
 - (1) Advanced methods, specific learning disability.
 - (2) Practicum, specific learning disability, which must be taken after other qualifications are complete.
 - b. For emotional disturbance:
 - (1) Advanced methods, emotional disturbance.
 - (2) Practicum, emotional disturbance, which must be taken after other qualifications are complete.
 - c. For mental retardation:
 - (1) Advanced methods, mental retardation.
 - (2) Practicum, mental retardation, which must be taken after other qualifications are complete.

History: Effective November 1, 2002; amended effective November 19, 2003; July 1, 2006; January 1, 2008.

General Authority: NDCC 15.1-02-16(14), 15.1-18-05, 15.1-32-09

Law Implemented: NDCC 15.1-02-16(14), 15.1-18-05, 15.1-32-09; Pub. L. 108-446, §612(a)(14)

67-11-16-04. Types of credentials. The professional credential is issued and is valid for the same period as the educator's professional license. A provisional credential is available under North Dakota Century Code section 15.1-18-06.

Tutor in training (~~available only until July 1, 2007~~). A letter of approval for a tutor in training is issued and is valid for one school year, including the following summer. The letter of approval may be renewed up to three consecutive years. Persons seeking authorization to work under a tutor-in-training ~~certification approval~~ as a special education strategist must:

- 1. Have an offer of employment to be employed as a special education strategist in a North Dakota school; and
- 2. Provide documentation of:
 - a. Two school years of general education teaching experiences;

- b. A current educator's professional license;
- c. A program of study based on the standards identified in section 67-11-17-03 outlined by a college or university with an accredited training program;
- d. Provide a document prepared by the school district which describes the need for the position and the plan of supervision of the tutor in training;
- e. A statement signed by the proposed supervisor who must be certified as a special education strategist; and
- f. A copy of current transcripts documenting successful completion of a minimum of eight semester hours of applicable coursework.

History: Effective November 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 15.1-02-11, 15.1-18-05, 15.1-18-06, 15.1-32-09

Law Implemented: NDCC 15.1-02-11, 15.1-18-05, 15.1-18-06, 15.1-32-09;
20 USC 1412(a)(14)

CHAPTER 67-23-01

67-23-01-01. Definitions. As used in this article, the following definitions apply:

1. ~~"Department" means the department of public instruction.~~
2. ~~"Free appropriate public education" means special education and related services, described in an individualized education program plan, and provided to children in the least restrictive environment.~~
3. ~~"Individualized education program" or "IEP" means an individualized education program, identifying the educational service required by the student with disabilities and developed for each student with disabilities by a multidisciplinary team~~ a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA section 614(d) [20 U.S.C. 1414(d)].
4. ~~2. "Individuals With Disabilities Education Act" or "IDEA" means a federal special education law that requires school districts to provide a free appropriate public education to eligible children with disabilities (20 USC 1400-1420) the Individuals With Disabilities Education Improvement Act of 2004, Public Law 108-446 [118 Stat. 2647; 20 U.S.C. 1400-1420].~~
5. ~~3. "Least restrictive environment" means that to the maximum extent appropriate students, children with disabilities are educated with nondisabled peers and that the setting where students with disabilities are educated is as close as possible to each student's home children who are not disabled and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.~~
6. ~~4. "Local education agency" means a school district or multidistrict special education program organized under the auspices of the superintendent which may apply for, receive, administer, and expend state and federal funds for special education, multidistrict special education unit organized under North Dakota Century Code chapter 15.1-33, or other legally constituted public authority for administrative control or direction of, or to perform a service function for, public elementary or secondary schools.~~
7. ~~5. "Multidisciplinary team" means a team of professionals and parents which develops an IEP for a student with disabilities.~~
8. ~~6. "Multidistrict special education unit" means that more than one school district organizes for the purposes of planning and coordinating special education and related services~~ a public corporation organized under

North Dakota Century Code chapter 15.1-33 for purposes of planning and delivering special education and related services.

- 9- 7. "Nonsectarian" means not affiliated with or restricted to a particular religion.
- 40- 8. "Organization" includes school districts, multidistrict local education agencies, child care centers, vocational education centers, private or public residential facilities, counties, and nonprofit agencies.
- 11- ~~"Part B of IDEA" means the Individuals With Disabilities Education Act, Part B. IDEA is federal legislation enacted and amended as Public Law 91-230 and Public Law 105-17 (20 USC 1400-1420). Part B of IDEA is codified at 20 USC 1411-1420.~~
- 42- 9. "Related services" means transportation and any developmental, corrective, or supportive services needed to help the a student with disabilities to benefit from special education.
- 43- 10. "Resident district" means the school district of residence of the ~~supporting parent~~ student as determined by law.
- 44- 11. "Special education unit" means a single-district special education ~~units~~ unit or a multidistrict special education ~~units~~ unit.
- 45- ~~"State" means the state of North Dakota.~~
- 46- 12. "Student with disabilities" or "child with disabilities" means ~~a student or child~~ an individual who has ~~reached the third birthday, has not yet reached age twenty-one as of midnight August thirty-first.~~
- a. Is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one, and who because of mental, physical, emotional, or learning characteristics requires regular or special education and related services designed to meet individual education needs. This definition includes children who are mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually impaired, emotionally disturbed, specific learning disabled, orthopedically impaired, other health impaired, autistic, or traumatic brain injured or who have the individual's educational needs; and
- b. Is an individual with mental retardation, hearing impairment including deafness, speech or language impairment, visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, deaf-blindness, or multiple disabilities.

17. "Superintendent" means the superintendent of public instruction.

History: Effective February 1, 2000; amended effective January 1, 2008.

General Authority: NDCC ~~45-59-05~~ 15.1-32-09

Law Implemented: NDCC ~~45-59-05~~ 15.1-32-09; 20 USC 1400-1419

CHAPTER 67-23-03

67-23-03-02. Application for federal funds under part B of IDEA. To apply for available federal funds, each district shall file forms provided by the department relative to the December child count requirement, the ~~end-of-the-year~~ IDEA data reports, and the application form prescribed by the department.

1. The December child count requirement means reporting students who have an IEP and are receiving special education and related services as of December first of the current year.
2. The ~~end-of-the-year~~ IDEA data reports ~~include collecting~~ mean the following:
 - a. Data on each student who received exited special education and ~~related services~~ during the past year; and
 - b. A report on special education and related services personnel needed and employed; ~~and,~~
 - ~~c. A count of students with disabilities who were suspended or expelled, or both.~~
3. Applications for federal funds include collection of the following information:
 - a. Maintenance of effort, meaning expenditures from state and local sources for special education, for the most current three years;
 - b. Project participants;
 - c. Project narratives;
 - d. Budget summary;
 - e. Assurances; and
 - f. Required signatures.

History: Effective February 1, 2000; ~~amended effective January 1, 2008.~~

General Authority: NDCC ~~15-59-05~~ 15.1-32-09

Law Implemented: NDCC ~~15-59-05, 15-59-05.1, 15-59-05.2~~ 15.1-32-02, 15.1-32-07, 15.1-32-21; 20 USC 1400-1419

CHAPTER 67-23-04
SPECIAL EDUCATION DISPUTE RESOLUTION OPTIONS AND APPEALS

[Repealed effective January 1, 2008]

CHAPTER 67-23-05
SPECIAL EDUCATION DISPUTE RESOLUTION

Section

<u>67-23-05-01</u>	<u>Dispute Resolution Options Under Part B of IDEA</u>
<u>67-23-05-02</u>	<u>Due Process Hearing Under Part B of IDEA</u>
<u>67-23-05-03</u>	<u>Facilitated IEP Meeting</u>

67-23-05-01. Dispute resolution options under part B of IDEA. Federal law sets out the procedures for the following special education dispute resolution options: medication, state complaint investigation, and due process. Specific information on these options may be found in the Individuals With Disabilities Education Improvement Act of 2004, Public Law 108-446 [118 Stat. 2647], 20 U.S.C. 1400 to 1419; at federal regulations implementing IDEA at 34 CFR part 300; and at the department's web site at www.dpi.state.nd.us/speced/resource/conflict/index.shtm.

History: Effective January 1, 2008.

General Authority: NDCC 15.1-32-09

Law Implemented: NDCC 15.1-32-02, 15.1-32-08, 15.1-32-12; 20 USC 1415

67-23-05-02. Due process hearing under part B of IDEA.

1. A due process hearing request must be made to:

Director of Special Education
North Dakota Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

2. An administrative law judge from the office of administrative hearings shall conduct the due process hearing.

History: Effective January 1, 2008.

General Authority: NDCC 15.1-32-09

Law Implemented: NDCC 15.1-32-02; 20 USC 1415

67-23-05-03. Facilitated IEP meeting. A school or a parent of a student with a disability may request a facilitated individualized education program meeting in the form and manner prescribed by the department. A facilitated IEP meeting may be requested after an individualized education program meeting has occurred in which a facilitator did not participate. If both the school and a parent of a student with a disability agree to participate in a facilitated individualized education program meeting, the department shall select and compensate a facilitator for the meeting. A person eligible to act as a facilitator must be knowledgeable and experienced in the IEP planning process, unaffiliated with any party, and neutral. The facilitator

guides the IEP meeting to ensure that the meeting is focused on the student. The facilitator does not make decisions and does not provide legal advice.

History: Effective January 1, 2008.

General Authority: NDCC 15.1-32-09

Law Implemented: NDCC 15.1-32-02, 15.1-32-08, 15.1-32-12

TITLE 69.5

NORTH DAKOTA RACING COMMISSION

JANUARY 2008

CHAPTER 69.5-01-01

69.5-01-01-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 53-06.2, except:

1. "Age" means the age of a horse and shall be reckoned from the first day of January of the year of foaling.
2. "Appaloosa" means a horse registered with the appaloosa horse club.
3. "Applicable horsemen's organization" means the jockey club with respect to thoroughbred horses, the American quarter horse association with respect to quarter horses, the United States trotting association with respect to standard bred horses, the appaloosa horse club with respect to appaloosa horses and the American paint horse association with respect to pinto and paint horses.
4. "Arabian" means a horse registered with the international Arabian horse association, the Arabian horse registry of America, inc., or the Anglo-Arabian horse registry.
5. "Arrears" means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.
6. "Association" means an individual or business entity holding a permit from the commission to conduct racing and ~~parimutuel~~ pari-mutuel wagering, and an annual license authorizing the specific dates of the annual racing meeting.
7. "Association grounds" means all real property utilized by an association in the conduct of its race meeting, including the track, concessions, stands, offices, barns, stables, employee housing, and parking.
8. "Authorized agent" means a person licensed by the commission as an agent for a horse owner or principal by virtue of a notarized appointment

of agent on a form approved by the commission filed by the owner or principal with the horsemen's bookkeeper authorizing the agent to handle matters pertaining to racing and stabling.

9. "Bleeder" means a horse which hemorrhages from within the respiratory tract during a race or within one hour postrace, or during exercise or within one hour of such exercise.
10. "Bleeder list" means a tabulation of all bleeders to be maintained by the commission.
11. "Chemist" means any official racing chemist designated by the commission.
12. "Claiming race" means one which includes a condition that any horse starting the race may be claimed and purchased by any licensed owner who has started a horse at the current meeting for an amount specified in the conditions for that race by the racing secretary.
13. "Commission" means the North Dakota racing commission.
14. "Contractual concessionaire" means any business or individual dealing in the furnishing, sale, or distribution of materials, supplies, or services to an association.
15. "Day" means a twenty-four-hour period beginning at one minute after twelve a.m. and ending at twelve midnight. Also referred to as a race day.
16. "Dead heat" means the finish of a race by two horses or more at the same time.
17. "Declaration" means the act of withdrawing an entered horse from a race.
18. "Entry" means:
 - a. A horse entered for a race; or
 - b. Two or more horses entered and joined for the same race for ~~parimutuel~~ pari-mutuel wagering purposes because of common ties of ownership, lease, or training.
19. "Field or mutuel field" means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track totalizator. The highest numbered horse with the totalizator capacity and all the higher-numbered horses following are then grouped together in the mutuel field.

20. "Foreign substances" means all substances except those which exist naturally in the untreated horse at normal physiological concentration.
21. "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by order of the stewards or the commission.
22. "Furosemide" means 4 Chloro-N-(2 furylmethyl)-5-sulfamoy-lanthanilic acid.
23. "Handicap" means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.
24. "Horse" means any horse (including and designated as a male, filly, stallion, colt, ridgling, or gelding) registered for racing under the jurisdiction of the commission and which requires a jockey to race.
25. "Hypodermic injection" means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.
26. "Jockey" means a rider licensed to ride in races as a jockey.
27. "Licensee" means any person or entity holding a license from the commission to engage in racing or related regulated activity.
28. "Maiden" means a horse, which at the time of starting, has never won a race on the flat in a state or country where racing is supervised by a lawfully established racing commission or board and where the races are covered by the racing form or official racing publication, American quarter horse chart books, the appaloosa horse club chart books, the paint horse chart books, and the Arabian horse chart book. A maiden that has been disqualified after finishing first is still a maiden.
29. "Match race" means a race between two horses, the property of two owners, on terms agreed upon by them. The match is void if either of the horses or if either owner dies prior to the running of the race. It remains a match even if money or other award is added to the stakes.
30. "Meeting" means the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission.
31. "Minor" means any person under the age of eighteen.
32. "Month" means a calendar month.

33. "Nominator" means the person in whose name a horse is entered for a race.
34. "Official time" means the official time for a race shall be the period from the time the first horse crosses the timing beam until the first horse crosses the finish line.
35. "Overnight race" means a race for which entries close seventy-two hours, or less, before the time set for the first race of the day on which the race is to be run.
36. "Owner" means:
 - a. A person who holds any title, right, or interest, whole or partial, in a horse; or
 - b. A lessee of a horse holding an owner's license.

An interest only in the winnings of a horse does not constitute partial ownership.

37. "Patron" means a member of the public present on the grounds of a ~~parimutuel~~ pari-mutuel association during a meeting for the purpose of wagering or to observe racing.
38. "Performance" means a schedule of eight races or more per day unless otherwise authorized by the commission.
39. "Permit" means an authorization by the commission to an association to conduct horse racing and ~~parimutuel~~ pari-mutuel wagering at a specified place.
40. "Permitholder" means an association holding a commission permit to conduct racing meetings and ~~parimutuel~~ pari-mutuel wagering.
41. "Place":
 - a. In general, to place means to finish a race in either first, second, or third place.
 - b. In particular, to place means to finish second in a race.

Example: Win - to place first in the finish.
 Place - to place second in the finish.
 Show - to place third in the finish.

42. "Post position" means the position assigned to the horse in the starting gate of a race.

43. "Post time" means the time set for the arrival of all horses in a race at the starting gate.
44. "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.
45. "Purse" means the gross cash portion of the prize for which a race is run.
46. "Purse race" means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse and for which entries close less than seventy-two hours prior to its running.
47. "Quarter horse" means a horse registered with the American quarter horse association.
48. "Race" means a running contest between horses ridden or driven by jockeys for a purse, prize, or other reward run at a licensed association in the presence of the stewards of the meeting or such other horse racing contests as may from time to time be authorized by the commission. This includes purse races, overnight races, and stakes races.
49. "Recognized meeting" means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and a commission for the mutual enforcement of rulings relating to horse racing.
50. "Rules" means the rules adopted by the commission to regulate the conduct of horse racing.
51. "Schooling" means practice races held using actual racing conditions, but in which no wagering is allowed.
52. "Scratch" means the act of withdrawing an entered horse from the race after the closing of overnight entries.
53. "Scratch time" means the time set by the association for the closing of applications to withdraw from races of that day.
54. "Security area" means the area surrounding the security stall delineated by the commission and controlled by it.
55. "Security stall" means the stall within the security barn assigned by the commission to a horse on the bleeder list, or occupancy as a prerequisite for receiving bleeder medication.

56. "Specimen" means any bodily substance including, but not limited to, blood or urine taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner prescribed by the commission for the purpose of analysis.
57. "Stable name" means a name used by an owner or lessee and registered with the commission.
58. "Stakes race" means one in which nominators of the entries contribute to a purse for the winners. A stakes race shall close for entries more than seventy-two hours in advance of its running. A stakes race includes a race for which horses are invited by an association to run for a guaranteed purse of five thousand dollars or more, without payment of stakes.
59. "Starter" means a horse in a race when the starting gate doors open in front of it at the moment the official starter dispatches the horses for a race.
60. "Stewards" means the duly appointed racing officials or their deputies serving at a licensed horse racing meeting.
61. "Subscription" means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.
62. "Test level" means the concentration of a foreign substance found in the test sample.
63. "Test sample" means any bodily substance including, but not limited to, blood or urine taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner as prescribed by the commission for the purpose of analysis.
64. "Thoroughbred" means a horse registered with the New York jockey club.
65. "Veterinarian" means a veterinarian currently licensed by the state board of veterinary medical examiners and the commission.
66. "Weigh in" means presentation of a jockey to the clerk of scales for weighing prior to a race.
67. "Weigh out" means presentation of a jockey to the clerk of scales for weighing after a race.

68. "Year" means a calendar year.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1

CHAPTER 69.5-01-02

69.5-01-02-01. General authority.

1. The commission has the authority, upon its own action or upon referral from the stewards, to charge any licensee or permittee for a violation of these rules or of the ~~parimutuel~~ pari-mutuel horse racing laws of this state; to conduct hearings and to impose fines and other penalties as provided by law and these rules; and to suspend, revoke, or encumber through conditions of probation licenses or permits. The commission will include in its rulings against licensees the licensee's full name, social security number, and date of birth.
2. The commission, upon application therefore and for good cause shown, may temporarily waive or modify any rule or permit any activity otherwise lawful but not specifically authorized by these rules when, in the opinion of the commission, such circumstances exist that without such waiver, modification, or activity the health or safety of any person or horse is adversely affected or the due conduct or best interest of ~~parimutuel~~ pari-mutuel horse racing of North Dakota is adversely impaired.
3. Whenever a situation arises in connection with a quarter horse meeting which is not covered by these rules, the American quarter horse association rules shall govern.

Where a conflict exists between the rules of the commission and the American quarter horse association, the commission's rules shall govern. Any rule covered by both a commission and American quarter horse association rule must be interpreted so that the commission rule modifies or supersedes the American quarter horse association rule.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-02. Suspensions.

1. When any license is suspended by the commission or is suspended by the racing regulatory agency of another state recognized by the commission, then the suspended licensee is prohibited from participating in any ~~parimutuel~~ pari-mutuel activity regulated by the commission.
2. The suspension shall, in addition, render ineligible for entry or starting, every horse in which the suspended licensee has any ownership interest or trainer responsibility. Eligibility for affected horses in such cases may be restored by transfer of the suspended licensee's interest

or responsibilities to another licensed person, if approved by the stewards of the meeting.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-06. Exclusion of patrons.

1. **Offenses.** The commission may exclude from the licensed premises a patron who has been convicted of any of the offenses listed in this subsection, if the commission determines that the circumstances of the offense giving rise to the conviction make the patron's presence a hazard to the reputation and conduct of racing and ~~parimutuel~~ pari-mutuel wagering, or may reasonably undermine the public confidence in the integrity of racing:
 - a. Offenses related to drugs or controlled substances;
 - b. Offenses related to arranging the outcome of a race, or to any fraud or deception while participating in racing or ~~parimutuel~~ pari-mutuel wagering activities;
 - c. Offenses related to representations made about any horse, ownership interest in a horse, or lease or sale of any horse;
 - d. Any felony of which the patron has been convicted; or
 - e. Any offense related to gaming or gambling.
2. **Notification.** In all cases where the commission excludes a person from any or all ~~parimutuel~~ pari-mutuel facilities in this state, the commission will attempt to notify said person of the facts or conduct which warrant exclusion and provide said person with a postexclusion hearing.
3. **Ejection.** Nothing in this rule precludes an association from exercising its right to eject persons from the premises.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-02-07. Commission veterinarian.

1. The commission may employ or contract with a veterinarian or veterinarians who are authorized to:
 - a. Maintain and operate a barn for the detention and testing of horses after each race;
 - b. Collect specimens for analysis to determine the presence of prohibited substances in any entered horse;
 - c. Examine any horse entered in any race and, upon a determination of unfitness to run, may recommend to the stewards that they scratch the horse; and
 - d. Delegate the veterinarian's duties to the veterinarian appointed by the licensed association subject to the supervision of the commission veterinarian and the approval of the commission.
2. Every horse entered to race ~~must~~ may be subjected to a veterinary examination for racing soundness and health on a race day, not later than two hours prior to official post time for the first race.
3. Testing of horses entering a race will occur as follows:
 - a. After each race, the winner of each race and any other horse designated by the stewards must be taken directly to the enclosure for such testing as the commission representative may require. Blood samples may be taken only by a veterinarian. All other body fluid samples must be taken by a veterinarian or under ~~his or her~~ a veterinarian's supervision.
 - b. Each horse to be tested must be accompanied by its owner, trainer, or the representative of either who shall remain during the testing and sign as a witness on the sample marking tag which will be detached and safeguarded by the commission representative before the sample is forwarded to the laboratory.
 - c. Samples taken must be marked for identification by a two-part tag initialed by the commission representative that includes on both parts an identical number, and the date of the sample, and on the commission part the name of the horse and its owners or trainer. The numbered part must be delivered under the seal of the commission to the testing laboratory. The identified part must be retained by the commission veterinarian until the results are obtained from the laboratory at which time the sample tag must be filed with the commission.

- d. The laboratory shall ensure the integrity of samples and sample containers.
 - e. The commission has the authority to direct the official laboratory to retain and preserve by freezing, samples for future analysis.
 - f. Every horse which suffers a breakdown on the racetrack, in training, or in competition, and is destroyed, and every other horse which expires while stabled on association grounds under the jurisdiction of the commission, shall undergo a post mortem examination at a time and place acceptable to the commission veterinarian to determine the injury or sickness which resulted in euthanasia or natural death. The cost of such post mortem examination shall be assessed to the owner of the horse.
4. A track security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of eighteen years old, be currently licensed by the commission, display their commission identification badge, and have a legitimate reason for being in the test barn area.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-03

69.5-01-03-01. General description. Every association conducting a race meeting shall appoint at least the following officials:

1. Two of the members of a three-member board of stewards.
2. The racing secretary.
3. The paddock judge.
4. The horse identifier.
5. The clerk of the scales.
6. The starter.
7. Timers, if needed.
8. Three or more patrol judges.
9. Gate judge.
10. The association veterinarian who shall assist and be responsible to the commission veterinarian and whose appointment must be from a list approved by the commission veterinarian.
- ~~10:~~ 11. Jockey room custodian, valets, and attendants.
- ~~11:~~ 12. Such other officials as the commission may from time to time require.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-03. Official's prohibited activities. A racing official or the racing official's assistants listed in ~~subsections 1 through 11~~ of section 69.5-01-03-01, while serving during any meeting in such capacity, may not engage in any of the following:

1. Participate in the sale, or purchase, or ownership of any horse racing at the meeting;
2. Be involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;
3. Sell or solicit horse insurance on any horse racing at the meeting or participate in any other business sales or solicitation not a part of the official's duties;

4. Wager on the outcome of any race; or
5. Accept or receive money or anything of value for such official's assistance in connection with such official's duties.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-07. Stewards - Enforcement authority.

1. Stewards shall enforce these rules and the racing laws of this state and have authority to charge any licensee for a violation of these rules and the laws of this state, to conduct hearings, and to recommend to the commission the imposition of administrative fees or suspensions within the limits and procedures of this section. The decision of the stewards as to the extent of a disqualification of any horse in any race is final for purposes of distribution of the ~~parimutuel~~ pari-mutuel pool and purses.
2. Stewards may impose administrative fees of up to one thousand dollars for each offense or suspend occupational licenses for up to six months for each offense, or both such fee and suspension. Such action by the stewards does not bar the commission from imposing a more severe penalty if so required in the determination of the commission. However, the commission shall initiate no action increasing any steward's penalty after sixty days from the date of the stewards' action. The stewards, instead of taking action against a licensee, may refer any alleged violation to the commission for hearing and decision, but such referral to the commission by the stewards is not necessary as a condition to commission action against a licensee. In cases where fines or penalties alter the results of a race, the stewards ~~may~~ shall re-award purses, prizes, awards, and trophies.
3. All fines imposed by the stewards upon a licensee must be paid by the licensee to the commission within forty-eight hours after imposition.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-10. Steward investigations and decisions.

1. **Investigations.** The stewards, upon direction of the commission, shall conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers, and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses and shall submit to the commission a written report of every such inquiry made by them.

2. **Cancel trifecta.** ~~The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering may occur or has occurred at any time they determine that the conduct of the race would not be in the interest of the regulation of the parimutuel wagering industry or in the public confidence in racing. The stewards shall cancel trifecta wagering any time there are fewer than eight five betting interests unless there is a late scratch in which there shall be a cancellation if there are fewer than seven betting interests.~~
3. **Form reversal.** The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer, or other persons connected with said horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win, be likely to cause it not to win, finish as near as possible to first, or be likely to finish as near as possible to first.
4. **Fouls.**
 - a. **Extent of disqualification.** Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and shall place any horse found to be disqualified behind the others in the race with which it interfered or may place the offending horse last in the race.
 - b. **Coupled entry.** When a horse is disqualified under this section and where that horse was a part of a coupled entry and, where, in the opinion of the stewards, the act which lead to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may, at their discretion, disqualify the other part of the entry.
5. **Protests and complaints.** The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and file such reports daily with the commission.
 - a. **Protests involving fraud.** Protests involving fraud may be made by any person at any time to the stewards.
 - b. **Protests not involving fraud.** Protests, except those involving fraud, may be filed only by the owner of a horse or the owner's authorized agent, the trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of the scales or to the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made thereon, unless the protest is entered prior to the time the first horse enters the gate.

- c. Protest to clerk of scales. A jockey who intends to enter a protest to the clerk of scales following the running of any race, and before the race is declared official, shall notify the clerk of scales of this intention immediately upon the arrival of the jockey at the scales.
- d. Prize money of a protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race must be paid to and held by the horseman's accountant until the protest is decided.
- e. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards one hour before post time of the race out of which the protest arises.
- f. Frivolous protests. No person or licensee shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-11. Racing secretary.

1. **General authority.** The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and the recording of racing results.
2. **Conditions.** The racing secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers, and the commission. Unless otherwise provided by the conditions, the winner of a certain sum means the winner of a single race of that sum. Corrections to the conditions must be made within twenty-four hours of publication.
3. **Posting of entries.** Upon the closing of entries each day, the racing secretary shall post a list of entries in a conspicuous location in the racing secretaries' office and furnish that list to local newspapers and radio and television stations.
4. **Stakes and entrance money records.** The secretary is caretaker of the permanent records of all stakes, entrance moneys, and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.
5. **Record of racing.** The racing secretary, no later than the day following each race, shall attach or endorse on the registration certificate of each

horse winning in any race the fact of that winning performance and the distance, the date of the race, and the type of conditions of the race.

6. **Record of jockeys.** Upon entry of a horse in a race, the owner or trainer shall furnish to the racing secretary the name of the jockey who will ride the entry no later than scratch time of the date of the race unless unusual circumstances prevail and the stewards grant contrary permission, but in no event not later than forty-five minutes before post time.
7. **Handicapping.** The racing secretary, or a handicapper assigned by the racing secretary, shall assign the weight to be carried by each horse in a handicap, according to the following table, when weights are not stated in the condition of the race:
 - a. Scale of weights for age:

Distance	Age	Jan./ Feb.	Mar./ Apr.	May	June	July	Aug.	Sept.	Oct.	Nov./ Dec.
One-half Mile	2						105	108	111	114
	3	117	119	121	123	125	126	127	128	129
	4	130	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
Six Furlongs	2						102	105	108	111
	3	114	117	119	121	123	125	126	127	128
	4	129	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
One Mile	2							96	99	102
	3	107	111	113	115	117	119	121	122	123
	4	127	128	127	126	126	126	126	126	126
	5 & up	128	128	127	126	126	126	126	126	126
One Mile and a Quarter	2									
	3	101	107	111	113	116	118	120	121	122
	4	125	127	127	126	126	126	126	126	126
	5 & up	127	127	127	126	126	126	126	126	126
One Mile and a Half	2									
	3	98	104	108	111	114	117	119	121	122
	4	124	126	126	126	126	126	126	126	126
	5 & up	126	126	126	126	126	126	126	126	126
Two Miles	3	96	102	106	109	112	114	117	119	120
	4	124	126	126	126	126	125	125	124	124
	5 & up	126	126	126	126	126	125	125	124	124

- b. Sex allowances. In all races except handicaps and races where the conditions expressly state to the contrary, two-year-old fillies are allowed three pounds [1.36 kilograms]; mares three-years old and upward are allowed five pounds [2.27 kilograms] before September first and three pounds [1.36 kilograms] thereafter.
 - c. No sex allowance is permitted in quarter horse races.
8. **Penalties not cumulative.** Penalties and weight allowances are not cumulative unless so declared in the conditions of a race by the racing secretary.
9. **Winnings.**
- a. All inclusive. For the purpose of the setting of conditions by the racing secretary, winnings must be considered to include all moneys and prizes won up to the time of the start of a race, including those races outside the United States. Foreign winnings must be determined on the basis of the normal rate of exchange prevailing on the day of the win.
 - b. Winnings considered from January first. Winnings during the year must be reckoned by the racing secretary from the preceding January first.
 - c. Winner of a certain sum. Winner of a certain sum means the winner of a single race of that sum, unless otherwise expressed in the condition book by the racing secretary. In determining the net value to the winner of any race, the sums contributed by its owner or nominator must be deducted from the amount won. In all stakes races, the winnings must be computed on the value of the gross earnings.
 - d. Winner's award. Unless the conditions of a race provide otherwise the entrance money, starting and subscription fees, and other contributions, shall go to the winner of the race. If for any reason a race is not run, those entrance, and starting and subscription fees must be returned to the nominators.
10. **Cancellation of a race.** The racing secretary has the authority to withdraw, cancel, or change any race which has not been closed. In the event the canceled race is a stakes race, all subscriptions and fees paid in connection with the race must be refunded.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-12. Paddock judge.

1. The paddock judge is in charge of the paddock and has general responsibility for the saddling and mounting of horses and for the equipment used.
2. The paddock judge shall attempt to maintain consistency in the use of equipment on individual mounts. Duties of the paddock judge include:
 - a. Requiring that a plater be in the paddock prior to each race to ensure that all horses are properly shod.
 - b. Excluding from the paddock all those persons who have no immediate business with the horses entered in a race and report rule violations in the paddock area to the stewards.
 - c. Permitting horses competing in a race to be shod in special training shoes only with the express permission of the stewards.
 - d. ~~Permitting bar plates to be used or disconnected only with the consent of the stewards~~ Reporting to the stewards all horses that fail to arrive in the paddock at the designated time.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-18. Stewards serve as placing judges. It is the duty of the stewards to determine the winner of each race and the order of finish for each of the remaining horses in the race. In case of a difference of opinion among the stewards, the majority opinion shall govern. In determining places at the finish of a race, the stewards shall consider only the noses of the placing horses. The stewards may correct errors in their determination of the placing of horses at the finish before the display of the official sign, or if the official sign has been displayed in error, after that display. If the display is in error, no person is entitled to any proceeds of the ~~parimutuel~~ pari-mutuel pool on account of such error. At the conclusion of each racing day, the stewards shall file with the commission a copy of the official placement of horses with the names of the first four horses finishing in each race of that day. The stewards shall provide other racing information within their observation or records upon the request of any official of the association or the commission. The stewards' decision on the race is final.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-03-19. Association veterinarian. ~~The association veterinarian or the association veterinarian's assistants shall give every horse entered in a race an examination on the day of the race to determine the horse's general fitness. During the examination all bandages must be removed by the groom and the horse may be exercised outside its stall to permit the examiner to determine the condition of the~~

~~horse's legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards. The association veterinarian shall inspect all of the horses in a race at the starting gate and after the finish of a race shall observe the horses upon their leaving the track. The association veterinarian is responsible to the commission veterinarian. The association veterinarian may, at the direction of the commission veterinarian, be required to inspect all the horses in a race at the starting gate, and, after the finish of a race, shall observe the horses leaving the track. The association veterinarian is responsible to the commission veterinarian.~~

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-04

69.5-01-04-02. Commission offices. Each association shall furnish for the commission's use on the association grounds reasonable office space for the commission's use. The office is shall be accessible to the public. Each office shall be equipped with telephone and internet hookups.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-04-16. Detention enclosure. Each association shall maintain a designated detention area or enclosure for use by the commission in securing from horses that have run a race, samples of urine, saliva, blood, or other bodily substances or tissues for chemical analysis. The enclosure must include a wash rack, commission veterinarian office, a walking ring, and at least eight a sufficient number of stalls each equipped with a window sufficiently large to allow the taking of the samples to be witnessed from outside the stall.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-05

69.5-01-05-01. Licenses required. Every person participating in horse racing, whether as permitholder, holder of any interest in a permit, association employee, concessionaire and contractholder and the owner or general manager of same, ~~parimutuel~~ pari-mutuel, or racing official, and all other persons, except concessionaire employees, whose duties require them to be present on association premises during racing hours, or to regularly visit such premises during racing hours, are required to have an occupational license from the commission authorizing them to be employed on the licensed premises and to practice their business, profession, or skill. License applicants may be required to furnish to the commission a set of fingerprints and a recent photograph and may be required to be refingerprinted or rephotographed periodically as the commission may require.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-02. License fees. Each application for a license required by this chapter, or its renewal, must be accompanied by the payment of an annual fee according to the following schedule:

1. Association license <u>to conduct live racing</u>	\$100.00 + \$10.00 per day of racing
2. Trainer	\$25.00 + \$5.00 for each horse owned over 3 horses in number. <u>\$75.00</u>
3. Owner, individual	\$25.00 + \$5.00 for each horse owned over 3 horses in number. <u>\$50.00</u>
4. Owner-trainer (combined)	\$50.00 + \$5.00 for each horse owned over 3 horses in number. <u>\$75.00</u>
5. Multiple owner	\$50.00 + \$5.00 for each horse owned over 3 horses in number. <u>\$75.00</u>
6. Owner (partnership, corporation)	\$50.00 <u>\$75.00</u>
7. Jockey/driver	\$100.00 <u>\$35.00</u>
8. Jockey apprentice	\$25.00 <u>\$35.00</u>
9. Jockey agent	\$25.00 <u>\$35.00</u>
10. Authorized agent	\$10.00 <u>\$25.00</u>
11. Stable name	\$10.00 <u>\$25.00</u>
12. Parimutuel <u>Pari-mutuel</u> manager	\$10.00 <u>\$35.00</u>
13. Auditor	\$10.00 <u>\$15.00</u>

14. Calculator operator	\$10.00
15. Totalizator operator	\$10.00 <u>\$15.00</u>
16. Track tote fee	\$10.00 <u>\$35.00</u>
17. Parimutuel <u>Pari-mutuel</u> employee	\$10.00 <u>\$15.00</u>
18. Racing secretary	\$25.00 <u>\$35.00</u>
19. Association veterinarian	\$100.00
20. Assistant veterinarian	\$25.00
21. Chief of security	\$10.00
22. Director of racing/speed	\$10.00 <u>\$35.00</u>
23. Horse identifier	\$10.00 <u>\$35.00</u>
24. Paddock judge	\$10.00 <u>\$35.00</u>
25. Patrol judge	\$10.00 <u>\$35.00</u>
26. Racing secretary assistant	\$10.00 <u>\$15.00</u>
27. Steward	\$25.00 <u>\$35.00</u>
28. Starter	\$10.00 <u>\$35.00</u>
29. Track superintendent	\$10.00 <u>\$35.00</u>
30. Custodian jockey room	\$10.00 <u>\$15.00</u>
31. Clerk of scales	\$10.00 <u>\$35.00</u>
32. Handicapper	\$10.00
33. Placing judge	\$10.00 <u>\$15.00</u>
34. Patrol judge	\$10.00 <u>\$15.00</u>
35. Timer	\$10.00 <u>\$15.00</u>
36. Announcer	\$10.00 <u>\$15.00</u>
37. Exercise person	\$10.00 <u>\$20.00</u>
38. Groom	\$10.00
39. Valet	\$10.00 <u>\$15.00</u>
40. Attendant	\$10.00 <u>\$15.00</u>
41. Photo manager	\$10.00 <u>\$25.00</u>
42. Outrider	\$10.00 <u>\$15.00</u>
43. Pony person	\$10.00 <u>\$20.00</u>
44. Tip sheet seller	\$10.00
45. Gate admission seller	\$10.00
46. Gate attendant	\$10.00
47. Hot walker	\$10.00
48. Office personnel	\$10.00 <u>\$15.00</u>

49. Photo employee	\$10.00
50. Security staff	\$10.00
51. Stable foreman	\$40.00 <u>\$15.00</u>
52. Others not listed (e.g., track maintenance)	\$10.00
53. Duplicate license issued to same person or entity during same year	\$10.00
<u>54. Farrier</u>	<u>\$50.00</u>
<u>55. Simulcast site operator</u>	<u>New \$1,000.00</u> <u>Renew \$250.00</u>
<u>56. Simulcast service provider</u>	<u>New \$2,500.00</u> <u>Renew \$1,000.00</u>
<u>57. Totalizator companies</u>	<u>New \$2,500.00</u> <u>Renew \$1,000.00</u>

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-09. Ineligible license applicants. The commission may deny or revoke the license of any applicant or holder who:

1. Has been convicted of any of the offenses listed in this subsection, which the commission hereby determines have a direct bearing upon the applicant's or holder's ability to serve the public and present a hazard to the reputation and conduct of racing and ~~parimutuel~~ pari-mutuel wagering, or may reasonably undermine the public confidence in the integrity of racing:
 - a. Offenses related to drugs, including, without limitation, controlled substances;
 - b. Offenses related to gambling or gaming, including bookmaking;
 - c. Offenses related to arranging the outcome of a race, or to any fraud or deception while participating in racing or ~~parimutuel~~ pari-mutuel wagering activities;
 - d. Offenses related to representations made about any horse, ownership interest in a horse, or lease or sale of any horse;
 - e. Any felony; or
 - f. Any other offense declared by the commission to have a direct bearing upon the applicant's or holder's ability to serve the public in

any specified occupation, trade, or profession which is the subject of the commission's jurisdiction.

2. Is not eighteen years of age except ~~that persons at least sixteen years of age may be employed on association premises in stables, parking lots, kitchens, and in maintenance and administrative offices, but may never be allowed in the betting areas where betting is being conducted~~ owners under eighteen years of age may be licensed with the permission of their legal guardians;
3. Has demonstrated a lack of financial responsibility in transactions related to racing or ~~parimutuel~~ pari-mutuel wagering;
4. Is ineligible to participate in racing in another state or racing jurisdiction whose racing regulatory agency is recognized by and reciprocates in the actions of this state;
5. Seeks application for more than one occupational license, if in the determination of the stewards, the holding of the two licenses would subject the applicant to a conflict of interest in those two licensed activities;
6. Is employed in any part-time or full-time employment with a government or private employer in any work in which a conflict exists with the interests and objectives of a licensed employment;
7. Has been denied patron privileges by order of the commission and has not been reinstated;
8. Supplies false information in the application; or
9. Is not of good moral character.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-10. Duration of license.

1. Licenses issued by the commission must be for a period of one year or such other period of time greater than one year as permitted by the commission.
2. The commission may also issue a license good for one racing season at a ~~parimutuel~~ pari-mutuel facility.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-06, 53-06.2-07, 53-06.2-08

69.5-01-05-13. Prohibited practices. The following practices by licensees are prohibited:

1. Giving or offering, directly or indirectly, a bribe in any form to any person licensed by the commission to violate these rules or the laws of this state related to racing.
2. Soliciting or offering to accept, directly or indirectly, a bribe in any form by a person licensed by the commission to violate these rules or the laws of this state related to racing.
3. Failing as a licensee to report any bribe or solicitation as in subsections 1 and 2.
4. Soliciting by any licensee except the association of bets by the public.
5. Improperly influencing or attempting to improperly influence the results of a race or combining with any person or conspiring to combine with any person to improperly influence or attempt to improperly influence the results of a race.
6. Entering or starting a horse known or believed to be ineligible or disqualified.
7. Offering or receiving money or other benefit for withdrawing a horse from a race.
8. Making a wager for a jockey by any person except the jockey's owner or trainer.
9. An owner or trainer making a wager for a jockey on a horse other than that ridden by the jockey. This may not be construed to include bets on another horse in combination with such owner's or trainer's own in multiple wagering bets.
10. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden.
11. Possessing any electrical or mechanical device designed to increase or decrease the speed of a horse during a race, other than an ordinary riding whip.
12. Bookmaking, which is the taking or receiving of a wager upon the result of any horse race of which betting is being conducted by any association licensed by the commission, except through the regular betting windows and facilities provided by the association.
13. Purchasing any ticket or share of a ~~parimutuel~~ pari-mutuel pool for another, for hire or anything of value.

14. The giving under oath of any false statement or the refusing to testify after proper notice to the commission about any matter regulated by the commission, except in the exercise of a lawful privilege.
15. Subjecting an animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise or shelter, or by neglect or intentional act cause a horse to suffer unnecessary pain.
16. Permitting a horse to start a race unless the horse has been officially tattooed for identification under the upper lip. A horse which is not tattooed may be allowed to race if all the following requirements are met:
 - a. A tattooer is unavailable as determined by the chief steward.
 - b. Before post time the horse is inspected by the chief steward and the commission veterinarian.
 - c. Before post time the chief steward and commission veterinarian certify the horse's identity to the racing secretary and the horse identifier.
17. Giving false, misleading, or inaccurate information about a horse's performance for publication in a printed program or racing publication.
18. In addition to any of the foregoing prohibited practices, any person who commits an act on the grounds of any ~~parimutuel~~ pari-mutuel facility which is patently contrary to the best interest of racing or which is in violation of a criminal statute of the United States or of this state and classified as a felony, is subject to administrative action including license revocation, suspension, fine, or deprivation of patron privileges.
19. Disorderly or offensive conduct that breaches the public peace or use of profane, obscene, or indecent language so as to be heard by another or offer such prohibited conduct to any representative of the commission or the association.
20. Possession, carrying or exhibiting a deadly weapon, or otherwise disturbing the peace on the premises of any permittee. This rule does not prohibit the carrying of a weapon by any duly authorized law enforcement officer or licensed security personnel engaged in their duties.
21. Possessing in any ~~parimutuel~~ pari-mutuel wagering area of any association any alcoholic beverage unless the beverage is purchased on the premises.

22. Possessing any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition and as prescribed by a veterinarian. The supply of such prescribed foreign substances shall be limited by ethical practice consistent with the purposes of this section. Notwithstanding the provisions of this subsection, any person may possess within a racetrack enclosure any chemical or biological substance for such person's own use, provided that if such chemical substance is prohibited from being dispensed by any federal law or the law of this state without a prescription, such person is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to that person. Notwithstanding the provisions of this subsection, any person may possess within any racetrack enclosure any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to such person, provided that such person has notified the state steward:
- a. Of such person's possession of such device;
 - b. Of the size of such device; and
 - c. Of the chemical substance to be administered by such device, and has obtained written permission for possession and use from the state steward.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-22. Racing colors. Colors, provided by the owners and approved by the stewards of the meeting, must be utilized during racing competition. Colors may be used by the association which correspond with post position colors.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-24. Transfer of horses. Each transfer of horse ownership at a meeting must be approved by the stewards, recorded with the applicable horsemen's organization and promptly reported to the racing secretary and the commission.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-25. Change of trainer. No owner may change the trainer of the owner's horse unless by written notice to and the approval of the stewards of the meeting. The stewards will advise the racing secretary of the change and the racing secretary shall require the new trainer to sign the trainer's name on the owner's registration.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-27. Trainers. The following restrictions and duties apply to trainers.

1. No person may hold a trainer's license unless the trainer:
 - a. Is at least eighteen years old;
 - b. Is qualified, in the opinion of the stewards, by reason of experience, background, and knowledge of racing as manifested by:
 - (1) Passing a written examination administered by the stewards; and
 - (2) Passing of a "barn test" administered by a horsemen's representative under the supervision of the stewards.
 - c. Has complied with the provisions of the state workers' compensation law and has secured compensation for the trainer's employees in accordance with that law; and
 - d. Has applied for a trainer's license in the trainer's legal name, and not under any fictitious or stable name.
2. The commission in considering whether to license a trainer in this state may consider the licensure of the trainer currently licensed or registered in another state that is a member of the national association of state racing commissioners.
3. The trainer is responsible for and is the absolute insurer of the condition of the horses in the trainer's care and custody and for the conditions and contents of stalls, tack rooms, feedrooms, sleeping rooms, and other areas which have been assigned by the association to the trainer. The trainer is the absolute insurer of the condition of the horses in the trainer's care and custody during the race and is liable for the presence in the trainer's horse during the race of any drug, medication, or any other prohibited substance. A trainer whose horse has been claimed remains responsible for the horse under this section until after the collection of urine or blood specimens as may be required.

4. Each trainer shall report immediately to the stewards and the commission veterinarian any illness in the horse entrusted into the trainer's care presenting unusual or unknown symptoms. Any alteration in the sex of a horse must be reported and noted by the trainer to the racing secretary or horse identification office immediately, and that office must note the same on the foal certificate.
5. A trainer or the trainer's assistant must be present with the trainer's horse in the paddock and shall supervise the saddling of the horse unless the stewards permit a substitute trainer to perform those duties. Every trainer who brings a horse to the paddock warrants that the horse is qualified for the race, ready to run and in physical condition to exert its best efforts, and entered with the intention to win.
6. A trainer shall present the trainer's horse in the paddock at least twenty minutes before post time of the race in which the horse is entered.
7. The following prohibited acts apply to trainers:
 - a. No trainer may enter or start a horse in any race if the horse is ineligible under these rules or the laws of this state related to racing.
 - b. No trainer may employ a veterinarian who is not licensed by both the state board of veterinary medicine examiners and the commission.
 - c. No trainer may employ any person under the age of sixteen.
 - d. No trainer may employ a jockey for the purpose of preventing the jockey from riding in any race.
 - e. No trainer may train or be responsible for any horse which is wholly or partly owned by a person under suspension by the stewards or the commission.
8. A trainer is responsible for the condition of a horse trained by the trainer and entered in an official workout or race. A trainer is responsible for the presence of a prohibited drug, medication, or substance in a horse trained by the trainer. A trainer is responsible for the presence of a permitted drug, medication, or substance in excess of the maximum allowable level in a horse trained by the trainer. A report, by a laboratory approved by the commission, is prima facie evidence of the presence of a prohibited drug, medication, or substance. A report, by a laboratory approved by the commission, is prima facie evidence of the presence of a permitted drug, medication, or substance in excess of maximum allowable level.

9. A trainer whose horse has been claimed remains responsible for any violations of rules regarding that horse's participation in the race in which the horse is claimed.
10. The trainer is responsible for maintaining the assigned stable area in a clean, neat, and sanitary condition at all times.
11. Additionally, with respect to horses in a trainer's care or custody, the trainer is responsible for:
 - a. The proper identity, custody, care, health, condition, and safety of the horses;
 - b. Ensuring that at the time of arrival at locations under the jurisdiction of the commission a valid health certificate and a valid negative equine infectious anemia test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;
 - c. Having each horse in the trainer's care that is racing, or is stabled on association grounds, tested for equine infectious anemia in accordance with state law and for filing evidence of such negative test results with the racing secretary;
 - d. Using the service of those veterinarians licensed by the commission to attend horses that are on association ground;
 - e. Immediately reporting the alteration of the sex of the horse to the horse identifier and the racing secretary;
 - f. Promptly reporting to the racing secretary and the official veterinarian when a posterior digital neurectomy is performed and ensuring that such fact is designated on its certificate of registration;
 - g. Promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in the trainer's charge;
 - h. Promptly reporting the serious injury or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;
 - i. Maintaining a knowledge of the medication record and status;
 - j. Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug, or substance;

- k. Ensuring the fitness to perform credibly at the distance entered;
 - l. Ensuring that every horse entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in this chapter;
 - m. Ensuring proper bandages, equipment, and shoes;
 - n. Presence in the paddock at least twenty minutes before post time or at a time otherwise appointed before the race in which the horse is entered;
 - o. Personally attending the paddock and supervising the saddling thereof, unless excused by the stewards; and
 - p. Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so.
12. A trainer may represent the owner of a horse in making entry of a horse in a race, or declaring the horse out of a race.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-05-29. Jockeys and apprentice jockeys.

1. Eligibility.

a. Jockeys.

- (1) No person under sixteen years of age will be licensed by the commission as a jockey.
- (2) All jockeys must pass physical examinations once a year by a physician approved by the commission. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride until such jockey successfully completes such examination.
- (3) A jockey may not be an owner or trainer of any racehorse.
- (4) A license will not be granted until the applicant has successfully completed two rides under a provisional license of the commission and has been approved by the starter.
- (5) Whenever a jockey from a foreign country, excluding Mexico and Canada, rides in the United States, such jockey must

declare that he or she is a holder of a valid license and currently not under suspension. To facilitate this process, the jockey shall present a declaration sheet to the commission. The sheet must state:

- (a) That the jockey is the holder of a valid license to ride;
- (b) That the jockey is not currently under suspension; and
- (c) That the jockey agrees to be bound by the rules of the commission.

This sheet must be retained by the commission and at the conclusion of the jockey's participation in racing, it must be returned to the jockey, properly endorsed by the commission, stating that the jockey has not incurred any penalty or had a fall. If a penalty has been assessed against the jockey, the appropriate racing official shall notify the racing authority issuing the original license to extend the penalty for the same period of time.

b. **Apprentice jockeys.**

- (1) A contract with a horse owner to provide apprentice jockey services, or an apprentice certificate from the stewards must be presented to the commission to be licensed.
- (2) The conditions in subdivision a of subsection 1 with regard to jockeys also apply to apprentice jockeys.

2. Jockeys' fees.

a. Track management shall have the authority to set the jockey mount fee.

b. Schedule. The minimum fee to jockeys, in the absence of special agreement, must be in all races as follows:

Purse	Win	2nd	3rd	Unplaced
\$400 and under	\$27	\$19	\$17	\$16
\$500	30	20	17	16
\$600	36	22	17	16
\$700 - \$900	10%	25	22	20
\$1,000 - \$1,400	10%	30	25	22
\$1,500 - \$1,900	10%	35	30	28

\$2,000	-	\$3,400	10%	45	35	33
\$3,500	-	\$4,900	10%	55	45	35
\$5,000	-	\$9,900	10%	65	50	40
\$10,000	-	\$14,900	10%	5%	5%	45
\$15,000	-	\$24,900	10%	5%	5%	50
\$25,000	-	\$49,900	10%	5%	5%	60
\$50,000	-	\$99,900	10%	5%	5%	75
\$100,000 and up			10%	5%	5%	100

b- c. Entitlement. Any apprentice or contract jockey is entitled to the regular jockey fees, except when riding a horse owned in part or solely by such jockey's contractholder. An interest in the winnings only (such as trainer's percent) does not constitute ownership.

e- d. Fee earned. A jockey's fee must be considered earned when the jockey is weighed out by the clerk of scales. The fee may not be considered earned if the jockey, of the jockey's own free will, takes himself or herself off of the jockey's mount, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above ruling must be at the discretion of the stewards.

d- e. Multiple engagements. If any owner or trainer engages two or more jockeys for the same race, the owner or trainer is required to pay each of the jockeys whether the jockey rides in the race or not.

e- f. Dead heats. Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.

3. **Apprentice subject to jockey rules.** Unless excepted under these rules, apprentice jockeys are subject to all commission rules governing the conduct of jockeys and racing.

4. **Apprentice allowances.**

a. An apprentice jockey shall ride with a five-pound weight allowance beginning with the apprentice jockey's first mount and for one full year from the date of the apprentice jockey's fifth winning mount.

b. If after riding one full year from the date of the apprentice jockey's fifth winning mount, the apprentice jockey has failed to ride a total of forty winners from the date of the apprentice jockey's first winning mount, the apprentice jockey shall continue to ride with a

five-pound weight allowance for one more year from the date of the apprentice jockey's fifth winning mount or until the apprentice jockey has ridden a total of forty winners, whichever comes first.

- c. If an apprentice jockey is unable to ride for a period of fourteen consecutive days or more after the date of the apprentice jockey's fifth winning mount because of service in the armed forces of the United States of America, or because of physical disablement, the commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such apprentice jockey was unable to ride.

5. Conduct.

- a. **Clothing and appearance.** A jockey shall wear the standard colors for the post position of the horse the jockey is riding, except as otherwise ordered or permitted by the commission or stewards, and shall also wear the number of the saddlecloth corresponding to the number given in the racing program. A jockey shall maintain a neat and clean appearance while engaged in the jockey's duties on association premises and shall wear a clean jockey costume, cap, helmet (as approved by commission), a jacket, breeches, and top boots.
- b. **Competing against contractor.** No jockey may ride in any race against a starting horse belonging to the jockey's contract employer unless the jockey's mount and the contract employer's horse are both trained by the same trainer.
- c. **Competing against spouse.** No jockey may compete in any race against any horse which is owned or trained by the jockey's spouse.
- d. **Confined to jockey room.** A jockey who is engaged to ride a race shall report to the scaleroom on the day of the race at the time designated by association officials. The jockey shall then report the jockey's engagements and any overweight to the clerk of scales. Thereafter, the jockey may not leave the jockey room except by permission of the stewards, until all of the jockey's riding engagements of the day have been fulfilled. Once a jockey has fulfilled the jockey's riding assignments for the day and has left the jockey's quarters, the jockey may not be readmitted to the jockey's quarters until after the entire racing program for that day has been completed, except upon permission of the stewards. A jockey is not allowed to communicate with anyone but the trainer or the jockey's agent while the jockey is in the room during the performance except with approval of stewards. On these occasions, the jockey should be accompanied by a security guard.

- e. Jockey betting. A jockey may only be allowed to wager on a race in which the jockey is riding if:
 - (1) The jockey's owner or trainer makes the wager for the jockey; and
 - (2) The jockey only wagers on his or her own mount to win or in combination with other horses in multiple bets.
 - f. Whip prohibited. No jockey may use a whip on a two-year-old horse before April first of each year.
 - g. Spurs prohibited. No jockey may use spurs.
 - h. Possessing drugs or devices. No jockey may have in the jockey's care, control, or custody any drugs or prohibited substances or any electrical or mechanical device that could affect a horse's racing performance.
6. **Jockey effort.** A jockey shall exert every effort to ride the jockey's horse to the finish in the best and fastest run of which the horse is capable. No jockey may ease up or coast to a finish, without adequate cause, even if the horse has no apparent chance to win prize money.
7. **Duty to fulfill engagements.** Every jockey shall fulfill such jockey's duly scheduled riding engagements, unless excused by the stewards. No jockey may be forced to ride a horse the jockey believes to be unsound, nor over a racing strip the jockey believes to be unsafe, but if the stewards find a jockey's refusal to fulfill a riding engagement is based on personal belief unwarranted by the facts and circumstances, such jockey may be subject to disciplinary action. The jockey is responsible to the jockey's agent for any engagements previously secured by said agent.
8. **Riding interference.**
- a. Interference. When the way is clear in a race, a horse may be ridden to any part of the course, but may not weave nor cross in front of other contenders so as to interfere with their course or threaten their safety.
 - b. Jostling. No jockey may jostle another horse or jockey. No jockey may strike another horse or jockey or ride so carelessly as to cause injury or possible injury to another horse in the race.
 - c. Partial fault - Third party interference. If a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified, unless the interfered or jostled horse or jockey was partly at fault or

the infraction was wholly caused by the fault of some other horse or jockey.

9. Jockey weighed out.

- a. A jockey must wear a safety vest when riding in any official race. A safety vest shall weigh no more than two pounds [.907 kilogram] and be designed to provide shock-absorbing protection to the upper body of at least a rating of five as defined by the British equestrian trade association.
- b. Each jockey must be weighed for his or her assigned horse not more than thirty minutes before the time fixed for the race.
- b. c. A jockey's weight must include his or her clothing, saddle, girth, pad, and saddle cloth.
- e. d. A jockey's weight does not include the number cloth, whip, head number, bridle, bit or reins, blinkers, helmet, tongue strap, tongue tie, muzzle, hood, noseband, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

10. Overweight limited. No jockey may weigh more than two pounds [0.91 kilograms] over the weight the jockey's horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of the scales at least forty-five minutes before the start of the race. ~~However, under no circumstances may a horse carry more than five pounds [2.27 kilograms] overweight. The overweight must be publicly announced and posted in a conspicuous place both prior to the first race of the day and before the running of the race. The scale of weights has been adjusted to allow the writing of conditions or assignments by the racing secretary up to a maximum of one hundred thirty-eight pounds [65.65 kilograms] or fourteen pounds [6.35 kilograms], whichever is less, over the weight stated in the published conditions. All weights over published conditions must be posted in the pari-mutuels area.~~

11. Weigh in - Unsaddling. Upon completion of a race, each jockey shall ride promptly to the winners circle and dismount. The jockey shall then present himself or herself to the clerk of scales to be weighed in. If a jockey is prevented from riding his or her mount to the winner's circle because of accident or illness either to the jockey or to the jockey's horse, the jockey may walk or be carried to the scales unless excused by the stewards.

- a. **Unsaddling.** Each jockey upon completion of a race shall return to the winner's circle and shall unsaddle his or her horse, unless excused by the stewards.

- b. Removing horse's equipment. No person except the valet-attendant for each mount is permitted to assist the jockey in removing the horse's equipment that is included in the jockey's weight, unless the stewards permit otherwise. To weigh in, each jockey shall carry to the scales all pieces of equipment with which the jockey weighed out. Thereafter, the jockey may hand the equipment to the valet-attendant.
- c. Underweight. When any horse places first, second, or third in a race, or is coupled in any form of multiple exotic wagering, and thereafter the horse's jockey is weighed in short by more than two pounds [0.91 kilograms] of the weight of which the jockey was weighed out, the jockey's mount may be disqualified and all purse moneys forfeited.
- d. Overweight. No jockey may be weighed in more than two pounds [0.91 kilograms] over the jockey's declared weight, but consideration must be given for excess weight caused by rain or mud. If the jockey is overweight, the jockey's mount may be disqualified and all purse moneys forfeited.

12. Contracts.

- a. Jockey contracts. A jockey may contract with an owner or trainer to furnish jockey services whenever the owner shall require, and in that event a jockey may not ride or agree to ride in any race for any other person without the consent of the owner or trainer to whom the jockey is under contract.
 - b. Apprentice contracts and transfers.
 - (1) Owners or trainers and apprentices who are parties to contracts for apprentice jockey services shall file a copy of the contract with the commission, upon forms approved by the commission, and shall, upon any transfer, assignment, or amendment of the contract, immediately furnish a copy thereof to the commission.
 - (2) No apprentice jockey may ride for a licensed owner or agent unless with the consent of the apprentice's contract employer.
 - c. Contract condition. No person other than an owner, trainer, jockey agent, or authorized agent of an owner in good standing may make engagements for an apprentice jockey or jockey. However, a jockey not represented by an agent may make his or her own engagements.
- 13. Jockey fines and forfeitures.** A jockey shall pay any fine or forfeiture from the jockey's own funds within forty-eight hours of the imposition of

the fine or forfeiture. No other person may pay jockey fines or forfeitures for the jockey.

14. **Competing claims.** Whenever two or more licensees claim the services of one jockey for a race, first call shall have priority and any dispute must be resolved by the stewards.
15. **Jockey suspension.**
 - a. Offenses involving fraud. Suspension of a licensee for an offense involving fraud or deception of the public or another participant in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.
 - b. Offenses not involving fraud. Suspension for an offense not involving fraud or deception of the public or another participant in racing shall begin on the third day after the ruling.
 - c. Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission must be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the stewards why such withdrawal should not be deemed frivolous.
16. **Association valet-attendant.** No jockey may have a valet-attendant except one provided and paid for by the association.
17. **Jockey agent.**
 - a. No jockey may have more than one agent.
 - b. All engagements to ride other than those for the jockey's contract employer must be made by the agent.
 - c. No revocation of a jockey's agent authority is effective until the jockey notifies the stewards in writing of the revocation of the agent's authority.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-07

69.5-01-07-01. Horses ineligible. A horse is ineligible to start a race when:

1. The horse is not stabled on the grounds of the licensed association or facilities approved by the association at least forty-eight hours prior to the race except for ship-ins on race day. Ship-in horses shall be in their assigned stall on the day they are scheduled to race. The racing association must have designated ship-in stalls and must provide the commission veterinarian with stalls assigned prior to nine a.m. All ship-in horses will be subject to prerace examinations by the commission veterinarian at their assigned stalls between nine a.m. and eleven a.m.;
2. The horse's applicable horsemen's organization registration certificate is not on file with the racing secretary, or horse identifier;
3. The horse is not fully identified by an official tattoo on the inside of the upper lip;
4. With respect to a horse who is entered for the first time, the nominator has failed to identify the horse by name, color, sex, age, and the names of his sire and dam as registered;
5. A horse is brought to the paddock and is not in the care of and saddled by a trainer or assistant trainer;
6. A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any association or regulatory agency;
7. A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in or assisted in the entry of racing of some other horse under the name of the horse in question;
8. A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person;
9. A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, it being presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;
10. A horse has no current negative coggins test certificate attached to the registration certificate;

11. The stakes or entrance money for the horse has not been paid;
12. A horse appears on the starter's list, stewards' list, or veterinarian's list;
13. A horse is a first-time starter and not approved by the starter;
14. A horse is owned in whole or in part by an undisclosed person or interest;
15. A horse which has started in a race within the past calendar year which race has not been reported in a nationally published monthly chart book, unless at least forty-eight hours prior to entry, the owner of the horse provides to the racing secretary under oath performance records which show the place and date of the race, the distance, the weight carried, the amount carried, and the horse's finishing position and time;
16. In a stakes race, a horse has been transferred with its engagements, unless, prior to the start, the fact of transfer of the horse and its engagements has been filed with the racing secretary;
17. A horse is subject to a lien which has not been approved by the stewards and filed with the horseman's accountant;
18. A horse is ~~five~~ seven years of age or older and still a maiden, ~~except for Arabian horses, in which case such horse is eight years of age or older and still a maiden;~~
19. A horse is subject to a lease not filed with the stewards;
20. A horse is not in sound racing condition;
21. A horse has been nerved by surgical neurectomy except in the case of heel nerves upon veterinarian approval, or cryosurgery;
22. A horse has been trachea-tubed to artificially assist its breathing;
23. A horse has been blocked with alcohol or otherwise drugged to desensitize the nerves above the ankle; ~~or~~
24. A horse has impaired eyesight in both eyes; or
25. When it is thirteen years old unless it wins a recognized race each preceding year in which case it may continue to race.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-02. Entries.

1. **Filing.** The association shall provide forms for making entries and declarations with the racing secretary. Entries and declarations shall be in writing, or by telephone or telegraph subsequently confirmed in writing by the owner, trainer, or authorized agent. When any entrant or nominator claims failure or error in the receipt by an association of any entry or declaration, such entrant or nominator may be required to submit evidence within a reasonable time of the filing of the entry or the declaration.
2. **Posting.** Upon the closing of entries, the racing secretary shall promptly compile a list of entries and cause it to be conspicuously posted.
3. **Coupling.**
 - a. **Entry coupling.** When one or more horses entered in a race have a common owner ~~and trainer~~, the horses must be coupled as an entry. ~~Horses must be regarded as having a common owner where an owner of one horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, shall have an ownership interest in another horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation. However, a trainer may enter two horses, separately owned, for wagering purposes. One of the horses must be preferred. If the race overfills, only one may start. If the race does not overfill, both horses may start and run as separate betting interest. Except in time trials and stakes races, there is no limit on the number of horses a single owner or trainer may run in that race and all entrants may race uncoupled with the steward's permission for wagering purposes. If an infraction occurs where, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the owner or trainer of the other entrant, the stewards may, at their discretion, disqualify the other parts of the owned or trained entrants.~~
 - b. **Coupled entries prohibited.** Coupled entries may not be permitted to race on any program in a race which is part of a daily double or trifecta wager.
 - c. **Coupled entry limitation on owner.** ~~No more than two horses coupled by a common ownership or trainer may be entered in an overnight race. When any licensee shall nominate and enter two horses coupled by common ownership or trainer, the nominator shall express a preference for which horse will start in the event that only one horse can be run by virtue of the rules of eligibility related to trifecta, daily double, or other exotic betting.~~
 - d. **Coupling of entries by stewards.** The stewards shall couple as a single entry any horses which, in the determination of the stewards are connected by common ownership or by a common trainer

or when the stewards determine that coupling is necessary in the interest of the regulation of the ~~parimutuel~~ pari-mutuel racing industry or necessary to the public confidence in racing.

- e. d. Coupled entry excluding others. A coupled entry may not be permitted to enter or start if the effect of the entry is to deprive an uncoupled single entry horse from starting.
4. **Splitting of a race.** If a race is canceled and declared off for insufficient entries, the association may split the list of entries for any other overnight race to provide an additional race to replace the one canceled. The racing secretary shall by lot divide the entries of the race so split into two different races.
 5. **Entry weight.** Owners, trainers, or any person duly authorized by either who enter a horse for a race shall ensure that the entry is correct and accurate as to the weight allowances available and claimed for the horse under the conditions set for the race. After a horse is entered and has been assigned a weight to carry in the race, the assignment of weight may not be changed except in the case of error.
 6. **Horses run once daily.** No horse may be entered for more than one race on the same day on which ~~parimutuel~~ pari-mutuel wagering is conducted.
 7. **Foreign entries.** For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall take into account the "Pattern Race Book" published jointly by the Irish turf club, the jockey club of Great Britain, and the societe encouragement.
 8. **Weight conversions.** For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall convert metric distances to English measures by reference to the following scale:

110 yards	=	100	meters
1 furlong	=	200	meters
1 mile	=	1,600	meters
 9. **Name.** The "name" of a horse means the name reflected on the certificate of registration or racing permit or temporary racing permit issued by the applicable horsemen's organization. Imported horses shall have a suffix, enclosed by brackets, added to their registered names showing the country of foaling. This suffix is derived from the International Code of Suffixes and constitutes part of the horse's

registered name. The registered names and suffixes, where applicable, must be printed in the official program.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-05. Prohibited entries.

1. **Entry by disqualified person.** An entry by a disqualified person or the entry of a disqualified horse is void. Any money paid for such entry must be returned if the disqualification is disclosed at least forty-five minutes before post time for the race. Otherwise the entry money must be paid to the winner.
2. **Limited partner entry prohibited.** No person other than a managing partner of a limited partnership or a person authorized by the managing partner may enter a horse owned by that partnership.
3. **Altering entries prohibited.** No alteration may be made in any entry after the closing of entries, but the stewards may permit the correction of an error in an entry.
4. **Limitation on overnight entries.** If the number of entries to any purse or overnight race is in excess of the number of horses that may be accommodated due to the size of the track, the starters for the race and their post positions must be determined by lot conducted in public by the racing secretary.
5. **Stake race entry limit.** In a stake race, the number of horses who may compete may be limited only by the number of horses nominated and entered. In any case, the association's lawful race conditions govern.
6. **Steward's denial of entry.** The stewards, after notice to the entrant, subscriber, or nominator, may deny entry of any horse to a race if the stewards determine the entry to be in violation of these rules or the laws of this state or to be contrary to the interests of the commission in the regulation of ~~parimutuel~~ pari-mutuel wagering or to public confidence in racing.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-06. Preference and eligibles. Each racing association shall provide a preference system before the beginning of each race meet.

1. **Eligible-to-start list.** A list of ~~not more than eight~~ names may be drawn from entries ~~filed in excess of~~ for positions available in the race.

These names must be listed as eligible-to-start as originally entered horses are withdrawn. The order in which these are listed shall become eligible-to-start and their post positions must be determined by the racing secretary. Any owner, trainer, or authorized agent who has entered a horse listed as an eligible-to-start and who does not wish to start shall file a scratch card with the secretary not later than the scratch time designated for that race.

2. ~~**Preference for excluded horses.** Horses which have been excluded from races must be given preference in the next race in which they are entered, providing the next race is one of similar conditions. Horses whose names appear in the entries and have an opportunity to start will be given no preference if they are entered for a race to be held on the day following entry and the race overfills.~~
3. **Preferred list entrants.** In making an entry of a horse on the preferred list, a claim of preference must be made at the time of entry and noted on the entry form or the preference will be lost. The preferred list must be posted in a place readily available to all horsemen.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-07. Post positions. Post positions must be determined by the racing secretary publicly and by lot. Post positions must be drawn from also-eligible entries at scratch time. In all races, horses drawn into the race from the also-eligible list shall take the outside post positions. In races of four hundred forty yards [400 meters] or less, horses will move into the post positions of the horses which have been scratched.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-09. Workouts.

1. **When required.** No horse may be started unless the horse has raced or has an approved timed workout satisfactory to the stewards. Such workout must have occurred on the grounds of a licensed parimutuel pari-mutuel facility within the previous thirty days. A horse which has not started for a period of sixty days or more is ineligible to race until it has completed a timed workout satisfactory to the stewards prior to the day of the race in which the horse is entered. No horse may be taken onto the track for training or a workout except during hours designated by the association.
2. **Identification.** The timer or the stewards may require any licensee to identify a horse in the licensee's care being worked. The owner, trainer,

or jockey may be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

3. **Information dissemination.** If the stewards approve such timed workout so as to permit the horse to run in a race, they shall make it mandatory that this information is furnished to the public in advance of the race including, but not limited to, the following means:
 - a. Announcement over the track's public address system;
 - b. Transmission on the track's message board;
 - c. Posting in designated conspicuous places in the racing enclosure; and
 - d. Exhibit on track television monitors at certain intervals if the track has closed circuit television.

If the workout is published prior to the race in either the daily racing form or the track program, then it is not necessary to make the announcements set forth in this subsection.

4. **Restrictions.** No horse may be taken onto the track for training or a workout except during hours designated by the association.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-16. Race procedures.

1. **Full weight.** Each horse shall carry the full weight assigned for that race from the paddock to the starting point, and shall parade past the stewards' stand, unless excused by the stewards.
2. **Touching and dismounting prohibited.** After the horses enter the track, no jockey may dismount nor entrust the jockey's horse to the care of an attendant unless, because of an accident occurring to the jockey, the horse, or the equipment, and then only with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the hands of the jockey or the assistant starter or an outrider on a lead pony may touch the horse before the start of the race.
3. **Outriders.** Two licensed outriders shall be mounted and on duty during racing hours and one licensed outrider during training hours. They shall be approved by and work under the direction of the stewards.

4. **Jockey injury.** If a jockey is seriously injured on the way to the post, the jockey's horse must be returned to the paddock and a replacement jockey obtained. In such an event both the injured jockey and the replacement jockey will be paid by the owner.
4. **5. Twelve-minute-parade limit.** After entering the track, all horses shall proceed to the starting post in not more than twelve minutes unless approved by the stewards. After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner. Once at the post, the horses must be started without unnecessary delay. All horses shall participate in the parade carrying their weight and equipment from the paddock to the starting post and any horse failing to do so may be disqualified by the stewards. No lead pony leading a horse in the parade shall obstruct the public's view of the horse entered in the race that the lead pony is leading except with permission of the stewards.
5. **6. Striking a horse prohibited.** In assisting the start of a race, no person other than the jockey, the starter, the assistant starter, or the veterinarian shall strike a horse or use any other means to assist the start.
6. **7. Loading of horses.** Horses shall take their position at the post (in the starting gate) in post position order (the order in which their names have been drawn, beginning from the inside rail).
7. **8. Delays prohibited.** No person may obstruct or delay the movement of a horse to the starting post.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

69.5-01-07-18. Medication.

1. No horse participating in a race shall carry in its body any substance foreign to the natural horse except as hereinafter provided.
2. No foreign substance may be administered to a horse entered to race by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four hours prior to the scheduled post time for the first race, except as hereinafter provided.
3. Foreign substances prohibited. No horse participating in a race may carry in its body any foreign substance.
4. The use of phenylbutazone shall be permitted under the following conditions:

- a. Any horse to which phenylbutazone has been administered shall be subject to having a blood and or urine samples taken at the direction of the official veterinarian to determine the quantitative phenylbutazone levels and the presence of other drugs which may be present in the blood or urine samples.
 - b. The permitted quantitative test level of phenylbutazone shall not exceed five micrograms per milliliter of plasma.
5. Furosemide (lasix).
- a. Furosemide (lasix) may be administered intravenously to a horse which is entered to compete in a race. Except under the instructions of the official veterinarian or the racing veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a postrace urine sample. Furosemide (lasix) shall be permitted only after the official veterinarian has placed the horse on the bleeder list.
 - b. The use of furosemide (lasix) shall be permitted under the following circumstances on association grounds where a detention barn may be utilized:
 - (1) Furosemide (lasix) shall be administered at the direction of the official veterinarian or the official veterinarian's designee no less than four hours prior to post time for the race for which the horse is entered.
 - (2) A horse qualified for a furosemide (lasix) administration must be brought to the detention barn within time to comply with the four-hour administration requirement specified above.
 - (3) The dose administered shall not exceed two hundred fifty milligrams nor be less than one hundred fifty milligrams.
6. Bleeder list.
- a. The official veterinarian shall maintain a bleeder list of all horses which have demonstrated external evidence of exercise-induced pulmonary hemorrhage or the existence of hemorrhage in the trachea post exercise upon endoscopic examination. Such examination must have been performed by or in the presence of the official veterinarian or the racing veterinarian.
 - b. The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered into the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy

of the bleeder certificate shall be attached to the horse's certificate of registration.

- c. Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.
 - d. A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal.
 - e. A horse which has been placed on a bleeder list in another jurisdiction may be placed on a bleeder list in this jurisdiction provided that the other jurisdiction's criteria for the identification of bleeders are satisfactory in this jurisdiction.
7. Upon a finding of a violation, the stewards may consider the currently established "uniform classification guidelines of foreign substances", and the "recommended penalties and model rule" promulgated by the association of racing commissioners international drug testing and quality assurance program and impose penalties and disciplinary measures consistent with the recommendations contained therein and their authority under the administrative rules and law.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-08

69.5-01-08-01. General. Each association may permit wagering only on races conducted by each association on the grounds of such association except as otherwise permitted by the commission and state law. All such permitted wagering must be under the ~~parimutuel~~ pari-mutuel system employing a totalizator system approved by the commission. All other systems of wagering other than ~~parimutuel~~ pari-mutuel are prohibited.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-03. Records. The ~~parimutuel~~ pari-mutuel (mutuels) manager shall maintain complete records of all wagering so the commission may review such records for any race including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest, and such other information as the commission may require. Such wagering records must be retained by each association and safeguarded for a period of time specified by the commission.

1. When a patron makes a written complaint regarding the pari-mutuel department to an association, the association shall immediately issue a complaint report, setting out:
 - a. The name of the complainant;
 - b. The nature of the complaint;
 - c. The name of the persons, if any, against whom the complaint was made;
 - d. The date of the complaint;
 - e. The action taken or proposed to be taken, if any, by the association.
2. The association shall submit every complaint report to the commission within forty-eight hours after the complaint was made.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-04. Calculation and distribution of pools.

1. **General.** The only ~~parimutuel~~ pari-mutuel wagering pools permitted are for win, place, show, daily double, exacta, quinella, ~~and~~ trifecta, pick (n) pools, superfecta pools, twin trifecta pools, and tri-superfecta. In each with pool there must be a separate and independent calculation

and distribution. From each pool there must be deducted by each association the commissions as provided by state law. Odd cents over any multiple of ten cents of winning per dollar wagered are deducted and retained by the licensee as breaks as the outs set forth in subsection 4 of section 69.5-01-08-11. The remainder of the moneys in the pool constitute the net pool for distribution as payoff to ticketholders as set out in subsections 2 through 11.

2. **Win pool.** The amount wagered on the horse or betting interest which finished first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.
 - a. In the event of a dead heat for first involving horses of two different betting interests, the win pool is distributed as if a place pool; if involving horses of three different betting interests, the win pool is distributed as if a show pool.
 - b. In the event no win ticket is sold on the horse which finishes first, the net win pool is distributed to holders of win tickets on the horse finishing second.

3. **Place pool.** The amounts wagered to place on the first two horses to finish are deducted from the net pool to determine the profit; the profit is divided into two equal amounts; one-half of the profit is divided by the amount wagered to place on the first finisher, such quotient being the profit per dollar wagered to place on the first finisher; and one-half of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place on such second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two finishers.
 - a. In the event of a dead heat for first between horses representing the same betting interests, the place pool is distributed as if a win pool; if between horses representing two different betting interests, the place pools distributed as if one betting interest finished first and the other finished second; if between horses representing three different betting interests, the place pool is distributed as if a show pool.
 - b. In the event of a dead heat for second between horses representing the same betting interest, the place pool is distributed as if no dead heat occurred; if between horses representing two or more different betting interests, the profit is divided in half, with one-half allocated for wagers to place on the horse which finished first, and other half divided equally so as to allocate one-fourth of the profit on the net place pool for wagers to place on each of the two horses finishing

in a dead heat for second, or one-sixth of the profit for wagers to place on each of three horses finishing in a dead heat for second.

- c. In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.
 - d. In the event no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace the horse in the distribution of wagers in the place pool.
4. **Show pool.** The amounts wagered to show on the first three horses to finish are deducted from the net pool to determine the profit. The profit is divided into three equal amounts; one-third of the profit is divided by the amount wagered to win on the first finisher, such quotient being the profit per dollar wagered to show on such first finisher; one-third of the profit is divided by the amount wagered to show on the second finisher, such quotient being the profit per dollar wagered to show on such second finisher; and one-third of the profit is divided by the amount wagered to show on the third finisher, such quotient being the profit per dollar wagered to show on such third finisher. Payoffs include return of amount wagered and profits thereon as to each of the first three finishers.
- a. In the event of a dead heat for first: between two horses involving different betting interests, or three horses involving three different betting interests, the show pool is distributed as if no dead heat occurred; if between two horses involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third allocated to wagers to show on the other horse among the first three finishers; if between three horses involving one betting interest, the show pool is distributed as if a win pool.
 - b. In the event of a dead heat for second: between two horses involving two different betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third allocated to wagers to show on the horse finishing first; if between three horses involving one, two, or three betting interests, one-third of the profit is allocated to wagers to show on the horse finishing first, and the remaining two-thirds of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.
 - c. In the event of a dead heat the third: between horses involving the same betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving two or more betting interests, two-thirds of the profit shall be allocated to wagers to

show on the first two finishers, and the remaining one-third is divided equally by the number of betting interests finishing in a dead heat for third for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for third.

- d. In the event the first three horses to finish comprise one betting interest, the show pool must be distributed as a win pool. In the event two horses coupled as a single betting interest finish first and second, or first and third, or second and third, two-thirds of the profit must be allocated to wagers to show on the other horse among the first three finishers.
 - e. In the event one horse coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second and another horse included in the same betting interest finishes in a dead heat for third: one-half of the profit in the show pool must be allocated to wagers on such field or entry, one-third of the profit in the show pool must be allocated to wagers on the horse finishing first or second, and the remaining one-sixth of such profit must be allocated to wagers on the horse finishing in a dead heat for third with such field or entry.
 - f. In the event only two horses finish, the show pool, if any, must be distributed as if a place pool; if only one horse finishes, the place and show pools, if any, must be distributed as if a pool; if no horse finishes, all money wagered on such race must be refunded upon presentation and surrender of parimutuel pari-mutuel tickets sold thereon. In the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wager in the show pool.
5. **Daily double pool.** The amount wagered on the winning combination, such being the horse or betting interest which finishes first in the first daily double race, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered and profit thereon.
- a. In the event of a dead heat for first involving two different betting interests, in one of the two daily double races, the daily double pool is distributed as if a place pool, with half the profit allocated to wagers combining the single winner of one daily double race and of the betting interests involved in the dead heat in the other daily double race, with the other half of the profit allocated to wagers combining the single winner of one daily double race and the other betting interest involved in the dead heat in the other daily double race.

- b. In the event of dead heats for first involving different betting interests in each of the daily double races, resulting in four, or six, or nine, winning combinations for proportionate allocation for each such winning daily double wager.
- c. In the event no daily double ticket is sold combining the horse or betting interest which finishes first in one of the daily double races, the daily double pool is distributed as if a win pool with the profit allocated to the wagering combination which includes the horse or betting interest which finished first in one of the daily double races.
- d. In the event no daily double ticket is sold combining the horses or betting interest which finished first in both the first and second race of the daily double, then the winning combination for distribution of the daily double profit must be that combining the horses or betting interests which finished second in each of the daily double races.
- e. If after daily double wagering has commenced and a horse not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or is prevented from racing because of failure of the starting gate to open properly, then daily double wagers combining such horse must be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.
- f. If, prior, to closing of the daily double wagering, a scheduled starter in the second half on the daily double which is not coupled in the betting with another horse is excused by the stewards, then daily double wagers combining such horse must be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.
- g. If after the first race of the daily double has been run, and a horse not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or prevented from racing because of failure of the starting gate door to open properly, then daily double wagers combining the winner of the first daily double race with such horses prevented from racing in the second daily double race must be allocated consolation payoffs.
- h. Consolation daily double payoffs must be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or betting interest scheduled to start in the second daily double race, such quotient being the consolation payoff per dollar wagered combining the winner of the first daily double with such horse prevented from riding in the second daily double race. Such consolation payoffs must be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

- i. If for any reason the first daily double race is canceled or declared "no race" by the stewards, then the entire daily double pool must be refunded upon presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is canceled or declared "no race" by the stewards after the first daily double race is declared official, then the net daily double pool must be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.
 - j. If no daily double ticket is sold requiring distribution, then the entire daily double pool must be refunded upon presentation and surrender of daily double tickets thereon.
6. **Quinella pool.** The amount wagered on the winning combination, such being the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.
- a. In the event of a dead heat for first: between horses involving two different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses involving three different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three horses finishing in a dead heat for first.
 - b. In the event of a dead heat for second: between horse involving two different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second; if between horses involving three different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three horses finishing in a dead heat for second.
 - c. In the event horses representing a single betting interest finish first and second, the net quinella pool must be allocated to wagers combining such single betting interest with the horse or betting interest which finishes third.
 - d. In the event no quinella ticket is sold combining:
 - (1) The first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second.

- (2) The second finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.
 - (3) The first finisher with either of the horses finishing in a dead heat for second or combining the two horses which finished in a dead heat for second, then the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the first three finishers with any other horses.
 - (4) The first two finishers, then the net quinella pool must be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses, and wagers combining the second finisher with any other horse.
 - (5) Horses or betting interest as would require distribution, then the entire quinella pool must be refunded upon presentation and surrender of quinella tickets thereon.
7. **Exacta pool.** The exacta pool is a contract by the purchaser of a ticket combining two horses in a single race, selecting the two horses that will subsequently finish first and second in that race. Payment of the ticket may be made only to the purchaser who has selected the same order of finish as officially posted.
- a. The exacta is not a "parlay" and has no connection with or relation to the win, place, and show betting and will be calculated as an entirely separate pool.
 - b. If no ticket is sold on the winning combination of an exacta pool, the net pool must be distributed equally between holders of tickets selecting the winning horse to finish first or holders of tickets selecting the second place horse to finish second or both.
 - c. If no ticket is sold that would require distribution of an exacta pool to winners as above defined, the association shall make a complete and full refund of exacta pool.
 - d. In case of a dead heat between two horses for first place, the net exacta pool must be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two horses for second place, the exacta pool must be figured as a place pool, the holders of tickets combining the winning horse and the two horses finishing second participating in the payoff.

- e. In the event of a dead heat for second place, if no ticket is sold on one of the two winning combinations, the entire net pool must be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the exacta pool must be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.
 - f. In the event of an entry finishing first and second, the net exacta pool must be distributed to holders of tickets selecting the entry to win combined with the horse finishing third.
8. **Trifecta pool.** The trifecta pool is a contract by the purchaser of a ticket combining three horses in a single race that will subsequently finish first, second, and third in that race. Payment of the ticket may be made only to the purchaser who has selected the same order of finish as officially posted.
- a. The trifecta is not a parlay and has no connection with the relation to the win, place, and show betting and will be calculated as an entire separate pool.
 - b. If no ticket is sold on the winning combination of the trifecta pool, the net pool must be distributed in that order. If no ticket is sold combining the win and place finish then that pool must be distributed to the holders of tickets selecting the winner. If less than three horses finish the payoff will be made to holders of tickets selecting the finishing horses in order, ignoring the balance of the selection.
 - c. If no ticket is sold that would require distribution of the net trifecta pool to a winner as above defined, the association shall make a full refund of the trifecta pool.
 - d. In the event of a dead heat or dead heats all trifecta tickets selecting the correct order of finish counting a horse in a dead heat as finishing in either position dead heated must be winning tickets. The payoff will be calculated as a place pool.
 - e. In the event of a scratch in the trifecta, no exchanges will be made. All tickets which include the scratched horse are eliminated from further participation of the trifecta pool and will be refunded.
 - f. ~~Coupled entries in fields are prohibited in trifecta races.~~
9. Pick (n) pools.

- a. The pick (n) requires selection of the first-place finisher in each of a designated number of contests. The association must obtain written approval from the commission concerning the scheduling of pick (n) contests, the designation of one of the methods prescribed in subdivision b, and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission.
- b. The pick (n) pool shall be apportioned under one of the following methods:
- (1) Method 1, pick (n) with carryover. The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; and the remainder shall be added to the carryover.
 - (2) Method 2, pick (n) with minor pool and carryover. The major share of the net pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) contests, the minor who selected the first-place finisher in the greatest number of pick (n) contests; and the major share shall be added to the carryover.
 - (3) Method 3, pick (n) with no minor pool and no carryover. The net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.
 - (4) Method 4, pick (n) with minor pool and no carryover. The major share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish. The minor share of the pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) contests, the

minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool. If there are no winning wagers, the pool is refunded.

- (5) Method 5, pick (n) with minor pool and no carryover. The major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. The minor place finisher in the second greatest number of pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all pick (n) contests, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests. If there are no wagers selecting the first-place finisher in a second greatest contest, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) contests. If there are no winning wagers, the pool is refunded.

- (6) Method 6, pick (n) with minor pool, jackpot pool, major carryover and jackpot carryover. Predetermined percentages of the net pick (n) pool shall be set aside as a major pool, minor pool, and jackpot pool. The major share of the net pick (n) pool and the major carryover, if any, shall be distributed to those who selected the first-place finisher of each of the pick (n) contests, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the pick (n) contests, the major net pool shall be added to the major carryover. If there is only one single ticket selecting the first-place finisher of each of the pick (n) contests, based on the official order of finish, the jackpot share of the net pick (n) pool and the jackpot carryover, if any, shall be distributed to the holder of that single ticket, along with the major net pool and the major carryover, if any. If more than one ticket selects the first-place finisher of each of the pick (n) contests the jackpot net pool shall be added to the jackpot carryover. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher of the second greatest number of pick (n) contests, based on the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) contests, the minor net pool of the pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher of the greatest number of pick (n) contests.

- (7) Method 7, pick (n) with no minor pool and carryover. The net pick (n) pool and carryover, if any, shall be distributed as a

single price pool to those who selected the first-place finisher in each of the pick (n) contests, based on the official order of finish. If there are no such wagers, the net pick (n) pool shall be added to the carryover.

c. If there is a dead heat for the first in any pick (n) contests involving:

(1) Contestants representing the same betting interest, the pick (n) pool shall be distributed as if no dead heat occurred.

(2) Contestants representing two or more betting interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

d. Should a betting interest in any of the pick (n) contests be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the host association for the contest as the close of wagering on that contest, shall be substituted for the scratch betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program combinations with substituted betting interests which became winners as a result to the substitution, in addition to the normal winning combination.

e. The pick (n) pool shall be canceled and all pick (n) wagers for the individual performance shall be refunded if:

(1) All three contests included as part of a pick 3 are canceled or declared no contest.

(2) At least three contests included as part of a pick 4, pick 5, or pick 6 are canceled or declared no contest.

(3) At least four contests included as part of a pick 7, pick 8, or pick 9 are canceled or declared no contest.

(4) At least five contests included as part of a pick 10 are canceled or declared no contest.

f. If at least one contest included as part of a pick (n) is canceled or declared no contest, but not more than the number specified in subdivision e, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.

- g. The pick (n) carryover may be capped as designated level approved by the commission so that if, at the close of any performance, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the pick (n) carryover is frozen, one hundred percent of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of pick (n) contests for that performance.
- h. A written request for permission to distribute the pick (n) carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation or the benefit to be derived, and the intended date and performance for the distribution.
- i. Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests. The pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- (1) Upon written approval from the commission as provided in subdivision h.
 - (2) Upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another or when the pick (n) is discontinued.
 - (3) On the closing performance of the meet or split meet.
- j. If for any reason, the pick (n) carryover must be held over to the corresponding pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool of the following meet on a date and performance so designated by the commission.
- k. With the written approval of the commission, the association may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.
- l. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly

prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

- m. The association may suspend previously approved pick (n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick (n) wagering is reinstated. An association may request approval of a pick (n) wager or separate wagering pool for specific performances.

10. Twin trifecta pools

- a. The twin trifecta requires selection of the first three finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin trifecta contest must be exchanged for a free ticket on the second twin trifecta contest in order to remain eligible for the second-half twin trifecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin trifecta contest. Winning first-half twin trifecta wagers will receive both an exchange and a monetary payout. Both of the designated twin trifecta contests shall be included in only one twin trifecta pool.

- b. After wagering closes for the first half of the twin trifecta and commissions have been deducted from the pool, the net pool shall then be divided into separate pools: the first-half twin trifecta pool and the second-half twin trifecta pool.

- c. In the first twin trifecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin trifecta contest:

- (1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then

- (2) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then

- (3) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers; then

- (4) The entire twin trifecta pool shall be refunded on twin trifecta wagers for that contest and the second-half shall be canceled.

- d. If no first-half twin trifecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half twin trifecta pool. In such

case, the second-half twin trifecta pool shall be retained and added to any existing twin trifecta carryover pool.

- e. Winning tickets from the first-half of the twin trifecta shall be exchanged for tickets selecting the first three finishers of the second-half of the twin trifecta. The second-half twin trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin trifecta contest:
 - (1) As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first three betting interests; but if there are no such tickets; then
 - (2) The entire second-half twin trifecta pool for the contest shall be added to any existing carryover moneys and retained for the corresponding second-half twin trifecta pool of the next consecutive performance.
- f. If a winning first-half twin trifecta ticket is not presented for cashing and exchange prior to the second-half twin trifecta contest, the ticket holder may still collect the monetary value associated with the first-half twin trifecta pool but forfeits all rights to any distribution of the second-half twin trifecta pool, except where expressly provided in subdivision m.
- g. Coupled entries and mutual fields may be permitted in twin trifecta contests with the prior written approval of the commission.
- h. Should a betting interest in the first-half of the twin trifecta be scratched, those twin trifecta wagers including the scratched betting interest shall be refunded.
- i. Should a betting interest in the second-half of the twin trifecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.
- j. If, due to a late scratch, the number of betting interests in the second-half of the twin trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half twin trifecta pool for that contest as a single price pool, but not the twin trifecta carryover.
- k. If there is a dead heat or multiple dead heats in either the first-half or second-half of the twin trifecta, all twin trifecta wagers selecting the correct order of finish, counting a betting interest involved in

a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

- (1) The first-half of the twin trifecta, the payout shall be calculated as a profit split.
 - (2) The second-half of the twin trifecta, the payout shall be calculated as a single price pool.
- l. If either of the twin trifecta contests are canceled prior to the first twin trifecta contest or the first twin trifecta contest is declared no contest, the entire twin trifecta pool shall be refunded on twin trifecta wagers for the contest and the second-half shall be canceled.
- m. If the second-half twin trifecta contest is canceled or declared no contest, all exchange tickets and outstanding first-half winning twin trifecta tickets shall be entitled to the net twin trifecta pool for that contest as a single price pool, but not twin trifecta carryover. If there are no such tickets, the net twin trifecta pool shall be distributed as described in subdivision c.
- n. The twin trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the twin trifecta carryover equals or exceeds the designated cap, the twin trifecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the twin trifecta carryover is frozen, one hundred percent of the net twin trifecta pool for each individual contest shall be distributed to winners of the first-half of the twin trifecta pool.
- o. A written request for permission to distribute the twin trifecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
- p. Should the twin trifecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the twin trifecta after completion of the first-half of the twin trifecta:
- (1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then

- (3) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers; then
 - (4) As a single price pool to holders of valid exchange tickets.
 - (5) As a single price pool to holders of outstanding first-half winning tickets.
- q. Contrary to subdivision d, during a performance designated to distribute the twin trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the twin trifecta. If there are no wagers correctly selecting the first-place, second-place, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place and second-place betting interests. If there are no wagers correctly selecting the first-place and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only in the first-half of the twin trifecta, all first-place tickets will become winners and will receive one hundred percent of that day's net twin trifecta pool and any existing twin trifecta carryover.
- r. The twin trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- (1) Upon written approval from the commission as provided in subdivision o.
 - (2) Upon written approval from the commission when there is a change in the carryover cap or when the twin trifecta is discontinued.
 - (3) On the closing performance of the meet or split meet.
- s. If, for any reason, the twin trifecta carryover must be held over to the corresponding twin trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The twin trifecta carryover plus accrued interest shall then be added to the second-half twin trifecta pool of the following meet on a date and performance so designated by the commission.
- t. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication

between totalizator and pari-mutuel department employees for processing of pool data.

- u. The association must obtain written approval from the commission concerning the scheduling of twin trifecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved twin trifecta format require prior approval from the commission.

11. Tri-superfecta pools.

- a. The tri-superfecta requires selection of the first three finishers, in the exact order, in the first of two designated contests and the first four finishers, in exact order, in the second of the two designated contests. Each winning ticket for the first tri-superfecta contest must be exchanged for a free ticket on the second tri-superfecta contest in order to remain eligible for the second-half tri-superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second tri-superfecta contest. Winning first-half tri-superfecta tickets will receive both an exchange and a monetary payout. Both of the designated tri-superfecta contests shall be included in only one tri-superfecta pool.
- b. After wagering closes for the first-half of the tri-superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools, the first-half tri-superfecta pool and the second-half tri-superfecta pool.
- c. In the first tri-superfecta contest only, winning tickets shall be determined using the following precedence, based upon the official order of finish for the first tri-superfecta contest:
 - (1) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence as the first two betting interests; but if there are no such wagers; then
 - (3) As a single price pool to those whose combination correctly selected the first-place betting interests, but if there are no such wagers; then
 - (4) The entire tri-superfecta pool shall be refunded on tri-superfecta wagers for that contest and the second-half shall be canceled.

- d. If no first-half tri-superfecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half tri-superfecta pool. In such case, the second-half tri-superfecta pool shall be retained and added to any existing tri-superfecta carryover pool.
- e. Winning tickets from the first-half of the tri-superfecta shall be exchanged for tickets selecting the first four finishers of the second-half of the tri-superfecta. The second-half tri-superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second tri-superfecta contest:
 - (1) As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets; then
 - (2) The entire second-half tri-superfecta pool for that contest shall be added to any existing carryover moneys and retained for the corresponding second-half tri-superfecta pool of the next performance.
- f. If a winning first-half tri-superfecta ticket is not presented for cashing and exchange prior to the second-half tri-superfecta contest, the ticket holder may still collect the monetary value associated with the first-half tri-superfecta pool but forfeits all rights to any distribution of the second-half tri-superfecta pool, except where expressly provided in subdivision m.
- g. Couple entries and mutuel fields may be permitted in tri-superfecta contests with the prior written approval of the commission.
- h. Should a betting interest in the first-half of the tri-superfecta be scratched, those tri-superfecta tickets, including the scratched betting interest shall be refunded.
- i. Should a betting interest in the second-half of the tri-superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.
- j. If, due to a late scratch, the number of betting interests in the second-half of the tri-superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half tri-superfecta pool for that contest as a single price pool, but not the tri-superfecta carryover.

- k. If there is a dead heat or multiple dead heats in either the first-half or second-half of the tri-superfecta, all tri-superfecta tickets selecting the correct order of finish counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner, in the case of a dead heat occurring in:
- (1) The first-half of the tri-superfecta, the payout shall be calculated as a profit split.
 - (2) The second-half of the tri-superfecta, the payout shall be calculated as a single price pool.
- l. If either of the tri-superfecta contests are canceled prior to the first tri-superfecta contest or the first tri-superfecta contest is declared no contest, the entire tri-superfecta pool shall be refunded on tri-superfecta wagers for that contest and the second-half shall be canceled.
- m. If the second-half of the tri-superfecta contest is canceled or declared no contest, all exchange tickets and outstanding first-half winning tri-superfecta tickets shall be entitled to the net tri-superfecta pool for that contest as a single price pool, but not the tri-superfecta carryover. If there are no such tickets, the net tri-superfecta pool shall be distributed as described in subdivision c.
- n. The tri-superfecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the tri-superfecta carryover equals or exceeds the designated cap, the tri-superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half tri-superfecta carryover is frozen, one hundred percent of the net tri-superfecta pool for each individual contest shall be distributed to winners for the first-half of the tri-superfecta pool.
- o. A written request for permission to distribute the tri-superfecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
- p. Should the tri-superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the tri-superfecta after completion of the first-half of the tri-superfecta:

- (1) As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers; then
 - (3) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers; then
 - (4) As a single price pool to those whose combination included, in correct sequence, the first-place betting interests only; but if there are no such wagers; then
 - (5) As a single price pool to holders of valid exchange tickets.
 - (6) As a single price pool to holders of outstanding first-half winning tickets.
- g. Contrary to subdivision d, during a performance designated to distribute the tri-superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the tri-superfecta. If there are no wagers correctly selecting the first-place, second-place, and third-place finishers, in their exact order, then exchange tickets shall be issued or combinations correctly selecting the first-place and second-place betting interests. If there are no wagers correctly selecting the first-place and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the tri-superfecta, all first-half tickets will become winners and will receive one hundred percent of that day's net tri-superfecta pool and any existing tri-superfecta carryover as a single price pool.
- h. The tri-superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- (1) Upon written approval from the commission as provided in subdivision o.
 - (2) Upon written approval from the commission when there is a change in the carryover cap or when the tri-superfecta is discontinued.

(3) On the closing performance of the meet or split meet.

- s. If, for any reason, the tri-superfecta carryover must be held over to the corresponding tri-superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The tri-superfecta carryover plus accrued interest shall then be added to the second-half tri-superfecta pool of the following meet on a date and performance so designated by the commission.
- t. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.
- u. The association must obtain written approval from the commission concerning the scheduling of tri-superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to be approved tri-superfecta format require prior approval from the commission.

12. Twin superfecta pools.

- a. The twin superfecta requires selection of the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin superfecta contest. Winning first-half twin superfecta tickets will receive both an exchange and a monetary payout. Both of the designated twin superfecta contests shall be included in only one twin superfecta pool.
- b. After wagering closes for the first-half of the twin superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half twin superfecta pool and the second-half twin superfecta pool.

13. Superfecta pools.

- a. The superfecta requires selection of the first four finishers in their exact order for a single contest.
- b. The net superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

- (1) As a single price pool to those whose combination finished in correct sequence as the first four betting interests, but if there are no such wagers; then
 - (2) As a single price pool to those whose combination included, in correct sequence, the first three betting interests, but if there are no such wagers; then
 - (3) As a single price pool to those whose combination included, in correct sequence, the first two betting interests, but if there are no such wagers; then
 - (4) As a single price pool to those whose combination correctly selected the first-place betting interest only, but if there are no such wagers; then
- c. If less than four betting interests finish and the contest is declared official, payouts will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.
- d. If there is a dead heat for first involving:
- (1) Contestants representing the four or more betting interests, all of the wagering combinations selecting the four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.
 - (2) Contestants representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth-place betting interest shall share in a profit split.
 - (3) Contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.
- e. If there is a dead heat for second involving:
- (1) Contestants representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second share in a profit split.
 - (2) Contestants representing two betting interests, all of the wagering combinations correctly selecting the winner, the

two dead-heated betting interests, irrespective of order, and the fourth-place betting interests shall share in a profit split.

- f. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence along with any two of the betting interests involved in the dead heat for third shall share in a profit split.
- g. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth shall share in a profit split.
- h. Coupled entries and mutual fields shall be prohibited in superfecta contests.

14. Twin quinella pools.

- a. The twin quinella requires selection of the first two finishers, irrespective of order, in each of two designated contests. Each winning ticket for the first twin quinella contest must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin quinella contest. Both of the designated twin quinella contests shall be included in only one twin quinella pool.
- b. In the first twin quinella contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin quinella contest:
 - (1) If coupled entry of mutual field finishes as the first two finishers, those who selected the coupled entry or mutual field combined with the next separate betting interest in the official order of finish shall be winners; otherwise
 - (2) Those whose combination finished as the first two betting interests shall be winners, but if there are no such wagers; then
 - (3) Those whose combination included either the first-place or second-place finisher shall be winners, but if there are no such wagers on one of those two finishers; then
 - (4) Those whose combination included the one covered betting interest included within the first two finishers shall be winners, but if there are no such wagers; then

(5) The entire pool shall be refunded on twin quinella wagers for that contest.

15. **Refunds.** After wagering has commenced, if a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate door to open properly, the wagers on such horse must be deducted from the pools, and refunded upon presentation and surrender thereof. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination then there may be no refund unless all of the horses representing such single betting interest are excused by the stewards or are prevented from racing because of failure of the starting gate doors to open properly, or both.

~~40.~~ 16. **Race canceled.** If for any reason a race is canceled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon must be refunded upon presentation and surrender of ~~parimutuel~~ pari-mutuel tickets thereon; except as to daily double wagers upon cancellation of the second daily double race, which must be distributed as provided under subsection 5.

~~44.~~ 17. **Totalizator breakdown.** In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race must be declared closed and the payoff must be computed on the sums wagered in each pool up to the time of the breakdown.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-05. Minimum wager and payoff. The minimum wager to be accepted by any licensed association is one dollar except multiple contribution wagers may be accepted at ten cents. The minimum payoff on a two dollar wager must be two dollars and ~~twenty~~ ten cents.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-06. Minors prohibited from wagering. No minor may be permitted by any licensed association to purchase a ~~parimutuel~~ pari-mutuel ticket or be present in the immediate wagering areas.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-08. Betting explanation. Each association shall cause to be published in the daily race program a general explanation of ~~parimutuel~~ pari-mutuel betting and an explanation of each type of betting pool offered; such explanation also must be posted in conspicuous places about the association grounds so as to adequately inform the public. Such explanation must be submitted to the commission prior to publication so as to ensure an absence of conflict with these rules.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-11. Parimutuel Pari-mutuel ticket sales.

1. No ~~parimutuel~~ pari-mutuel tickets may be sold except by the association conducting the races on which such wagers are made, and the same must be sold only at regular "seller" windows properly designated by signs showing the type and denomination of tickets to be sold at such windows if there are restrictions of any kind. No ~~parimutuel~~ pari-mutuel tickets may be sold after the totalizator has been locked and no association is responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.
2. Any claim by a person that the person has been issued a ticket other than that which the person requested must be made before such person leaves the seller window and before the totalizator is locked.
3. After purchasing a ticket and after leaving a ticket window, a person is not entitled to enter for issuance of an incorrect ticket, or claim refund or payment for tickets discarded, lost, destroyed, or mutilated beyond identification.
4. Payment on valid ~~parimutuel~~ pari-mutuel tickets may be made only upon presentation and surrender thereof to the association where such wager was made within ninety days following the running of the race on which such wager was made. Failure to present any such ticket within ninety days constitutes a waiver of the right to receive payment thereon. The balance of funds not paid out constitutes the outs.
5. Payment of valid ~~parimutuel~~ pari-mutuel tickets must be made on the basis of the order of finishes purposely posted on the infield results board and declared "official" by the stewards; any subsequent change in such order of finish or award of purse money as may result from a subsequent ruling by the stewards or commission in no way affects the ~~parimutuel~~ pari-mutuel payoff. Cashiers' windows must remain open a reasonable length of time after the last race.

6. The association is responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, then such posting error may be corrected accompanied by a public address announcement, and only the correct amounts may be used in the payoff, irrespective of the initial error on the public board.
7. Prior to posting payoffs, the ~~parimutuel~~ pari-mutuel manager shall require each of the computer printout sheets of such race to be proven and the winners verified. Such proof must show the amounts for commissions, breakage, and payoffs, which added together must equal the total pool. All pay slips are to be checked with computer printout sheets as to winner and prices before being issued to cashiers, and all board prices are to be rechecked before released to the public.
8. Whenever the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool, or pools, is less than the amount used in calculating the payoff, such deficiency must be deposited in the pool or pools by the association. Should the recapitulation of sales prove that the actual amount in the pool or pools is greater than the amount used in calculating the payoff due to an error of the totalizator, such error resulting in underpayment to the public, then the aggregate of such underpayments must be paid into the corresponding pool of the next race or races in such amounts as may be determined by the state steward and the ~~parimutuel~~ pari-mutuel manager. If any such error should occur in computing the daily double pool, the underpayment must be added to the daily double pool of the following day. Overpayments and underpayments subsequently discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from such final adjustment must be paid to the commission.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-12. Meeting interests involving more than one horse. When two or more horses entered for the same race are determined by the stewards to have common ties through ownership or training and are joined by the stewards as a "mutuel entry", such mutuel entry becomes a single betting interest and a wager on one horse in a mutuel entry is a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest ~~parimutuel~~ pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, is

shown in the "mutuel field" as a single betting interest, and a wager on one horse in the mutuel field is a wager on all horses in the same mutuel field.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-12.1. The pari-mutuel manager. The pari-mutuel manager:

1. Shall deliver to the commission at the end of each racing day, a record showing the amount wagered in each pool, the commission and the breakage for each race, and the totals of each for the day.
2. Shall be properly and timely advised by the racing secretary, prior to the beginning of wagering on each race, on the horses that will compete in the race.
3. Is held responsible for the conduct of the mutuels employees, but is not responsible for their shorts or longs. Each seller or cashier shall be responsible to the pari-mutuel manager for their shorts or longs. Such shorts or longs shall be a guide to the pari-mutuel managers as to the conduct and character of the employees.
4. Shall employ only those licensed by the commission unless by special permission of the commission.
5. Shall allow no one to enter the mutuel department other than those properly licensed and whose employment requires their presence, except with the specific authorization of the pari-mutuel manager or the commission.
6. Shall sign all license applications for employees of the pari-mutuel department.
7. Shall, upon discharging an employee or the resignation of an employee, immediately report same to the commission. If a discharge or resignation is related to possible violations of racing rules or state laws, or problems involving the handling or reconciliations of wagers, notice shall be accompanied by a report to the commission concerning the reasons for the action.
8. Shall be responsible for the odds board and the information it reflects.

History: Effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-13. Emergency situations. In the event any emergency arises in connection with the operation of the ~~parimutuel~~ pari-mutuel department not

provided for by these rules, then the ~~parimutuel~~ pari-mutuel manager shall make an immediate decision and render a full report to the commission.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

69.5-01-08-14. Totalizator employees. Any employee of a totalizator company shall report any irregularities or wrongdoings by any person involving ~~parimutuel~~ pari-mutuel wagering immediately to the commission.

History: Effective July 1, 1989; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-10, 53-06.2-11

CHAPTER 69.5-01-09

69.5-01-09-01. Definitions. As used in this chapter:

1. "Accredited North Dakota-bred race horse" means a horse qualifying for and duly registered in the North Dakota breeders' fund program. ~~For purposes of awards and purse supplements, such accreditation for horses racing shall continue through the age of six years. Awards for breeding mares and stallions shall continue indefinitely.~~
2. "Breeder" means the owner or lessee ~~of the respective breed-registering organization~~ of the dam at the time of foaling in North Dakota.
3. "North Dakota-bred" means a foal born in North Dakota out of a ~~mare~~ broodmare registered as a broodmare with the North Dakota racing commission which ~~mare~~ broodmare was in North Dakota:
 - a. On or before February first of the year foaled; or
 - b. Within thirty days after the date of a bona fide purchase or lease transaction, whichever of those dates is the latest, and provided, in either case, that mare remained physically within the boundaries of North Dakota until foaling.
4. "North Dakota-foaled" means a horse foaled in North Dakota.
5. "Race horse owner" means the owner or lessee of record with the respective breed-registering organization at the time the horse participates in a race qualifying the horse for breeders' fund awards or purse supplements under the provisions of this chapter.
6. "Stallion owner" means the owner of a stallion registered as a breeding stallion in the North Dakota breeders' fund program. North Dakota breeders' fund awards accruing to the owner of a stallion as a result of qualifying race performances by North Dakota-breds sired by a stallion shall be awarded to the owner of the stallion at the time of conception of such progeny.

In a case involving extraordinary circumstances, the North Dakota racing commission or designated registering agency retains the right to allow or disallow the registration of a foal as North Dakota-bred at its sole discretion.

The requirements of this section apply to all breeds.

History: Effective January 1, 1990; amended effective March 1, 2002; January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-02. Registration and requirements for North Dakota-bred eligibility.

1. The breeder or owner of a North Dakota-bred horse shall register such horse with the North Dakota racing commission. The commission may shall contract with and designate an official registering agency to implement the registration of North Dakota-bred horses.

2. Broodmare registration. A broodmare must ~~meet the qualifications as outlined in subsection 4 of section 69.5-01-09-04~~ be registered as a broodmare to be eligible for broodmare award payments based on a percentage of the North Dakota breeders' fund program awards earned by accredited North Dakota-bred horses foaled by the mare. In addition, the broodmare must meet the following conditions:
 - a. The North Dakota racing commission or the designated agency must receive the broodmare's original breed registration certificate for embossing, a completed North Dakota breeders' fund program registration application as furnished by the North Dakota racing commission, and a registration fee of ~~ten~~ twenty dollars.

 - b. Failure to properly register the broodmare, ~~as outlined in section 69.5-01-09-04 and in this section,~~ a broodmare prior to foaling will disqualify any subsequent claims for North Dakota breeders' fund award payments.

 - c. ~~A broodmare may be registered at any time.~~

3. Stallion registration. To be eligible to receive stallion award payments, the following requirements must be met:
 - a. Stallions must physically be in North Dakota and registered or the registration renewed with the North Dakota racing commission or official registering agency by February first of the current breeding year. The stallion's original breed registration certification must be received by the North Dakota racing commission or official registering agency for embossing, with a completed North Dakota breeders' fund program registration application and a registration fee of ~~twenty~~ thirty dollars. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate.

 - b. When a stallion is purchased after February first of the current breeding season, the new owner must register the stallion within thirty days after the date of a bona fide purchase with the North Dakota racing commission or official registering agency to be eligible for the North Dakota breeders' fund program.

- c. Stallions must remain in North Dakota for the entire current breeding season from February first to July thirty-first. Stallions registered pursuant to subdivision b must be in North Dakota as of the date of registration and remain in North Dakota through July thirty-first.
4. Foal registration and certification. For a horse foaled in North Dakota to be registered and subsequently certified as a North Dakota-bred, the following requirements must be met:
 - a. Any time from foaling through December thirty-first of the foaling year that the horse was foaled in North Dakota, the foal must be registered with the North Dakota racing commission or official registering agency. The registration form must be provided by the commission and must contain the date, name, registration number, owner's name of the foaling dam, date the foal was born, and foal owner's statement that the foal was born in North Dakota. The application to register a foal in the North Dakota breeders' fund program as a North Dakota-bred must be accompanied by a ~~ten~~ twenty dollar registration fee.
 - b. Registration applications that meet all other requirements provided in this section, but are received after the December thirty-first deadline, may be processed and approved provided that applications and registration fees received after December thirty-first of the foaling year but prior to December thirty-first of the yearling year are accompanied by a late fee of one thousand dollars.
 - c. An investigator appointed by the commission shall have access to the premises on which qualified mares, North Dakota-registered stallions, and North Dakota-bred foals or horses are kept. The investigator may perform random inspections of North Dakota-registered foals as required by the commission.
 - d. The original breed registration certificate must be embossed by the commission or official registering agency prior to the entry into any restricted race.
 - e. Failure to have the breed registration certificate embossed shall disqualify a horse from entry in a race restricted to, or with preference given to, accredited North Dakota-bred horses, and shall prohibit an award or payment from the North Dakota breeders' fund.
 - f. The owner of the dam of a foal submitted to the registering agent or the North Dakota racing commission for registration in the North Dakota breeders' fund program must notify the North Dakota racing

commission ten days prior to shipping if the dam is to be leaving the state prior to ninety days after foaling.

9. The foal of a mare registered in the North Dakota breeders' fund program, but owned by an out-of-state individual or corporation, will be required to be inspected by a state-licensed veterinarian at the expense of the owner.

History: Effective January 1, 1990; amended effective March 1, 2002; January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-03. Administration of North Dakota breeders' fund program.

1. The North Dakota racing commission shall ~~deduct one-half of one percent~~ make deductions from each ~~parimutuel pari-mutuel~~ pool resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota breeders' fund as provided for by North Dakota Century Code section 53-06.2-11. All moneys held in the fund must be deposited with the North Dakota state treasurer in accordance with North Dakota law. All moneys shall remain in the control of the state treasurer until, upon action of the North Dakota racing commission, funds are transferred to the account of the fund administrator. The director of racing of the racing commission is responsible for the timely deposit of all revenue derived from the breeders' fund take-out and shall keep accurate records of deposits and disbursements.
2. The management procedures, rules, fee schedules, registration forms, publications, and all other instruments necessary to the operation of the North Dakota breeders' fund program by the official registering agency are subject to the review and approval of the commission. The commission must be provided copies of the completed registration forms for all horses entered in the North Dakota breeders' fund program, or the North Dakota stallion or broodmare registry. ~~The official registering agency shall provide the commission with~~ shall have prepared a financial accounting of the North Dakota breeders' fund program by an independent accountant within ninety days of the end of the calendar year. Costs of administering this ~~program~~ accounting will be funded by a deduction of no more than five percent of the yearly accumulated North Dakota breeders' fund.
3. ~~The racing industry advisory committee~~ North Dakota horsemen's council shall be the officially recognized advisory body to the North Dakota racing commission on all matters pertaining to the North Dakota breeders' fund program. The actions of the racing industry advisory committee shall be advisory only and shall not be binding upon the North Dakota racing commission. Establishment and membership of the racing industry advisory committee as to number

and representative affiliation shall be at the discretion of the North Dakota racing commission.

4. Any person who desires to contest the accuracy of the commission's records or accounting of the North Dakota breeders' fund distribution in any one year shall file a written claim with the commission prior to the end of the calendar year. The written claim must state the basis for the claim.

History: Effective January 1, 1990; amended effective March 1, 2002; January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-07. North Dakota-bred racing program. Any organization licensed by the commission to conduct a race meeting with ~~parimutuel~~ pari-mutuel wagering shall provide a North Dakota-bred program and publish such conditions in the condition book prior to the commencement of the race meeting. Prior to publication and distribution of the condition book, the commission shall review and approve the North Dakota-bred racing program. Any changes thereto must be filed with the commission and none may substantially deviate from the conditions previously published, unless approved by the commission.

The racing secretary at each racetrack shall be required to write and offer no less than one race each day for accredited North Dakota-bred horses. If the race meeting being conducted is a mixed race meeting, there shall be offered no less than one race each day per major breed racing (thoroughbreds, American quarter horses, or standardbreds) for accredited North Dakota-bred horses. In the event a race does not fill, a race may be opened up with North Dakota-bred horses preferred. For the purposes of this clause, a full gate shall consist of six or more horses. All entries must be publicly posted in the race office whether the race fills or not.

History: Effective January 1, 1990; amended effective March 1, 2002; January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-10. Distribution of funds for North Dakota-bred ~~parimutuel~~ pari-mutuel races.

1. ~~Sixty percent of the moneys accruing to the North Dakota breeders' fund shall be awarded to accredited North Dakota-bred horses who qualify for awards at licensed races outside the state and forty percent shall be awarded to accredited North Dakota-bred horses who win awards at licensed races within the state. Any race considered in this category~~ For any race to qualify for distribution of funds from the breeders' funds it must be a race licensed in North Dakota and have a minimum purse of one thousand dollars and in trials, fifteen

hundred dollars in all other races, or, if a claiming race, must have a minimum claiming price of two thousand five hundred dollars. All amount minimums will be determined in United States currency. In races restricted to certified North Dakota-bred horses, where the purse for such race is funded by the breeders' fund, no additional points will be paid to the owners of runners in such races.

2. The official order-of-finish distribution amounts accredited must be as follows:
 - a. Fifty percent of the total scheduled award payment to a winning accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any;
 - b. Thirty percent of the total scheduled award payment to the placing accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any; and
 - c. Twenty percent of the total scheduled award payment to the showing accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any.
3. The North Dakota racing commission shall establish a point system assigning monetary values for each win, place, or show by North Dakota-bred horses at licensed race meets within the state ~~and outside the state~~. The point system will assign values based on the relative moneys available for distribution ~~inside the state and outside the state~~, and the number of horses that qualify for such awards ~~inside in the state and outside the state~~. The North Dakota racing commission shall award additional points within the system it establishes for qualifying performances by accredited North Dakota-bred horses who win, place, or show in a race at a licensed race meet ~~outside in the state~~ where the purse is ten thousand dollars or more as follows:
 - a. Purse of ten thousand dollars or more but less than twenty-five thousand dollars is worth double points.
 - b. Purse of twenty-five thousand dollars or more but less than fifty thousand dollars is worth triple points.
 - c. Purse of fifty thousand dollars or more is worth quadruple points.
4. Distribution points for win, place, or show shall be established by the North Dakota racing commission for such performances by North Dakota-bred horses. ~~Separate pools shall be established for moneys to be awarded to North Dakota-bred horses that earn awards at licensed races outside the state and for North Dakota-bred horses who earn awards at licensed races within the state.~~

5. The distribution of North Dakota breeders' fund award payments must be as follows:
 - a. Sixty percent of the scheduled award payment to owners of accredited North Dakota-breds who earn such awards, provided however, that if either the dam or sire, or both, are not duly registered in the program as broodmares or stallions, that the award percentages that would have accrued to them, had they been in the program, be paid to the owner of the accredited foal up to one hundred percent of the scheduled award.
 - b. Thirty percent of the scheduled award payment to the ~~owner of the dam~~ breeder of an accredited North Dakota-bred who earns awards, provided that the dam was registered in the North Dakota breeders' fund program as a broodmare at the time the accredited North Dakota-bred was foaled.
 - c. Ten percent of the scheduled award payment to the owner of the sire at the time of conception of an accredited North Dakota-bred who earns awards provided that the sire was registered in the North Dakota breeders' fund program as a breeding stallion at the time the foal was conceived.
6. ~~No more than a total of ten race awards per horse will be permitted. The owner may select the ten races (win, place, or show) for breeders' fund awards. Applications for breeders' fund awards of the preceding year's races must be received in the North Dakota racing commission office on approved forms by January fifteenth of the year, following those races.~~
7. Award checks must have imprinted on them "This check is void if not cashed within sixty days after date of issuance". This statement is binding and checks not cashed within sixty days of issuance shall revert to the commission to be redeposited in the breeders' fund for future distribution awards with the exception that in the event the commission is unable to locate and award the recipient by United States first-class mail, the commission shall be given an additional sixty days beyond the void date of the award check to attempt to locate the payee. If unable to locate the payee within the additional sixty days, any such award shall revert back to the commission to be held in the breeders' fund for future distribution. Any subsequent claims for such awards by the person or entities not cashing award checks as prescribed or not located as defined by this section shall not be allowed.
8. 7. In no event may North Dakota breeders' fund moneys be used to subsidize restricted races, other than those restricted to North Dakota-breds.
9. ~~All broodmare and stallion awards must be calculated at the end of the year for distribution.~~

~~40: 8. All owner's awards may shall be distributed with purse distribution or, until such time as sufficient criteria is established, may be calculated at yearend for distribution before the end of the calendar year.~~

~~11. No breeders' fund moneys will be payable to the owner or owners of the sire or dam unless the owner or owners of the runner makes application for and receives an award.~~

History: Effective January 1, 1990; amended effective March 1, 2002; January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-11. Open company wins awards. Accredited North Dakota-bred horses that win open races at a North Dakota parimutuel pari-mutuel track will be eligible to receive owner, breeder, and stallion awards authorized by the commission.

History: Effective January 1, 1990; amended effective March 1, 2002; January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

CHAPTER 69.5-01-10

69.5-01-10-01. Deduction from ~~parimutuel~~ pari-mutuel pool. The North Dakota racing commission shall ~~deduct one-half of one percent~~ make deductions from each ~~parimutuel~~ pari-mutuel pool resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota purse fund as provided for by North Dakota Century Code section 53-06.2-11.

History: Effective January 1, 1990; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

CHAPTER 69.5-01-11

69.5-01-11-01. Definitions.

1. "Association" means an organization eligible to conduct offtrack wagering pursuant to North Dakota Century Code section 53-06.2-06. Unless otherwise specifically defined, the simulcast site operator shall be defined as the association.
2. "Authorized pari-mutuel wagering entity" means a licensed racetrack, association, simulcast service provider, or simulcast site operator.
3. "Authorized receivers" means simulcast site operators and simulcast service providers.
4. "Combined parimutuel pari-mutuel pool" means the parimutuel pari-mutuel wagers received at simulcast sites being contributed into one or more parimutuel pari-mutuel pools as required by the commission.
5. "Commission" means the North Dakota racing commission.
- 3- 6. "Decoder" means a device or means to convert encrypted audiovisual signals or data, or both, into a form recognizable as the original content of the signals.
- 4- 7. "Downlink" means a receiving antenna coupled with an audiovisual signal receiver compatible with and capable of receiving simultaneous audiovisual signals or data emanating from a sending track, and includes the electronic transfer of received signals from the receiving antenna to television monitors within the satellite facility.
- 5- 8. "Eligible organization" means an organization eligible to conduct offtrack wagering pursuant to North Dakota Century Code section 53-06.2-06.
- 6- 9. "Encryption" means the scrambling or other manipulation of the audiovisual signals to mask the original content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal.
10. "Guest association" means the simulcast service provider.
11. "Independent real-time monitoring system" means a system operated and approved by the commission for the purpose of immediate and continuous analysis of wagering and other pari-mutuel systems data in order to detect suspect wagering transactions or other activity indicating a possible problem relating to the integrity of the pari-mutuel system and which transmits transactional level data to a wagering security data base.

7. 12. "Interstate simulcast wagering" means wagering conducted by a betting system outside the state of North Dakota on the results of one or more races being run at a North Dakota track or wagering conducted by a betting system within the state of North Dakota on the results of one or more races being run at a site outside the state of North Dakota.
8. 13. "Intrastate simulcast wagering" means ~~parimutuel~~ pari-mutuel wagering at a North Dakota simulcast site on horse races run at a North Dakota track.
14. "Landlord" means the person or other entity owning or operating the physical plant or base business within which the simulcast site is located.
15. "Pari-mutuel manager" means the person responsible for managing the pari-mutuel wagering system, including managing all teller and wagering operations, monitoring tote operations, opening and closing tote, communicating with tote hub, issuing wagering system reports, and maintaining wagering system records.
9. 16. "Person" means any person, firm, corporation, association, or organization.
40. 17. "Sending track" means any track from which simulcast signals originate.
41. 18. "Simulcast employee or agent" means any person employed by a simulcast service provider or simulcast site operator, but does not include custodial or maintenance personnel not directly involved in wagering and others exempted by the commission.
12. "~~Simulcast operator~~" means ~~an eligible organization licensed by the commission to offer, sell, cash, redeem, or exchange parimutuel tickets on races being simulcast from a sending track.~~
43. 19. "Simulcast service provider" means a person engaged in providing simulcasting services to a simulcast site operator and establishing, operating, and maintaining the combined ~~parimutuel~~ pari-mutuel pool, but does not include persons authorized by the federal communications commission to provide telephone service or space segment time on satellite transponders.
44. 20. "Simulcast services" means services provided to a simulcast site operator including the simulcast signal from a sending track and the operation of the combined North Dakota ~~parimutuel~~ pari-mutuel pool.
45. 21. "Simulcast site" means the physical premises, structure, and equipment utilized by a simulcast site operator for the conduct of ~~parimutuel~~ pari-mutuel wagering on horse racing events being run elsewhere.

22. "Simulcast site operator" means an eligible organization licensed by the commission to offer, sell, cash, redeem, or exchange pari-mutuel tickets on races being simulcast from a sending track.
23. "Totalizator system standards" means the minimum standards for approval and operation of a pari-mutuel wagering system.
- 16: 24. "Uplink" means an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audiovisual signals or data, or both, on federal communications commission-controlled frequencies, and includes any electronic transfer of the audiovisual signals from within the racing enclosure to the location of the transmitter at the uplink.
25. "Voucher" means a document or card produced by a pari-mutuel system device on which a stored cash value is represented and the value of which is recorded in and redeemed through the pari-mutuel system.

History: Effective March 1, 1990; amended effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-02. General licensing requirements.

1. Any simulcast site operator, simulcast service provider, or simulcast employee desiring to display the simulcast of parimutuel events on which parimutuel wagering shall be permitted in the manner and subject to the conditions provided for under law and by the commission totalizator company must be licensed by the commission and approved by the attorney general. Totalizator companies contracting for service within the state and their employees whose principal work address is within the state must be licensed by the commission. Other vendors and their employees may be required to be licensed at the discretion of the commission. Application for a license must include the license fee as prescribed by the commission. Applications for licenses must be in such form as may be prescribed by the commission and must contain such information or other material or evidence as the commission may require. All licenses must be for a period of one year commencing January first and ending December thirty-first of each calendar year. The initial license fee for a simulcast service provider is two thousand five hundred dollars, for a simulcast site operator is one thousand dollars, and for a totalizator company is two thousand five hundred dollars.
2. The application for renewal of license must be made to the commission no later than thirty days prior to the date of expiration of the license on such form by such date as may be prescribed by the commission. If the commission has not specifically set application dates for renewal of the class of license, application must be made no later than thirty days prior to the date of expiration of the license. Application for renewal

of license must be made in such form as may be prescribed by the commission. Application for license renewal must include the license fee as prescribed by this chapter for a simulcast service provider, one thousand dollars; simulcast site operator, two hundred fifty dollars; and totalizator company, one thousand dollars.

3. Approval or disapproval of an application for simulcast site operator or simulcast service provider license must include consideration by the commission of the following:
 - a. The operator's or provider's general benefit to the state of North Dakota.
 - b. The operator's or provider's general benefit to the state's horse racing industry.
 - c. The operator's or provider's integrity.
 - (1) Individual and corporate conduct and reputation.
 - (2) Criminal history.
 - (3) Betting and gaming industry conduct and reputation.
 - d. The operator's or provider's credibility.
 - (1) Accuracy of feasibility study.
 - (2) Experience and expertise of the operator or provider in the simulcast industry.
 - e. Financial stability.
4. A simulcast service provider cannot operate without an executed contract with a simulcast site operator.
5. The commission may require licensing of any entity or person contracting with or providing services or commodities to any simulcast site operator, simulcast service provider, or simulcast employee licensed by the commission.

History: Effective March 1, 1990; amended effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-03. Licensing the simulcast service provider providers.

1. A service provider Simulcast service providers must be licensed by the commission and approved by the attorney general.

2. Before the commission may grant such license, it shall review and approve the services to be provided by the applicant. The applicant shall submit such information as required by the commission which must include, but not be limited to:
 - a. The services and equipment to be provided.
 - b. ~~The sources and amounts of revenue expected from said operation~~ Projected revenue and costs associated with the operations of the applicant as a simulcast service provider.
 - c. A complete financial statement demonstrating adequate capitalization to maintain the intended services.
 - d. A description of the management or management groups responsible for the operation of the simulcast services company.
 - e. A complete description of the transmission, totalizer, and data processing equipment to be used.
 - f. A history of the company demonstrating the experience and technical knowledge necessary to supply the intended services.
 - g. Written agreements between the applicant and all parties assisting in providing simulcast services.
 - h. A description of the security measures to be used to protect the propriety of the signal and the integrity of the wagering process.
 - i. The system of accounts to be utilized in the collection and distribution of revenues directly or indirectly related to the simulcast operation and the combined ~~parimutuel~~ pari-mutuel pool.
 - j. A detailed statement demonstrating individual and corporate conduct, ability, and reputation of the applicant and supervisory personnel.
3. ~~The license fee must be five thousand dollars annually~~ The commission may license one or more simulcast service providers concurrently to provide services, as defined by this chapter, to one or more licensed simulcast site operators within the state. Fees for such license shall be as prescribed by the commission. Licenses will be for a term of one calendar year. The commission may establish license fees separately for first-time applicants and for renewal of existing licenses in order to recognize additional costs of investigation and analysis required for first-time licenses.

4. ~~The licensee shall post with the commission such surety as is required by the commission for the services the applicant will provide. Each applicant for a license shall give bond payable to this state with good security as approved by the commission. The bond must be in the amount the commission determines will adequately protect the amount normally due and owing to this state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.~~

History: Effective March 1, 1990; amended effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-04. Duties of the simulcast service provider providers.

1. ~~The service provider~~ Simulcast service providers shall comply with all state and federal laws, including section 3001, et seq. of title 15 of the United States Code.
2. ~~The A simulcast service provider intending to make any change not reflected in the original license application submitted to the commission, a supervisory personnel change, or change of sending track must be granted in its structure or operations which would alter any of the responses given in its original license application must obtain prior approval of such changes by the commission and must file with the commission a statement including, but not limited to:~~
 - a. The changes to be made.
 - b. A statement that the simulcast service provider is in compliance with section 3001, et seq. of title 15 of the United States Code and any other applicable federal laws.
 - c. The date and time the simulcast service provider intends to commence said changes.
3. A simulcast service provider may not be licensed as a simulcast operator.
4. ~~The service provider shall provide:~~ A service provider shall maintain records of all wagering at sites where it provides services. Such records shall be available to the commission for review and shall be retained in safekeeping for periods of time as follows:
 - a. ~~Parimutuel terminals, parimutuel odds display, modems or switching units enabling parimutuel data transmissions, and data communication between the service provider and the simulcast operator.~~

- ~~b.~~ A voice communication system between the state steward and the sending track stewards.
 - ~~c.~~ A telecommunication system available to the state steward for discharge of the steward's duties.
 - a. Hard copy of daily computer report - one year and until payment is made to the commission for unclaimed tickets.
 - b. Digital storage - three years.
 - c. Summary reports - five years.
 - d. Other wagering records as may be required from time to time and are specifically defined by the commission.
5. ~~The service provider shall, for a period of ninety days, retain the video record of all simulcasts in decoded form, and shall provide a copy of such record on a one-half inch [12.7 millimeters] video home system video cassette to the commission at its request. A licensed service provider shall initiate testing as provided in section 69.5-01-11-12.~~
6. ~~Not less than thirty minutes prior to the commencement of transmission of the racing program of each day or night, the service provider shall initiate a test program of its transmitter, encryption and decoding, and data communication system to assure proper operation.~~
7. ~~The A simulcast service provider shall maintain such security controls over its simulcast and communications system as directed by the commission.~~
- 8: 7. The A simulcast service provider shall provide the commission with a certified report of its operations as directed by the commission. The operations summary shall be provided to the commission on a weekly basis, with race weeks ending on Sunday. The report must contain content as directed by the commission. The report of a simulcast service provider may also include information, and may also satisfy the operations report of guest associations required by section 69.5-01-11-12.
- 9: 8. A licensed simulcast service provider may only provide simulcast services to a simulcast site operator licensed by the commission, except that a simulcast service provider may provide simulcast services to an Indian tribal entity within the state which may not be licensed pursuant to the provision of an existing racing addendum to a tribal gaming compact or to a racing association or simulcast site operator properly licensed by the recognized authority within another state.

- ~~10.~~ 9. The A simulcast service provider shall provide access to the simulcast system to all simulcast site operators licensed by the commission on an equal, nondiscriminatory basis. The A simulcast service provider may require compliance by the simulcast site operator with contractual provisions necessary to maintain the integrity of the simulcast and ~~parimutuel~~ pari-mutuel systems and to ensure proper operation of offtrack wagering.
- ~~11.~~ 10. The A simulcast service provider shall provide access by the commission or its designated representative to the provider facility and to all records of the provider and any other information as required by the commission or its representative.
- ~~12.~~ 11. Simulcasting may be permitted only on races conducted at approved locations at ~~parimutuel~~ pari-mutuel tracks governed by a racing commission, racing board, or governmental agency.
- ~~13.~~ 12. A simulcast service provider shall ~~establish and maintain~~ participate in a combined ~~parimutuel~~ pari-mutuel pool, ensure its the integrity of its participation, and establish procedure as approved by the commission for the use of federally insured financial institutions for receipt and disbursement of funds which are part of the combined ~~parimutuel~~ pari-mutuel pool. Such procedure must include provision for timely reconciliation and settlement of pool accounts with simulcast site operators serviced by a simulcast service provider. Times within which settlement of pool accounts are to be settled must be specified in contracts or service agreements between a simulcast service provider and host associations or simulcast site operators.
- ~~14.~~ The ~~service provider shall provide a signal from the sending track that will contain in its video content a digital display of the actual time of day, the name of the racetrack from where it emanates, the number of the race being displayed, and the sequential fractional time of the race as the race is being run.~~
13. Payment of taxes and other funds:
- a. A simulcast service provider shall pay all pari-mutuel taxes, special fund contributions, and other funds due and owing the state of North Dakota as indicated in the certified report of its operations, required in this chapter, directly to the racing commission.
- b. Amounts due to the state of North Dakota for pari-mutuel taxes, promotion fund, breeders' fund, and breakage shall be paid to the racing commission in monthly payments on or before the last day of the next month succeeding the month in which the pari-mutuel tax or other funds due to the state of North Dakota occurred or accrued.

- c. A simulcast service provider shall submit a report and a corresponding payment of funds owing to the racing commission for the full amount of outs (unclaimed winning tickets) within fifteen days after the end of the calendar quarter following the calendar quarter in which such wager was made. A simulcast service provider shall also submit a report and a corresponding payment of funds to the racing commission for the full amount of all breakage retained by a simulcast service provider. Breakage shall be calculated by deducting odd cents over any multiple of five cents of winnings per dollar from the portion of the pari-mutuel pool to be redistributed.
 - d. The racing commission may, when a simulcast service provider is delinquent in remittance of taxes or other funds owed to the state, notify the surety providing bond coverage to the state of the delinquent status of such taxes or funds, and may make a claim for payment from the surety.
 - e. If a simulcast service provider fails to submit a report of its operations as required, or fails to pay pari-mutuel taxes or other funds due the state within the time required by this section, or if upon audit it is found to owe additional taxes or other funds, a simulcast service provider is subject to a late fee of five percent of the amount of tax or other funds due, plus interest of one percent of the tax or other funds due per month or a fraction of a month of delay after the due date for the remittance of the moneys according to this chapter. A simulcast service provider with seven of fourteen delinquent payments may be subject to a late fee of ten percent of the moneys due plus interest of one percent of the amounts due per month or a fraction of a month of delinquency. The late fees and interest must be paid to the racing commission and disposed of in the same manner as other receipts under this chapter.
 - f. The racing commission may suspend or revoke a license of a simulcast service provider for failure to submit a report of its operations as required by law or administrative rule or for failure to pay funds due the state as required by law or administrative rule. The racing commission may also take such other actions as may be authorized by law.
- ~~15.~~ 14. The commission may appoint a simulcast steward or stewards as reasonably necessary for the protection of the public interest. The simulcast stewards must be appointed and assigned by the commission, but they must be paid for their services by the service provider. The commission shall be reimbursed on a monthly basis for the salaries, benefit, and travel expenses by the simulcast service provider for the auditors and stewards assigned to them. Duties of a steward or auditor shall include the following:

- a. An independent weekly record and report of each race program presented by a simulcast service provider. The report must be based on a review of each race contained in a program.
 - b. Reconciliation of all operating exceptions by the simulcast service provider and the sites it services that are not within the definitions of this chapter or are departures from normal operating practice. Such reconciliation shall include identification, investigation, reporting, and recommendation for adjustment or disposition directly to the commission.
 - c. Independent review and reporting directly to the director of the commission of all actions taken by the simulcast service provider or the totalizator company operating under contract with the simulcast service provider.
 - d. The steward or auditor shall have authority as presiding official at any time the steward or auditor is on the premises of a simulcast service provider. In the absence of the steward or auditor, the representative or a simulcast service provider shall be the designee of the commission as presiding official.
15. A simulcast service provider and a totalizator company operating under contract with a simulcast service provider shall serve as the designees of the commission to supervise simulcast operations pertaining to pari-mutuel wagering as is reasonably necessary to ensure the public interest.
 16. All reports must be signed by the presiding official and filed with the commission. The presiding official shall take immediate emergency actions as necessary to assure the continued operation and integrity of the simulcast system. All such actions shall be reported to the commission. The presiding official shall, when such acts are not, in the official's judgment an emergency, report to the commission prior to acting.
 17. A licensed simulcast service provider shall adopt and adhere to emergency operating procedures as follows. Totalizator system operations will be maintained by a service provider hub. Wagering data will be transferred from the simulcast wagering site to the hub via data transmission lines or electronic transmission. Wagering will be conducted in ontrack pools. The hub will transfer all wagering data from simulcast wagering site to the ontrack totalizator system. The locking procedure for the purpose of locking all teller windows at post time will be initiated by an ontrack official; the lock will be electronically conducted through the totalizator system to lock all tellers windows at the simulcast wagering site. Back-up locking procedures will be maintained by the presiding official, the hub pari-mutuel operator and the hub totalizator system operator. In the event of a lock procedure

failure, in which one or more windows fail to lock at the designated time, wagers shall be refunded. In the event of a locking procedure failure, a report will be submitted to the commission. Included will be computer reports reflecting all wagering activity.

- a. In the event of an interruption of the audiovisual satellite signal from the host racetrack, the hub pari-mutuel operator must:
 - (1) Notify the host track of the loss of signal.
 - (2) Maintain telephone contact with host track pari-mutuel department. The simulcast service provider licensee may continue to accept wagering on the balance of the program.
 - (3) In the event the hub totalizator system fails to transfer the data to the ontrack totalizator system, the totalizator hub pari-mutuel operator must notify ontrack totalizator system representative of the problem and request additional time prior to the start of the race to allow for a transmission of the data.
 - (4) A simulcast service provider licensee's hub pari-mutuel operator shall prepare a report indicating that the transfer of data could not be completed electronically. The report shall also include all the following:
 - (a) A copy of the totalizator report prior to the failure of the transfer of data.
 - (b) A copy of the totalizator report.
 - (c) A brief statement as to where the failure occurred, when the ontrack officials were notified.
- b. The ontrack pari-mutuel manager must be notified of the system failure.
- c. In the event that the ontrack totalizator system experiences a complete failure, the hub pari-mutuel operator may pay ontrack prices or refund amounts wagered.
- d. In the event any emergency arises in connection with the operation of the pari-mutuel system not provided for by these rules, then the hub pari-mutuel operator shall make an immediate decision and render a full report to the North Dakota racing commission.
- e. The hub pari-mutuel operator is responsible during the simulcast racing operating hours for the reporting of any problems or delays

to the wagering site. The wagering site is responsible for reporting any problems or delays to the public.

History: Effective March 1, 1990; amended effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-05. Licensing the simulcast operator site operators.

1. Before the commission may grant a license to a simulcast operator site operators, it shall review and approve a plan of operation submitted by an applicant including, but not limited to, the following information:
 - a. A feasibility study denoting the revenue earnings expected from the simulcast facility and the costs expected to operate such facility. The feasibility study must include:
 - (1) The number of races to be simulcast
 - (2) The types of wagering to be offered.
 - (3) The level of attendance expected and the area from which such attendance will be drawn.
 - (4) The level of anticipated wagering activity.
 - (5) The source and amount of revenue expected from other than parimutuel pari-mutuel wagering.
 - (6) The cost of operating the simulcast facility and the identification of costs to be amortized and the method of amortization of such costs.
 - b. The security measures to be employed to protect the facility, to control crowds, to safeguard the transmission of the simulcast signal and to control the transmission of wagering data to effectuate common wagering pools.
 - c. The description of the management groups responsible for the operation of the simulcast facility.
 - d. The system of accounts to maintain a separate record of revenues collected by the simulcast facility, the distribution of such revenues, and the accounting of costs relative to the simulcast operation.
 - e. The location of each simulcast site; and a copy of the lease or site agreement, ~~and a written confirmation from appropriate local officials that the location of such facility and the number of~~

~~patrons expected to occupy such facility are in compliance with all applicable local ordinances and codes.~~

- ~~f. All written agreements or letters of consent between parties to the operation of the simulcast system, including a licensed service provider.~~
 - ~~g. Proof of eligibility under North Dakota Century Code section 53-06.2-06.~~
 - ~~h. Applicant's financial information demonstrating adequate capitalization to carry on the duties of a simulcast site operator.~~
 - ~~i. Support or nonsupport of the local jurisdictional government.~~
 - ~~j. Proof of adequate experience and knowledge necessary to conduct simulcasting and parimutuel pari-mutuel wagering operations.~~
2. ~~The annual license fee must be one thousand dollars. For each additional site over one, the simulcast operator shall pay a site fee of five hundred dollars. The license fee shall be as prescribed by the commission. Simulcast site operators may apply for a license and may operate one or more sites at the fees prescribed by the commission. Licenses will be for a term of one calendar year.~~
3. ~~No license as simulcast operator may be granted to:~~ Licenses to simulcast site operators may be granted as follows:
- ~~a. Organizations ineligible under North Dakota Century Code section 53-06.2-06.~~
 - ~~b. A service provider.~~
 - a. Organizations eligible under North Dakota Century Code section 53-06.2-06.
 - b. Indian tribal entities within the state which may be licensed pursuant to the provision of an existing racing addendum to a tribal gaming compact with the state.
 - c. No simulcast service providers may be licensed as site operators.
4. ~~The simulcast operator shall post with the commission a surety in an amount and in such form as the commission requires, to ensure payment of distributable amounts of the parimutuel pool, operational costs, salaries, wages, benefits, taxes, North Dakota purse and breeders funds, and related financial obligations. Each applicant for a license under this chapter shall give bond payable to this state with good security as approved by the commission. The bond must be in the~~

amount the commission determines will adequately protect the amount normally due and owing to this state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.

5. No simulcasting or ~~parimutuel~~ pari-mutuel wagering may be conducted at a simulcast site not approved by the commission.

History: Effective March 1, 1990; amended effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-06. Duties of the simulcast operator site operators.

1. A simulcast site operator shall conduct the ~~parimutuel~~ pari-mutuel wagering at a simulcast site approved by the commission.
2. The A simulcast site operator shall provide access to the commission or its designated representative to the simulcast site and to all records of the operator and any other information as required by the commission or its designated representative.
3. If a licensee or an applicant for a live horse race meet license requests a shutdown of a simulcast site, the commission may require such simulcast site to shut down during the hours that the live race meet is run.
4. The A simulcast site operator is responsible for cash shortages which occur at a simulcast site.
5. The provisions of North Dakota Century Code section 53-06.2-11 are applicable to simulcasting and offtrack ~~parimutuel~~ pari-mutuel wagering. ~~The simulcast operator is responsible for the payment of the state takeout, the North Dakota breeders fund, and the North Dakota purse fund provided by the commission~~ A simulcast site operator shall establish a system of accounts to facilitate and to make record of compliance with this section. Such accounts must provide for timely payoffs to winning patrons either through immediate cash payments or by vouchers payable upon demand as soon as necessary funds transfer can be made through the clearing process of the banking system. Such accounts must also provide for timely transfer to the simulcast site operator's service provider of all funds owing to the state. These shall include pari-mutuel taxes, breakage, unclaimed tickets, purse fund contributions, breeders' fund contributions, and promotion fund contributions. The simulcast site operator's service agreement with its service provider must include provision for such timely transfer of these funds.
6. A simulcast site operator may only take a signal from a service provider licensed by the commission.

7. All wagers are made on the official results of the sending track.
8. ~~No simulcast operator may employ an independent contractor for the conduct of simulcasting or parimutuel wagering. Only an employee of a simulcast operator working for or without compensation may conduct simulcasting or parimutuel wagering, or both. Only a licensed employee of a simulcast site operator may conduct simulcast or pari-mutuel wagering on behalf of a simulcast site operator, except where valid pari-mutuel tickets are issued by a pari-mutuel ticket machine which is an automated ticket machine. A simulcast site operator may use such automated ticket machines only with the prior approval of the commission. When automated teller machines are used by a simulcast site operator, the operator may contract with persons other than employees whose activities on behalf of the simulcast site operators must be limited to the following:~~
 - a. To collect and account for cash receipts extracted from a voucher-issuing machine.
 - b. To pay out cash for winning ticket vouchers issued by an automated teller machine.
 - c. To maintain a record of such cash-handling activities using a record keeping system devised by the site operators and approved by the commission.

Such contractors must be licensed by the commission.

History: Effective March 1, 1990; amended effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-07. Licensing of simulcast employees.

1. No person may be a simulcast employee unless that person is the holder of a valid license issued by the North Dakota racing commission.
2. The employment of an unlicensed person by a simulcast site operator or simulcast service provider is prohibited. Upon discharge of a licensed simulcast employee, the operator or service provider shall report that fact to the commission, including the name and occupation of the discharged licensee and the reason for discharge.
3. The commission will not issue a license to a simulcast employee unless the application includes the prior endorsement of the employer.
4. ~~The initial license fee is twenty-five dollars. The annual and the renewal fee is ten dollars shall be prescribed by the commission.~~ For each change of employment, name change, or replacement of a lost or

destroyed license, a five-dollar fee will may be assessed as prescribed by the commission. The term of licenses shall be one calendar year.

5. ~~If the applicant for a simulcast employee license will be working at a gaming site licensed by the attorney general, and provides proof that the applicant is holding a valid gaming work permit, that applicant will be charged a ten-dollar initial license fee. Renewal and replacement fees must be the same as subsection 4 Maintenance and administrative representatives of simulcast service providers and their vendors or suppliers must have current North Dakota racing commission licenses available for presentation prior to requesting admittance to restricted areas of simulcast sites. If such representatives are not licensed by the North Dakota racing commission, they must be accompanied by a licensed representative or have the prior identification and endorsement of a licensed representative.~~
6. Each simulcast employee shall wear a valid license at all times while working in the a simulcast site or service provider's site. The license must be worn on the upper one-third of the employee's body. All information on the license or permit must be easily visible. No license may be transferred to any other person.
7. No employee or agent of a simulcast service provider may be employed by a simulcast site operator. No employee of a simulcast operator may be employed by a service provider.
8. No simulcast employee may wager at a simulcast site while on duty. For purposes of this section, a simulcast employee taking a temporary break is still considered on duty. ~~Furthermore, no simulcast employee may wager at a simulcast site until four hours have elapsed since the simulcast employee went off duty.~~

History: Effective March 1, 1990; amended effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-09. Denial, suspension, and revocation of simulcast licenses.

1. Reasons for denial, suspension, and revocation. The commission may deny, suspend, or revoke licenses for just cause. Actions constituting just cause include:
 - a. Any action or attempted action by a person contrary to any law.
 - b. Corrupt practices, which include:
 - (1) Prearranging or attempting to prearrange the order of finish of a race.

- (2) Failing to properly pay winnings to a bettor or to properly return change to a bettor purchasing a ticket.
 - (3) Falsifying or manipulating the odds on any entrant in a race.
- c. Any violation of the rules of racing or simulcasting adopted by the commission.
 - d. Willful falsification or misstatement of facts in an application for simulcasting privileges or a license.
 - e. Material false statement to a racing or simulcast official or to the commission.
 - f. Willful disobedience of a commission order or of a lawful order of an agent of the commission.
 - g. Continued failure or inability to meet financial obligations connected with the operation of any part of a simulcast system or simulcast site.
 - h. Failure or inability to properly maintain a simulcast system, simulcast site, or combined ~~parimutuel~~ pari-mutuel pool.
 - i. Failure to fulfill contractual obligations to other facets of the simulcast system.
 - j. The suspension or revocation of racing or ~~parimutuel~~ pari-mutuel wagering activity of the applicant or licensee by an out-of-state regulatory agency recognized by the commission.
2. The procedures to be followed in denial, suspension, or revocation of simulcast licenses must be as prescribed by North Dakota Century Code section 53-06.2-15.

History: Effective March 1, 1990; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-10. Pari-mutuel wagering. The North Dakota racing commission has taken separate action to adopt and incorporate the model rules of the association of racing commissioners international, inc., in whole or in part as soon as adoption and incorporation is practically possible.

History: Effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-11. Account wagering. The requirements for account wagering are as follows:

1. The simulcast site operator may offer a system of account wagering to its patrons whereby wagers are debited and payouts credited to a sum of money, deposited in an account by the patron, that is held by the association. The simulcast site operator shall notify the patron, at the time of opening the account, of any rules the association has made concerning deposits, withdrawals, average daily balance, user fees, interest payments, and any other aspect of the operation of the account. The simulcast site operator shall notify the patron whenever the rules governing the account are changed, such notification occurring thirty days before the new rules are applied to the account and including the opportunity for the patron to close or cash-in the account. The patron shall be deemed to have accepted the rules of account operation upon opening or not closing the account. The simulcast site operator shall request authorization from the commission before a system of account wagering is offered.

2. To establish an account with the association an application form must be signed or otherwise authorized in a manner approved by the commission and include all the following information about the applicant:
 - a. Full legal name.
 - b. Principal residence physical address.
 - c. Principal residence mailing address, if different than physical address.
 - d. Telephone number.
 - e. Social security number.
 - f. Proper identification or certification demonstrating that the applicant for the amount is at least eighteen years of age, if a resident of North Dakota, or twenty-one years of age, if not a North Dakota resident.
 - g. Any other information required by the commission.

3. The information each applicant submits may be subject to electronic verification of the name, principal residence address, date of birth and social security number, individual reference service company, or other technology approved by the commission. If there is a discrepancy, then the applicant for an account will be contacted by the advance deposit wagering facility and given instructions as to how to resolve the matter.

4. The principal residence address provided in writing by the accountholder at the time of application is deemed to be the proper address for all mailing, including checks, statements of account, account withdrawals, notices, or other correspondence unless the accountholder has provided the association with a change of principal residence address. The mailing of checks or other correspondence to the address given by the accountholder shall be the sole risk of the accountholder.
5. The accountholder shall maintain the minimum account balance established in the association operating plan. No wager may be made or accepted that would lower the account balance below the minimum balance.
6. The simulcast site operator may offer to open for its patrons:
 - a. Accounts that are operational for any performance offered by the association, whereby wagers are placed by the accountholder at a self-service terminal or by telephone or any other electronic means.
 - b. The simulcast site operator may reserve the right at any time to refuse to open an account, to accept a wager, or to accept a deposit.
 - c. The simulcast site operator shall provide, for each accountholder, a confidential account number and password to be used by the patron to confirm validity of every account transaction.
7. Deposits may be made in cash, check, or electronic transfer. Holding periods will be determined by the association and the accountholder shall be informed of this. A receipt for the deposit may be issued to the accountholder by the association but does not need to reflect the current account balance.
8. The simulcast site operator may only debit an account as follows:
 - a. Upon receipt by the association of information needed to place a wager, the association shall only debit the account in the amount of the wager at the time the wager is placed.
 - b. For fees for service or other transaction-related charges by the site operator.
 - c. Authorized withdrawal from an account when one of the following exists:
 - (1) The accountholder of an account appears personally at the simulcast site operator licensee's location and provides all the following:

- (a) Proper identification.
 - (b) The correct secure personal identification code.
 - (c) A properly completed and signed withdrawal slip.
- (2) The accountholder sends to the simulcast site operator, a properly completed and signed withdrawal slip or e-mail signature the association shall, within five business days of its receipt, send a check by certified mail with return receipt requested to the accountholder if there are sufficient funds in the account to cover the withdrawal. The check shall be payable to the accountholder and in the amount of the requested withdrawal. If funds are not sufficient to cover the withdrawal, the accountholder will be notified in writing and those funds in the account will be withdrawn and sent to the accountholder within the five-day time period. Electronic funds transfers may be used for withdrawals in lieu of a check at the discretion of the accountholder and the simulcast site operator in accordance with financial institution funds availability schedules.
9. Each accountholder shall be deemed to be aware of the status of that account at all times. Wagers will not be accepted which would cause the balance of the account to drop below the minimum account balance as set by the simulcast site operator. Any account not updated when a transaction is completed shall be inoperable until the transaction is posted and the account balance updated.
10. When an accountholder is entitled to a payout or refund, said monies will be credited to the respective account, thus increasing the balance. It is the responsibility of the accountholder to verify proper credits and, if in doubt, notify the association within the agreed-upon timeframe for consideration. Unresolved disputes may be forwarded to the commission. No claim will be considered by the commission, unless submitted in writing by the simulcast site operator, or the accountholder, and accompanied by supporting evidence.
11. The simulcast site operator shall maintain complete records of every deposit, withdrawal, wager, and winning payout for each account. These records shall be made available to the commission upon request.
- a. Any account wagering system shall provide for the accountholder's review and finalization of a wager before it is accepted by the association. Neither the accountholder nor the simulcast site operator shall change a wager after the accountholder has reviewed and finalized the wager.

- b. For wagers made by voice telephone, the simulcast site operator shall make a voice recording of the entire transaction and shall not accept any such wager if the voice recording system is inoperable. The voice recording of the transaction shall be deemed to be the actual wager regardless of what was recorded by the pari-mutuel system.
12. The simulcast site operator may close any account when the holder thereof attempts to operate with an insufficient balance or when the account is dormant for a period determined by the commission. In either case, the simulcast site operator shall refund the remaining balance of the account to the accountholder within thirty days.

History: Effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

69.5-01-11-12. Totalizator system standards.

1. Facility requirements. For onsite totalizator rooms an authorized pari-mutuel wagering entity shall provide a totalizator room to house the main computing and communications equipment and the operator's terminal at the authorized pari-mutuel wagering entity's facility. The room must include all of the following:
- a. Air-conditioning with humidity control to maintain a stable environment that meets the specifications of the computer equipment manufacturer.
 - b. A master power switch that allows all or part of the equipment housed in the room to be turned off in an emergency.
 - c. A smoke and fire alarm system that sounds locally and is tied into the authorized pari-mutuel wagering entity's master alarm system.
 - d. Fire extinguishers to deal with minor electrical fires.
 - e. An internal communication system connecting the totalizator operator with all of the following:
 - (1) The stewards or racing judges (for racetracks only).
 - (2) The mutuel manager.
 - (3) Each betting line.
 - (4) The commission's office onsite if any.

- f. A private outside line for communication with supervisors, programmers, or totalizator personnel at other sites.
 - g. Fire-resistant, locking storage cabinets to hold removable data storage devices and documents necessary for operating the system.
 - 2. For totalizator room at a central processing location, the authorized pari-mutuel wagering entity may contract with a totalizator service that uses a central processing location off the authorized pari-mutuel wagering entity's grounds. The authorized pari-mutuel wagering entity shall do all the following:
 - a. Provide an onsite totalizator room that satisfies the requirements in subsection 1.
 - b. Ensure the totalizator central processing location satisfies the requirements of an onsite totalizator room as set forth in subsection 1.
 - c. Ensure the totalizator central processing location has a communications system connecting the central processing location operator with all the following:
 - (1) The totalizator operator at the authorized pari-mutuel wagering entity's facility.
 - (2) A private outside line for the communication with supervisors, programmers, or totalizator personnel at other sites.
 - 3. The commission may require that the computer system be supported by an uninterruptible power supply, to allow for system shutdown if a power failure occurs, meeting all the following requirements:
 - a. In a system shutdown, all wagering data in the computer at the time of the failure must remain intact and all race and end-of-day reports must be produced.
 - b. The uninterruptible power supply must be able to supply even power to the totalizator system, for a minimum of fifteen minutes, when a power surge or drop occurs.
 - c. An alarm associated with the uninterruptible power supply must be readily recognizable by the totalizator operator from inside the totalizator room.
 - 4. The commission may require the totalizator system to transmit data in real time to an independent real-time monitoring system approved by

- the commission. This system is to provide information in a read-only format.
- a. At a minimum the system shall verify all transactions performed by the totalizator.
 - b. Access to the independent monitoring system shall be provided to the commission and the authorized pari-mutuel wagering entity for monitoring activity.
 - c. In the case where the system detects a discrepancy in the totalizator operation or with the independent monitoring system, or both, the system shall automatically notify the authorized pari-mutuel wagering entity's mutuel manager or duly appointed representative. The mutuel manager is to determine the cause of the error and to require any necessary repairs or adjustments to be made pursuant to the rules.
 - d. Notification of discrepancies identified pursuant to subdivision c shall be made to the commission's director no later than twenty-four hours after each occurrence.
5. For each race day offered, the totalizator system must be capable of producing all the following reports and have them available for review by the mutuel manager, the commission, or both:
- a. The balance report showing for every wagering device operated on that day, including all the following:
 - (1) The teller's name or identification number, if applicable.
 - (2) The total value and number of tickets sold, canceled, and cashed, separating the outs from the current day's tickets.
 - (3) The total amount of money drawn from the money room, including the beginning draws.
 - (4) The total amount of money returned to the money room.
 - (5) A listing of adjustments made to each wagering device balance after each wagering device has been individually balanced.
 - b. The wagering summary report showing all the following:
 - (1) By wagering site, the amount wagered, refunded, and added for every pool and for each race.
 - (2) The time of day each race's pools closed.

- (3) The commissions deducted, breakage calculated, and amount paid out for every pool in each race.
 - (4) The total value of outstanding tickets before the pools were opened for the performance, the value of tickets cashed during the performance, the value of tickets to be added to the outstanding ticket total, and the new outstanding ticket total.
 - (5) The total value of outstanding vouchers before the pools were opened for the performance, the value of vouchers cashed during the performance, the value of vouchers to be added to the outstanding voucher total, and the new outstanding voucher total.
- c. The system balance report comparing the pool and paid-out totals obtained by processing the transaction files with the pool and paid-out totals obtained from the actual calculations.
 - d. The money room balance report showing cash added and subtracted from the beginning day's balance resulting from the day's wagering and cashing transactions.
 - e. The internal revenue service report showing the winner's social security number, the ticket number, amount won, and taxes withheld for each transaction requiring a form W2-G.
6. Other standard and special reports.
 - a. A totalizator company shall produce any of the following standard reports requested by the commission within seventy-two hours, unless otherwise directed, after receiving the request:
 - (1) An odds progression report showing each successive line of odds for the win pool and the time it was displayed to the public.
 - (2) A ticket and transaction history report showing the appropriate portion of the ticket history log for the requested ticket identification numbers.
 - (3) A terminal history report showing the portion of the terminal log requested.
 - (4) An outstanding ticket report showing all the following information for uncashed winning tickets retained in the totalizator system:
 - (a) The ticket identification number.

- (b) The wagers on the ticket.
 - (c) The date and performance for which the ticket is outstanding.
 - (d) The value of the winning wagers.
 - (e) The wagering device location and number.
- (5) An outstanding tickets cashed report, for a performance, race, or pool, showing each outstanding ticket cashed that day, in the form of the outstanding ticket report, including the identity of the wagering device that cashed the ticket and an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read.
 - (6) A manually cashed tickets report, for a performance, race, or pool, showing every ticket cashed that day in the form of the ticket history report, the identity of the wagering device that cashed the ticket, and an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read as well as a subtotal for each wagering device.
 - (7) A canceled tickets report, for a performance or race, showing each ticket canceled that day in the form of the ticket history report, the identity of the wagering device that cashed the ticket, and an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read as well as a subtotal for each wagering device.
 - (8) A network balance report summarizing the activity and liabilities for each site within a tote-to-tote network.
 - (9) A teller inquiry report showing the time of each cash balance inquiry made by each teller.
 - (10) A wagering report required for multi-leg pools four legs or more, showing the amount bet on every combination of the pool and total amount bet.
 - (11) An account history report showing all activity for each account.
 - (12) Inter-track wagering report for a card showing the separate or consolidated report for wagers made at participating tracks, including all money wagered on each runner or combination of runners in each pool for each race. Separate or consolidated reports for the host track and each satellite

track and the combined totals are required and any additional reports, as determined by the commission.

(13) Ticket history report and terminal history report, in the case of a wagering device to totalizator network failure, for specific locations and time periods in order to determine what wagers have been recorded in the totalizator from the remote site, including any advance bets.

(14) Pool transmission report listing time of each pool transmission.

b. The totalizator system must be able to produce a special report that filters data by all the following:

(1) Performance.

(2) Race.

(3) Pool.

(4) Betting interest.

(5) Wagering device.

(6) Sites.

7. The totalizator operator shall produce a daily log to the commission on request. The totalizator system must produce at a minimum all the following logs in a format prescribed by the commission:

a. Teller machine history log showing all of the following for every wagering device operated during a performance:

(1) Each time the wagering device was opened and closed.

(2) For each wagering transaction, the wagers made, tickets issued, and total value of the transaction.

(3) For each cashing, canceling, or refunding transaction, the identification numbers of the tickets processed, the wagers paid out, and the value of the wagers paid out.

(4) For each cashing transaction, an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read.

(5) The amount of each cash draw and return.

(6) Any special function, including teller balance, accessed through the wagering device.

(7) The times of day each of the transactions listed in this subdivision were made.

b. A ticket history log showing all of the following for every ticket issued:

(1) The identification number of each cashed and canceled ticket.

(2) The wagering device location and number.

(3) The wagers and their values.

(4) The cashing and canceling machine location and number.

(5) The amount paid out.

(6) The time of day each transaction occurred.

(7) An indication as to whether each transaction was manual or automatic.

c. A user terminal log showing the time of day of each entry for:

(1) Each terminal other than a wagering device operating during a day:

(a) Each logon and logoff and the operator's identification code.

(b) Each command or transaction entered.

(c) Each stop betting, order of finish, official, and sales open command and the device that issued it.

(d) Each occurrence of loss and restoration of communication between computers or sites.

(e) Each occurrence of discrepancy between computers or sites when comparing data bases.

(2) Each wagering device operated during a performance.

(a) Each logon and logoff and the teller's identification code, if applicable.

- (b) Each instance of loss and restoration of communication and the wagering device.
- d. A system error log showing the date and time of each error.
- e. System journal log, including date and time of each entry, including remote access, showing for every day the system is operated for wagering, maintenance, or other purpose:
 - (1) System shutdown commands, the device from which they were issued, and the user identification of the individual issuing the commands.
 - (2) The individual user identification used and the originating device for every attempt, successful or unsuccessful, to access the operating system.
 - (3) The individual user identification used and the originating device for every attempt, successful or unsuccessful, to access the application programs.
 - (4) All commands that affect the operating environments issued from the operating system command line.
 - (5) All commands issued from within the application program in an attempt to access the operating system.
 - (6) A listing of every operational or operating terminal during computer operation.
- f. An account history log showing all of the following for every account:
 - (1) The identification number of the account.
 - (2) Each time the account was accessed, the location and time of each access point.
 - (3) For each wagering transaction, the amount, time, betting interest selected and type of wagers made, the wagering device used to make the wager, and total value of the transaction.
 - (4) For each cashing, canceling, or refunding transaction, the identification numbers of the tickets processed, the wagers paid out, the location and time, and the value of the wagers paid out.

- (5) For each withdrawal and deposit the amount, the location, and time.
8. In addition to the computer-generated reports and logs, the totalizator personnel must maintain at a minimum all the following logs for review by the commission or duly appointed representative:
- a. The totalizator operator must maintain a system incident log and make it available on request for review by the commission. The system incident log must include a description of each incident involving the totalizator system, including system failures, their causes, and corrective actions taken.
 - b. Totalizator room access log of all authorized persons entering and leaving the totalizator central computer room. This includes entries of date, time, and user identification of each person entering and leaving the room.
 - c. Totalizator maintenance log of all maintenance work completed on wagering devices and the main totalizator computers or printers showing all the following:
 - (1) The name of the person performing the work.
 - (2) The date and time of day when the maintenance was performed.
 - (3) The type of maintenance jobs performed.

History: Effective August 1, 2007.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-10.1

CHAPTER 69.5-01-12

69.5-01-12-02. Deduction from exotic wagers, unclaimed tickets, and breakage. The North Dakota racing commission shall ~~deduct one-half of one percent~~ make deductions from exotic wagers and in addition shall receive all amounts from unclaimed tickets and breakage resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota promotion fund as provided for by North Dakota Century Code section 53-06.1-11.

History: Effective March 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

TITLE 92
WORKFORCE SAFETY AND INSURANCE

JANUARY 2008

CHAPTER 92-01-02

92-01-02-11. Attorneys. Any party has a right to be represented by an attorney at any stage in the proceedings regarding a claim. An attorney who represents an injured worker in a proceeding regarding a claim shall file a notice of legal representation prior to or together with the attorney's first communication with the organization. ~~If a notice of legal representation is filed subsequently by another attorney, a notice of withdrawal must be filed by the attorney of record before the subsequent attorney may represent the claimant.~~

History: Amended effective June 1, 1990; April 1, 1997; April 1, 2008.

General Authority: NDCC 65-02-08, 65-10-03

Law Implemented: NDCC 65-02-08, 65-10-03

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

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

association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.

3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:
 - a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.
 - b. Two thousand five hundred dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the administrative hearing is held.
 - c. Five thousand one hundred dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing is held. If the employee prevails after an evidentiary hearing and the organization wholly rejects the recommended decision, and the employee appeals from the organization's final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.
 - d. Five thousand seven hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Seven thousand six hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
 - e. Nine thousand three hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Ten thousand dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.
 - f. One thousand four hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

- g. Five hundred dollars for review of a proposed settlement, if the employee to whom the settlement is offered was not represented by counsel at the time of the offer of settlement.
 - h. Should a settlement or order amendment offered during the OIR process be accepted after the OIR certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.
4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.
 5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).
 6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. ~~The signature of the attorney constitutes a certificate by the attorney that the attorney has not sought or obtained payment, and will not seek payment of any fees or costs from the employee relative to the same dispute regarding an administrative order.~~ The organization may deny fees and costs that are determined to be excessive or frivolous.
 7. The following costs will be reimbursed:
 - a. Actual postage, if postage exceeds three dollars per parcel.
 - b. Actual toll charges for long-distance telephone calls.
 - c. Copying charges, at eight cents per page.
 - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.

- e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.
8. The following costs will not be reimbursed:
- a. Facsimile charges.
 - b. Express mail.
 - c. Additional copies of transcripts.
 - d. Costs incurred to obtain medical records.
 - e. On-line computer-assisted legal research.
 - f. Copy charges for documents provided by the organization.

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

History: Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 65-02-08, 65-02-15

Law Implemented: NDCC 65-02-08, 65-02-15, 65-10-03

92-01-02-22.1. Out-of-country injuries. The organization may, at its sole discretion, extend workers' compensation coverage by written agreement to North Dakota employers for their employees hired in North Dakota and working outside the United States for a limited period of time, provided the workers' compensation system of the foreign country is not applicable to the employer and the employer provides sufficient documentation in advance of the foreign exposure of its inability to obtain any coverage in the private insurance market.

History: Effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-08-01(1)(d)

92-01-02-29.1. Medical necessity.

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to the location of service, is medically necessary if it is widely accepted by the practicing peer group and has been determined to be safe and effective based on published, peer-reviewed, scientific studies.
2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the organization. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.
3. The organization will not authorize or pay for the following treatment:
 - a. Massage therapy or acupuncture unless specifically preapproved or otherwise authorized by the organization. Massage therapy must be provided by a licensed physical therapist, licensed occupational therapist, licensed chiropractor, or licensed massage therapist.
 - b. Chemonucleolysis; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; ~~synvisc~~ injections; viscosupplementation injections; and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).
 - c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the organization. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the organization and prescribed by the attending doctor. Dietary supplements, including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.
 - d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, cold packs, and gravity traction devices are not compensable except at the discretion of the organization under exceptional circumstances.

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

f. Intradiscal electrothermal annuloplasty (IDET).

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

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

1. Certain treatment procedures require prior authorization or preservice review by the organization or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, and expected prognosis.
2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.
3. Medical service providers shall request prior authorization directly from the claims analyst for the items listed in this subsection. The claims analyst shall respond to requests within fourteen days.
 - a. Durable medical equipment.
 - (1) The organization will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The claims analyst shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the claims analyst. If the equipment is needed on a long-term basis, the organization may purchase the equipment. The claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The organization shall purchase the equipment from the most cost-efficient source.
 - (2) The claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the

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

- (3) If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.
 - (4) Equipment costing less than five hundred dollars does not require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics, but specifically excludes ten units.
- b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.
- c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the organization will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The claims analyst will approve concurrent care on a case-by-case basis. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.

- d. Telemedicine. The organization may pay for audio and video telecommunications instead of a face-to-face "hands on" appointment for the following appointments: office or other outpatient visits that fall within CPT codes 99241 through 99275, inclusive; new and established evaluation and management visits that fall within CPT codes 99201 through 99215, inclusive; individual psychotherapy visits that fall within CPT codes 90804 through 90809, inclusive; and pharmacologic management visits that fall within CPT code 90862. As a condition of payment, the patient must be present and participating in the telemedicine appointment. The professional fee payable is equal to the fee schedule amount for the service provided. The organization may pay the originating site a facility fee, not to exceed twenty dollars.
4. Notwithstanding the requirements of subsection 5, the organization may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.
 5. Medical service providers shall request preservice review from the utilization review department for:
 - a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery and outpatient surgical procedures. For an inpatient stay that exceeds fourteen days, the provider shall request, on or before the fifteenth day, additional review of medical necessity for a continued stay.
 - b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the utilization review department actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the utilization review department may require an independent consultation with a doctor of the organization's choice. The organization shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the organization shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the organization may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the organization believes the proposed surgery is excessive,

inappropriate, or ineffective and the organization cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46.

- c. Magnetic resonance imaging, a myelogram, discogram, bonescan, arthrogram, or computed axial tomography. Tomograms are subject to preservice review if requested in conjunction with a myelogram, discogram, bonescan, arthrogram, computed axial tomography scan, or magnetic resonance imaging. The organization may waive preservice review requirements for procedures listed in this subdivision when requested by a doctor who is performing an independent medical examination or permanent partial impairment evaluation at the request of the organization.
- d. Physical therapy and occupational therapy treatment beyond the first ten treatments or beyond thirty days after first prescribed, whichever occurs first, or physical therapy and occupational therapy treatment after an inpatient surgery, outpatient surgery, or ambulatory surgery beyond the first ten treatments or beyond thirty days after therapy services are originally prescribed, whichever occurs first. Postoperative physical therapy and occupational therapy may not be started beyond ninety days after surgery date. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.
- e. Electrodiagnostic studies, which may only be performed by ~~board-certified~~ electromyographers who are certified or board-eligible ~~electromyographers eligible for certification by the American board of electrodiagnostic medicine, American board of physical medicine and rehabilitation, or the American board of neurology and psychiatry's certification in the specialty of clinical neurophysiology.~~ Nerve conduction study reports must include either laboratory reference values or literature-documented normal values in addition to the test values.
- f. Thermography.
- g. ~~Vertebral axial decompression therapy (Vax-D treatment).~~ Intra-articular injection of hyaluronic acid.
- h. ~~Intradiscal electrothermal annuloplasty (IDET).~~
- i. Trigger point injections if more than three injections are required in a two-month period. No more than twenty injections may be paid over the life of a claim. If a trigger point injection is administered, the organization may not pay for additional modalities such

as cryotherapy and osteopathic manipulations performed in conjunction with the trigger point injection. For purposes of this paragraph, injections billed under CPT code 20552 or 20553 will count as a single injection. Only injections administered on or after May 1, 2002, will be applied toward the maximum number of injections allowed under this subdivision.

- ~~j~~: i. Facet joint injections.
 - ~~k~~: j. Sacroiliac joint injections.
 - ~~l~~: k. Facet nerve blocks.
 - ~~m~~: l. Epidural steroid injections.
 - ~~n~~: m. Nerve root blocks.
 - ~~o~~: n. Peripheral nerve blocks.
 - ~~p~~: o. Botox injections.
 - ~~q~~: p. Stellate ganglion blocks.
 - ~~r~~: q. Cryoablation.
 - ~~s~~: r. Radio frequency lesioning.
 - ~~t~~: s. Facet rhizotomy.
 - ~~u~~: t. Prolotherapy.
 - ~~v~~: u. Implantation of stimulators and pumps.
6. Chiropractic providers shall request preservice review from the organization's chiropractic managed care vendor for chiropractic treatment beyond the first twelve treatments or beyond ninety days after the first treatment, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The organization may waive this subsection in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.
 7. Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.
 8. The organization may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.

9. ~~The utilization review department~~ organization or managed care vendor must respond orally to the medical service provider within twenty-four hours, or the next business day, of receiving the necessary information to complete a review and make a recommendation on the service, unless the organization or managed care vendor requires a review by the organization's medical director. If a review by the medical director is required, the organization or managed care vendor must inform the provider within twenty-four hours, or the next business day, of receiving the necessary information that the review will be performed. If a review by the medical director is performed, the organization or the managed care vendor must respond to the provider's request within seventy-two hours of receiving the necessary information. Within that time for review, the organization or managed care vendor must either recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial.
10. The organization may conduct retrospective reviews of medical services and subsequently reimburse medical providers only:
- a. If preservice review or prior authorization of a medical service is requested by a provider and a claimant's claim status in the adjudication process is pending or closed; or
 - b. If preservice review or prior authorization of a medical service is not requested by a provider and the provider can prove, by a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not know, that the condition was, or likely would be, covered under workers' compensation.

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

11. The organization must notify provider associations of the review requirements of this section prior to the effective date of these rules.
12. The organization must respond to the medical service provider within thirty days of receiving a retrospective review request.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003; July 1, 2004; July 1, 2006; April 1, 2008.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-43. Home nursing care.

1. When the attending doctor believes special or attendant (home nurse) care is needed, the doctor shall submit the following information:
 - a. A description of the special or home nursing care required, including the estimated time required (i.e., catheterization, three times per day, thirty minutes; bathing, two times per day, one hour; toilet transfers as needed, dressing change, four times per day, two hours).
 - b. The skill level or special training required to administer care (i.e., R.N.; L.P.N.; family member who has received special training; or no special training required).
 - c. If known, the name and address of a person or facility willing to provide care.
 - d. The length of time special or home nursing care will be required.
2. Fees for home nurse or attendant care are based upon the organization's established fee schedule.
3. The organization may authorize and pay for visiting nurse care necessary for evaluation or instruction of a home health care provider.
4. When the claimant or claimant's family makes arrangements for caregivers, the organization shall reimburse those providing the home nursing care.
5. Payment to individuals who provide services under this section does not constitute an employer and employee relationship between the organization and the provider of care.
6. The organization may not pay a rate for home nursing care which exceeds ~~any rate included in the definition of "average cost of nursing facility care" under section 75-02-02.1-33.1~~ the cost of nursing facility care under the applicable case-mix classification in section 75-02-06-17.

History: Effective January 1, 1994; amended effective October 1, 1998; July 1, 2006; April 1, 2008.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-45.1. Provider responsibilities and billings.

1. A provider may not submit a charge for a service which exceeds the amount the provider charges for the same service in cases unrelated to workers' compensation injuries.
2. All bills must be fully itemized, including ICD-9-CM codes, and services must be identified by code numbers ~~and descriptions~~ found in the fee schedules or as provided in these rules. The definitions of commonality in the guidelines found in the current procedural terminology must be used as guides governing the descriptions of services, except as provided in the fee schedules or in these rules. All bills must be submitted to the organization within one year of the date of service or within one year of the date the organization accepts liability for the work injury or condition.
3. All medical service providers shall submit bills referring to one claim only for medical services on current form UB 92 04 or form HGFA CMS 1500, except for dental billings which must be submitted on American dental association J510 dental claim forms. Bills and reports must include:
 - a. The claimant's full name and address;
 - b. The claimant's claim number and social security number;
 - c. Date and nature of injury;
 - d. Area of body treated, including ICD-9-CM code identifying right or left, as appropriate;
 - e. Date of service;
 - f. Name and address of facility where the service was rendered;
 - g. Name of medical service provider providing the service;
 - h. Physician's or supplier's billing name, address, zip code, telephone number; physician's unique physician identification number (UPIN) or national provider identifier (NPI), or both; physician assistant's North Dakota state license or certification number; physical therapist's North Dakota state license number; advanced practice registered nurse's UPIN or NPI, or both, or North Dakota state license number;
 - i. Referring or ordering physician's UPIN or NPI, or both;
 - j. Type of service;
 - k. Appropriate procedure code or hospital revenue code;

7. When a provider submits a bill to the organization for medical services, the provider shall submit a copy of the bill to the claimant to whom the services were provided. The copy must be stamped or printed with a legend that clearly indicates that it is a copy and is not to be paid by the claimant.
8. If the provider does not submit records with a bill, and still does not provide those records upon request of the organization, the charges for which records were not supplied may not be paid by the organization, unless the provider submits the records before the decision denying payment of those charges becomes final. The provider may also be liable for the penalty provided in subsection 6 of North Dakota Century Code section 65-05-07.
9. Disputes arising out of reduced or denied reimbursement are handled in accordance with section 92-01-02-46. In all cases of accepted compensable injury or illness under the jurisdiction of the workers' compensation law, a provider may not pursue payment from a claimant for treatment rendered to that claimant unless the payment for the treatment was denied because:
 - a. The claimant sought treatment from that provider for conditions not related to the compensable injury or illness.
 - b. The claimant sought treatment from that provider which was not prescribed by the claimant's attending doctor. This includes ongoing treatment by the provider who is a nonattending doctor.
 - c. The claimant sought palliative care from that provider not compensable under section 92-01-02-40 after the claimant was provided notice that the palliative care service is not compensable.
 - d. The claimant sought treatment from that provider after being notified that the treatment sought from that provider has been determined to be unscientific, unproven, outmoded, investigative, or experimental.
 - e. The claimant did not follow the requirements of subsection 1 of North Dakota Century Code section 65-05-28 regarding change of doctors before seeking treatment of the work injury from the provider requesting payment for that treatment.
 - f. The claimant is subject to North Dakota Century Code section 65-05-28.2, and the provider requesting payment is not a preferred provider and has not been approved as an alternative provider under subsection 2, 3, or 4 of North Dakota Century Code section 65-05-28.2.

10. A medical service provider may not bill for services not provided to a claimant and may not bill multiple charges for the same service. Rebilling must indicate that the charges have been previously billed.
11. Pursuant to North Dakota Century Code section 65-05-33, a medical service provider may not submit false or fraudulent billings.
12. Only one office visit designation may be used at a time except for those code numbers relating specifically to additional time.
13. When a claimant is seen initially in an emergency department and is admitted subsequently to the hospital for inpatient treatment, the services provided immediately prior to the admission are part of the inpatient treatment.
14. ~~A physical medicine modality or manipulation, when applied to two or more areas at one visit, is reimbursed at one hundred percent of the maximum allowable fee for the first area treated, fifty percent for the second area treated, and twenty-five percent for all subsequent areas treated.~~ Hot and cold pack as a modality will be considered as a bundled charge and will not be separately reimbursed.
15. ~~When ultrasound, diathermy, microwave, infrared, and hot packs are used in combinations of two or more during one treatment session, only one may be reimbursed, unless two separate effects are demonstrated.~~ Limit of two modalities per visit for outpatient physical therapy services, outpatient occupational therapy services, and chiropractic visit.
16. When a medical service provider is asked to review records or reports prepared by another medical service provider, the provider shall bill review of the records using CPT code 99080 with a descriptor of "record review". The billing must include the actual time spent reviewing the records or reports and must list the medical service provider's normal hourly rate for the review.
17. When there is a dispute over the amount of a bill or the necessity of services rendered, the organization shall pay the undisputed portion of the bill and provide specific reasons for nonpayment or reduction of each medical service code.
18. If medical documentation outlines that a non-work-related condition is being treated concurrently with the compensable injury and that condition has no effect on the compensable injury, the organization may reduce the charges submitted for treatment. In addition, the attending doctor must notify the organization immediately and submit:
 - a. A description or diagnosis of the non-work-related condition.
 - b. A description of the treatment being rendered.

- c. The effect, if any, of the non-work-related condition on the compensable injury.

The attending doctor shall include a thorough explanation of how the non-work-related condition affects the compensable injury when the doctor requests authorization to treat the non-work-related condition. Temporary treatment of a non-work-related condition may be allowed, upon prior approval by the organization, provided the condition directly delays recovery of the compensable injury. The organization may not approve or pay for treatment for a known preexisting non-work-related condition for which the claimant was receiving treatment prior to the occurrence of the compensable injury, which is not delaying recovery of the compensable injury. The organization may not pay for treatment of a non-work-related condition when it no longer exerts any influence upon the compensable injury. When treatment of a non-work-related condition is being rendered, the attending doctor shall submit reports monthly outlining the effect of treatment on both the non-work-related condition and the compensable injury.

19. In cases of questionable liability when the organization has not rendered a decision on compensability, the provider has billed the claimant or other insurance, and the claim is subsequently allowed, the provider shall refund the claimant or other insurer in full and bill the organization for services rendered.
20. The organization may not pay for the cost of duplicating records when covering the treatment received by the claimant. If the organization requests records in addition to those listed in subsection 5 or records prior to the date of injury, the organization shall pay a minimum charge of five dollars for five or fewer pages and the minimum charge of five dollars for the first five pages plus thirty-five cents per page for every page after the first five pages.
21. The provider shall assign the correct approved billing code for the service rendered using the appropriate provider group designation. Bills received without codes will be returned to the provider.
22. Billing codes must be found in the most recent edition of the physician's current procedural terminology; health care financing administration common procedure coding system; code on dental procedures and nomenclature maintained by the American dental association; or any other code listed in the fee schedules.
23. A provider shall comply within thirty calendar days with the organization's request for copies of existing medical data concerning the services provided, the patient's condition, the plan of treatment, and other issues pertaining to the organization's determination of

compensability, medical necessity, or excessiveness or the organization may refuse payment for services provided by that provider.

History: Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2008.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07, 65-05-28.2

92-01-02-57. Medical expense assessments. An employer may file an incident report with the organization through the organization's web site. If an incident report is filed with the organization by midnight central time of the next organization business day following the workplace injury or incident and a claim is filed for benefits within ~~ten~~ fourteen calendar days of the date of injury, the organization shall waive the two hundred fifty dollar medical expense assessment.

The organization shall notify an employer by regular mail of the employer's medical expense assessment billing statement or by electronic transmission of the organization's decision to assess a medical expense assessment against an employer's account. The billing statement must inform the employer of the ability to appeal the decision of the organization.

History: Effective July 1, 2006; amended effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.3, 65-05-07.2

CHAPTER 92-05-02

92-05-02-03. Eligibility - Billing. All employers, except participants in the retrospective rating and deductible programs are eligible to participate in the organization's risk management program plus.

An employer may elect, subject to the organization's approval, to participate in an alternative risk management program.

The organization, in its discretion, shall determine eligibility for the safety outreach program. Pursuant to this program, the organization will serve the sector of industry and business that has historically generated high frequency or severity rates, or both.

Volunteer accounts are not eligible for participation in risk management programs.

At the organization's discretion, an employer account that is delinquent, uninsured, or not in good standing pursuant to section 92-05-02-01 may not be eligible for discounts under this article.

Discounts are automatically calculated by the organization and applied to an employer's premium billing statement. At the organization's discretion, discounts earned under section 92-05-02-06 may be payable either as a credit to the employer's premium billing statement or as a cash payment to the employer.

History: Effective July 1, 2006; amended effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1

92-05-02-07. Alternative Risk Management Programs. The organization may create a new program or modify an existing employer premium calculation program under this article to provide greater or lesser premium discounts.

History: Effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1, 65-04-19.3

CHAPTER 92-05-03

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

History: Effective July 1, 2006; amended effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04

92-05-03-04. Transitional return-to-work grant program. The organization may create grant programs to defray the costs incurred by a North Dakota employer who elects to participate in the organization's transitional return-to-work grant program. A grant An award under this section is within the discretion of the organization.

History: Effective July 1, 2006; amended effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04

92-05-03-05. Ergonomic program. The organization may create grant programs to defray the costs incurred by a North Dakota employer who elects to participate in the organization's ergonomic grant program. A grant ward under this section is within the discretion of the organization.

History: Effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04

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

History: Effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04

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

History: Effective April 1, 2008.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04

TITLE 96
BOARD OF CLINICAL LABORATORY PRACTICE

JANUARY 2008

CHAPTER 96-02-10

96-02-10-01. Exempt tests and methods. An individual, supervised by an individual licensed by the board, performing the following food and drug administration-waived tests and using the following methods, is exempt from the provisions of North Dakota Century Code chapter 43-48:

1. Nonautomated Any of the following tests by nonautomated or automated urinalysis by dipstick or tablet color comparison:
 - a. Bilirubin.
 - b. Blood.
 - c. Glucose.
 - d. Ketone.
 - e. Leukocyte.
 - f. Nitrate.
 - g. Potential of hydrogen (pH).
 - h. Protein.
 - i. Specific gravity.
 - j. Urobilinogen.
2. Fecal occult blood by any accepted method.
3. Ovulation test by visual color comparison.
4. Qualitative urine pregnancy test by visual color comparison.

5. Erythrocyte sedimentation rate by any accepted nonautomated method.
6. Whole blood glucose by any accepted single analyte method.
7. Spun microhematocrit by any accepted method.
8. Hemoglobin by single analyte instrument or manual copper sulfate method.
9. Any of the following tests by immunoassay using a rapid test device:
 - a. Helicobacter pylori.
 - b. Influenza.
 - c. Mononucleosis.
 - d. Streptococcus group A.
10. Prothrombin time international normalized ratio by mechanical endpoint.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 43-48-03, 43-48-04

Law Implemented: NDCC 43-48-03

TITLE 101
REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

JANUARY 2008

CHAPTER 101-02-01

101-02-01-01. Application to take the examination. Any person who wishes to file an application to take the examination to qualify as a licensed or certified ~~real property~~ appraiser may obtain the required form upon request from the ~~appraisal~~ board.

History: Effective October 1, 1992; amended effective January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-07

101-02-01-02. Application for apprentice, licensure, or certification. A person who wishes to file an application for a permit to be an apprentice ~~real property~~ appraiser, a licensed ~~real property~~ appraiser, or a certified ~~general real property~~ appraiser may obtain the required form from the ~~appraisal~~ board.

History: Effective October 1, 1992; amended effective October 1, 1998; January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-05

101-02-01-03. Filing fees.

1. The following annual fees must be charged:

a. Apprentice real property appraiser permit	\$225
b. Licensed real property appraiser permit	\$225
c. Certified general real property appraiser permit	\$225
d. Inactive status	\$ 50
e. Late filing fee (per month)	\$ 25 <u>\$50</u>

2. The following fees will be charged:

a.	Initial real property appraiser <u>Apprentice</u> , licensure, or certification permit	\$275
b.	Real property appraiser permit status change	\$150
e.	Temporary practice permit-per contract	\$150
d.	c. Approval of prelicensing or precertification educational courses	\$100
e.	d. Approval of continuing educational courses:	
	(1) Courses two to eight hours in length	\$25
	(2) Courses over eight hours in length	\$50
f.	e. Appraiser list on disk	\$20
g.	f. Appraiser list on labels	\$20
h.	g. Pocket card replacement	\$20
i.	h. Wall certificate replacement	\$20

History: Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003; January 1, 2008.

General Authority: NDCC 43-23.3-20

Law Implemented: NDCC 43-23.3-05

101-02-01-04. Payment of license and certificate permit fees. Checks given the board in payment of ~~real estate appraiser license and certificate permit~~ fees which are returned unpaid may be considered cause for ~~license or certificate~~ denial, suspension, or revocation.

History: Effective October 1, 1992; amended effective January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-03, 43-23.3-20

CHAPTER 101-02-02

101-02-02-02. Appraiser permit definitions, criteria, and qualifications.

To apply for and maintain any appraiser permit an individual must meet all of the following requirements:

1. Be at least eighteen years of age;.
2. Have a high school education or its equivalent;.
3. Possess good character; and.
4. Pass the appropriate examinations. All applicants for permits of apprentice ~~real property~~ appraiser, licensed ~~real property~~ appraiser, certified residential appraiser, and certified general ~~real property~~ appraiser agree to follow the uniform standards of professional appraisal practice (USPAP) and must satisfy the qualification requirements listed in chapter 101-02-02.

History: Effective October 1, 1992; amended effective October 1, 1998; January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-08, 43-23.3-18

101-02-02-03. Apprentice real property appraiser.

1. **Definition.** An apprentice ~~real property~~ appraiser permit must be issued to an individual who successfully meets all of the ~~North Dakota appraisal board~~ requirements for such a permit.
2. **Property appraisal limitations.** An apprentice ~~real property~~ appraiser permit is considered the entry level (training ground level) for a North Dakota ~~real property~~ appraiser. The apprentice ~~real property~~ appraiser permittee shall assist either a licensed or a certified general ~~real property~~ appraiser in appraisal work, provided the licensed or certified general ~~real property~~ appraiser accepts full responsibility for the appraisal performed. The scope of practice for the apprentice ~~real property~~ appraiser is the appraisal of those properties that the supervising appraiser is permitted and qualified to appraise. The apprentice ~~real property~~ appraiser shall be subject to the uniform standards of professional appraisal practice.
3. **Examination.** There is no examination required for the apprentice ~~real property~~ appraiser.
4. **Education.** ~~The apprentice real property appraiser must have successfully completed the fifteen-hour national uniform standards of professional appraisal practice course, or its equivalent. Equivalency shall be determined through the appraisal qualifications board course~~

~~approval program or by an alternate method established by the appraisal qualifications board. No other appraisal or appraisal-related education is required for the apprentice real property appraiser.~~

- a. An applicant for an apprentice appraiser permit must have successfully completed seventy-five class hours in subjects related to real estate appraisal which cover the required core curriculum as established by the appraisal qualifications board of the appraisal foundation and approved as such, by the board. Coverage must include a minimum of all of the following:
 - (1) Thirty hours of basic appraisal principles.
 - (2) Thirty hours of basic appraisal procedures.
 - (3) The fifteen-hour national uniform standards of appraisal practice course or its equivalent.
- b. Class hours will be credited only for educational offerings with content that follows the required core curriculum.
- c. A class hour is defined as sixty minutes, of which at least fifty minutes are instruction attended by the student.
- d. Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.
- e. The prescribed number of class hours includes time for examinations.
- f. Uniform standards of professional appraisal practice qualifying education credit shall only be awarded when the class is instructed by an at least one appraisal qualifications board-certified instructor who is state-certified.
- g. Credit for the class requirement may be obtained from the following:
 - (1) Colleges or universities.
 - (2) Community or junior colleges.
 - (3) Real estate appraisal or real estate-related organizations.
 - (4) State or federal agencies or commissions.
 - (5) Proprietary schools.

- (6) Providers approved by the board.
- (7) The appraisal foundation or its boards.
- h. Qualifying education must have been obtained within the five-year period immediately preceding application for a permit.
- i. Forty hours may be from distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:
 - (1) Provide interaction between the student and the instructor. Interaction is a reciprocal environment in which the student has verbal or written communication with the instructor.
 - (2) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.
 - (3) Obtain course delivery mechanism approval from one of the following sources:
 - (a) Appraisal qualifications board-approved organizations providing approval of course design and delivery.
 - (b) A college that qualifies for content approval in paragraph 2 and that awards academic credit for the distance education course.
 - (c) A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.
 - (4) Require the student to successfully complete a written examination proctored by an official approved by the presenting college or university, or sponsoring organization.

- (5) Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.
- (6) Be equivalent to at least fifteen class hours.
 - j. Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.
 - k. Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional practice courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.
 - l. Courses taken to meet the seventy-five hour apprentice requirement can be creditable toward the licensure and certification education requirement.
 - m. Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.
- ~~b. n.~~ The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and ~~North Dakota Administrative Code~~ title 101.
- 5. **Experience.** No experience is required for the apprentice real property appraiser.
- 6. **Apprentice real property appraiser responsibilities.** The apprentice real property appraiser must be subject to direct supervision by a supervising appraiser who must be state licensed or certified in good standing.
 - a. The scope of practice for the apprentice real property appraiser is the appraisal of those properties that the supervising appraiser is permitted by the supervising appraiser's current credential and that the supervising appraiser is qualified to appraise.
 - b. To obtain experience credit for appraisals, the apprentice must sign the report, sign the certification, or be given credit in the certification for significant professional assistance.
 - c. The apprentice real property appraiser and supervising appraiser shall jointly maintain a log of all appraisals for which the apprentice completed seventy-five percent or more of the assignment. The log, at a minimum, must include the following for each appraisal:

- (1) Type of property.
 - (2) Date of report.
 - (3) Address of appraised property.
 - (4) Description of work performed by the apprentice and scope of the review and supervision of the supervising appraiser.
 - (5) Number of work hours or points per assignment.
 - (6) Signature and state license or certification number of the supervising appraiser.
- d. The apprentice ~~real property~~ appraiser is permitted to have more than one supervising appraiser.
 - e. Separate appraisal logs must be maintained for each supervising appraiser.
 - f. The apprentice ~~real property~~ appraiser is entitled to obtain copies of appraisal reports the apprentice ~~real property~~ appraiser prepared.
7. **Supervisor responsibilities.** The supervising appraiser is responsible for the training, guidance, and direct supervision of the apprentice ~~real property~~ appraiser.
- a. Training, guidance, and direct supervision of the apprentice ~~real property~~ appraiser means:
 - (1) Accepting Each supervising appraiser must accept responsibility for the appraisal report by signing and certifying that the report complies with generally accepted appraisal procedures and is in compliance with the uniform standards of professional appraisal practice.
 - (2) Reviewing Each supervising appraiser must review and signing sign the apprentice ~~real property~~ appraisal reports.
 - (3) Personally inspecting Each supervising appraiser must personally inspect each appraised property interior and exterior with the apprentice ~~real property~~ appraiser on at least the first twenty-five appraisal assignments requiring inspection and until the supervising appraiser determines the apprentice appraiser ~~trainee~~ is competent in accordance with the competency provision of the uniform standards of professional appraisal practice for the property type.

- b. A supervising appraiser must have a license or certified permit in good standing and not subject to any disciplinary action within the last two years.
- c. A supervising appraiser is limited to supervising no more than ~~two~~ three apprentice appraisers at one time.
- d. A supervising appraiser shall keep copies of appraisal reports for a period of five years or at least two years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

History: Effective October 1, 1992; amended effective October 1, 1998; February 1, 2003; January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-03, 43-23.3-06, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

101-02-02-05. Licensed real property appraiser.

1. **Definitions.** A licensed ~~real property~~ appraiser permit must be issued to an individual who successfully meets all of the ~~North Dakota appraisal board~~ requirements for such a permit.
2. **Property appraisal limitations.** The licensed ~~real property~~ appraiser is allowed to appraise noncomplex, one-to-four family residential properties that have a transaction value of up to one million dollars and complex one-to-four family residential properties that have a transaction value of up to two hundred fifty thousand dollars. In addition, a licensed ~~real property~~ appraiser is allowed to appraise noncomplex, nonresidential properties, that have a transaction value of up to two hundred fifty thousand dollars. ~~All The licensed real property appraisers are~~ appraiser is bound by the competency provisions of the uniform standards of professional appraisal practice.
3. **Examination.** An applicant for a licensed ~~real property~~ appraiser permit must have successfully completed the ~~appraisal board-approved~~ uniform licensing examination or its equivalent ~~within two years of making the application.~~ Successful completion of the examination is valid for a period of twenty-four months. The licensure permit must be obtained within twenty-four months of successful completion of the examination or the examination must be retaken. An applicant for the examination as a licensed ~~real property~~ appraiser must have furnish proof to the board that the applicant has successfully completed ninety classroom hours of real estate appraisal the applicable education required by subsection 4.
4. **Education.**

- a. An applicant for a licensed appraiser permit who meets the education requirements before January 1, 2008, and makes application by July 1, 2009, must successfully complete ninety classroom hours of real estate appraisal education. Fifteen of the ninety hours must include the successful completion of the national uniform standards of professional appraisal practice course, or its equivalent. Equivalency must be determined through the appraisal qualifications board course approval program or by an alternate method established by the appraisal qualifications board. Sixty of the ninety hours must be comprised of appraisal-specific education related to the valuation of real estate, and fifteen hours may be comprised of appraisal-related subject matter, as approved as such, by the board.
- a. (1) A classroom hour is defined as fifty minutes out of each sixty-minute segment.
- b. (2) Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.
- c. (3) Open-book examinations are not acceptable in qualifying education courses.
- d. (4) Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by an appraisal qualifications board certified instructor.
- e. (5) Credit for the classroom requirement may be obtained from the following:
- (1) (a) Colleges or universities;_
 - (2) (b) Community or junior colleges;_
 - (3) (c) Real estate appraisal or real estate-related organizations;_
 - (4) (d) State or federal agencies or commissions;_
 - (5) (e) Proprietary schools;_and_
 - (6) (f) Other providers approved by the board.
- f. ~~Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses.~~

g- (6) There is no time limit regarding when qualifying education credit must have been obtained.

h- (7) Various appraisal courses may be credited toward the ninety classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of the topics listed below, with particular emphasis on the appraisal of one to four unit residential properties.

(1) (a) Influences on real estate value.

(a) [1] Physical and environmental.

(b) [2] Economic.

(c) [3] Governmental and legal.

(d) [4] Social.

(2) (b) Legal considerations in appraisal.

(a) [1] Real estate versus real property.

(b) [2] Real property versus personal property.

(c) [3] Limitations on real estate ownership.

(d) [4] Legal rights and interests.

(e) [5] Forms of property ownership.

(f) [6] Legal descriptions.

(g) [7] Transfer of title.

(3) (c) Types of value.

(a) [1] Market value or value in exchange.

(b) [2] Price.

(c) [3] Cost.

(d) [4] Investment value.

(e) [5] Value in use.

(f) [6] Assessed value.

- (g) [7] Insurable value.
- (4) (d) Economic principles.
 - (a) [1] Anticipation.
 - (b) [2] Balance.
 - (c) [3] Change.
 - (d) [4] Competition.
 - (e) [5] Conformity.
 - (f) [6] Contribution.
 - (g) [7] Increasing and decreasing returns.
 - (h) [8] Substitution.
 - (i) [9] Supply and demand.
 - (j) [10] Surplus and productivity.
- (5) (e) Real estate markets and analysis.
 - (a) [1] Characteristics of real estate markets.
 - (b) [2] Absorption analysis.
 - (c) [3] Role of money and capital markets.
 - (d) [4] Real estate financing.
- (6) (f) Valuation process.
 - (a) [1] Definition of the problem.
 - (b) [2] Collection and analysis of data.
 - (c) [3] Analysis of highest and best use.
 - (d) [4] Application and limitations of each approach to value.
 - (e) [5] Reconciliation and final value estimate.
 - (f) [6] The appraisal report.

- (7) (g) Property description.
 - (a) [1] Site description.
 - (b) [2] Improvement description.
 - (c) [3] Basic construction and design.
- (8) (h) Highest and best use analysis.
 - (a) [1] Four tests.
 - (b) [2] Vacant site or as if vacant.
 - (c) [3] As improved.
 - (d) [4] Interim use.
- (9) (i) Appraisal statistical concepts.
 - (a) [1] Mean.
 - (b) [2] Median.
 - (c) [3] Mode.
 - (d) [4] Range.
 - (e) [5] Standard deviation.
- (10) (j) Sales comparison approach.
 - (a) [1] Research and selection of comparables.
 - (b) [2] Elements of comparison.
 - (c) [3] Adjustment process.
 - (d) [4] Application of sales comparison approach.
- (11) (k) Site value.
 - (a) [1] Sales comparison.
 - (b) [2] Land residual.
 - (c) [3] Allocation.
 - (d) [4] Extraction.

- (e) [5] Plottage and assemblage.
- (12) (l) Cost approach.
 - (a) [1] Steps in cost approach.
 - (b) [2] Application of the cost approach.
- (13) (m) Income approach.
 - (a) [1] Gross rent multiplier analysis.
 - (b) [2] Estimation of income and expenses.
 - (c) [3] Operating expense ratios.
- (14) (n) Valuation of partial interests.
 - (a) [1] Life estates.
 - (b) [2] Undivided interests in commonly held property.
 - (c) [3] Easements.
 - (d) [4] Timeshares.
 - (e) [5] Cooperatives.
 - (f) [6] Leased fee estate.
 - (g) [7] Leasehold estate.
- (15) (o) Appraisal standards and ethics.
- i. (8) Forty hours may be distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes on-line learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must:
 - (1) (a) Provide interaction between the student and the instructor.
 - (2) (b) Meet one of the following requirements:
 - (a) [1] The course is presented by a college or university, accredited by the commission on colleges or a

regional accreditation association, which offers distance education programs in other disciplines.

- ~~(b)~~ ~~The course is approved for college credit by the American council on education.~~
- ~~(e)~~ [2] The course is approved for design and delivery mechanism by the international distance education certification center and for content by the appraiser qualifications board or the board.
- ~~(3)~~ (c) Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization.
- ~~(4)~~ (d) Meet the requirements for qualifying education established by the appraiser qualifications board.
- ~~(5)~~ (e) Be equivalent to at least fifteen classroom hours.
- j. (9) Credit awarded for the classroom hour requirement when an individual seeks a different classification than that held may also be awarded for the continuing education requirement of the classification held.
- k. (10) Courses taken in satisfying the qualifying education requirements should not be repetitive in nature. Each course credited toward the required number of qualifying education hours should represent a progression in which the appraiser's knowledge is increased.
- l. (11) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.
- b. An applicant for a licensed appraiser permit who completes education after December 31, 2007, or applies after July 1, 2009, must apply under all of the following education requirements:
 - (1) One hundred fifty class hours in subjects related to real estate appraisal which cover the required core curriculum as established by the appraisal qualifications board of the appraisal foundation and approved as such, by the board. Coverage must include a minimum of all of the following:
 - (a) Thirty hours of basic appraisal principles.

- (b) Thirty hours of basic appraisal procedures.
 - (c) The fifteen-hour national uniform standards of appraisal practice course or its equivalent.
 - (d) Fifteen hours of residential market analysis and highest and best use.
 - (e) Fifteen hours of residential appraiser site valuation and cost approach.
 - (f) Fifteen hours of residential sales comparison and income approaches.
 - g. Fifteen hours of residential report writing and case studies.
- (2) Class hours will be credited only for educational offerings with content that follows the required core curriculum.
 - (3) A class hour is defined as sixty minutes, of which at least fifty minutes are instruction attended by the student.
 - (4) Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.
 - (5) The prescribed number of class hours includes time for examinations.
 - (6) Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.
 - (7) Credit for the class hour requirement may be obtained from the following:
 - (a) Colleges or universities.
 - (b) Community or junior colleges.
 - (c) Real estate appraisal or real estate-related organizations.
 - (d) State or federal agencies or commissions.

- (e) Proprietary schools.
 - (f) Providers approved by the board.
 - (g) The appraisal foundation or its boards.
- (8) There is no time limit regarding when qualifying education credit must have been obtained.
- (9) Seventy-five hours may be from distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:
- (a) Provide interaction between the student and the instructor. Interaction is a reciprocal environment when the student has verbal or written communication with the instructor.
 - (b) Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation, or the board.
- [1] Obtain course delivery mechanism approval from one of the following sources:
- [a] Appraisal qualifications board-approved organizations providing approval of course design and delivery.
 - [b] A college that qualifies for content approval in subparagraph b that awards academic credit for the distance education course.
 - [c] A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

[2] Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization.

[3] Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.

[4] Be equivalent to at least fifteen class hours.

(10) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.

(11) Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional practice (USPAP) courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

(12) Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.

(13) The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and title 101.

(14) Experience may not be substituted for education.

5. **Experience.** A licensed real property appraiser must have the equivalent of two thousand hours of credible appraisal experience prior to obtaining the licensing permit. The experience requirements must be satisfied by time spent on the appraisal process. The appraisal process consists of analyzing factors that affect value, defining the problem; gathering and analyzing data, applying the appropriate analysis and methodology, and arriving at a value opinion and correctly reporting the value opinion in compliance with the uniform standards of professional appraisal practice. The applicant for licensure must submit a log from which the board will select for review a minimum of three summary or self-contained residential appraisal reports. All three of the reports must be complete appraisals and must meet the current uniform standards of professional appraisal practice (USPAP) as of the effective date of the appraisal and must reflect that the applicant has an acceptable level of competency and understanding of the principles.

practices, and procedures consistent with the body of knowledge for the licensed level.

- a. Adequate experience will be determined on a point system.
 - (1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.
 - (2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.
 - (a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value. The appraisal process consists of an analysis of factors that affect value, definition of the problem, gathering and analyzing data, applying the appropriate value approaches and methodology, arriving at an opinion of value, and correctly reporting the opinion of value in compliance with the uniform standards of professional appraisal practice.
 - (b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate. Review appraisal experience must conform to standard three of the uniform standards of professional appraisal practice. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
 - (c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial

taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.

- (3) Types of property appraised may include the following:
- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition.
 - (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
 - (c) Residential multifamily, thirteen-plus units may include apartments, condominiums, townhouses, and mobile home parks.
 - (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center.
 - (e) Commercial multitenant may include office building, shopping center, and hotel.
 - (f) Industrial may include warehouse and manufacturing plant.
 - (g) Institutional may include rest home, nursing home, hospital, school, church, and government building.
- (4) Points assigned for each appraisal type are assigned by the appraisal board and are included on the application for licensure and certification. A copy of this form can be obtained by contacting the appraisal board office.
- b. A total of two hundred forty points is equivalent to the two thousand-hour requirement. These two hundred forty points (two thousand hours of experience) must be obtained using at least ~~two years~~ one year of appraisal practice gained over a period of at least ~~twenty-four~~ twelve months.

- c. There is no other time limit regarding when qualifying experience may be obtained.
- d. Hours may be treated as cumulative in order to achieve the necessary two thousand hours (two hundred forty points) of appraisal experience.
- e. Acceptable appraisal experience includes, but is not limited to, the following:
 - (1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study.
 - (a) Mass appraisal experience must conform to standard six of the uniform standards of professional appraisal practice. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
 - (b) Review of real estate appraisals or real property consulting services, including market analysis, cash flow and investment analysis, and feasibility analysis, must conform to standards three, four, and five of the uniform standards of professional appraisal practice. Experience involving these functions should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under standard one of the uniform standards of professional appraisal practice.
 - (c) A market analysis typically performed by a real estate broker or sales person should be awarded experience credit when the analysis is prepared in conformity with standards one and two of the uniform standards of professional appraisal practice, the individual can demonstrate that the individual is using techniques and methods consistent with those used by appraisers to value property and the individual is effectively utilizing the appraisal process.
 - (d) Real property appraisal experience should be awarded for appraisals of real estate components, estates, or interests unless the appraiser has not complied with

standards one, two, and six of the uniform standards of professional appraisal practice.

- (2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes ~~authorship and consulting~~.
- f. Documentation in the form of reports or file memoranda must be provided to support the experience claimed. If reports or file memoranda are unavailable for good cause, the board may accept other evidence of compliance with the uniform standards of professional appraisal practice.
9. The verification for the two thousand hours (two hundred forty points) of experience credit claimed by an applicant shall be on forms prescribed by the ~~state certification or licensing board~~ which shall include all of the following:
- (1) Type of property;;
 - (2) Date of report;;
 - (3) Address of appraised property;;
 - (4) Description of work performed;and by the applicant and scope of the review and supervision of the supervising appraiser.
 - (5) Number of work hours (points) per assignment.
 - (6) The signature and permit number of the supervising appraiser, if applicable.
 - (7) Separate appraisal logs maintained for each supervising appraiser, if applicable.
- h. There need not be a client in order for an appraisal to qualify for experience. Appraisals made without clients can fulfill up to fifty percent of the total experience requirement.
- i. Case studies or practicum courses that are approved by the board or through the appraisal qualifications board of the appraisal foundation course approval program can satisfy the nonclient experience requirement.
- (1) A practicum course must include the generally applicable methods of appraisal practice for the credential category. Content includes all of the following:

- (a) Requiring the student to produce credible appraisals that utilize an actual subject property.
 - (b) Performing market research containing sales analysis.
 - (c) Applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.
- (2) Assignments must require problem-solving skills for a variety of property types for the credential category.
 - (3) Experience credit shall be granted for the actual class hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.
- j. All experience must be obtained after January 30, 1989, and must be USPAP compliant.

History: Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003; January 1, 2008.

General Authority: NDCC 43-23.3-03, 43-23.3-09

Law Implemented: NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

101-02-02-05.1. Certified residential appraiser.

1. **Permit.** A certified residential appraiser permit must be issued to an individual who successfully meets all of the board requirements for such a permit.
2. **Property appraisal limitations.** The certified residential appraiser may appraise one-family to four-family family residential properties without regard to value or complexity. In addition, a certified residential appraiser may appraise noncomplex, nonresidential properties that have a transaction value of up to two hundred fifty thousand dollars. The certified residential appraiser is bound by the competency provision of the uniform standards of professional appraisal practice.
3. **Examination.** An applicant for a certified residential appraiser permit must have successfully completed the board-approved uniform state-certified residential examination or its equivalent. Successful completion of the examination is valid for a period of twenty-four months. The certified residential permit must be obtained within twenty-four months of successful completion of the examination or the examination must be retaken. An applicant for the examination as a certified residential appraiser must furnish proof to the board that the applicant has successfully completed the applicable education required by subsection 4.

4. Education.

a. An applicant for a certified residential appraiser permit who meets the education requirements before January 1, 2008, and makes application by July 1, 2009, must successfully complete one hundred twenty hours of real estate appraisal education. Fifteen of the one hundred twenty hours must include the successful completion of the national uniform standards of professional appraisal practice course or its equivalent. Equivalency must be determined through the appraisal qualifications board of the appraisal foundation course approval program or by an alternate method established by the appraisal qualifications board of the appraisal foundation. Ninety of the one hundred twenty hours must be comprised of appraisal-specific education related to the valuation of real estate and fifteen hours may be comprised of appraisal-related subject matter as approved as such by the board.

- (1) A classroom hour is defined as fifty minutes out of each sixty-minute segment.**
- (2) Credit toward the classroom hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.**
- (3) Open-book examinations are not acceptable in qualifying education courses.**
- (4) Uniform standards of professional appraisal practice education credit shall only be awarded when the classroom is instructed by an appraisal qualifications board-certified instructor.**
- (5) Credit for the classroom requirement may be obtained from the following:**
 - (a) Colleges or universities.**
 - (b) Community or junior colleges.**
 - (c) Real estate appraisal or real estate-related organizations.**
 - (d) State or federal agencies or commissions.**
 - (e) Proprietary schools.**
 - (f) Other providers approved by the board.**

- (6) There is no time limit regarding when qualifying education credit must have been obtained.
- (7) Various appraisal courses may be credited toward the one hundred twenty classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of the topics listed below, with particular emphasis on the appraisal of one-unit to four-unit residential properties.
- (a) Influences on real estate value.
- [1] Physical and environmental.
 - [2] Economic.
 - [3] Governmental and legal.
 - [4] Social.
- (b) Legal considerations in appraisal.
- [1] Real estate versus real property.
 - [2] Real property versus personal property.
 - [3] Limitations on real estate ownership.
 - [4] Legal rights and interests.
 - [5] Forms of property ownership.
 - [6] Legal descriptions.
 - [7] Transfer of title.
- (c) Types of value.
- [1] Market value or value in exchange.
 - [2] Price.
 - [3] Cost.
 - [4] Investment value.
 - [5] Value in use.
 - [6] Assessed value.

[7] Insurable value.

(d) Economic principles.

[1] Anticipation.

[2] Balance.

[3] Change.

[4] Competition.

[5] Conformity.

[6] Contribution.

[7] Increasing and decreasing returns.

[8] Opportunity cost.

[9] Substitution.

[10] Supply and demand.

[11] Surplus and productivity.

(e) Real estate markets and analysis.

[1] Characteristics of real estate markets.

[2] Absorption analysis.

[3] Role of money and capital markets.

[4] Real estate financing.

(f) Valuation process.

[1] Definition of the problem.

[2] Collection and analysis of data.

[3] Analysis of highest and best use.

[4] Application and limitations of each approach to value.

[5] Reconciliation and final value estimate.

- [6] The appraisal report.
- (g) Property description.
 - [1] Site description.
 - [2] Improvement description.
 - [3] Basic construction and design.
- (h) Highest and best use analysis.
 - [1] Four tests.
 - [2] Vacant site or as if vacant.
 - [3] As improved.
 - [4] Interim use.
- (i) Appraisal mathematics and statistics.
 - [1] Compound interest concepts.
 - [2] Statistical concepts used in appraisal.
- (j) Sales comparison approach.
 - [1] Research and selection of comparables.
 - [2] Elements of comparison.
 - [3] Adjustment process.
 - [4] Application of sales comparison approach.
- (k) Site value.
 - [1] Sales comparison.
 - [2] Land residual.
 - [3] Allocation.
 - [4] Extraction.
 - [5] Plottage and assemblage.
- (l) Cost approach.

- [1] Steps in cost approach.
- [2] Application of the cost approach.
- (m) Income approach.
 - [1] Estimation of income and expenses.
 - [2] Operating expense ratios.
 - [3] Direct capitalization.
 - [4] Gross rent multiplier analysis.
- (n) Valuation of partial interests.
 - [1] Life estates.
 - [2] Undivided interests in commonly held property.
 - [3] Easements.
 - [4] Timeshares.
 - [5] Cooperatives.
 - [6] Leased fee estate.
 - [7] Leasehold estate.
- (o) Appraisal standards and ethics.
- (p) Narrative report writing.
- (8) Sixty hours may be for distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:
 - (a) Provide interaction between the student and the instructor.
 - (b) Meet one of the following requirements:
 - [1] The course is presented by a college or university, accredited by the commission on colleges or a

regional accreditation association, which offers distance education programs in other disciplines.

[2] The course is approved for design and delivery mechanism by the international distance education certification center and for content by the appraiser qualifications board or the board.

(c) Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization.

(d) Meet the requirements for qualifying education established by the appraiser qualifications board.

(e) Be equivalent to at least fifteen classroom hours.

(9) Credit awarded for the classroom hour requirement when an individual seeks a different classification than that held may also be awarded for the continuing education requirement of the classification held.

(10) Courses taken in satisfying the qualifying education requirements should not be repetitive in nature. Each course credited toward the required number of qualifying education hours should represent a progression in which the appraiser's knowledge is increased.

(11) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable by the board without additional state review.

b. An applicant for a certified residential appraiser who completes education after December 31, 2007, or applies after July 1, 2009, must apply under all of the following education requirements:

(1) An associate degree, or higher from an accredited college or university. In lieu of the associate degree, an applicant for the certified residential permit shall successfully complete a minimum of twenty-one semester credit hours in all the following collegiate level subject matter courses from an accredited college, junior college, community college, or university:

(a) English composition.

(b) Principles of economics (micro or macro).

- (c) Finance.
 - (d) Algebra, geometry, or higher mathematics.
 - (e) Statistics.
 - (f) Introduction to computers, word processing and spreadsheets.
 - (g) Business or real estate law.
- (2) Two hundred class hours in subjects related to real estate appraisal which cover the required core curriculum as established by the appraisal qualifications board of the appraisal foundation and approved as such by the board.
- (a) Coverage must include a minimum of all of the following:
 - [1] Thirty hours of basic appraisal principles.
 - [2] Thirty hours of basic appraisal procedures.
 - [3] The fifteen-hour national uniform standards of appraisal practice course or its equivalent.
 - [4] Fifteen hours of residential market analysis and highest and best use.
 - [5] Fifteen hours of residential appraiser site valuation and cost approach.
 - [6] Fifteen hours of residential report writing and case studies.
 - [7] Fifteen hours of statistics, modeling, and finance.
 - [8] Fifteen hours of advanced residential applications and case studies.
 - [9] Fifteen hours of appraisal subject matter electives.
 - (b) Class hours will be credited only for educational offerings with content that follows the required core curriculum.

- (c) A class hour is defined as sixty minutes, of which at least fifty minutes are for instruction attended by the student.
- (d) Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.
- (e) The prescribed number of class hours includes time for examinations.
- (f) Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.
- (g) Credit for the class requirement may be obtained from the following:
 - [1] Colleges or universities.
 - [2] Community or junior colleges.
 - [3] Real estate appraisal or real estate-related organizations.
 - [4] State or federal agencies or commissions.
 - [5] Proprietary schools.
 - [6] Providers approved by the board.
 - [7] The appraisal foundation or its boards.
- (h) There is no time limit regarding when qualifying education credit must have been obtained.
- (i) One hundred hours may be from distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:

- [1] Provide interaction between the student and the instructor. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor.
 - [2] Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.
 - [3] Obtain course delivery mechanism approval from one of the following sources:
 - [a] Appraisal qualifications board-approved organizations providing approval of course design and delivery.
 - [b] A college that qualifies for content approval in item 2 and that awards academic credit for the distance education course.
 - [c] A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.
 - [4] Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization.
 - [5] Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.
 - [6] Be equivalent to at least fifteen class hours.
- (j) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program

may be acceptable to the board without additional state review.

- (k) Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional practice (USPAP) courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.
- (l) Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.
- (m) The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and title 101.
- (n) Experience may not be substituted for education.

5. **Experience.** A certified residential appraiser must have the equivalent of two thousand five hundred hours of credible appraisal experience prior to obtaining the certified residential appraiser certification permit. The experience requirements must be satisfied by time spent on the appraisal process. The appraisal process consists of analyzing factors that affect value, defining the problem, gathering and analyzing data, applying the appropriate analysis and methodology, and arriving at an opinion and correctly reporting the opinion in compliance with the uniform standards of professional appraisal practice. The applicant for certified residential appraiser must submit a log from which the board will select for review a minimum of three summary or self-contained one-family to four-family residential appraisal reports. One report must include and demonstrate competence and a working knowledge of all three approaches to value. The reports submitted must meet the current uniform standards of professional appraisal practice (USPAP) as of the effective date of the appraisal and must reflect that the applicant has an acceptable level of competency and understanding of the principles, practices, and procedures consistent with the body of knowledge for the certified residential level.

- a. Adequate experience will be determined on a point system.
 - (1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.
 - (2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.

- (a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value. The appraisal process consists of an analysis of factors that affect value, definition of the problem, gathering and analyzing data, applying the appropriate value approaches and methodology, arriving at an opinion of value, and correctly reporting the opinion of value in compliance with the uniform standards of professional appraisal practice.
- (b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate. Review appraisal experience must conform to standard three of the uniform standards of professional appraisal practice. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
- (c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process, including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.
- (3) Types of property appraised may include the following:

- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition.
 - (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
 - (c) Residential multifamily, thirteen-plus units may include apartments, condominiums, townhouses, and mobile home parks.
 - (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center.
 - (e) Commercial multitenant may include office building, shopping center, and hotel.
 - (f) Industrial may include warehouse and manufacturing plant.
 - (g) Institutional may include rest home, nursing home, hospital, school, church, and government building.
- (4) Points assigned for each appraisal type are assigned by the board and are included on the application for licensure and certification. A copy of this form can be obtained by contacting the board office.
- b. A total of three hundred points is equivalent to the two thousand five hundred-hour requirement. These three hundred points (two thousand five hundred hours of experience) must be obtained using at least two years of appraisal practice gained over a period of at least twenty-four months.
 - c. There is not other time limit regarding when qualifying experience may be obtained.
 - d. Hours may be treated as cumulative in order to achieve the necessary two thousand five hundred hours (three hundred points) of appraisal experience.
 - e. Acceptable appraisal experience includes the following:
 - (1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting (excludes related

fields such as real estate lending), highest and best use analysis, and feasibility analysis or study.

- (a) Mass appraisal experience must conform to standard six of the uniform standards of professional appraisal practice. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
 - (b) Review of real estate appraisals or real property consulting services, including market analysis, cash flow and investment analysis, and feasibility analysis must conform to standards three, four, and five of the uniform standards of professional appraisal practice. Experience involving these functions should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under standard one of the uniform standards of professional appraisal practice.
 - (c) A market analysis typically performed by a real estate broker or salesperson should be awarded experience credit when the analysis is prepared in conformity with standards one and two of the uniform standards of professional appraisal practice, and the individual can demonstrate that the individual is using techniques and methods consistent with those used by appraisers to value property and the individual is effectively utilizing the appraisal process.
 - (d) Real property appraisal experience should be awarded for appraisals of real estate components, estates, or interests unless the appraiser has not complied with standards one, two, and six of the uniform standards of professional appraisal practice.
- (2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes consulting.
- f. Documentation in the form of reports or file memoranda must be provided to support the experience claimed. If reports or memoranda are unavailable for good cause, the board may accept other evidence of compliance with the uniform standards of professional appraisal practice.

9. The verification for the two thousand five hundred hours (three hundred points) of experience credit claimed by an applicant shall be on forms prescribed by the board which shall include all of the following:
- (1) Type of property.
 - (2) Date of report.
 - (3) Address of appraised property.
 - (4) Description of work performed by the applicant and scope of the review and supervision of the supervising appraiser.
 - (5) Number of work hours (points) per assignment.
 - (6) The signature and permit number of the supervising appraiser, if applicable.
 - (7) Separate appraisal logs maintained for each supervising appraiser, if applicable.
- h. There need not be a client in order for an appraisal to qualify for experience. Appraisals made without clients can fulfill up to fifty percent of the total experience requirement.
- i. Case studies or practicum courses that are approved by the board or through the appraisal qualifications board of the appraisal foundation course approval program can satisfy the nonclient experience requirement.
- (1) A practicum course must include the generally applicable methods of appraisal practice for the credential category. Content includes all of the following:
 - (a) Requiring the student to produce credible appraisals that utilize an actual subject property.
 - (b) Performing market research containing sales analysis.
 - (c) Applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.
 - (2) Assignments must require problem-solving skills for a variety of property types for the credential category.

(3) Experience credit shall be granted for the actual class hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.

j. All experience must be obtained after January 30, 1989, and must be uniform standards of professional appraisal practice compliant.

History: Effective January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43.23.3-09, 43-23.3-17, 43-23.3-18

101-02-02-06. Certified general real-property appraiser.

1. **Definitions.** A certified general real-property appraiser permit must be issued to an individual who successfully meets all of the ~~North Dakota appraisal board~~ requirements for such a permit.
2. **Property appraisal limitations.** The certified general real-property appraiser may appraise all types of properties. The certified general real-property appraiser is bound by the competency provision of the uniform standards of professional appraisal practice.
3. **Examination.** An applicant for a certified general real-property appraiser permit must have successfully completed the appraisal board approved uniform state certification examination or its equivalent ~~within two years of making the application.~~ Successful completion of the examination is valid for a period of twenty-four months. The certified general permit must be obtained within twenty-four months of successful completion of the examination or the examination must be retaken. An applicant for the examination as a certified real-property appraiser must ~~have~~ furnish proof to the board that the applicant has successfully completed one hundred eighty classroom hours of real estate appraisal the applicable education required by subsection 4.
4. **Education.**
 - a. An applicant for a certified general appraiser permit who meets the education requirements before January 1, 2008, and makes application by July 1, 2009, must successfully complete one hundred eighty hours of real estate appraisal education. Fifteen of the one hundred eighty hours must include the successful completion of the national uniform standards of professional appraisal practice course, or its equivalent. Equivalency shall be determined through the appraisal qualifications board course approval program or by an alternate method established by the appraisal qualifications board. One hundred fifty hours of the one hundred eighty hours must be comprised of appraisal-specific education related to the valuation of real estate, and fifteen hours

may be comprised of appraisal-related subject matter, as approved as such, by the board.

- a: (1) A classroom hour is defined as fifty minutes out of each sixty-minute segment.
- b: (2) Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.
- e: (3) Open-book examinations are not acceptable in qualifying education courses.
- d: (4) Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by an appraisal qualifications board-certified instructor.
- e: (5) Credit for the classroom requirement may be obtained from the following:
 - (1) (a) Colleges or universities.
 - (2) (b) Community or junior colleges.
 - (3) (c) Real estate appraisal or real estate-related organizations.
 - (4) (d) State or federal agencies or commission.
 - (5) (e) Proprietary schools.
 - (6) (f) Other providers approved by the state certification or licensing board.
- f: ~~Credit towards the classroom hour requirement may be awarded to teachers of appraisal courses.~~
- g: (6) There is no time limit regarding when qualifying education credit must have been obtained.
- h: (7) Various appraisal courses may be credited toward the one hundred eighty classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of topics listed below with particular emphasis on the appraisal of nonresidential properties. Residential is defined as one-to-four residential units.

(1) (a) Influence on real estate value.

(a) [1] Physical and environmental.

(b) [2] Economic.

(c) [3] Governmental and legal.

(d) [4] Social.

(2) (b) Legal considerations in appraisal.

(a) [1] Real estate versus real property.

(b) [2] Real property versus personal property.

(c) [3] Limitations on real estate ownership.

(d) [4] Legal rights and interests.

(e) [5] Forms of property ownership.

(f) [6] Legal descriptions.

(g) [7] Transfer of title.

(3) (c) Types of value.

(a) [1] Market value or value in exchange.

(b) [2] Price.

(c) [3] Cost.

(d) [4] Investment value.

(e) [5] Value in use.

(f) [6] Assessed value.

(g) [7] Insurable value.

(4) (d) Economic principles.

(a) [1] Anticipation.

(b) [2] Balance.

(c) [3] Change.

- (d) [4] Competition.
 - (e) [5] Conformity.
 - (f) [6] Contribution.
 - (g) [7] Increasing and decreasing returns.
 - (h) [8] Substitution.
 - (i) [9] Supply and demand.
 - (j) [10] Surplus and productivity.
- (5) (e) Real estate markets and analysis.
- (a) [1] Characteristics of real estate markets.
 - (b) [2] Absorption analysis.
 - (c) [3] Role of money and capital markets.
 - (d) [4] Real estate financing.
- (6) (f) Valuation process.
- (a) [1] Definition of the problem.
 - (b) [2] Collection and analysis of data.
 - (c) [3] Analysis of highest and best use.
 - (d) [4] Application and limitations of each approach to value.
 - (e) [5] Reconciliation and final value estimate.
 - (f) [6] The appraisal report.
- (7) (g) Property description.
- (a) [1] Site description.
 - (b) [2] Improvement description.
 - (c) [3] Basic construction and design.
- (8) (h) Highest and best use analysis.

- (a) [1] Four tests.
 - (b) [2] Vacant site or as if vacant.
 - (c) [3] As improved.
 - (d) [4] Interim use.
- (9) (i) Appraisal mathematics and statistics.
- (a) [1] Compound interest concepts.
 - (b) [2] Statistical concepts used in appraisal.
- (10) (j) Sales comparison approach.
- (a) [1] Research and selection of comparables.
 - (b) [2] Elements of comparison.
 - (c) [3] Adjustment process.
 - (d) [4] Application of sales comparison approach.
- (11) (k) Site value.
- (a) [1] Sales comparison.
 - (b) [2] Land residual.
 - (c) [3] Allocation.
 - (d) [4] Extraction.
 - (e) [5] Plottage and assemblage.
- (12) (l) Cost approach.
- (a) [1] Steps in cost approach.
 - (b) [2] Application of the cost approach.
- (13) (m) Income approach.
- (a) [1] Estimation of income and expenses.
 - (b) [2] Operating ratios.
 - (c) [3] Direct capitalization.

- (d) [4] Gross rent multiplier analysis.
- (14) (n) Valuation of partial interests.
 - (a) [1] Life estates.
 - (b) [2] Undivided interests in commonly held property.
 - (c) [3] Easements.
 - (d) [4] Timeshares.
 - (e) [5] Cooperatives.
 - (f) [6] Leased fee estate.
 - (g) [7] Leasehold estate.
- (15) (o) Appraisal standards and ethics.
- (16) (p) Narrative report writing.
- i. (8) Eighty hours may be distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes, but is not limited to, online learning internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must:
 - (1) (a) Provide interaction between the student and the instructor.
 - (2) (b) Meet one of the following requirements:
 - (a) [1] The course is presented by a college or university, accredited by the commission on colleges or a regional accreditation association, that offers distance education programs in other disciplines.
 - (b) ~~The course is approved for college credit by the American council on education.~~
 - (c) [2] The course is approved for design and delivery mechanism by the international distance education certification center, and for content by the appraiser qualifications board or the board.

- ~~(3)~~ (c) Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization.
- ~~(4)~~ (d) Meet the requirements for qualifying education established by the appraisal qualifications board.
- ~~(5)~~ (e) Be equivalent to at least fifteen classroom hours.
- (9) Credit awarded for the classroom hour requirement when an individual seeks a different classification than that held may also be awarded for the continuing education requirement of the classification held.
- j. ~~(10) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review. Courses taken in satisfying the qualifying education requirements should not be repetitive in nature. Each course credited toward the required number of qualifying education hours should represent a progression in which the appraiser's knowledge is increased.~~
- k. ~~(11) Courses taken in satisfying the qualifying education requirements should not be repetitive in nature. Each course credited toward the required number of qualifying education hours should represent a progression in which the appraiser's knowledge is increased. Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable by the board without additional state review.~~
- b. An applicant for a certified general appraiser who completes education after December 31, 2007, or applies after July 1, 2009, must apply under all of the following education requirements.
 - (1) A bachelor's degree or higher from an accredited college or university. In lieu of the bachelor's degree, an applicant for the certified general permit shall successfully complete a minimum of thirty semester credit hours in all the following collegiate level subject matter courses from an accredited college, junior college, community college, or university:
 - (a) English composition.
 - (b) Micro economics.

- (c) Macro economics.
 - (d) Finance.
 - (e) Algebra, geometry, or higher mathematics.
 - (f) Statistics.
 - (g) Introduction to computers, word processing and spreadsheets.
 - (h) Business or real estate law.
 - (i) Two elective courses in accounting, geography, agriculture economics, business management, or real estate.
- (2) Three hundred class hours in subjects related to real estate appraisal which cover the required core curriculum as established by the appraisal qualifications board of the appraisal foundation, and approved as such, by the board.
- (a) Coverage must include a minimum of all of the following:
 - [1] Thirty hours of basic appraisal principles.
 - [2] Thirty hours of basic appraisal procedures.
 - [3] The fifteen-hour national uniform standards of appraisal practice course or its equivalent.
 - [4] Thirty hours of general appraiser market analysis and highest and best use.
 - [5] Fifteen hours of statistics, modeling, and finance.
 - [6] Thirty hours of general appraiser sales comparison approach.
 - [7] Thirty hours general appraiser site valuation and cost approach.
 - [8] Sixty hours of general appraiser income approach.
 - [9] Thirty hours of general appraiser report writing and case studies.

[10] Thirty hours of appraisal subject matter electives.

- (b) Class hours will be credited only for educational offerings with content that follows the required core curriculum.
- (c) A class hour is defined as sixty minutes, of which at least fifty minutes are for instruction attended by the student.
- (d) Credit toward the class hour requirement may only be granted when the length of the educational offering is at least fifteen hours, and the individual successfully completes a closed-book examination pertinent to that educational offering.
- (e) The prescribed number of class hours includes time for examinations.
- (f) Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by at least one appraisal qualifications board-certified instructor who is state-certified.
- (g) Credit for the class requirement may be obtained from the following:
 - [1] Colleges or universities.
 - [2] Community or junior colleges.
 - [3] Real estate appraisal or real estate-related organizations.
 - [4] State or federal agencies or commissions.
 - [5] Proprietary schools.
 - [6] Providers approved by the board.
 - [7] The appraisal foundation or its boards.
- (h) There is no time limit regarding when qualifying education credit must have been obtained.
- (i) One hundred fifty hours may be from distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education

includes online learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must meet all of the following requirements:

- [1] Provide interaction between the student and the instructor. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor.
- [2] Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.
- [3] Obtain course delivery mechanism approval from one of the following sources:
 - [a] Appraisal qualifications board-approved organizations providing approval of course design and delivery.
 - [b] A college that qualifies for content approval in item 2 that awards academic credit for the distance education course.
 - [c] A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.
- [4] Require the student to successfully complete a written examination proctored by an official approved by the presenting, college, university, or sponsoring organization.
- [5] Meet the requirements for qualifying education established by the appraisal qualifications board of the appraisal foundation.

[6] Be equivalent to at least fifteen class hours.

(j) Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.

(k) Courses taken to satisfy the qualifying education requirements must not be repetitive. Uniform standards of professional practice (USPAP) courses taken in different years are not repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

(l) Courses taken for the class hour requirement when an individual seeks a different classification than that held may also be counted for the continuing education requirement of the classification held.

(m) The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and title 101.

(n) Experience may not be substituted for education.

5. **Experience.** A certified general ~~real property~~ appraiser must have the equivalent of three thousand hours of credible appraisal experience prior to obtaining the certified general ~~real property~~ appraiser certification permit. The experience requirements must be satisfied by time spent on the appraisal process. The appraisal process consists of analyzing factors that affect value, defining the problem, gathering and analyzing data, applying the appropriate analysis and methodology, and arriving at an opinion and correctly reporting the opinion in compliance with the uniform standards of professional appraisal practice. The applicant for certification must submit a log from which the board will select for review a minimum of three summary or self-contained nonresidential appraisal reports. ~~All three of the reports must be complete appraisals and one~~ One report must include and demonstrate competence and a working knowledge of all three approaches to value. The reports submitted must meet the current uniform standards of professional appraisal practice (USPAP) as of the effective date of the appraisal and must reflect that the applicant has an acceptable level of competency and understanding of the principles, practices, and procedures consistent with the body of knowledge for the certified general level.

a. Adequate experience will be determined on a point system.

- (1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.
- (2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.
 - (a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value. The appraisal process consists of an analysis of factors that affect value, definition of the problem, gathering and analyzing data, applying the appropriate value approaches and methodology, arriving at an opinion of value, and correctly reporting the opinion of value in compliance with the uniform standards of professional appraisal practice.
 - (b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate. Review appraisal experience must conform to standard three of the uniform standards of professional appraisal practice. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
 - (c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field

inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.

(3) Types of property appraised may include the following:

- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition.
- (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
- (c) Residential multifamily, thirteen-plus units may include apartments, condominiums, townhouses, and mobile home parks.
- (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center.
- (e) Commercial multitenant may include office building, shopping center, and hotel.
- (f) Industrial may include warehouse and manufacturing plant.
- (g) Institutional may include rest home, nursing home, hospital, school, church, and government building.

(4) Points assigned for each appraisal type are assigned by the appraisal board and are included on the application for licensure or certification. A copy of this form can be obtained by contacting the appraisal board office.

- b. A total of three hundred sixty points is equivalent to three thousand-hour requirement. These three hundred sixty points, (three thousand hours of experience) must be obtained using at least two and one-half years of appraisal practice gained over a period of at least thirty months.
- c. There is no other time limit regarding when qualifying experience may be obtained.
- d. Hours may be treated as cumulative in order to achieve the necessary three thousand hours (three hundred sixty points) of appraisal experience.

- e. Acceptable appraisal experience includes the following:
- (1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study.
 - (a) Mass appraisal experience must conform to standard six of the uniform standards of professional appraisal practice. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
 - (b) Review of real estate appraisals or real property consulting services, including market analysis, cash flow and investment analysis, and feasibility analysis must conform to standards three, four, and five of the uniform standards of professional appraisal practice. Experience involving these functions should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under standard one of the uniform standards of professional appraisal practice.
 - (c) A market analysis typically performed by a real estate broker or sales person should be awarded experience credit when the analysis is prepared in conformity with standards one and two of the uniform standards of professional appraisal practice, the individual can demonstrate that the individual is using techniques and methods consistent with those used by appraisers to value property and the individual is effectively utilizing the appraisal process.
 - (d) Real property appraisal experience should be awarded for appraisals of real estate components, estates, or interests unless the appraiser has not complied with standards one, two, and six of the uniform standards of professional appraisal practice.
 - (2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes ~~authorship and consulting.~~

- f. Documentation in the form of reports or file memoranda must be provided to support the experience claimed. If reports or file memoranda are unavailable for good cause, the board may accept other evidence of compliance with the uniform standards of professional appraisal practice.
- 9. The verification for the three thousand hours (three hundred sixty points) of experience credit claimed by an applicant shall be on forms prescribed by the ~~state certification or licensing~~ board which shall include all of the following:
 - (1) Type of property.
 - (2) Date of report.
 - (3) Address of appraised property.
 - (4) Description of work performed by the applicant and scope of the review and supervision of the supervising appraiser.
 - (5) Number of work hours (points) per assignment.
 - (6) The signature and permit number of the supervising appraiser, if applicable.
 - (7) Separate appraisal logs maintained for each supervising appraiser, if applicable.
- h. The applicant must have at least fifty percent (one thousand five hundred hours) of nonresidential appraisal experience. Residential is defined as one-unit to four-unit residential units.
- i. There need not be a client in order for an appraisal to qualify for experience. Appraisals made without clients can fulfill up to fifty percent of the total experience requirement.
- j. Case studies or practicum courses that are approved by the board or through the appraisal qualifications board of the appraisal foundation course approval program can satisfy the nonclient experience requirement.
 - (1) A practicum course must include the generally applicable methods of appraisal practice for the credential category. Content includes all of the following:
 - (a) Requiring the student to produce credible appraisals that utilize an actual subject property.
 - (b) Performing market research containing sales analysis.

(c) Applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.

(2) Assignments must require problem-solving skills for a variety of property types for the credential category.

(3) Experience credit shall be granted for the actual class hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.

k. All experience must be obtained after January 30, 1989, and must be USPAP compliant.

History: Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003; January 1, 2008.

General Authority: NDCC 43-23.3-03, 43-23.3-09

Law Implemented: NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

101-02-02-07. Inactive status.

1. ~~A licensee or certificate permittee must~~ licensed or certified appraiser may be assigned by the board to inactive status upon written request to the board.
2. ~~A licensee or certificate permittee whose appraiser license or certificate is on inactive status must be returned to active status upon making a written request to the board.~~
3. ~~A licensee or certificate permittee licensed or certified appraiser on inactive status is~~ may not entitled to act directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a state-licensed licensed or state-certified real property certified appraiser; however, in order to continue to hold an appraiser license or certificate, the licensee or certificate permittee whose license or certificate is on inactive status must renew the license or certificate, by including payment of prescribed renewal fee and completion of continuing education as required by the board.
4. ~~The board may take disciplinary action against a licensee or certificate permittee on inactive status.~~
3. A licensed or certified appraiser on inactive status must renew a permit as required by North Dakota Century Code section 43-23.3-12 and section 101-02-04-01. A licensed or certified appraiser on inactive status is required to complete the continuing education required by North Dakota Century Code sections 43-23.3-12 and 43-23.3-19 and section 101-04-01-01.

4. A licensed or certified appraiser on inactive status may be removed from inactive status upon written request and proof of completion of all the continuing education that would have been required if the licensed or certified appraiser was not on inactive status, including the most recent edition of the seven-hour national uniform standards of professional appraisal practice update course or its equivalent.

History: Effective October 1, 1992; amended effective January 1, 2008.

General Authority: NDCC 43-23.3-03, 43-23.3-12

Law Implemented: NDCC 43-23.3-12, 43-23.3-19, 43-23.3-20

CHAPTER 101-02-02.1

101-02-02.1-01. Reciprocity Issuance of permits to applicants licensed or certified by another state. ~~If, in the determination of the board, another state, territory, or the District of Columbia has substantially equivalent licensure requirements and enters into a reciprocity agreement with the board, an applicant who is licensed in the other state may be licensed under North Dakota Century Code chapter 43-23.3. The board may issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state. If an applicant was licensed or certified by another state by reciprocity or a similar process, the requirements of the state in which the applicant was originally licensed or certified must be at least substantially equivalent to the requirements imposed by this state. To qualify, the applicant must meet all of the following requirements:~~

1. ~~Submit an application on a form provided by the board;~~
2. ~~Certify that the applicant is licensed or certified to appraise real estate in the applicant's good standing in another state of domicile;~~
3. ~~Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or any other jurisdiction;~~
4. ~~Sign an irrevocable consent to service of process form; and Provide documentation of the requirements of the state in which the applicant was originally licensed or certified.~~
5. Pay the application fee.

History: Effective January 1, 1995; amended effective October 1, 1998; January 1, 2008.

General Authority: NDCC 43-23.3-03, 43-23.3-11

Law Implemented: NDCC ~~43-23.3-11~~ 43-23.3-04.1

101-02-02.1-02. Temporary practice licensure permit. A nonresident of this state who has submitted an irrevocable consent to service of process may obtain a temporary license permit to perform a contract relating to the appraisal of real estate in this state. To qualify, the applicant must meet all of the following requirements:

1. Submit an application on a form provided by the board;
2. Certify that the applicant is licensed or certified to appraise real estate in good standing in the applicant's another state of domicile;
3. Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or any other jurisdiction;

4. Submit a copy of the contract for appraisal services; and
5. Sign an irrevocable consent to service of process form; and
6. Pay the application fee.

A temporary license permit issued under this section is expressly limited to the grant of authority to perform the appraisal work required by the contract for appraisal services. Each temporary license permit expires upon the completion of the appraisal work required by the contract for appraisal services.

History: Effective January 1, 1995; amended effective October 1, 1998; January 1, 2008.

General Authority: NDCC 43-23.3-03, 43-23.3-11

Law Implemented: NDCC 43-23.3-11

101-02-02.1-03. Nonresident consent to service of process. Repealed effective January 1, 2008. ~~Each applicant under this chapter who is not a resident of this state shall submit with the applicant's application an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the board. This method of process may be used in an action against the applicant in a court of this state arising out of the applicant's activity as a real estate appraiser in this state if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.~~

History: Effective January 1, 1995.

General Authority: ~~NDCC 43-23.3-03~~

Law Implemented: ~~NDCC 43-23.3-11~~

**CHAPTER 101-02-03
CHARACTER**

[Repealed effective January 1, 2008]

CHAPTER 101-02-04

101-02-04-01. ~~License and certificate~~ Permit renewal.

1. A holder of an appraiser ~~license or certificate~~ permit desiring the renewal of such ~~license or certificate~~ permit shall, during the month preceding the expiration date of such ~~license or certificate~~ permit, apply for same in writing upon a form approved by the board and shall forward the required fee. Forms are available upon request to the board.
2. Permits may be renewed up to ninety days after the date of expiration, with payment of late fee. The applicant who does not file a renewal application by the ninety-day deadline is subject to all requirements governing new applicants.
3. A person who, in any way, acts as a ~~state-licensed~~ an apprentice licensed, or ~~state-certified real property~~ certified appraiser while that individual's ~~license or certificate~~ permit is expired will be subject to disciplinary action and penalties as described in North Dakota Century Code chapter 43-23.3.

History: Effective October 1, 1992; amended effective February 1, 2003; January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-12, 43-23.3-23

CHAPTER 101-03-02

101-03-02-02. Display of permit. ~~Repealed effective January 1, 2008. The real property appraiser license or certificate of a state licensed or state certified real property appraiser must be prominently displayed at the appraiser's principal place of business.~~

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

General Authority: ~~NDCC 43-23.3-03~~

Law Implemented: ~~NDCC 43-23.3-14~~

CHAPTER 101-03-03

101-03-03-01. Change of name or address. All apprentice, licensed, and certified permittees shall notify the board in writing of each change of business address, residence address, or trade name within twenty days of said change and pay the change of address fee. The address must be sufficiently descriptive to enable the board to correspond with and locate the apprentice, licensed, or certified permittee.

History: Effective October 1, 1992; amended effective February 1, 2003; January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-13

CHAPTER 101-03.1-01

101-03.1-01-01. Unprofessional conduct. Any of the following acts and omissions constitute a violation of the standards of professional appraisal practice and are grounds for disciplinary action:

1. Violation or attempted violation of North Dakota Century Code chapter 43-23.3 or the rules adopted by the board.
2. Failure to comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation.
3. Engaging in the business of real estate appraising under an assumed or fictitious name.
4. Paying a finder's fee or referral fee to any person in connection with the appraisal of real estate, but an intracompany payment for business development is not unethical.
5. Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualification.
6. Violation of the confidential nature of individual, business, or governmental records to which a licensee or permittee gained access through employment or engagement as an appraiser.
7. Performance of appraisal services beyond the licensee's or permittee's level of competence.
8. Having been disciplined in another state, territory, or country relating to a ~~license or certificate~~ permit or the authorization to practice as an appraiser.
9. Negligence, refusal, or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.
10. Failing as a ~~state-certified real estate licensed or certified~~ appraiser to actively and personally supervise any person not licensed or certified under the provisions of North Dakota Century Code chapter 43-23.3 who assists the ~~state-certified licensed or certified~~ appraiser in performing real estate appraisals.
11. Having become permanently or temporarily unfit to engage in appraisal activity because of physical, mental, emotional, or other causes. Suspension of a ~~license or certification~~ permit in cases where the

licensee or permittee is temporarily unfit to conduct appraisal activity shall only be for the period of unfitness.

12. Commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as an appraiser or otherwise.
13. Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.
14. Filing a frivolous complaint against a permitted appraiser.

History: Effective January 1, 1995; amended effective February 1, 2003; January 1, 2008.

General Authority: NDCC 43-23.3-03, 43-23.3-22

Law Implemented: NDCC 43-23.3-18, 43-23.3-22

101-03.1-01-02. Reporting requirements.

1. A licensee or permittee having direct knowledge that any licensee or permittee has violated any provision of North Dakota Century Code chapter 43-23.3 or the rules adopted by the board shall report such knowledge to the board.
2. Upon being convicted of any act which is or would be punishable as a felony in this state, or upon being disciplined by the authority that regulates ~~state-licensed apprentice, licensed, or state-certified certified~~ appraisers in another jurisdiction, an ~~appraiser apprentice, licensed, or certified~~ appraiser in this state shall notify the board of that fact within thirty days.

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

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-18, 43-23.3-22

CHAPTER 101-03.1-02

101-03.1-02-01. Types of disciplinary action. Disciplinary action by the board may consist of the following:

1. **Revocation.** Revocation terminates an individual's status as a an apprentice, licensed, or certified appraiser. When a license or certificate permit has been revoked the permittee shall surrender the license or certificate permit immediately to the board. When a license or certificate permit has been revoked the licensee permittee may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a an apprentice, licensed, or certified appraiser. ~~Any reapplication for licensure shall be treated as a new application.~~
2. **Suspension.** Suspension is the removal of a licensee's permittee's privilege to act as a an apprentice, licensed, or certified appraiser for a specified minimum period of time. When a license or certificate permit has been suspended the licensee permittee shall surrender the license or certificate permit to the board for the period of suspension. When a license or certificate permit has been suspended the licensee permittee may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a an apprentice, licensed, or certified appraiser, but must maintain the license permit by properly renewing it and complying with continuing education requirements.
3. **Monetary fine.** A monetary fine must be reasonable in light of the conduct of the licensee permittee. A monetary fine may include an amount sufficient to reimburse the board for the cost of a disciplinary action, or to prevent the licensee permittee from obtaining a financial benefit as a result of the licensee's permittee's unprofessional or improper conduct.
4. **Issuance of letter of reprimand.** Reprimand is a form of discipline which declares the conduct of the licensee permittee improper, but does not limit the licensee's permittee's right to act as a an apprentice, licensed, or certified appraiser. ~~Letters of reprimand may be public or private.~~ Letters of reprimand shall be sent by ~~certified mail~~ to the licensee permittee. The letter of reprimand shall be placed in the licensee's licensure permittee's file.
5. **Probation.**

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

General Authority: NDCC 43-23.3-03, 43-23.3-22

Law Implemented: NDCC 43-23.3-18, 43-23.3-22

101-03.1-02-02. Consideration. Repealed effective January 1, 2008. ~~In determining whether a license or certificate should be revoked or suspended, whether a monetary fine should be imposed, or whether a public or private letter of~~

reprimand should be issued, the board shall consider all relevant factors, including the following:

1. ~~The severity of the offense;~~
2. ~~The licensee's mental state;~~
3. ~~Any physical or mental disability or impairment of licensee;~~
4. ~~The potential or actual injury caused by the licensee's conduct;~~
5. ~~The number of repetitions of the offense;~~
6. ~~A pattern of misconduct;~~
7. ~~The length of time since the date of violation;~~
8. ~~The length of time the respondent has practiced;~~
9. ~~Prior disciplinary offenses or the absence thereof;~~
10. ~~Remoteness of prior offenses;~~
11. ~~The deterrent effect of the penalty imposed;~~
12. ~~Dishonesty or selfish motive, or the absence thereof;~~
13. ~~The effect of the penalty upon the respondent's livelihood;~~
14. ~~Any efforts by the licensee to make restitution or to rectify consequences of misconduct;~~
15. ~~Evidence of rehabilitation;~~
16. ~~Refusal to acknowledge wrongful nature of conduct;~~
17. ~~Imposition of other penalties or sanctions; and~~
18. ~~Any other aggravating or mitigating circumstances.~~

History: ~~Effective January 1, 1995.~~

General Authority: ~~NDCC 43-23.3-03~~

Law Implemented: ~~NDCC 43-23.3-18, 43-23.3-22~~

101-03.1-02-03. Modification of disciplinary action. The board, on its own motion or upon application, at any time after the imposition of any discipline may reconsider its prior action and reinstate or restore such ~~license or certificate permit~~ or reduce the severity of its prior disciplinary action. The taking of any such

further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

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

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-22

101-03.1-02-04. Notice of disciplinary action. The board shall notify the disciplinary enforcement agency of other jurisdictions in which the licensee permittee is admitted about any disciplinary action ~~except a private letter of reprimand. Except for a private letter of reprimand, the~~ The board shall ~~may~~ cause a notice of disciplinary action to be published in the board's newsletter ~~and in the official newspaper of the county in which the licensee maintains an office.~~ The notice shall may clearly identify the licensee permittee affected by the disciplinary action and contain a summary of the circumstances which resulted in the action taken, including a reference to the appropriate rule or statute.

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

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-22

101-03.1-02-05. Notice of status. Within ten days after the date of the order by which a licensee's permittee's license or certificate is revoked or suspended, the licensee shall permittee may be required to cause notice to be given by registered or certified mail, return receipt requested, to all current clients. ~~The notice shall include the order of the board and state that the licensee cannot act as a certified or licensed real estate appraiser after the effective date of the order.~~

The board may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interest of clients and other members of the public.

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

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-22

CHAPTER 101-03.1-03

101-03.1-03-01. Complaint procedure. Any person may file a complaint with the board seeking disciplinary action against the holder of a ~~license~~ permit issued by the board. The complainant shall submit a written statement describing the nature of the complaint and the facts supporting the complaint. The complaint must be signed and include the address or telephone number at which the complainant can be contacted. The board may initiate and investigate a complaint on its own motion.

History: Effective January 1, 1995; amended effective February 1, 2003; November 19, 2003; January 1, 2008.

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 43-23.3-03, 43-23.3-22

101-03.1-03-02. Informal disposition. At any time prior to or after formal disciplinary proceedings have been instituted against a an apprentice, licensed, or certified appraiser, the appraiser may submit to the board an offer of settlement whereby the appraiser agrees to accept sanctions in lieu of formal disciplinary action. Sanctions may include voluntarily surrendering the ~~license or certificate~~ permit, suspension of the ~~license or certificate~~ permit, probation, imposition of a monetary fine, a letter of reprimand, licensing or certification education courses, or a requirement that the appraiser submit work product for board review. If the board determines that the proposed settlement will adequately protect the public, the board may accept the offer and enter a decision consented to by the appraiser incorporating the proposed settlement.

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

General Authority: NDCC 43-23.3-03

Law Implemented: NDCC 28-32-05.1

CHAPTER 101-04-01

101-04-01-01. Continuing education requirements.

1. **Purpose.** The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases that individual's skill, knowledge, and competency in real estate appraising.
2. **Requirements.** All apprentice, licensed, and certified permittees must meet a minimum level of continuing education. This minimum level has been set at ~~forty-two~~ twenty-eight hours over a ~~three-year~~ two-year education renewal period. Of the ~~forty-two~~ twenty-eight hours, appraisers must complete the seven-hour national uniform standards of professional appraisal practice update course, or its equivalent, every two years. Equivalency must be determined through the appraisal qualifications board course approval program or by an alternate method approved by the appraisal qualifications board. ~~Twenty-one~~ Fourteen hours of the ~~forty-two~~ twenty-eight hours must include appraisal-specific education related to the valuation of real estate, and ~~fourteen~~ seven hours may be comprised of appraisal-related subject matter, approved as such by the ~~appraisal~~ board.
 - a. The necessary ~~forty-two~~ twenty-eight hours may be obtained at any time during the ~~three-year~~ two-year renewal period, except for the required national uniform standards of professional appraisal practice requirement.
 - b. Verification of the necessary ~~forty-two~~ twenty-eight hours must be submitted by the end of the ~~three-year~~ two-year renewal period.
 - c. Uniform standards of professional practice (USPAP) continuing education credit shall only be awarded when the class is instructed by an at least one appraisal qualifications board-certified instructor who is state-certified.
 - d. All continuing education courses taken in this state must be approved by the board.
 - e. Courses taken out of this state may be approved for credit, provided the state in which the course was taken has approved the course for appraiser education.
 - f. A course which has not had prior approval may be approved on an individual basis.
 - g. All continuing education must be taken in blocks of at least two hours.

- h. A classroom hour is defined as fifty minutes out of each sixty-minute segment.
- i. With the exception of distance education, no examination is required for continuing education courses.
- j. Credit for the ~~classroom~~ class requirement may be obtained from the following:
 - (1) Colleges or universities.
 - (2) Community or junior colleges.
 - (3) Real estate appraisal or real estate-related organizations.
 - (4) State or federal agencies or commissions.
 - (5) Proprietary schools.
 - (6) Other providers approved by the ~~state certification or licensing board~~.
- k. Credit may be granted for education offerings which are consistent with the purpose of continuing education stated in subsection 1 and cover real estate-related appraisal topics such as:
 - (1) Ad valorem taxation.
 - (2) Arbitration and dispute resolution.
 - (3) ~~Business courses~~ Courses related to practice of real estate appraisal or consulting.
 - (4) ~~Construction~~ Development cost estimating.
 - (5) Ethics and standards of professional practice.
 - (6) Land use planning, and zoning, ~~and taxation~~.
 - (7) Management, leasing, ~~brokerage~~, and timesharing.
 - (8) Property development and partial interests.
 - (9) ~~Real estate appraisal (valuations or evaluations)~~.
 - ~~(10)~~ Real estate law, easements, and legal interests.
 - ~~(11)~~ (10) Real estate litigation, damages, and condemnation.

- ~~(12)~~ (11) Real estate financing and investment.
- ~~(13)~~ (12) Real estate appraisal-related computer applications.
- ~~(14)~~ (13) Real estate securities and syndications.
- ~~(15)~~ Real property exchange.
 - l. A professional real estate appraisal organization meeting may be granted credit, provided it is a formal education program of learning which contributes to the real estate appraisal profession.
 - m. Real estate appraisal-related field trips may be granted credit. However, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur.
 - n. Continuing Up to one-half of an individual's continuing education credit may be granted for participation, other than as a student in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education.
 - ~~(1) Ten hours may be granted for authorship of textbooks, publications, or similar activities provided the document contributes to the appraisal profession.~~
 - ~~(2) One and one-half hours of credit for each one hour of instruction may be granted for teaching appraisal courses.~~
 - ~~(3) Teaching of a course with the same, or substantially the same subject content may be claimed only once for credit within a three-year two-year renewal cycle.~~
 - o. Fourteen hours Continuing education credit may be granted for distance education. Distance education is defined as any educational process based on the geographical separation of provider instructor and student e.g., Distance education includes CD-ROM instruction, online learning, internet-based instruction, correspondence courses, and videoconferencing, or similar activities. Distance Acceptable distance education courses may be acceptable to meet the continuing education requirement provided that the course is approved by the board and meets one of the following conditions must meet all of the following requirements:
 - ~~(1) The course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor~~

~~student attendance, and is a minimum of two classroom hours and meets the requirements for continuing education courses established by the appraiser qualifications board. Provide interaction between the student and the instructor. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor.~~

- (2) ~~The course has been presented by an accredited commission on colleges or a regional accreditation association college or university that offers distance education programs in other disciplines, has received approval for college credit by the American council on education, or is approved for design and delivery mechanism by the international distance education certification center and for content by the appraiser qualifications board or the board. Additionally, the course must meet the following requirements: Be approved for content by the board, the appraisal qualifications board of the appraisal foundation, or an accredited college, community college, or university, that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States secretary of education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board of the appraisal foundation or the board.~~
- (3) Be approved for delivery mechanism by one of the following sources:
 - (a) Appraiser qualifications board-approved organizations providing approval of course design and delivery.
 - (b) A college that qualifies for content approval in paragraph 2 and that awards academic credit for the distance education course.
 - (c) A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.
- ~~(a) (4) The course is~~ Be equivalent to a minimum of two classroom hours in length and meets ~~meet~~ the requirements for real estate appraisal-related courses established by the appraiser qualifications board.
- (5) If intended for use as continuing education, include at least one of the following:

~~(b)~~ (a) The student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation, or if a written examination is not required for accreditation, the

(b) The student successfully completes the course mechanisms required for accreditation which to demonstrate mastery and fluency. Said mechanisms must be present in a course without an examination in order to be acceptable knowledge of the subject matter.

- p. A course with the same or substantially the same subject content may be claimed only once for credit within a three-year two-year renewal cycle.
- q. Excess hours of education earned in one renewal period cannot be carried over to the next renewal period.
- r. Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be accepted by the board without additional state review.
- s. Courses that are taken as a result of a disciplinary action may not be credited toward continuing education.
- t. Courses taken for the class hour requirement when an individual seeks a different classification than that held may be simultaneously counted for the continuing education requirement of the classification held.
- u. Appraisers are required to complete continuing education for a partial year in a continuing education cycle as follows:
- (1) For continuing education cycle periods of one hundred eighty-five days or more, fourteen hours of continuing education are required.
 - (2) For continuing education cycle periods of less than one hundred eighty-five days, no continuing education is required.

History: Effective October 1, 1992; amended effective October 1, 1998; February 1, 2003; January 1, 2008.

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Law Implemented: NDCC 43-23.3