

NORTH DAKOTA ADMINISTRATIVE CODE

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TITLE 18.5
Credit Review Board

FEBRUARY 1996

CHAPTER 18.5-01-01

18.5-01-01-01. History.

1. The provisions of North Dakota Century Code chapter 6-09.10 were established in 1985, setting up a credit review board to deal with the matter of ever increasing farm foreclosures. The board was given authority to negotiate with lenders on behalf of farmers and to provide interest subsidies to eligible farmers for eligible purchases, refinancing, or redemptions of the farmer's home-quarter.
2. In 1987, North Dakota Century Code chapter 6-09.10 was amended to consolidate the negotiations undertaken by the board and the department of agriculture's farm credit counseling program. North Dakota Century Code sections 4-01-19.2 and 4-01-19.3 were repealed.
3. In 1987, North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.6 were added to North Dakota Century Code chapter 6-09.10 to provide further assistance to financially distressed farmers and small businesses in the form of legal and tax assistance. Two hundred thousand dollars were appropriated to the board to provide such assistance under the administration and supervision of the commissioner of agriculture and the board.
4. In 1989, North Dakota Century Code chapter 6-09.10 was further amended. The farm credit counseling program was renamed the agricultural mediation service. The commissioner of agriculture was given additional authority to contract with

mediators to mediate between a farmer and a farmer's creditors.

5. In 1991, North Dakota Century Code chapter 6-09.10 was amended, authorizing the agricultural mediation service to negotiate and resolve any farmer-related problems.
6. In 1993, North Dakota Century Code chapter 6-09.10 was amended to expand the number of members of the board and to increase its responsibilities to include recommending policies and procedures to the industrial commission and to the state board of vocational education, and to coordinate a farm management delivery system.
7. In 1995, North Dakota Century Code chapter 6-09.10 was amended to permit use of the home-quarter purchase fund for coordination and operation of a farm management delivery system.

History: Effective January 1, 1988; amended effective December 1, 1989; January 1, 1992; June 1, 1994; February 1, 1996.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

18.5-01-01-01.1. Definitions.

1. The definitions as set forth in section 18.5-02-01-00.1 are applicable to this chapter.
2. "Board" means the credit review board.
3. "Coordinator" means the coordinator of the farm management delivery system.
4. "Farm diversification--analytic-system"--means-the-coordinated effort-among-various-entities-and-the-credit-review--board--to serve--farmers;--including--a--system-of-computer-programs-and analytic-tools;--Such-system-will-assist-farmers-in--analyzing their---farm--businesses--through--farm--budgeting;--financial planning;--and--traditional;--nontraditional;--and--value-added enterprise--analyses management delivery system" means the coordinated effort among various entities and the credit review board to provide farmers with education and analysis of their farm businesses through farm budgeting, financial planning, production practices, and enterprise analysis. The system will be promoted and referred to as farm management for profit.
5. "Home-quarter purchase fund" means the fund established at the Bank of North Dakota and includes interest earned on moneys in that fund.

6. "Moneys generated by the farm management delivery system" means any moneys used to pay related expenses other than the home-quarter purchase fund.

History: Effective June 1, 1994; amended effective February 1, 1996.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03

18.5-01-01-02. Coordination of farm assistance programs. The credit review board is charged with responsibility in providing assistance to eligible farmers and other persons pursuant to the provisions of North Dakota Century Code chapter 6-09.10.

1. The responsibilities and duties under North Dakota Century Code chapter 6-09.10 belonging solely to the board are as follows:
 - a. Adopting written policies governing negotiators, mediators, and staff of the agricultural mediation service including:
 - (1) Approving interest rate buydowns as authorized by North Dakota Century Code sections 6-09.10-05, 6-09.10-07, and 6-09.10-08.
 - (2) Charging reasonable fees to farmers and other persons for any assistance provided pursuant to North Dakota Century Code chapter 6-09.10. Mediation fees must be twenty-five dollars per hour for the farmer and for each creditor of the farmer attending mediation meetings to whom the farmer owes ten thousand dollars or more. For noncredit-related disputes, parties must each be charged twenty-five dollars per hour for attending mediation meetings. The board may waive the payment of all or a portion of mediation fees for anyone that the administrator certifies is unable to pay such fees. Fees must be ~~ten~~ fifteen dollars per hour per farmer for providing negotiating assistance. However, no farmer may be charged for the first ten hours of negotiating assistance provided by a negotiator. The board may waive payment of all or a portion of the fees to be paid for providing negotiating assistance for any farmer that the administrator certifies is unable to pay such fees.
 - (3) Making all decisions on deferral, restructure, or waiver of payment, or other reasonable loan servicing options, for assistance provided under the provisions of North Dakota Century Code sections 6-09.10-05 and 6-09.10-08.4.

- b. Recommending policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.
 - c. Recommending policies for the adult farm management program to the state board of vocational education.
 - d. ~~Developing--and--administering--a--grant--program--to--provide--farmers--with--access--to--the--farm--diversification--analytic--system:---This--program--shall--coordinate~~ Coordination and operation of a farm management delivery system among the adult farm management program, agricultural mediation service, and the North Dakota state university extension service.
 - e. Adopting rules implementing any of the provisions of North Dakota Century Code chapter 6-09.10.
2. The responsibilities and duties belonging solely to the commissioner under North Dakota Century Code chapter 6-09.10 are as follows:
 - a. Establishing and administering the agricultural mediation service.
 - b. Appointing the administrator of the service.
 - c. Hiring staff and hiring or contracting with mediators and negotiators to mediate between eligible farmers and other persons.
 3. The commissioner and the board shall have joint responsibility and duty under North Dakota Century Code chapter 6-09.10 as follows:
 - a. Implementing and administering legal and tax assistance to eligible farmers and small businesses as authorized by North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5.
 - b. Selecting appropriate cases for assistance to be made pursuant to North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5 among eligible farmers and small business persons.
 - c. Administering payment for assistance to any farmer or small business who receives assistance under North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5.

History: Effective January 1, 1988; amended effective December 1, 1989; January 1, 1992; June 1, 1994; February 1, 1996.

General Authority: NDCC 6-09.10-09, 28-32-02.1

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03, 6-09.10-05, 6-09.10-06,
6-09.10-07, 6-09.10-08, 6-09.10-08.1, 6-09.10-08.2, 6-09.10-08.3,
6-09.10-08.4, 6-09.10-08.5, 28-32-02.1

CHAPTER 18.5-02-01

18.5-02-01-08. Program implementation. The board shall develop coordinate and administer operate a grant program to provide farmers with access to the farm diversification-analytic management delivery system. The program shall coordinate a farm management delivery system among the adult farm management program, agricultural mediation service, and the North Dakota state university extension-service.

1. Each of these three entities shall report at least quarterly to the credit review board addressing the following:
 - 1- a. The extent and nature of assistance provided to farmers.
 - 2- b. Number of farmers assisted.
 - 3- c. Recommendations to the credit review board on how these three entities and others, if appropriate, can most effectively and efficiently serve farmers.
 - 4- d. Future plans and goals of the entity.
 - 5- e. Other matters as deemed appropriate by the board.
2. None of these three entities is entitled to receive more than forty percent of the moneys generated by the farm management delivery system.
3. The farm management delivery system shall meet or exceed the requirements for farmers home administration borrower training.
4. Additional responsibilities and duties of the board are as follows:
 - a. Charge a reasonable tuition fee to help defray operating expenses and salaries associated with the program.
 - b. Award scholarships based on financial need.
 - c. Use any moneys in the fund to pay salaries and operating expenses not covered by moneys generated.
5. Additional responsibilities and duties of the administrator are as follows:
 - a. Oversee the administration of the farm management delivery system.

b. Supervise a coordinator of the farm management delivery system who will be hired by the commissioner with advice and consent of the board.

(1) The coordinator shall report directly to the administrator and to the board at regular monthly meetings.

(2) The coordinator shall coordinate activities regarding the farm management delivery system among the participating entities.

History: Effective June 1, 1994; amended effective February 1, 1996.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-02.1

TITLE 24
Electrical Board

FEBRUARY 1996

CHAPTER 24-02-01

24-02-01-02. General statement of policy and interpretative rules.

1. **Apprentice electricians.** There are two categories of apprentice electricians.
 - a. Apprentice electricians under the joint apprenticeship training committee training program approved by the department of labor.
 - b. Electrician trainees who may not be eligible for the joint apprenticeship training committee program and other persons desiring to accumulate a sufficient time and capability in the electrical trade to qualify them to apply for permission to take the examination for journeyman electrician's license. Licensed electrician may supervise not more than three apprentices.

Any person may work as an apprentice under a licensed master electrician, but the master electrician may not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite.

Any master electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative, shall subject his license to nonrenewal, suspension, or revocation by the board.

2. **Master electricians.** A master electrician may exercise his privileges as a licensed master for no more than one shop or business.
3. **Purpose and scope.** The purpose of these standards is the practical safeguarding of persons and of buildings and their contents, from electrical hazards arising from the use of electricity for light, heat, and power. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, also the conductors that supply streetlighting, together with the associated equipment necessary to its safe operation.

These standards, based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.

All requirements contained herein must be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, nor an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring installation. In cases where these requirements differ or are in conflict with the requirements of the 1993 1996 edition, National Electrical Code and the 1988 1994 edition, Life Safety Code NFPA no. 101, the more restrictive requirements shall be the minimum.

4. **Administrative powers and duties.** The executive director of the North Dakota state electrical board, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the 1993 1996 edition, National Electrical Code, and the 1988 1994 edition, Life Safety Code NFPA no. 101. In all cases where any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the 1993 1996 edition, National Electrical Code, and the 1988 1994 edition, Life Safety Code NFPA no. 101, such acts must be done in the name of and on behalf of the state and the executive director, in so acting for the state, shall not render the executive director liable for any damages that may accrue to persons or property as a result of any such act committed in good faith in the discharge of the executive director's duties, and any suit brought against the executive director by reason thereof, must be defended by the state until final termination of proceedings contained therein.

The electrical regulations of these standards, the 1993 1996 edition, National Electrical Code, and the 1988 1994 edition,

Life Safety Code NFPA no. 101, may be modified or waived by special permission in particular cases where such modification or waiver is specifically permitted or in particular cases where an advancement in the technology of electricity makes such modification or waiver advisable in the best interest of the people of North Dakota. Such "special permission" must, in all cases, be obtained from the executive director in writing prior to the commencement of the work.

The executive director or the electrical inspector shall have the power to enter any building or premises at any reasonable hour in the discharge of their duties, and it shall be competent for them, when necessary, to remove any existing obstructions such as laths, plastering, boarding, or partitions, which may prevent an inspection of electrical wiring and equipment; they shall also have the power to enter any building used in whole or in part for the purpose of public assemblage at any time when occupied by the public in order to examine electrical wiring and equipment in such building, and it shall be unlawful for any person to interfere with them in the performance of their duties.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-03. General requirements. Electrical installations must be planned to provide adequate capacity for the load.

1. Wiring systems shall have conductors of sufficient capacity to furnish each outlet without excessive line loss or voltage drop. The voltage drop may not exceed five percent at the farthest outlet of power, heating and lighting loads, or combinations of such loads.
2. All wiring materials must be listed by underwriters' laboratories, incorporated, or other accepted testing laboratories to safeguard life and property. It is the duty of the electrical installer to secure permission from the executive director to use materials, devices, and methods of installation not specifically covered by these standards.
3. All installations must be made in a workmanlike manner with special attention paid to the mechanical execution of work. All conductors must be rigidly supported and all fittings securely fastened.
4. When wiring public school buildings, approval must be received from the department of public instruction and the state electrical board.

5. Overhead conductors may not cross over water wells or known sites where water wells may be drilled. A minimum distance of twenty feet [6.10 meters] in all directions must be maintained for overhead conductors.
6. Hospitals, nursing homes, homes for the aged, and all dormitories designed to house more than sixteen people must be wired in metal raceway. Portable cleaning equipment receptacle outlets must be installed in corridors and located so that no point in the corridor along the floorline, measured horizontally, is more than twenty-five feet [7.62 meters] from an outlet. Spacing of receptacle outlets for dormitories and homes for the elderly must be in conformity with section 210-52(a), 1993 1996 edition, National Electrical Code.

Exception: By special permission from the state electrical board, receptacles in dormitories and homes for the elderly may be located conveniently for the permanent fixture layout.
7. In the wiring of nursing homes and hospitals, reference must be made to the state department of health and consolidated laboratories for special requirements pertaining to operating rooms, delivery rooms, and emergency lighting.
8. Aluminum conductors in sizes smaller than no. 6 may not be used. Aluminum conductors installed and all corresponding materials must be underwriters' laboratories listed. All materials used must be installed according to the requirements of the National Electrical Code. Connections must be made with the type approved for aluminum. Consideration must be given to the use of different types of metal.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-04. Places of assembly. This section covers all buildings, structures, or portions of buildings designed or intended for the assembly of one hundred or more persons.

Places of assembly include, but are not limited to: assembly halls, auditoriums, including auditoriums in schools; mercantile, business and other occupancies; exhibition halls; armories; dining facilities, including restaurants; church chapels; dancehalls; mortuary chapels; museums; skating rinks; gymnasiums and multipurpose rooms; bowling lanes; poolrooms; clubrooms; places of awaiting transportation; courtrooms; drinking establishments; and conference rooms.

Occupancy of any room or space for assembly purposes by less than one hundred persons in a building of other occupancy, and incidental to

such other occupancy, must be classed as part of the other occupancy and subject to the applicable provisions.

When such building structures or portions thereof contain a projection booth or stage platform or area for the presentation of theatrical or musical production, either fixed or portable, the wiring for that area must comply with all applicable provisions of article 520, 1993 1996 edition, National Electrical Code.

(For methods of determining population capacity, see occupant load value table, section 24-02-01-16).

1. **Hazardous (classified) locations.** Hazardous areas located in any assemblage occupancy must be installed in accordance with article 500, 1993 1996 edition, National Electrical Code, hazardous locations.
2. **Temporary wiring.** In exhibition halls used for display booths, as in trade shows, the temporary wiring must be installed in accordance with article 305, 1993 1996 edition, National Electrical Code - temporary wiring, except approved portable cables and cords shall be permitted to be laid on floors where protected from contact by the general public.
3. **Wiring methods.** The fixed wiring method must be metal raceway or nonmetallic raceway encased in not less than two inches [5.08 centimeters] of concrete.

Adjacent areas separated by a firewall must be considered a separate building and may be wired in any approved wiring method in chapter 3 of the National Electrical Code. (For the purpose of this section, a firewall is defined as a wall with a two-hour fire rating. The wall shall start at the foundation and extend continuously through all floors to the roof.

Exception: As provided in article 640, 1993 1996 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, 1993 1996 edition, National Electrical Code, communication circuits, and in article 725, 1993 1996 edition, National Electrical Code, for class 1, class 2, and class 3 remote control and signaling circuits, and in article 760, 1993 1996 edition, National Electrical Code, for fire protective signaling systems.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-05. Hazardous locations.

1. Oilfield installations must be classified in accordance with the following American petroleum institute publications.
 - a. Recommended practice for classification of locations for electrical installations at drilling rigs and production facilities on land and on marine fixed and mobile platforms. 500B, third edition, October 1, 1987.
 - b. Classification of locations for electrical installations in petroleum refineries. 500A, fourth edition, December 1987.
 - c. Classification of locations for electrical installations at pipeline transportation facilities. 500C, second edition, July 1984.
2. Electrical wiring in grain elevators must conform with code requirements, class II, division 1, under article 500, 1993 1996 edition, National Electrical Code. All enclosures and electrical equipment mounted in rooms containing grinders, cleaners, roller mills, hoppers, open conveyors or spouts, mixers, and other dust producing machinery must be labeled and approved for class II, division 1 location, including motor controllers of the type in which starting and running contractors are oil immersed. General purpose enclosures may only be installed in dustfree locations.
 - a. Surge protective capacitors must be provided for all services in grain elevators receiving power from an exterior overhead line. Surge protective capacitors may be located inside or outside a building. If located within a building, each capacitor must be protected with a fuse of proper voltage rating for the circuit and an ampere rating not less than twenty nor more than thirty amperes.
 - b. Where necessary to employ flexible connections in grain elevators, dusttight flexible connectors and conduit must be used.
 - c. Receptacles and switches installed in grain elevators must be labeled and approved for a class II, division 1 dusty location.
 - d. Electrical wiring and equipment installed in a grain elevator which is not used commercially and having a total capacity of less than ten thousand bushels [352.39 cubic meters] and located in a rural district must conform to class II, division 2, under article 500, 1993 1996 edition, National Electrical Code.
 - e. Electrical wiring and equipment in buildings or rooms other than a grain elevator where grain is handled or

processed on a commercial basis such as rooms containing grinders, augers, open spouts, roller mills, or similar dust producing machinery, must be labeled and approved for class II, division 1, under article 500, 1993 1996 edition, National Electrical Code.

- f. In buildings or rooms where grain is handled or processed not on a commercial basis, such as rooms containing grinders, augers, open spouts, roller mills, or similar dust producing machinery, the electrical wiring and equipment must conform to class II, division 2, under article 500, 1993 1996 edition, National Electrical Code.

Exceptions: Rooms where grain is handled or processed occasionally on a limited basis, general purpose equipment may be used if approved by the local inspection authority.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-06. Grounding. Grounding must conform to article 250, 1993 1996 edition, National Electrical Code.

1. The equipment grounding conductor must be spliced in the same manner as branch circuit conductors except that solder may not be used.
2. The neutral conductor may not be used as the equipment grounding conductor and must be insulated except as provided in section 250-60, 1993 1996 edition, National Electrical Code.
3. All metal boxes in structures containing metal lath, tinfoil insulation, or other metallic barrier must be grounded.
4. At motor connections, a bonding jumper sized in accordance with table 250-95, 1993 1996 edition, National Electrical Code, must be provided around all flexible conduit in sizes one-half inch [12.70 millimeters] and larger. The bonding jumper is not required where a separate grounding conductor is included.
5. Grounding of metal lighting standards.
 - a. Circuits run in nonmetallic conduit or buried directly in the ground: the ornamental metal standard must be grounded by use of a grounding conductor, not the neutral conductor. This grounding conductor must be run continuously throughout the system and properly bonded to each standard by use of lugs. It must be connected to a

one-half inch [12.70 millimeters] by ten-foot [3.0-meter] copperweld ground rod at each metal standard. The ten-foot [3.0-meter] ground rod is driven in the center of the metal standard base and projecting slightly above the base. Both ground rod and grounding conductor must be connected to the metal standards. The grounding conductor must be in accordance with the 1993 1996 edition, National Electrical Code and in no case smaller than no. 8 copper or no. 6 aluminum.

- b. Because of different characteristics of copper and aluminum, devices such as pressure terminal or pressure splicing connectors and soldering lugs must be suitable for the material of the conductor and must be properly installed and used. Conductors of dissimilar metals may not be intermixed in a terminal or splicing connector where physical contact occurs between dissimilar conductors (such as copper and aluminum, copper and copper-clad aluminum, or aluminum and copper-clad aluminum), unless the device is suitable for the purpose and conditions of use. Consideration must also be given to dissimilar metals when grounding aluminum light standards.
- c. When circuits are run in metal conduit the ornamental metal lighting standard must be grounded to the metal conduit. No ground rod is required.

6. The grounding electrode conductor must be connected to the grounded service conductor in the enclosure for the service disconnect.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-07. Branch circuits and feeders. Branch circuits and feeders must comply with articles 210 and 215, 1993 1996 edition, National Electrical Code.

- 1. The total connected load must be divided as evenly as practicable, between the two ungrounded conductors of a three-wire system and three conductors of a four-wire wye (120-208 volts) system.
- 2. A separate circuit with disconnect must be provided for the purpose of operating or controlling electrical equipment on heating plants. Wiring requirements for fixed electrical space heating equipment is provided under article 424, 1993 1996 edition, National Electrical Code.

3. Dwelling occupancies having built-in baking or cooking units installed separately must have an individual disconnect and overcurrent protective device. Conductors supplying these units must have a carrying capacity according to nameplate rating.
4. A minimum of six appliance circuits must be installed in kitchens that may be used to serve public gatherings such as schools, churches, lodges, etc.
5. Dwelling type occupancies. Receptacle outlets must be installed in accordance with section 210-52, 1993 1996 edition, National Electrical Code.
 - a. Lighting outlets in dwelling type occupancies must be installed in accordance with section 210-70, 1993 1996 edition, National Electrical Code.
 - b. A minimum of three circuits must be installed to supply receptacle outlets in kitchen, pantry, dining room, and breakfast room. These circuits may not supply other outlets and must have conductors not smaller than no. 12. Such circuits must be provided with overcurrent devices rated at twenty amperes and must be known as appliance circuits. Two of these circuits must supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit.
 - c. In laundry at least one 20-ampere branch circuit must be provided to supply laundry receptacles. See exceptions 1 and 2, section 210-52(e) 210-52(f), and 220-4(c), 1993 1996 edition, National Electrical Code.
 - d. Ground-fault protection for personnel must comply with section 210-8, 1993 1996 edition, National Electrical Code.
6. Branch circuit and feeder calculations must comply with article 220, 1993 1996 edition, National Electrical Code. Voltage drop must be taken into consideration when figuring size of feeder or branch circuit.

Formulas for determining voltage drop or conductor size are:

$$\text{Voltage drop} = \frac{21.6 \times L \text{ ft.} \times I}{\text{C.M.A.}}$$

or

$$\text{C.M.A.} = \frac{21.6 \times L \text{ ft.} \times I}{\% \text{ drop} \times \text{voltage}}$$

L = length in ft., one way

I = load in amps

E = volts
C.M.A. = Circular-mil area 21.6 multiplying
factor for copper 35 multiplying
factor for aluminum

Percent drop = permissible voltage drop times
voltage of circuit as follows:

3% of 208 = $208 \times .03 = 6.24$ volts
3% of 120 = $120 \times .03 = 3.6$ volts
3% of 240 = $240 \times .03 = 7.2$ volts
5% of 240 = $240 \times .05 = 12.0$ volts

Example:

240 volts, 1,000 ft. distance, 10 ampere
load, 5% drop

$21.6 \times 1,000 = 21,600.0 \times 10 = 216,000$

216,000 divided by 26,250 (C.M.A. of No. 6) =
8.2 volts (less than 5%)

216,000 divided by 16,510 (C.M.A. of No. 8) =
13 volts (more than 5%)

120 volts, 8 ampere load, 100 ft. distance,
3% drop

$21.6 \times 100 = 2,160 \times 8 = 17,280$

17,280 divided by 6,530 (C.M.A. of No. 12) =
2.64 volts (less than 3%)

17,280 divided by 4,107 (C.M.A. of No. 14) =
4.2 volts (more than 3%)

or

$21.6 \times 8 \text{ amps} \times 100 \text{ ft.} = 17,280$

17,280 divided by 3.6 (volts representing 3%) =
5,008 C.M.A. (No. 12)

For 3-phase circuits, use formula, then
multiply the results by .86

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-08. Services. Electrical services must comply with article 230, 1993 1996 edition, National Electrical Code.

1. In general, the point of attachment of a service drop to a building must be not less than ten feet [3.0 meters] above the ground and must be at a height to permit a minimum clearance of service conductors of ten feet [3.0 meters] above walks and eighteen feet [5.48 meters] above driveways or public roads. Where the form of the building will not permit placing the attachment ten feet [3.0 meters] or more above the ground, a mast or other suitable means must be used to obtain the ten feet [3.0 meters] clearance.

2. Perpendicular mast used for support of a service drop to low buildings must be not less than two-inch [5.08-centimeter] galvanized rigid steel conduit or intermediate metal conduit fitted with storm collar flashing and offset reducer if needed, at the lower end to accommodate a meter socket.
3. A span of one hundred ten feet [43.48 meters] must be considered a maximum distance for a one hundred amp service drop to a mast unless the mast is substantially guyed.
4. To eliminate moisture condensation, service raceways must have provisions to prevent circulation of air from a warmer to a colder section of the raceway (see section 300-7, 1993 1996 edition, National Electrical Code).
5. Where the service conduit enters a switch, cabinet, or trough through a knockout, the conduit must be bonded in accordance with section 250-71, 1996 edition, National Electrical Code.
6. Switch location. A service switch or a manually operable circuit breaker must be provided for each set of service entrance conductors and located at a readily accessible point not more than six and one-half feet [1.98 meters] above the floor level and as near as possible to the entrance of the conductors either inside or outside the building or structure. If outside, this equipment must be approved for outside location. In no case may the equipment be mounted lower than two feet [.6096 meters] above grade level. Switch cabinets must be of the dead front type. All service equipment and panels to be mounted on inside of outside walls of buildings housing livestock must be mounted at least two inches [5.08 centimeters] away from such outside walls by means of a substantial backboard or frame. It is recommended that the service entrance switch in residences be located in the basement or on the first floor. In no case may overcurrent devices be located in bathrooms, clothes closets, stairways, or crawl space.
7. Rating of service switch. Any new or old dwelling where service is altered, or where the dwelling is rewired, a minimum one hundred amp service and rated panel must be installed.
 - a. A one hundred ampere service must be installed using conductors rated at one hundred amperes. The panel must contain provisions for four double pole two hundred forty volt three-wire circuits, one of which may be used as a disconnect for not less than ten 2-wire one hundred twenty volt circuits.
 - b. A pole top disconnecting means in rural areas is mandatory on all overhead pole top meter installations. Disconnect

switches with an overcurrent protective device is optional to the supplier of electric current.

- c. Where a single stack service is used on a yard pole, it must be considered only as a meter loop and the load conductor must be treated as service conductors to buildings.
8. Clearance from ground. Conductors must have a clearance of not less than ten feet [3.0 meters] from the ground or from any platform or projection from which they might be reached. See section 225-18, 1993 1996 edition, National Electrical Code.
9. Clearances from buildings for conductors not over six hundred volts. See section 225-19, 1993 1996 edition, National Electrical Code. Conductors must have a clearance of not less than thirty-six inches [.914 meters] from windows, doors, porches, fire escapes, or similar locations. Conductors run above the top level of a window are considered out of reach from that window.
10. Temporary--service.---Temporary-service-must-be-granted-to-any contractor-and-this-temporary-service-can-be-moved-from--place to--place---with---one---certificate--issued--for--the--first installation-and-the-same-certificate--will--suffice--for--all future--locations.--It-is-the-responsibility-of-the-contractor to-maintain--the--temporary--service--in--good--condition--and electrically--safe--at--all--times.--If-the-power-supplier-finds these-conditions-not-being-complied--with,--the--supplier--may refuse--hookup-and-notify-the-inspector-covering-that-area-who has-full-authority-to-determine-whether--it--be--condemned--or rebuilt.---At--the--expiration--of--ninety--days--it--may--be considered-a-permanent-service-and-all-wiring--connected--must comply-with-the-provision-pertaining-to-permanent-wiring:
 - a.--Each---temporary---service---must--be--provided--with--the electrical-wiring-certificate-number,--name,--and--license number--of--electrician-that-issued-the-certificate.--This information-must-be-applied-in-such-a-manner-that-it-will withstand-the-elements-of-weather.
 - b.--Minimum--requirements--for--temporary--services;---Outdoor equipment-must--be--weatherproof;---(Wood--enclosures--are unsatisfactory-and-should-not-be-used;)--Temporary-service must-be-grounded;--(Butt-pole--ground--is--acceptable;)--A minimum--clearance-of-ten-feet-[3.0-meters]-above-finished grade-must-be-provided-for-overhead-service-conductors.
 - c.--Temporary--wiring--is--not-permitted-without-approval-from the-state-electrical-board-or--local--inspector,--however, this--does-not-apply-to-a-temporary-pole-service-or-wiring for-construction-purposes.

~~11~~: Underground services: Underground service must comply with article 230, part D, 1993 1996 edition, National Electrical Code.

- a. Cables or individual conductors on outside of buildings or poles must be protected where subject to mechanical injury. Where rigid metal conduit is used, a bushing must be used on both ends. Sufficient slack conductor must be left to allow for ground settling next to foundations. Past experience indicates that the ground next to a foundation has settled as much as three feet [.914 meters]. Where conduit is used on a pole to protect such conductors, it must comply with the 1993 1996 edition of the National Electrical Code. Metal conduit protecting underground conductors on a pole or building must be grounded.
- b. Underground service conductors must be protected against physical damage in accordance with section 300-5, 1993 1996 edition, National Electrical Code.

~~12~~: 11. High voltage installations over six hundred volts. All wiring installations containing circuits and equipment operated at more than six hundred volts must comply with article 710, 1993 1996 edition, National Electrical Code, along with the following requirements:

- a. All ducts, pull boxes, junction boxes, and equipment must be clearly marked with signs having white background and red lettering by the word "DANGER" and value of operating voltage.
- b. All wiring and equipment must be bonded and grounded as per article 250, 1993 1996 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-09. Overcurrent protection. Overcurrent protection must comply with article 240, 1993 1996 edition, National Electrical Code.

1. Weatherproof sockets, pigtail sockets, or lampholders may not be considered as cutout bases for plug fuses.

2. Overcurrent devices must be located at a height of no less than eighteen inches [45.72 centimeters] above grade level.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-10. Wiring methods. Nonmetallic sheathed cable type NM, NMC, and UF must be supported at intervals not to exceed three feet [.914 meters] for two conductor cable and four feet [1.21 meters] for three conductor cable and within twelve inches [30.48 centimeters] from each cabinet, box, or fitting. For additional installation requirements, see articles 336 or 339, 1993 1996 edition, National Electrical Code.

1. Agricultural buildings. This section covers all buildings housing livestock, poultry, and other areas of similar or like nature. All electrical wiring devices and equipment must be installed in accordance with the provisions of article 547, 1993 1996 edition, National Electrical Code.
2. Electric metallic tubing may not be used in concrete below grade, in concrete slab or masonry in direct contact with earth. (A vapor barrier, if used, will have no effect on the requirements of the section.) Electric metallic tubing may not be embedded in earth or fill.
3. Aluminum conduit may not be installed in contact with earth or embedded in concrete.
4. Rigid metal conduit may be used under all atmospheric conditions and occupancies, except that ferrous raceways and fittings protected from corrosion solely by enamel may be used only indoors and in occupancies not subject to severe corrosive influences. Conduits and fittings exposed to severe corrosive influences must be of corrosion-resistant material suitable for the conditions. Where practicable, the use of dissimilar metals throughout the system must be avoided to eliminate the possibility of galvanic action.
5. The installation of rigid nonmetallic conduit must comply with the provision of article 347, 1993 1996 edition, National Electrical Code.
6. Fertilizer rooms, meatpacking plants, salt processing plants, and similar locations are judged to be occupancies where severe corrosive conditions are likely to be present. It is recommended that nonmetallic conduit with nonmetallic boxes and fittings be used as the wiring method for such occupancies. Ferrous and nonferrous metal raceways may be used providing the raceway, boxes, and fittings are properly

protected against corrosion. Wherever rigid nonmetallic conduit is used as the wiring method, provisions must be made for expansion. (Approximately one inch [2.54 centimeters] of expansion per thirty feet [9.10 meters] of conduit per fifty degrees Fahrenheit [28 degrees Celsius] temperature change.)

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-11. Motors, motor circuits, and controllers. Section 430-1, 1993 1996 edition, National Electrical Code, is a guide to general requirements.

1. For motor running protection, all three-phase motors must be provided with three running overcurrent units.
2. The motor branch circuit overcurrent device must be capable of carrying the starting current of the motor but may not exceed two hundred twenty-five percent of the full load current of the motor.

Exception: Where the two hundred twenty-five percent is not sufficient for starting the motor, a higher rating or setting overcurrent device may be used if approved by the state electrical board.

3. All other wiring for motors, motor circuits, and controllers must comply with article 430, 1993 1996 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-12. Boxes and fittings. Boxes must be of sufficient size to provide free space for all conductors enclosed in the box in accordance with article 370, 1993 1996 edition, National Electrical Code.

1. ~~All unused openings must be effectively closed with metal plugs or plates.~~
2. Not more than one extension ring may be used on outlet boxes unless special permission has been obtained from the electrical inspector having jurisdiction.

- 3- 2. Except as provided for in article 604, 1993 1996 edition, National Electrical Code, boxes must be installed at each opening, splice, or connection.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-13. Seasonal dwellings. Electrical wiring installation in all seasonal dwellings must comply with the North Dakota wiring standards and the 1993 1996 edition, National Electrical Code, with the following exceptions:

1. Buildings without basements may be wired with a minimum of sixty ampere service providing it is adequate for the load.
2. A minimum of two appliance circuits must be provided to supply outlets in kitchen, dining room, and breakfast room.
3. Receptacle outlets must be installed in accordance with section 210-52(a), 1993 1996 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-14. Mobile home parks and recreational vehicle parks. The electrical wiring in mobile home parks must comply with part B, article 550, 1993 1996 edition, National Electrical Code. Mobile home service equipment may not be mounted in or on the mobile home and must be located at a height of no less than two feet [.6096 meters] above finished grade level.

1. The electrical wiring in recreational vehicle parks must comply with part B, article 551, 1993 1996 edition, National Electrical Code. Lot service equipment must be located not less than two feet [.608 meters] nor more than six and one-half feet [1.98 meters] above the ground.
2. Electrical enclosures located outdoors in mobile home parks or recreational vehicle parks that house bare bus bars or terminals must be provided with covers requiring a tool for removal of such covers. Overhead conductors must have a clearance above ground of not less than eighteen feet [5.48 meters] except in areas where it is impractical for movement

of vehicles or mobile homes, the clearance above ground may not be less than twelve feet [3.66 meters].

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-15. Athletic field lighting. All lighted athletic and sport fields supplied from a primary system must be provided with a fused disconnect switch on the primary side. The switch must have proper ratings with a lockable manual control handle. The installation of primary conductors installed underground must conform to section 24-02-01-08. The secondary conductors are considered service conductors. For installation of service conductors, see article 230, parts D, E, and F, 1993 1996 edition, National Electrical Code. A main disconnect switch on the secondary side is optional. A disconnecting means at each pole or tower is not mandatory. Branch circuit panel boards having a rating of no less than one hundred twenty-five percent of the total connected load must be provided at each tower or pole. The panel may be located at the top of pole or tower. Conductors supplying panel must be calculated on the basis of one hundred twenty-five percent of the total connected load. Wiring installed on pole or tower must be in raceway; except, for flexibility at lamps, approved cable assemblies will be permitted. All metal towers must be grounded to a one-half inch [12.7 millimeter] by ten foot [3.0 meter] ground rod. The grounded conductor on the secondary side must be grounded to the grounding electrode. Metal boxes, raceways, cabinets and fittings, or noncurrent-carrying metal parts of other fixed electrical equipment must be grounded when required. (See article 250, 1993 1996 edition, National Electrical Code.)

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-16. Exit marking, illumination of means of egress, and emergency lighting. The purpose of this section is to provide exit and emergency lighting requirements in accordance with Life Safety Code NFPA 101, 1988 1994 edition, in simple and condensed form. For occupancies or items not covered in this condensed version, refer to NFPA 101, 1988 1994 edition, for complete details. In the wiring of institutional occupancies, governmental agencies may use other codes, which may be more stringent, especially where federal funds are involved.

1. **Exit marking.** All required exits and access to exits must be marked by readily visible signs with letters not less than six inches [15.24 centimeters] high and arrows indicating direction to exits. Every sign must be suitably illuminated.

See section 5-10.3, Life Safety Code NFPA 101, ~~1988~~ 1994 edition.

2. **Illumination of means of egress.** Illumination of means of egress must provide continuous, dependable, illumination of not less than one foot-candle at floor level for all areas such as corridors, stairways, and exit doorway, providing a lighted path of travel to the outside of the building and public way during all times that the means of egress is available for use. Illumination must be from a source of reasonable assured reliability and may be supplied from normal lighting circuits or special circuits with switching controlled by authorized personnel. Illumination required for exit marking may also serve for illumination of means of egress and must be so arranged that failure of a single unit such as burning out of a single bulb will not leave any area in darkness.
3. **Emergency lighting.** Emergency lighting systems must be so arranged to provide the required illumination automatically in event of any interruption or failure of the normal power supply. An acceptable alternate source of power may be an electric generator or approved battery. In occupancies where emergency lighting is required, the circuits supplying exit marking and illumination of means of egress must be supplied by the emergency system. Other areas of the facilities only requiring exit marking and illumination of means of egress may be supplied by the normal source.
4. **Classification of occupancy.**

Assembly

- Theaters
- Motion picture theaters
- Assembly halls
- Auditoriums
- Exhibition halls
- Libraries
- Museums
- Skating rinks
- Gymnasiums
- Bowling lanes
- Poolrooms
- Armories
- Conference rooms
- Restaurants
- Churches
- Dancehalls
- Clubrooms
- Passenger stations and terminals of
air surface, underground, and marine
public transportation facilities
- Recreation piers

Courtrooms
Mortuary chapels
Drinking establishments
College and university classrooms,
fifty persons and over

Educational

Schools twelfth grade and under
Instructional building - Business occupancy
Classrooms under fifty persons - Business occupancy
Classrooms fifty persons and over - Place of assembly
Laboratories, instructional - Business occupancy
Laboratories, Noninstructional - Industrial
Day care facilities
Academies
Nursery schools
Kindergartens

Health care

Health care facilities
Hospitals
Nursing homes
Residential-custodial care
Nurseries
Homes for the aged
Mentally retarded care institutions

Detention and correctional occupancies

Residential-restrained care
Penal institutions
Reformatories
Jails
Detention centers
Correctional centers

Residential

Hotels
Motels
Apartments
Dormitories
Orphanages for age six years and older
Lodging or roominghouses
One-family and two-family dwellings

Mercantile

Supermarkets
Department stores
Shopping centers
Drugstores
Auction rooms

Business

Doctors' offices

- Dentists' offices
- City halls
- General offices
- Townhalls
- Courthouses
- Outpatient clinics, ambulatory
- College and university - instructional buildings, classrooms under 50 persons, and instructional laboratories

Industrial

- Factories of all kinds
- Laboratories
- Drycleaning plants
- Power plants
- Pumping stations
- Smokehouses
- Laundries
- Creameries
- Gas plants
- Refineries
- Sawmills
- College and university Noninstructional laboratories

Storage

- Warehouses
- Cold storage
- Freight terminals
- Truck and marine terminals
- Bulk oil storage
- Parking garages
- Hangars
- Grain elevators
- Barns
- Stables

5. Occupant load value table.

Occupancy	Square Feet Per Person
Places of assembly	15 net *
Areas of concentrated use without fixed seating	7 net
Waiting space	3 net
Libraries. In stack areas	100 net
In reading rooms	50 net
Mercantile building, street floor and sales below street floor	30 gross **
Upper floors	60 gross

Mall

Street level and below	30 gross
Upper floor	60 gross
Storage, shipping	300 gross
Offices only	100 gross
Educational occupancies	
Classroom area	20 net
Shops and other vocational areas	50 net
Day nurseries with sleeping facilities	35 net
Business, industrial	100 gross
Hotels, motels, apartments, and dormitories	200 gross
Health care	
Sleeping departments	120 gross
Inpatient departments	240 gross

* Net floor area is the actual occupied area, not including accessory unoccupied areas or thickness of walls.

** Gross floor area is the floor area within the inside perimeter of the outside walls of the building under consideration with no deduction for hallways, stairs, closets, thickness of interior walls, columns, or other features.

Notes to occupant load table.

- (a) An assembly area of concentrated use without fixed seats such as an auditorium, church, chapel, dance floor, or lodge room - seven square feet [.65 square meters] per person.
- (b) An assembly area of less concentrated use such as a conference room, dining room, drinking establishment, exhibit room, gymnasium, or lounge - fifteen square feet [1.39 square meters] per person.
- (c) Standing room or waiting space - three square feet [.28 square meters] per person.
- (d) Bleachers, pews, and similar bench type seating - eighteen linear inches [45.72 centimeters] per person.

6. Building classification table.

x - indicates required
o - indicates not required

Occupancy	Exit Marking	Illumination of Means of Egress	Emergency
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Places of assembly				
Class A-1000 persons or more	x	x	x	Notes 6&7
Class B- 300 to 1000 persons	x	x	x	
Class C- 50 to 300	x	x	x	
All windowless or underground places of assembly	x	x	x	
Churches - Class C (exclusively for religious worship)	x	x	o	
Class A & B	x	x	x	
Educational				Note 4
All educational occupancies including administrative area, general classrooms, mechanical rooms, and storage rooms	x	x	o	
(a) All interior stairs and corridors	x	x	x	
(b) Shop and laboratories	x	x	x	
(c) In flexible and open plan buildings	x	x	x	
(d) In all portions of buildings that are interior or windowless	x	x	x	
Day care centers - (More than 12 persons)	x	x	x	
Group day care homes 7 to including 12 persons	x	x	o	
Family day care homes Fewer than 7 persons	x	x	o	
Health care occupancies Hospitals and nursing homes (for complete details see article 517 of NEC or NFPA standard 99)	x	x	x	Note 1
Detention and correctional				

occupancies	x	x	x	
These occupancies include residential - restrained care, reformatories, jails, detention centers, and correctional centers				
Residential				
Hotels and motels				
More than 16 and less than 26 rooms	x	x	o	
More than 25 rooms	x	x	x	Note 2
Apartment buildings				
12 or less apartments	x	x	o	Note 3
More than 12 apartments or four or more floors	x	x	x	Note 3
Lodginghouses or roominghouses less than 16	x	x	o	
Dormitories - same as hotels				
Mercantile				
Class A - over 30,000 square feet	x	x	x	
Class B - 3000 to 30,000 square feet	x	x	x	
Class C - under 3000 square feet	x	x	o	
Business				
Under 1000 persons, 1 floor	x	x	o	
2 or more stories above exit discharge	x	x	x	
100 or more persons above or below level of exit discharge	x	x	x	
1000 or more persons	x	x	x	
All windowless, and underground	x	x	x	
Industrial				
All	x	x	x	
When occupied during				

daylight hours only with skylights or windows	x	o	o
Storage			
All	x	x	x *
When occupied during daylight hours only with windows	x	o	o
* Storage occupancies do not require emergency lighting when not normally occupied.			
Special provisions			
Underground or windowless buildings or structures	x	x	x
Swimming pools (other than single family residential)	x	x	x
Combined facility			Note 5

NOTES:

Note 1: Power supply for exit and emergency lighting must conform to NFPA 110.

Note 2: Where each guestroom on ground floor has direct exit to outside, no emergency lighting need be provided (motels).

Note 3: Buildings with only one exit need not be provided with exit signs.

Note 4: Small schools familiar to occupants need not be provided with exit signs.

Note 5: Where the same means of egress serve multiple-use or combined occupancies, exit lighting, exit signs, and emergency lighting shall be provided for the occupancy with the most stringent lighting requirements. The occupant load of each type of occupancy shall be added to arrive at the total occupant load.

Note 6: Exit lighting on floor of motion picture theaters may be reduced to one-fifth foot-candle during period of performance.

Note 7: See occupant load value table.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-16.1. Fire alarm requirements for evacuation and life safety. Fire alarms must be installed in accordance with the current state building code and state fire code.

History: Effective February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-19. Inspection fees.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, must have an electrical wiring certificate properly executed by the master or class "B" electrician supervising the installation of electrical wiring. The state electrical board shall prescribe such form, and shall have on hand a supply of such certificates for distribution to master and class "B" electricians. Such certificate must consist of the original and five copies.
2. Before work commences on any electrical installation where a new entrance is installed, an existing entrance is altered, a building is moved, or where the cost of the repair work or additional installation exceeds three hundred dollars, the master or class "B" electrician supervising such installation shall execute an electrical wiring certificate and distribute the various copies as directed. The gold copy of the certificate must be forwarded to the electrical inspector and the canary copy to power company before work is commenced. Within fifteen days of completion, use, or occupancy, whichever is foremost, the white and green copies must be forwarded to the office of the state electrical board, along with the proper fee. The pink copy must be retained by the master or class "B" electrician and the manila copy must be left in, or on the panel or given to the owner. All six copies must contain a description of the work and the legal description of the location.
3. The electric wiring certificates shall be available from the state electrical board at Bismarck, North Dakota, upon request of any master or class "B" electrician holding a proper current license from the electrical board. The master or class "B" electrician must be held responsible for all certificates issued to him. A charge of fifteen dollars to cover board costs must be imposed on each lost wiring certificate.

4. A copy of an electrical wiring certificate must be filed with the power supplier before an electrical installation may be energized.

5. Inspection fees shall be as follows:

Job Cost	Inspection Fee
Up to \$300.00	\$15.00 (minimum fee)
\$300.00 to \$3,000.00	\$15.00 for the first \$300.00 plus 2% on balance up to \$3,000.00
\$3,000.00 to \$10,000.00	\$69.00 for the first \$3,000.00 plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$15,000.00	\$174.00 for the first \$10,000.00 plus 1% on balance up to \$15,000.00
\$15,000.00 to \$100,000.00	\$224.00 for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	\$649.00 for the first \$100,000.00 plus 1/4 of 1% on balance

Inspection fee must accompany the copies of wiring certificates which must be forwarded to the state electrical board, box 857, Bismarck, North Dakota 58502.

6. Whenever an electrical installation made by or under the supervision of a master or class "B" electrician is commenced or in use without submitting an electrical wiring certificate, as directed in subsection 2, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of twenty-five dollars. In addition, when time and travel is expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs to be calculated at a rate of twenty-five dollars per hour and twenty cents per mile of travel.

7. Corrections. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of twenty-five dollars, which must be paid to the board by the master or class "B" electrician.

8. All reinspections must be paid for by the electrical contractors at a cost of twenty-five dollars per hour with a minimum charge of twenty-five dollars.
9. The electrical inspection fee must be based on the total amount of the electrical contract or total cost to the owner including extras.
10. The following items need not be included in the cost:
 - a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, etc.
 - b. Electric heating panels, including heating and air-conditioning units.
 - c. Electric motors.
 - d. Trenching, concrete basis for streetlighting and traffic signal standards.
11. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are removed from an existing installation and placed at another location, the electrical contractor shall estimate the cost of these materials and include the amount in the job cost for the purpose of calculating the proper inspection fee.
12. The inspection fee for all motor-driven passenger or freight elevators and dumbwaiters installed in North Dakota shall be as follows:

Elevators and dumbwaiters having horsepower rating
up to 5 horsepower - \$20.00

Elevators and dumbwaiters having horsepower rating
5 horsepower through 15 horsepower - \$40.00

Elevators and dumbwaiters having horsepower rating
over 15 horsepower - \$60.00

The master electrician having supervision of elevator or dumbwaiter installations shall obtain electrical wiring certificates from the state electrical board. The certificate form must be completed, signed by the master electrician, and forwarded to the state electrical board, Bismarck, North Dakota, with the inspection fee.

13. Electrically driven irrigation machines. Each center pivot system, a flat fee of fifty dollars. All other types, the fee must be based on cost of electric material and labor (see section 24-02-01-19).
14. Requested inspections. For inspections not covered in this section or special services, the fee must be twenty dollars per man hour, including traveltime, plus twenty cents per mile traveled.
15. For requested inspection by an owner on wiring done by the owner, the inspection fee must be as stated in this section, except the minimum must be ~~twenty-five~~ forty dollars. Owner wiring may be done on residential and farmstead property occupied by the owner. Certification and inspection is required as stated in subsection 1. Requests for inspection of owner wired installations must be in writing and must be accompanied by a print or drawing depicting the wiring to be done.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; March 1, 1990; January 1, 1993; February 1, 1996.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

TITLE 32
Board of Cosmetology

FEBRUARY 1996

CHAPTER 32-03-01

32-03-01-10. Booth space. In the event any salon premises are divided into booth space allotments to be leased to others, each person, firm, association, partnership, corporation, or other entity whose name appears on the application as owner of the cosmetology salon shall be responsible for the sanitary conditions of the salon and shall be responsible for the entire salon and its operation being in compliance with federal, state, and local laws, ordinances, rules, regulations, and codes. The owner shall be responsible for keeping the entire salon open for inspection by the board or board inspectors, and the board shall examine and inspect the entire salon premises regardless of any booth space allotments.

Each booth space allotment shall be licensed as a separate salon having a separate and independent certificate of registration, and each booth space allotment shall be operated only by a manager-operator.

1. **Compliance as salon.** Each booth space allotment shall be ~~self-sufficient and~~ must have a minimum of thirty square feet [2.79 square meters] of work space. The salon premises must meet all of the requirements of a salon contained in North Dakota Century Code chapter 43-11 and this article, except that there may be common reception areas and, common toilet facilities, common product dispensing area, and common entrances and exits.
2. **Certificates displayed.** The certificate of registration for each booth space allotment shall be displayed in the booth.

3. **Signs.** For each booth, the signs required of cosmetology salons shall be displayed at the entrances to the premises and at the entrance to each booth.
4. **Premises used.** Each manager-operator operating a booth space salon shall be responsible for all professional services performed and for all of the premises used.
5. **Entrances.** All entrances shall be approved by the board.

History: Amended effective February 1, 1996.

General Authority: NDCC 43-11-05

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

32-03-01-12. Application for license to practice cosmetology for the homebound. Any person, firm, association, corporation, partnership, and other entity desiring to provide cosmetology services for the homebound shall make application to the board for a homebound license and meet the following requirements:

1. Possess a valid manager-operator license.
2. Register all clients with the board office.
3. Provide a doctor's certificate or a certificate from a health official or nurse stating that the client is homebound and the certificate must state the length of time the client will be homebound.
4. Have a kit that contains the following:
 - a. Manager-operator license;
 - b. Copy of rules of sanitation;
 - c. Eyewash;
 - d. First-aid kit;
 - e. Portable drainboard;
 - f. Twelve combs and twelve brushes;
 - g. Closed container for soiled towels and other linens that need to be laundered;
 - h. Photo identification; and
 - i. Disinfectant solution.
5. Comply with all rules of disinfection for combs, brushes, tools, and other equipment as provided in section 32-02-01-10.

6. Pay an initial fee for a homebound license of seventy-five dollars or a renewal fee of twenty-five dollars per year.

History: Effective February 1, 1996.

General Authority: NDCC 43-11-05

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

CHAPTER 32-05-01

32-05-01-06.1. Master esthetician. Every person desiring to be licensed by the board as a master esthetician shall:

1. Furnish to the board evidence of having practiced as a licensed esthetician for one hundred twenty-five days.
2. Take and pass the North Dakota law test for master license.

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

History: Effective February 1, 1996.

General Authority: NDCC 43-11-05

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

32-05-01-07.1. Master manicurist. Every person desiring to be licensed by the board as a master manicurist shall:

1. Furnish to the board evidence of having practiced as a licensed manicurist for sixty days.
2. Take and pass the North Dakota law test for master license.

A master manicurist may operate as a manager-operator of a salon that is operated and engaged exclusively in the practice of manicuring.

History: Effective February 1, 1996.

General Authority: NDCC 43-11-05

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

TITLE 33
State Department of Health

JANUARY 1996

CHAPTER 33-15-01

33-15-01-04. Definitions. As used in this article, except as otherwise specifically provided or where the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. "Act" means North Dakota Century Code chapter 23-25.
2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof.
3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
4. "Ambient air" means the surrounding outside air.
5. "ASME" means the American society of mechanical engineers.
6. "Control equipment" means any device or contrivance which prevents or reduces emissions.
7. "Department" means the North Dakota state department of health and consolidated laboratories.
8. "Emission" means a release of air contaminants into the ambient air.

9. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alternation, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.
10. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency including those requirements developed pursuant to title 40, Code of Federal Regulations, parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to title 40, Code of Federal Regulations, 52.21 or under regulations approved pursuant to title 40, Code of Federal Regulations, part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.
11. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.
12. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.
13. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.
14. "Hazardous waste" has the same meaning as given by chapter 33-24-02.
15. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.
16. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the

destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.

17. "Industrial waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
18. "Infectious waste" means waste that is listed in subdivisions a through g. Ash from incineration and residues from disinfection processes are not infectious waste once the incineration or the disinfection has been completed.
 - a. Cultures and stocks. Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
 - b. Pathological waste. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.
 - c. Human blood and blood products. Liquid waste human blood; products of blood; items saturated or dripping with human blood; or items that were saturated or dripping with human blood that are now caked with dried human blood, including serum, plasma, and other blood components, and their containers.
 - d. Sharps. Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes, regardless of presence of infectious agents. Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
 - e. Animal waste. Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research including research in veterinary hospitals, production of biological, or testing of pharmaceuticals.

- f. Isolation waste. Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.
 - g. Unused sharps. Unused, discarded sharps, hypodermic needles, suture needles, and scalpel blades.
19. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers. Also known as PM₁₀.
 20. "Installation" means any property, real or personal, including, but not limited to, processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.
 21. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.
 22. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
 23. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.
 24. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
 25. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.
 26. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

27. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.
28. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.
29. "Pesticide" includes (a) any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals; (b) any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscicides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.
30. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
31. "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.
32. "Premises" means any property, piece of land or real estate, or building.
33. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
34. "Process weight rate" means the rate established as follows:
 - a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
 - b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual

process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

35. "Public nuisance" means any condition of the ambient air beyond the property line of the offending person which is offensive to the senses, or which causes or constitutes an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
36. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
37. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste, and infectious waste.
38. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1144 degrees Kelvin to 1255 degrees Kelvin]).
39. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.
40. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.
41. "Source" means any property, real or personal, or person contributing to air pollution.
42. "Source operation" means the last operation preceding emission which operation (a) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and (b) is not an air pollution abatement operation.
43. "Special waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining,

beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

44. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.
45. "Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.
46. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].
47. "Trade waste" means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.
48. "Trash" means refuse commonly generated by food warehouses, wholesalers, and retailers which is comprised only of nonrecyclable paper, paper products, cartons, cardboard, wood, wood scraps, and floor sweepings and other similar materials. Trash may not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash must be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste, and similar substances.
49. "Volatile organic compounds" means any ~~compounds~~ compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1, 1, 1-trichloroethane (methyl chloroform); 1,1,1 2-trichloro-2 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC HCFC-22); trifluoromethane (CFC HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro

1,1-difluoroethane (HCFC-142b); 2-chloro -
1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane
(HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane
(HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic,
branched, or linear completely methylated siloxanes; acetone
and perfluorocarbon compounds which fall into these classes:

- a. Cyclic, branched, or linear, completely fluorinated alkanes;
- b. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- c. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- d. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

For purposes of determining compliance with emission limits, volatile organic compounds will be measured by the test methods in title 40, Code of Federal Regulations, part 60, appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as volatile organic compounds if the amount of such compounds is accurately quantified, and such exclusion is approved by the department.

As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the enforcement authority, the amount of negligibly reactive compounds in the source's emissions.

50. "Waste classification" means the seven classifications of waste as defined by the incinerator institute of America and American society of mechanical engineers.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-04

33-15-04-01. Refuse burning restrictions. No person may dispose of refuse and other combustible material by open burning, or cause, allow, or permit open burning of refuse and other combustible material, except as provided for in section 33-15-04-02 or 33-15-10-02, and no person may conduct or, cause, or permit the conduct of a salvage operation by open burning.

History: Amended effective October 1, 1987; January 1, 1989; January 1, 1996.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-04-02. Permissible open burning. The open burning of refuse and other combustible material may be conducted as specified in the subsections of this section if no public nuisance is or will be created and if the burning is not prohibited by, and is conducted in compliance with, other applicable laws, ordinances, and regulations. All open burning must comply with the rural fire mitigation action guide included in the North Dakota rural fire contingency plan and with provisions of the state fire code.

The authority to conduct open burning under the provisions of this section does not exempt or excuse a person from the consequences, damages, or injuries which may result therefrom.

1. Fires purposely set for the instruction and training of public and industrial firefighting personnel.
2. Fires set for the elimination of a fire hazard which cannot be abated by any other means when authorized by the appropriate governmental entity, including the local fire department.
3. Fires set for the removal of dangerous or hazardous material, where there is no other practical or lawful method of disposal and burning is approved in advance by the department. Where there is imminent danger to human health or safety and where there is no other practical or lawful method of disposal, burning can be initiated without prior notice to the department, provided notice is furnished as soon as practical.
4. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of food.
5. Fires purposely set to forest or rangelands for a specific reason in the management of forest, rangeland, or game in accordance with practices recommended by the North Dakota game and fish department, the North Dakota department of

agriculture, and the United States forest service, and the burning is approved in advance by the department.

Except in an emergency, the burning may not be conducted in such proximity of any class I area that the visibility of such area is adversely impacted as defined in chapter 33-15-19.

6. The burning of trees, brush, grass, wood, and other vegetable matter in the clearing of land, right-of-way maintenance operations, and agricultural crop burning if all of the following conditions are met:

a. Prevailing winds at the time of the burning must be away from any city.

b. The burning must not be conducted adjacent to an occupied residence or in such proximity thereto that the ambient air of such occupied residence may be affected by the air contaminants being emitted.

c. Care must be used to minimize the amount of dirt on the material being burned.

d. Oils, rubber, and other materials which produce unreasonable amounts of air contaminants may not be burned.

e. The initial burning may begin only between three hours after sunrise and three hours before sunset and additional fuel may not be intentionally added to the fire at times outside the limits stated above.

f. The burning must not be conducted adjacent to any highway or public road so as to create a traffic hazard.

g. The burning must not be conducted within one mile [1.61 kilometers] of any military, commercial, county, municipal, or private airport or landing strip.

h. Except in an emergency, the burning may not be conducted in such proximity of any class I area that the visibility of such area is adversely impacted as defined in chapter 33-15-19.

7. Where no municipal collection and disposal service is available, the burning of refuse and other combustible materials generated in the operation of a domestic household if the following conditions are met:

a. The material to be burned must not be the combined waste from a building designed to accommodate more than three such households.

b.--The burning must be conducted on the property on which the waste is generated.

8.--The burning of liquid hydrocarbons which are spilled or lost as a result of pipeline breaks or other accidents involving the transportation of such materials or which are generated as wastes as the result of oil exploration, development, production, refining, or processing operations if all of the following conditions are met:

a.--The material cannot be practicably recovered or otherwise lawfully disposed of in some other manner.

b.--The burning must not be conducted within a city or adjacent to an occupied residence or in such proximity thereto that the ambient air of such city or occupied residence may be affected by the air contaminants being emitted.

c.--Except in an emergency, the burning of liquid hydrocarbons may not be conducted in such proximity of any class I area as defined in chapter 33-15-15, that the ambient air of such area is adversely impacted by the air contaminants emitted.

d.--Except in an emergency, the burning of liquid hydrocarbons may not be conducted in such proximity of any class I area that the visibility of such area is adversely impacted as defined in chapter 33-15-19.

e.--The burning must be controlled so that a traffic hazard is not created as the result of the air contaminants being emitted.

f.--The burning must be approved in advance by the department, except as provided in subsection 3.

The open burning of refuse and other combustible material may be conducted as specified in this section if the burning is not prohibited by, and is conducted in compliance with, other applicable laws, ordinances, and regulations. All open burning must comply with the rural fire mitigation action guide included in the North Dakota rural fire contingency plan and with provisions of the state fire code. The authority to conduct open burning under this section does not exempt or excuse a person from the consequences, damages, or injuries that may result therefrom.

1. The following types of burning are specifically authorized but are subject to the conditions listed in subsection 2 as well as any condition included as part of this subsection:

a. Fires purposely set for the instruction and training of public and industrial firefighting personnel.

- b. Fires set for the elimination of a fire hazard that cannot be abated by any other means when authorized by the appropriate governmental entity, including the local fire department.
- c. Fires set for the removal of dangerous or hazardous material, where there is no other practical or lawful method of disposal and burning is approved in advance by the department. Where there is imminent danger to human health or safety and where there is no other practical or lawful method of disposal, burning may be initiated without prior notice to the department, provided notice is furnished as soon as practical.
- d. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of food.
- e. Fires purposely set to forest or rangelands for a specific reason in the management of forest, rangeland, or game in accordance with practices recommended by state or federal agencies, as appropriate, and the burning is approved in advance by the department.
- f. The burning of trees, brush, grass, wood, and other vegetable matter in the clearing of land, right-of-way maintenance operations, and agricultural crop burning.
- g. The burning of refuse and other combustible materials generated in the operation of a domestic household if the following conditions are met:
 - (1) No collection and disposal service is required or directed by a municipality or other government entity.
 - (2) The material to be burned must be from a building accommodating no more than one family.
 - (3) The burning must be conducted on the property on which the waste is generated.
- h. The burning of liquid hydrocarbons that are spilled or lost as a result of pipeline breaks or other accidents involving the transportation of such materials or which are generated as wastes as the result of oil exploration, development, production, refining, or processing operations if the following conditions are met:
 - (1) The material cannot be practicably recovered or otherwise lawfully disposed of in some other manner.

- (2) The burning must be approved in advance by the department, except as provided in subdivision c.
2. The following conditions apply to all types of permissible burning listed in subsection 1.
- a. No public nuisance is or will be created.
 - b. The burning must not be conducted upwind of, or in proximity to, an occupied building such that the ambient air of such occupied building may be adversely affected by the air contaminants being emitted.
 - c. Care must be used to minimize the amount of dirt on the material being burned and the material must be dry enough to burn cleanly.
 - d. Oils, rubber, and other materials that produce unreasonable amounts of air contaminants may not be burned.
 - e. The burning may be conducted only when meteorological conditions favor smoke dispersion and air mixing.
 - f. The burning must not be conducted adjacent to any highway or public road so as to create a traffic hazard.
 - g. The burning must not be conducted adjacent to any operational military, commercial, county, municipal, or private airport or landing strip in such a manner as to create a hazard.
 - h. Except in an emergency, burning may not be conducted in such proximity of any class I area, as defined in chapter 33-15-15, that the ambient air of such area is adversely impacted.
 - i. Except in an emergency, the visibility of any class I area cannot be adversely impacted as defined in chapter 33-15-19.
 - j. Burning activities must be attended and supervised at all times burning is in progress.
 - k. Burning is prohibited if the fire index is in the "extreme" category as issued by the national weather service. Notification to the department is required prior to starting the burn if the fire index is in the "very high" category.

1. If state or local fire officials determine conditions to be unsafe for open burning, such burning must cease until conditions are deemed safe by such officials.

History: Amended effective October 1, 1987; January 1, 1989; January 1, 1996.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-06

33-15-06-01. Restriction of emissions of sulfur dioxide from use of fuel.

1. General provisions.

- a. Except as provided in subdivision c of this subsection, this section applies to any installation in which fuel is burned and in which the sulfur dioxide emissions are substantially due to the content of the fuel burned, and in which the fuel is burned primarily to produce heat.
- b. For purposes of this section, a fuel burning installation is any single fuel burning furnace or boiler or other unit, device, or contrivance in which fuel is burned or any grouping of two or more such furnaces or boilers or other units, devices, or contrivances on the same premises or otherwise located in close proximity to each other and under control of the same person. The capacity of such installations shall be the manufacturer's or designer's guaranteed maximum heat input rate.
- c. This chapter does not apply to installations which are subject to a sulfur dioxide emission limit under chapter 33-15-12.
- d. For purposes of this chapter, equipment at an oil and gas production facility, as defined in chapter 33-15-20, is considered industrial process equipment.

2. **Restrictions applicable to fuel burning installations.** No person shall cause or permit the emission of sulfur dioxide to the ambient air from any fuel burning installation in an amount greater than three pounds of sulfur dioxide per million British thermal units [1290 nanograms/joule] of heat input to the installation on a one-hour-block-average basis. The department may establish alternative averaging periods provided the requirements of chapter 33-15-02 are met. All averaging periods must begin on the hour and averaging periods greater than one hour must be rolling averages.
3. The department shall establish more restrictive emission limits for a source if it is determined that such source is causing the ambient air quality standards of chapter 33-15-02 or the prevention of significant deterioration increments of chapter 33-15-15 for sulfur dioxide to be exceeded. However, the department may consider alternative measures which will

achieve compliance with the ambient air quality standards or prevention of significant deterioration increments.

History: Amended effective June 1, 1992; January 1, 1996.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-09

**EMISSION OF CERTAIN SETTLEABLE ACIDS AND
ALKALINE SUBSTANCES RESTRICTED**

[Repealed effective January 1, 1996]

CHAPTER 33-15-12

33-15-12-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 60, as they exist on May 1, 1994 1995, which are listed under section 33-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard.

History: Effective June 1, 1992; amended effective December 1, 1994; January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-12-02. Standards of performance.

Subpart A - General provisions.

*60.2. The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the department and the administrator of the United States environmental protection agency.

Subpart C - Emission guidelines and compliance times.

Subpart Ca - Emissions guidelines and compliance times for municipal waste combustors.

Subpart D - Standards of performance for fossil-fuel fired steam generators for which construction is commenced after August 17, 1971.

Subpart Da - Standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978.

Subpart Db - Standards of performance for industrial-commercial-institutional steam generating units.

Subpart Dc - Standards of performance for small industrial-commercial-institutional steam generating units.

Subpart E - Standards of performance for incinerators.

Subpart Ea - Standards of performance for municipal waste combustors.

Subpart F - Standards of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Subpart H - Standards of performance for sulfuric acid plants.

Subpart I - Standards of performance for asphalt concrete plants.

Subpart J - Standards of performance for petroleum refineries.

Subpart K - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after ~~July 1, 1970~~ June 11, 1973, and prior to May 19, 1978.

*60.110(c) is deleted in its entirety and replaced with the following:

(c) Any facility under 60.110(a) that commenced construction, reconstruction, or modification after July 1, 1970, and prior to May 19, 1978, is subject to the requirements of this subpart.

Subpart Ka - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984.

Subpart Kb - Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984.

Subpart L - Standards of performance for secondary lead smelters.

Subpart M - Standards of performance for secondary brass and bronze ~~ingot~~ production plants.

Subpart N - Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973.

Subpart Na - Standards of performance for secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983.

Subpart O - Standards of performance for sewage treatment plants.

Subpart P - Standards of performance for primary copper smelters.

Subpart Q - Standards of performance for primary zinc smelters.

Subpart R - Standards of performance for primary lead smelters.

Subpart S - Standards of performance for primary aluminum reduction plants.

Subpart T - Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

Subpart U - Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

Subpart V - Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants.

Subpart W - Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

Subpart X - Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

Subpart Y - Standards of performance for coal preparation plants.

Subpart Z - Standards of performance for ferroalloy production facilities.

Subpart AA - Standards of performance for steel plants: Electric arc furnaces: constructed after October 21, 1974, and before August 17, 1983.

Subpart AAa - Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

Subpart BB - Standards of performance for kraft pulp mills.

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

Subpart EE - Standards of performance for surface coatings of metal furniture.

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

Subpart KK - Standards of performance for lead-acid battery manufacturing plants.

Subpart LL - Standards of performance for metallic mineral processing plants.

Subpart MM - Standards of performance for automobile and light-duty truck surface coating operations.

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

Subpart QQ - Standards of performance for the graphic arts industry: publication rotogravure printing.

Subpart RR - Standards of performance for pressure-sensitive tape and label surface coating operations.

Subpart SS - Standards of performance for industrial surface coating: large appliances.

Subpart TT - Standards of performance for metal coil surface coating.

Subpart UU - Standards of performance for asphalt processing and asphalt roofing manufacture.

Subpart VV - Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry.

Subpart WW - Standards of performance for the beverage can surface coating industry.

Subpart XX - Standards of performance for bulk gasoline terminals.

Subpart AAA - Standards of performance for new residential wood heaters.

Subpart BBB - Standards of performance for the rubber tire manufacturing industry.

Subpart CCC - [Reserved]

Subpart DDD - Standards of performance for volatile organic compound (VOC) emissions for the polymer manufacturing industry.

Subpart EEE - [Reserved]

Subpart FFF - Standards of performance for flexible vinyl and urethane coating and printing.

Subpart GGG - Standards of performance for equipment leaks of VOC in petroleum refineries.

Subpart HHH - Standards of performance for synthetic fiber production facilities.

Subpart III - Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

Subpart JJJ - Standards of performance for petroleum dry cleaners.

Subpart KKK - Standards of performance for equipment leaks of VOC from onshore natural gas processing plants.

Subpart LLL - Standards of performance for onshore natural gas processing; SO₂ emissions.

Subpart NNN - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

Subpart 000 - Standards of performance for nonmetallic mineral processing plants.

Subpart PPP - Standards of performance for wool fiberglass insulation manufacturing plants.

Subpart QQQ - Standards of performance for VOC emissions from petroleum refinery wastewater systems.

Subpart RRR - Standards of performance for volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

Subpart SSS - Standards of performance for magnetic tape coating facilities.

Subpart TTT - Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

Subpart UUU - Standards of performance for calciners and dryers in mineral industries.

Subpart VVV - Standards of performance for polymeric coating of supporting substrates facilities.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate changes.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures.

Appendix I - Removable label and owner's manual.

History: Effective June 1, 1992; amended effective March 1, 1994;
December 1, 1994; January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-13

33-15-13-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 61, as they exist on ~~July~~ May 1, 1994 ~~1995~~, which are listed under section 33-15-13-01.2 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-13-02. Emission standard for asbestos.

1. **Applicability.** The provisions of this section are applicable to those sources specified in subsections 3 through 17.
2. **Definitions.** All terms that are used in this section and are not defined below are given the same meaning as in North Dakota Century Code chapter 23-25 and in section 33-15-13-01.2.
 - a. "Active waste disposal site" means any disposal site other than an inactive site.
 - b. "Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted; however, the absence of visible emissions is not sufficient evidence of being adequately wet.
 - c. "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.
 - d. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, operation and maintenance, handling, or disposal of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.

- e. "Asbestos abatement project designer" means any person who develops the plans, specifications, and designs for an asbestos abatement project.
- f. "Asbestos abatement project monitor" means any person, employed to monitor an asbestos removal project to ensure any of the following:
 - (1) The removal is conducted in accordance with state and federal regulations.
 - (2) State-of-the-art work practices are employed.
 - (3) The abatement is conducted as designed.
 - (4) Personal and ambient air samples are collected properly.

Persons acting as the project designer who are not responsible for the proper collection of personal and ambient air samples and employees of the asbestos removal contractor or facility owner are excluded from this definition.

- g. "Asbestos abatement supervisor" means any person employed by the asbestos contractor who supervises workers engaged in asbestos removal, encapsulation, enclosure, and repair. Supervisors may include those individuals with the position title of foreman, working foreman, or leadman pursuant to collective bargaining agreements.
- h. "Asbestos-containing waste material" means asbestos mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this section. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.
- i. "Asbestos contractor" means any partnership, firm, association, operation, or sole proprietorship that contracts to perform asbestos abatement for another.
- j. "Asbestos inspector" means any person who inspects facilities for asbestos-containing materials.
- k. "Asbestos management planner" means any person who develops facility plans for the management of asbestos-containing materials.

- l. "Asbestos mill" means any facility engaged in converting, or in any intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of asbestos materials is not considered a part of the asbestos mill.
- m. "Asbestos tailings" means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.
- n. "Asbestos waste from control devices" means any waste material that contains asbestos and is collected by a pollution control device.
- o. "Asbestos worker" means an employee or agent of an asbestos contractor, or a public employee engaged in the abatement of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material, except for individuals engaged in abatement at their private residence.
- p. "Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.
- q. "Category II nonfriable asbestos-containing material" means any material, excluding category I nonfriable asbestos-containing material, containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by mechanical forces expected to act on the material.
- r. "Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.
- s. "Cutting" means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.
- t. "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility, together with any related handling operations or the intentional burning of any facility.
- u. "Emergency renovation operation" means a renovation operation that was not planned but results from a sudden,

unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

- v. "Encapsulation" means a method of asbestos abatement that includes the treatment of asbestos-containing materials with a sealant material that completely surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers. A bridging encapsulant creates a membrane over the surface while a penetrating encapsulant penetrates the material and binds the material's components together.
- w. "Enclosure" means a method of asbestos abatement that includes the construction of a permanent, airtight, impermeable barrier around asbestos-containing material to prevent the release of asbestos fibers into the air.
- x. "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.
- y. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to this section is not excluded, regardless of its current use or function.
- z. "Facility component" means any part of a facility including equipment.
- aa. "Friable ~~asbestos~~ asbestos-containing material" means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry. The term includes nonfriable asbestos-containing

material after such previously nonfirable material becomes damaged to the extent that when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure. The percentage of asbestos is determined using the method specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy. If the asbestos content is greater than zero percent, assume the material contains greater than one percent asbestos or verify the asbestos content by point counting using polarized light microscopy. If a result obtained by point count is different from a result obtained by visual estimation, the point count result will be used.

- bb. "Fugitive source" means any source of emissions not controlled by an air pollution control device.
- cc. "Glove-bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove-bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the occupational safety and health administration's (OSHA's) final rule on occupational exposure to asbestos, appendix G, title 29, Code of Federal Regulations, 1926.58.
- dd. "Grinding" means to reduce to powder or small fragments and includes mechanical chipping or drilling.
- ee. "In poor condition" means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.
- ff. "Inactive waste disposal site" means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.
- gg. "Inspection" means any activity undertaken in a school building, or a public or commercial building, to determine the presence or location, or to assess the condition of, friable or nonfriable asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and nonfriable, known or assumed asbestos-containing material which has been previously identified. The term does not include the following:
 - (1) Periodic surveillance of the type described in 40 Code of Federal Regulations, 763.92(b) solely for the purpose of recording or reporting a change in the

condition of known or assumed asbestos-containing material;

(2) Inspections performed by employees or agents of federal, state, or local governments solely for the purpose of determining compliance with applicable statutes or regulations; or

(3) Visual inspections of the types described in 40 Code of Federal Regulations, 763.90(I) solely for the purpose of determining completion of response actions.

- hh. "Installation" means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).
- ~~hh~~ ii. "Leaktight" means that solids or liquids cannot escape or spill out. It also means dusttight.
- ~~ii~~ jj. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operations, or any other preventable upset conditions, equipment breakdown, or process failure.
- ~~jj~~ kk. "Manufacturing" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos, with any other materials, including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.
- ~~kk~~ ll. "Natural barrier" means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes, or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.
- ~~ll~~ mm. "Nonfriable asbestos-containing material" means any material containing more than one percent asbestos as determined using the method specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy, that, when dry, can not be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces expected to act on the material.

- ~~mm~~ nn. "Nonscheduled renovation operation" means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.
- ~~nn~~ oo. "Outside air" means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open ferry dock.
- ~~oo~~ pp. "Owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operations, or both.
- ~~pp~~ qq. "Particulate asbestos material" means finely divided particles of asbestos or material containing asbestos.
- ~~qq~~ rr. "Planned renovation operations" means a renovation operation, or a number of such operations, in which some regulated asbestos-containing material will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.
- ss. "Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than ten units or detached single-family homes. The term includes, industrial and office buildings, residential apartment buildings and condominiums of ten or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses, and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.
- ~~pp~~ tt. "Public employee" for the purpose of this chapter means any person employed by the United States government or the state of North Dakota or any of its political subdivisions who provides service for which compensation is paid. This includes employment by appointment or election.
- ~~ss~~ uu. "Regulated asbestos-containing material (RACM)" means:
- (1) Friable asbestos material.
 - (2) Category I nonfriable asbestos-containing material that has become friable.

- (3) Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading.
- (f) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces acting on or expected to act on the material in the course of demolition or renovation operations regulated by this section.

- tt: vv. "Remove" means to take out regulated asbestos-containing material or facility components that contain or are covered with regulated asbestos-containing material from any facility.
- uu: ww. "Renovation" means altering in any way a facility or facility components, including the stripping or removal of regulated asbestos-containing material from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.
- vv: xx. "Repair" means returning damaged asbestos-containing materials to an undamaged condition or to an intact state so as to prevent asbestos fiber release.
- ww: yy. "Resilient floor covering" means asbestos-containing floor tile, including asphalt and vinyl floor tiles and sheet vinyl floor covering containing more than one percent asbestos as determined using polarized light microscopy according to the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.
- xx: zz. "Roadways" means surfaces on which motor vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.
- yy: aaa. "Strip" means to take off regulated asbestos-containing material from any part of any facility or facility components.
- zz: bbb. "Structural member" means any member of a facility, such as beams, walls, ceilings, floors, etc.
- aaa: ccc. "Visible emissions" means any emissions which are visually detectable without the aid of instruments, coming from regulated asbestos-containing material or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operations. This does not include condensed uncombined water vapor.

- ~~bbb-~~ ddd. "Waste generator" means any owner or operator of a source covered by this section whose act or process produces asbestos-containing waste material.
- ~~eee-~~ eee. "Waste shipment record" means the shipping document, required to be originated and signed by the waste generator and is used to track and substantiate the disposition of asbestos-containing waste material.
- ~~ddd-~~ fff. "Working day" means any day Monday through Friday and includes holidays that fall on any day Monday through Friday.

3. Standard for asbestos mills.

- a. Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by subsection 13 to clean emissions containing asbestos material before they escape to, or are vented to, the outside air.
- b. Each owner or operator of an asbestos mill shall meet the following requirements:
 - (1) Monitor each potential source of asbestos emissions from any part of the mill facility, including air-cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.
 - (2) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that can not be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:
 - (a) Maintenance schedule.
 - (b) Recordkeeping plan.

- (3) Maintain records of the results of visible emissions monitoring and air-cleaning device inspections using a suitable form which includes the following information:
 - (a) Date and time of each inspection.
 - (b) Presence or absence of visible emissions.
 - (c) Condition of fabric filters including presence of any tears, holes, and abrasions.
 - (d) Presence of dust deposits on clean side of fabric filters.
 - (e) Brief description of corrective actions taken including date and time.
 - (f) Daily hours of operation for each air-cleaning device.
 - (4) Furnish upon request and make available at the affected facility during normal business hours for inspection by the department all records required under this subdivision.
 - (5) Retain a copy of all monitoring inspection records for at least two years.
 - (6) Submit quarterly a copy of visible emissions monitoring records to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.
4. **Standard for roadways.** No person may surface a roadway with asbestos tailings or asbesto-containing waste material.
5. **Standard for manufacturing.**
- a. **Applicability.** This section applies to the following manufacturing operations using commercial asbestos.
 - (1) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.
 - (2) The manufacture of cement products.
 - (3) The manufacture of fireproofing and insulating materials.
 - (4) The manufacture of friction products.

- (5) The manufacture of paper, millboard, and felt.
- (6) The manufacture of resilient floor covering.
- (7) The manufacture of paints, coatings, caulks, adhesives; and sealants.
- (8) The manufacture of plastics and rubber materials.
- (9) The manufacture of chlorine utilizing asbestos diaphragm technology.
- (10) The manufacture of shotgun shell wads.
- (11) The manufacture of asphalt concrete.

b. Standard. Each owner or operator of any of the manufacturing operations to which this section applies shall either:

- (1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or
- (2) Use the methods specified by subsection 13 to clean emissions containing asbestos material from these operations before they escape to, or are vented to, the outside air.
- (3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air-cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emission to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.
- (4) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

- (a) Maintenance schedule.
- (b) Recordkeeping plans.
- (5) Maintain records of the results of visible emission monitoring and air-cleaning device inspections using a suitable form which includes the following information:
 - (a) Date and time of each inspection.
 - (b) Presence or absence of visible emissions.
 - (c) Condition of fabric filters including presence of any tears, holes, and abrasions.
 - (d) Presence of dust deposits on clean side of fabric filters.
 - (e) Brief description of corrective action taken, including date and time.
 - (f) Daily hours of operation for each air-cleaning device.
- (6) Furnish upon request and make available at the affected facility during normal business hours for inspection by the department all records required under this subdivision.
- (7) Retain a copy of all monitoring and inspection records for at least two years.
- (8) Submit quarterly a copy of the visible emissions monitoring records to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.

6. Standard for demolition and renovation.

- a. Applicability. To determine which requirements of subdivisions a, b, and c of this subsection apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility, or part of the facility where the demolition or renovation operation will occur, for the presence of asbestos, including category I and category II nonfriable asbestos-containing material. The requirements of subdivisions b and c of this subsection apply to each owner or operator of an asbestos demolition or renovation

operation including the removal of regulated asbestos-containing material, as follows:

- (1) For a demolition or renovation project involving the stripping or removal of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of regulated asbestos-containing material, all the procedural requirements of subdivision c apply, except for ordered demolitions as provided in paragraph 4.
- (2) For any facility being demolished, all the notification requirements of subdivision b apply.
- (3) For a renovation project where at least one hundred sixty square feet [14.9 square meters] of regulated asbestos-containing material on facility components or at least two hundred sixty linear feet [79.3 meters] of regulated asbestos-containing material on pipes or a total of thirty-five cubic feet [1 cubic meter] of regulated asbestos-containing material on or off facility components are to be stripped, removed, dislodged, cut, drilled, or similarly disturbed at a facility all the notification requirements of subdivision b apply.
 - (a) To determine whether this paragraph applies to planned renovation operations involving individual nonscheduled operations, predict the additive amount of regulated asbestos-containing material to be removed or stripped over the maximum period of time a prediction can be made, not to exceed one calendar year of January first through December thirty-first.
 - (b) To determine whether this paragraph applies to emergency renovation operations, estimate the amount of regulated asbestos-containing material to be removed or stripped as a result of the sudden unexpected event that necessitated the renovation.
- (4) If the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of subdivision b and paragraphs 4, 5, 6, 7, and 8 of subdivision c apply.
- (5) Owners or operators of demolition or renovation operations are exempt from the requirements of 61.05(a), 61.07, and 61.09 of the general provisions of this chapter.

- b. Notification requirements. Each owner or operator to which this section applies shall:
- (1) Provide the department with written notice of the intention to demolish or renovate.
 - (2) Indicate whether the notice is an original or a revised notification and update the notice as necessary including when the amount of asbestos affected changes by at least twenty percent.
 - (3) Postmark or deliver the notice as follows:
 - (a) At least ten working days before demolition begins, except as provided in subparagraph b.
 - (b) As early as possible before, but not later than the following working day after, demolition begins if the operation is described in paragraph 4 of subdivision a or for an emergency renovation as described in subparagraph b of paragraph 3 of subdivision a of this subsection.
 - (c) At least ten working days before the end of the calendar year preceding the year for which notice is being given for renovations described in subparagraph a of paragraph 3 of subdivision a of this subsection.
 - (d) At least ten working days before renovation begins. When necessary, the department may accept a telephone notification followed by the written notification.
 - (e) In no event may an operation covered by this subsection begin on a date other than the date contained in the written notice unless the department has been supplied a properly amended notification following the timetables outlined above.
 - (4) Include the following information on a notification form provided by the department:
 - (a) Name, address, and telephone number of both the owner and operator and the asbestos removal contractor.
 - (b) Description of the facility or affected part of the facility being demolished or renovated, including the size, age, and prior and present use of the facility.

- (c) An estimate of the amount of regulated asbestos-containing material to be removed from the facility in terms of square feet, linear feet or cubic feet, as appropriate. Also estimate the approximate amount of category I and category II nonfriable asbestos-containing material in the affected part of the facility that will not be removed before demolition. Also provide the procedures and analytical methods used to detect the presence and determine the quantity of regulated asbestos-containing material and category I and category II nonfriable asbestos-containing material.
- (d) Location of the facility being demolished or renovated to include the street address, city, county, and state.
- (e) Scheduled starting and completion dates of the asbestos abatement work or any other activity that would break up, dislodge, or similarly disturb asbestos material.
- (f) Scheduled starting and completion dates of the demolition or renovation.
- (g) Type of operation: demolition or renovation.
- (h) A description of the demolition or renovation work to be performed including the demolition or renovation techniques and methods to be employed during the activity and a description of the affected facility components.
- (i) Description of work practices and engineering controls to be used to comply with the requirements of this section, including asbestos removal and waste handling emission control procedures.
- (j) The name and location of the waste disposal site where the asbestos-containing waste material will be deposited.
- (k) The name, address, and telephone number of the waste transporter.
- (l) For emergency renovations, provide the date and hour that the emergency occurred, a description of the sudden unexpected event, and an explanation of how the event caused an unsafe

condition or would cause equipment damage or an unreasonable financial burden.

- (m) Description of procedures to be followed in the event that unexpected regulated asbestos-containing material is found or category II nonfriable asbestos-containing material becomes crumbled, pulverized, or reduced to powder during the operation.
- (n) For facilities described in paragraph 4 of subdivision a, the name, title, and authority of the state or local governmental representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order must be attached to the notification.
- (o) A signed statement by the contractor that all asbestos abatement supervisors and asbestos workers assigned to this project are certified by the department, in accordance with subsection 16.

c. Procedures for asbestos emission control. Each owner or asbestos contractor to whom this subsection applies shall comply with the following procedures:

- (1) Remove all regulated asbestos-containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal. Asbestos-containing material need not be removed before demolition if:
 - (a) It is category I nonfriable asbestos-containing material that is not in poor condition and is not friable.
 - (b) It is on a facility component that is encased in concrete or other similarly hard material and adequately wetted whenever exposed during demolition and maintained wet until it is disposed of in accordance with subsection 11.
 - (c) It was not accessible for testing and therefore was not discovered before demolition began and the material cannot be safely removed. If not removed for safety reasons, these materials must be adequately wetted when exposed during demolition and maintained wet until they are disposed of in accordance with subsection 11.

- (d) They are category II nonfriable asbestos-containing material and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.
- (2) When a facility component that contains, is covered with, or is coated with regulated asbestos-containing material is being taken out of the facility as a unit or in sections:
- (a) Adequately wet all regulated asbestos-containing material exposed during cutting or disjoining operations; and
 - (b) Carefully wrap or otherwise contain the facility member with an impermeable covering prior to the disjoining operation; and
 - (c) Carefully lower the units or sections to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the regulated asbestos-containing material.
- (3) When regulated asbestos-containing material is being stripped from a facility component while it remains in place in a facility, adequately wet the material during the stripping operation.
- (a) In renovation operations, wetting that would unavoidably damage equipment or present a safety hazard is not required if:
 - [1] The owner or operator has obtained prior written approval from the department based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and
 - [2] The owner or operator uses one of the following emission control methods:
 - [a] A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air and be equipped with high efficiency particulate air filtration or be

designed and operated in accordance with the requirements in subsection 13.

- [b] A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.
 - [c] Leaktight wrapping to contain all regulated asbestos-containing material prior to dismantlement.
- (b) In renovation operations where wetting would result in equipment damage or a safety hazard and the methods allowed in subparagraph a of paragraph 3 of this subdivision cannot be used, another method may be used after obtaining written approval from the department based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph 3 of this subdivision.
 - (c) A copy of the department's written approval must be kept at the worksite and made available for inspection.
- (4) After a facility component covered with, coated with, or containing regulated asbestos-containing material has been taken out of the facility as units or in sections pursuant to paragraph 2 of this subdivision it must be kept contained in leaktight wrapping or:
 - (a) Adequately wet the regulated asbestos-containing material during stripping; or
 - (b) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air and be equipped with high efficiency particulate air filtration or be designed and operated in accordance with the requirements in subsection 13.
 - (5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs 2, 3, and 4 of this subdivision) the regulated asbestos-containing material is not required to be stripped if the following requirements are met:

- (a) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material;
 - (b) The component is encased in a leaktight wrapping; and
 - (c) The leaktight wrapping is labeled according to subsection 11 during all loading and unloading operations and during storage.
- (6) For all regulated asbestos-containing material, including material that has been removed or stripped:
- (a) Adequately wet the material and ensure that it remains wet until collected for disposal in accordance with subsection 11;
 - (b) Carefully lower the materials to the ground or a lower floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material; and
 - (c) Transport the materials to the ground via leaktight chutes or containers if they have been removed or stripped more than fifty feet [15.24 meters] above ground level and were not removed as units or in sections.

Regulated asbestos-containing material contained in leaktight wrapping that has been removed in accordance with paragraph 4 of this subdivision and subitem c of item 2 of subparagraph a of paragraph 3 of this subdivision need not be wetted.

- (7) When the temperature at the point of wetting is below zero degrees Celsius [32 degrees Fahrenheit], the owner or operator:
- (a) Need not comply with the wetting requirements of subparagraph a of paragraph 2 of subdivision c of subsection 4 and paragraph 3 of this subdivision. The owner or operator shall comply with the other requirements in this subdivision; and
 - (b) Remove facility components containing, coated with or covered with friable asbestos materials as units or in sections to the maximum extent possible; and

- (c) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records. These records must be available for inspection by the department during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least two years.
 - (8) No regulated asbestos-containing material may be stripped, removed, or otherwise handled or disturbed at a facility regulated by this subsection unless at least one onsite representative such as a supervisor, foreman or management level person, or other authorized representative who has completed the supervisor training requirements of subparagraph a of paragraph 2 and paragraph 4 of subdivision b of subsection 16 is present. Evidence that the required training has been completed shall be posted and made available for inspection by the department at the demolition or renovation site.
 - (9) For facilities described in paragraph 4 of subdivision a, adequately wet the portion of the facility that contains friable asbestos materials during the wrecking operation.
 - (10) If a facility is demolished by intentional burning, all regulated asbestos-containing material including category I and category II nonfriable asbestos-containing material must be removed in accordance with this subsection before burning.
 - (11) When a demolition or renovation project that involves the disturbance of regulated asbestos-containing material is conducted in the ambient air, the owner or operator shall designate the boundaries of the work area by appropriate means.
7. **Standard for spraying.** The owner or operator of an operation in which asbestos-containing materials are spray applied shall use only those materials that contain one percent asbestos or less for spray-on application.
8. **Standard for fabricating.**
- a. **Applicability.** This subsection applies to the following fabricating operations using commercial asbestos:
 - (1) The fabrication of cement building products.

- (2) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.
 - (3) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions, and ceilings for marine construction; and flow control devices for the molten metal industry.
- b. Standard. Each owner or operator of any of the fabricating operations to which this subsection applies shall:
- (1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or
 - (2) Use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.
 - (3) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air-cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.
 - (4) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include at a minimum, the following:
 - (a) Maintenance schedule.
 - (b) Recordkeeping plan.
 - (5) Maintain records of the results of visible emission monitoring and air-cleaning device inspections using

a suitable form which includes the following information:

- (a) Date and time of each inspection.
- (b) Presence or absence of visible emissions.
- (c) Condition of fabric filters, including the presence of any tears, holes, and abrasions.
- (d) Presence of dust deposits on clean side of fabric filters.
- (e) Brief description of corrective actions taken including date and time.
- (f) Daily hours of operation for each air-cleaning device.

(6) Furnish upon request and make available at the affected facility during normal business hours, for inspection by the department, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least two years.

(8) Submit quarterly a copy of the visible emission monitoring record to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.

9. **Standard for insulating materials.** No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet applied and friable after drying. The provisions of this subsection do not apply to spray-applied insulating materials regulated under subsection 7.

10. **Standard for waste disposal for asbestos mills.** Each owner or operator of any source covered under the provisions of subsection 3 shall:

a. Deposit all asbestos-containing waste material at department approved waste disposal sites operated in accordance with the provisions of subsection 15.

b. Discharge no visible emissions to the outside air from the transfer of asbestos waste from control devices to the tailings conveyor, or use the methods specified by subsection 13 to clean emissions containing particulate

asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with subdivision b of subsection 11 or subdivision c of this subsection.

- c. Discharge no visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of any asbestos-containing waste material, or use one of the disposal methods as follows:

- (1) Use a wetting agent as follows:

- (a) Adequately mix all asbestos-containing waste material with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings, before depositing the material at a waste disposal site. Use the agent as recommended for the particular dust by the manufacturer of the agent.

- (b) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

- (c) Wetting may be suspended when the ambient temperature at the waste disposal site is less than fifteen degrees Fahrenheit [-9.44 degrees Celsius] as determined by an appropriate measurement method with an accuracy of plus or minus two degrees Fahrenheit [1.11 degrees Celsius]. During periods when wetting operations are suspended, the temperature must be recorded at least at hourly intervals, and records must be retained for at least two years in a form suitable for inspection.

- (2) Use an alternative emission control and treatment method that has received prior written approval by the department and administrator. To obtain approval for an alternative method, a written application must be submitted to the department and the administrator of the United States environmental protection agency demonstrating that the following criteria are met:

- (a) The alternative method will control asbestos emissions equivalent to currently required methods.

- (b) That the alternative method is suitable for the intended application.

(c) The alternative method will not violate other regulations.

(d) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.

(3) When waste is transported by vehicle to a disposal site, all of the requirements of subdivision d of subsection 11 must be complied with.

11. **Standard for waste disposal for manufacturing, demolition, renovation, and fabricating operations.** Each owner or operator of any source covered under any of the provisions of subsection 5, 6, or 8 shall comply with all the provisions of this subsection. Each owner or operator of any source covered by subsection 10 shall comply with subdivision d of this subsection.

a. Discharge no visible emissions to the outside air during the collection processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods as follows:

(1) Adequately wet asbestos-containing waste material as follows:

(a) Mix asbestos waste from control devices with water to form a slurry; adequately wet other asbestos-containing waste material;

(b) Discharge no visible emissions to the outside air from collection, mixing, and wetting operations, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air;

(c) After wetting, seal all asbestos-containing waste material in leaktight containers while wet. For materials that will not fit into containers without additional breaking, put materials into leaktight wrapping;

(d) Label the containers or wrapped materials specified above as follows:

DANGER

CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST

CANCER AND LUNG DISEASE HAZARD

Alternatively, use warning labels currently specified by occupational safety and health standards of the department of labor, occupational safety and health administration (OSHA) under title 29, Code of Federal Regulations, 1910.1001 or title 29, Code of Federal Regulations, 1926.58; and

- (e) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.
- (2) Process asbestos-containing waste material into nonfriable forms as follows:
 - (a) Form all asbestos-containing waste material into nonfriable pellets or other shapes.
 - (b) Discharge no visible emissions to the outside air from the collection and processing operations including incineration, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.
 - (3) For facilities demolished where the regulated asbestos-containing material is not removed prior to demolition according to paragraph 4 of subdivision a and subparagraphs a, b, c, and d of paragraph 1 of subdivision c of subsection 6 adequately wet asbestos-containing waste material at all times during and after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leaktight containers or wrapping but may be transported by covered hauling and disposed of in bulk.
 - (4) Use an alternative disposal method that has received prior approval by the department and administrator of the United States environmental protection agency.
 - (5) As applied to demolition and renovation, the requirements of subdivision a of this subsection do not apply to category I or category II nonfriable asbestos-containing material waste that is not or will not become crumbled, pulverized, or reduced to powder.

- b. Deposit all asbestos-containing waste material as soon as practical at:
- (1) Department-approved waste disposal sites operated in accordance with the provisions of subsection 15.
 - (2) A United States environmental protection agency approved site that converts regulated asbestos-containing material and asbestos-containing waste material into nonasbestos (asbestos free) material according to the provisions of subsection 17.
 - (3) The requirements of this subdivision do not apply to category I nonfriable asbestos-containing material that is not or will not become regulated asbestos-containing material.
- c. All facilities used for the temporary storage of asbestos-containing waste material must be controlled and the material must be stored in leaktight containers.
- (1) Post a warning sign at the entrances to the temporary storage facility with a label as follows:

DANGER

ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

Alternatively, use warning labels currently specified by occupational safety and health standards of the department of labor, occupational safety and health administration (OSHA) under title 29, Code of Federal Regulations, 1910.1001 or title 29, Code of Federal Regulations, 1926.58.

- (2) Take necessary precautions to prevent or restrict access to the temporary storage facility.
 - (3) The temporary storage facility must be inspected at least once per week to ensure that good structural integrity of the storage facility is maintained and that the facility remains secure.
 - (4) The maximum length of time allowed for temporary storage of an asbestos-containing waste material may not exceed one hundred eighty days.
- d. Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must:

- (1) Be displayed in such a manner and location that a person can easily read the legend.
- (2) Conform to the requirements for twenty-inch by fourteen-inch [50.8-centimeter by 35.56-centimeter] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this paragraph; and
- (3) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
ASBESTOS DUST HAZARD	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
CANCER AND LUNG DISEASE HAZARD	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block.
Authorized Personnel Only	14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

- e. Prior to transportation of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of asbestos-containing waste material off the facility site:
 - (1) The owner or operator and the transporter shall ensure that a waste shipment record has been appropriately completed and signed by the generator, and accompanies the waste to the disposal site. The waste shipment record must include the following information:
 - (a) Name, address, and telephone number of the facility owner or operator where the asbestos-containing waste materials were generated.
 - (b) Location of the facility where asbestos-containing waste material was generated.
 - (c) The name and address of this department as being the responsible agency for administering the asbestos NESHAP program.

- (d) Estimated quantity of asbestos-containing waste material in cubic yards.
 - (e) Name and physical site location of the waste disposal site where the asbestos-containing waste will be deposited.
 - (f) The name and telephone number of the disposal site operator.
 - (g) The date transported.
 - (h) The name, address, and telephone number of the transporters.
 - (i) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.
- (2) Provide a copy of the waste shipment record to the disposal site owner or operator at the same time as the asbestos-containing waste material is delivered to the disposal site.
 - (3) For waste shipments where a copy of the waste shipment record signed by the owner or operator of the designated disposal site is not received by the waste generator within thirty-five days of the date the waste was accepted by the initial transporter, contact the transporter or the owner or operator, or both, of the designated disposal site to determine the status of the waste shipment.
 - (4) Report in writing to this department if a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site is not received by the waste generator within forty-five days of the date the waste was accepted by the initial transporter. Include in the report the following information:
 - (a) A copy of the waste shipment record for which a confirmation of delivery was not received; and
 - (b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the result of those efforts.

- (5) Retain a copy of all waste shipment records including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site for at least two years.
 - (6) A copy of the completed waste shipment record must be submitted to the department by the owner or operator of the facility no later than ten days after the owner or operator of the facility receives the completed waste shipment record from the landfill operator.
- f. Furnish upon request, and make available for inspection by the department, all records required under this section.
 - g. If an acceptable disposal site, as determined by subsection 15, is located on the same property as the facility where asbestos-containing waste materials were generated, then the recordkeeping requirements of subdivision e of this subsection do not apply. The owner shall maintain records which include information on the quantity, location, and date of asbestos-containing waste disposal activities.
12. **Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.** Each owner or operator of any inactive waste disposal site that received deposits of asbestos-containing waste material generated by sources covered under subsection 3, 5, 8, or 10, shall:
- a. Comply with one of the following:
 - (1) Discharge no visible emissions to the outside air from an inactive waste disposal site subject to this subsection;
 - (2) Cover the asbestos-containing waste material with at least fifteen centimeters [6 inches] of compacted non-asbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material;
 - (3) In areas where vegetation would be difficult to maintain, cover the asbestos-containing waste material with at least sixty centimeters [2 feet] of compacted non-asbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste or cover with at least six inches [15.24 centimeters] of compacted non-asbestos-containing material and at least an additional three inches [7.62 centimeters] of a

nonasbestos crushed rock cover in place of the vegetation; or

(4) For inactive waste disposal sites for asbestos tailings, apply a resinous-based or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent. Obtain prior approval of the department to use other equally effective dust suppression agents. For purposes of this paragraph, used, spent, or other waste oil is not considered a dust suppression agent.

b. Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph 2 or 3 of subdivision a of this subsection.

(1) Display warning signs at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:

(a) Be posted in such a manner and location that a person can easily read the legend.

(b) Conform to the requirements for fifty-one-centimeter by thirty-six-centimeter [20-inch by 14-inch] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this subdivision.

(c) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
ASBESTOS DUST HAZARD	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
CANCER AND LUNG DISEASE HAZARD	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block.

Spacing between any two lines must be at least equal to the height of the upper two lines.

- (2) Fence the perimeter of the site in a manner adequate to deter access by the general public.
 - (3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.
- c. The owner or operator may use an alternative control method that has received prior approval of the department and administrator of the United States environmental protection agency rather than comply with the requirements of subdivision a or b of this subsection.
- d. Notify the department, in writing, at least forty-five days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of a new start date must be provided to the department at least ten days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:
- (1) Scheduled starting and completion dates.
 - (2) Reason for disturbing the waste.
 - (3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the department may require changes in the emission control procedures to be used.
 - (4) Location of any temporary storage site and the final disposal site.
- e. Within sixty days of a site becoming inactive, record in accordance with state law a notation on the deed to the facility property and on any instrument that would normally be examined during a title search. This notation will in perpetuity notify any potential purchaser of the property that:

- (1) The land has been used for the disposal of asbestos-containing waste material;
- (2) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in subdivision f of subsection 15 have been filed with the department; and
- (3) The site is subject to this section.

13. Air-cleaning.

a. The owner or operator who elects to use air-cleaning, as permitted in subsections 3, 5, 6, 7, 8, 10, and 11 shall:

(1) Use fabric filter collection devices except as noted in subdivision b of this subsection, doing all of the following:

(a) Ensuring that the airflow permeability, as determined by A.S.T.M. method D737-75, does not exceed nine $\text{m}^3/\text{min}/\text{m}^2$ [$30 \text{ ft}^3/\text{min}/\text{ft}^2$] for woven fabrics or eleven $\text{m}^3/\text{min}/\text{m}^2$ [$35 \text{ ft}^3/\text{min}/\text{ft}^2$] for felted fabrics, except that twelve $\text{m}^3/\text{min}/\text{m}^2$ [$40 \text{ ft}^3/\text{min}/\text{ft}^2$] for woven and fourteen $\text{m}^3/\text{min}/\text{m}^2$ [$45 \text{ ft}^3/\text{min}/\text{ft}^2$] for felted fabrics is allowed for filtering air from asbestos ore dryers.

(b) Ensuring that felted fabric weighs at least four hundred seventy-five grams per square meter [14 ounces per square yard] and is at least one and six-tenths millimeters [$1/16$ inch] thick throughout.

(c) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.

(2) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this subsection. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the asbestos material.

(3) For fabric filters installed after January 10, 1989, provide for easy inspection for faulty bags.

b. There are the following exceptions to paragraph 1 of subdivision a:

(1) If the use of fabric creates a fire or explosion hazard or the department determines that a fabric

filter is not feasible, the department may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals [40 inches water gauge pressure].

- (2) Use a high efficiency particulate air filter that is certified to be at least ninety-nine and ninety-seven hundredths percent efficient for particles with a diameter size of three-tenths microns and greater.
- (3) The department and administrator of the United States environmental protection agency may authorize the use of filtering equipment other than that described in subdivisions a and b of this subsection if the owner or operator demonstrates to the administrator and the department's satisfaction that it is equivalent to the described equipment in filtering asbestos material.

14. Reporting.

- a. Any existing source to which this section applies (with the exception of sources subject to subsections 4, 7, and 9) which has not previously supplied a notice to this department or the administrator, shall provide such notice within ninety days of the effective date of this regulation. Any new source to which this section applies shall provide notice to this department within ninety days of the effective startup date of the source. Changes to the information provided in a notice must be submitted to this department within thirty days of the change taking place. The notice shall provide the following information to the department:
 - (1) A description of the emission control equipment used for each process; and
 - (2) If a fabric filter device is used to control emissions;
 - (a) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ if the fabric filter device uses a woven fabric and; if the fabric is synthetic, whether the fill yarn is spun or not spun.
 - (b) If the fabric filter device uses a felted fabric, the density in g/m^2 , the minimum thickness in millimeters, and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$.
 - (3) If a high efficiency particulate air filter is used to control emissions, the certified efficiency.

- (4) For sources subject to subsections 10 and 11:
 - (a) A brief description of each process that generates asbestos-containing waste material;
 - (b) The average volume of asbestos-containing waste material disposed of in cubic yards per day;
 - (c) The emission control methods used in all stages of waste disposal; and
 - (d) The type of disposal site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

- (5) For sources subject to subsections 12 and 15:
 - (a) A brief description of the site; and
 - (b) The method or methods used to comply with the standard, or alternative procedures to be used.

b. The information required by subdivision a of this subsection must accompany the information required by subsection 8 of section 33-15-13-01. Active waste disposal sites subject to subsection 15 shall also comply with this provision. Roadways, demolition and renovations, spraying, and insulating materials are exempted from the requirements of section 33-15-13-01.1.

15. **Standard for active waste disposal sites.** To be an acceptable site for disposal of asbestos-containing waste material under subsections 10, 11, and 17, an active waste disposal site must meet the requirements of this subsection.

a. Either there shall be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of subdivisions c and d of this subsection must be met.

b. Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph 1 of subdivision c of this subsection must be met.

(1) Warning signs must be displayed at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

- (a) Be posted in such a manner and location that a person may easily read the legend.
- (b) Conform to the requirements of fifty-one centimeters by thirty-six centimeters [20 inches by 14 inches] upright format signs specified in 29, Code of Federal Regulations, 1910.145(d)(4) and this subsection.
- (c) Display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site	2.5 cm [1 in.] Sans Serif, Gothic, or Block
Avoid Creating Dust Breathing Asbestos Dust May Cause Lung Disease and Cancer	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block 14 Point Gothic

Spacing between lines must be at least equal to the height of the upper two lines.

- (2) The perimeter of the disposal site must be fenced in order to adequately deter access to the general public.
 - (3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.
- c. Rather than meet the no visible emission requirements of subdivision a of this subsection, an active waste disposal site would be an acceptable site if at the end of each operating day, or at least once every twenty-four-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous twenty-four-hour period is covered with either:
- (1) At least fifteen centimeters [6 inches] of compacted non-asbestos-containing material; or
 - (2) A resinous-based or petroleum-based dust suppression agent that effectively binds dust and controls wind

erosion. This agent must be used in the manner and frequency recommended for the particular dust by the manufacturer of the dust suppression agent. Other equally effective dust suppression agents may be used upon prior approval by the department. For purposes of this paragraph, used, spent, or other waste oil is not considered a dust suppression agent.

- d. Rather than meet the no visible emission requirements of subdivision a of this subsection, use an alternative emission control method that has received prior approval by the department and administrator of the United States environmental protection agency.
- e. For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:
 - (1) Maintain waste shipment records which include the following information:
 - (a) The name, address, and telephone number of the waste generator.
 - (b) The name, address, and telephone number of the transporters.
 - (c) The quantity of the asbestos-containing material in cubic yards.
 - (d) The presence of improperly enclosed or uncovered wastes or any asbestos-containing waste material not sealed in leaktight containers. Report in writing to this department by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.
 - (e) The date of the receipt.
 - (2) As soon as possible and no longer than thirty days after receipt of the waste send a copy of the signed waste shipment record to the waste generator.
 - (3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within fifteen days after receiving the waste, immediately report in writing to this department. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

- (4) Retain a copy of all records and reports required by this paragraph subdivision for at least two years.
- f. Maintain until closure, records of the location, depth and area and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.
 - g. Upon closure, comply with all the provisions of subsection 12.
 - h. Submit to this department, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.
 - i. Furnish upon request and make available during normal business for inspection by this department, all records required under this section.
 - j. Comply with subdivision d of subsection 12 if it becomes necessary to excavate or otherwise disturb asbestos-containing waste material that has been previously covered.
16. **Asbestos abatement licensing and certification.** No public employees or employees of asbestos contractors shall engage in any asbestos abatement activity or provide asbestos abatement project monitoring unless they are certified with the department as provided in this subsection. No person shall engage in any asbestos abatement activity in a public or commercial building unless the person is certified with the department as provided in this subsection. Certification will be for a period of one year from the completion date of the initial training course or the last refresher ~~source~~ course in the appropriate discipline. All asbestos contractors and firms who provide asbestos abatement or asbestos abatement project monitoring services, must be licensed with this department, as provided in this subsection, prior to beginning asbestos abatement or asbestos abatement project monitoring activities. At least one person having completed the requirements for supervisor certification of subdivision b of this subsection is required to be at the worksite at all times while work is in progress, if the work involves repair, removal, encapsulation, enclosure, or handling of regulated asbestos-containing material if the work is being conducted by an asbestos contractor or public employees. At least one onsite individual having completed the supervisor training requirement of subdivision b of this subsection is required to be present if the activity is regulated by subsection 6 and the work is being conducted by employees of the owner.
- a. Asbestos workers. All asbestos workers employed by asbestos abatement contractors and all public employees

and all other asbestos workers in public and commercial buildings engaged in the repair, removal, enclosure, encapsulation, or handling of regulated asbestos-containing material, must obtain certification as outlined in all paragraphs of this subdivision except as provided in subdivision h.

- (1) Application. Any applicant desiring certification as an asbestos worker shall make an application to the department on forms supplied by the department. Each application shall be accompanied by a nonrefundable fee of twenty-five dollars except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.
- (2) Initial training. Any applicant desiring certification as an asbestos worker shall complete the initial training requirements for asbestos worker accreditation under title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course designed for asbestos workers. The training course must have received approval from the environmental protection agency or the department.
- (3) Examination. Any applicant for certification shall pass a written examination administered by the department. The department may accept proof of successful completion of an examination administered by an environmental protection agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations may be given before requiring attendance of another initial training course. Information concerning the testing arrangements can be obtained from the department.
- (4) Refresher training. Any asbestos worker who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial

training course. The course content shall must include, ~~but not be limited to~~, a review of the changes in federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, the asbestos worker shall complete a refresher course within one year of the last refresher course.

(5) Certification renewal. Any asbestos worker who desires to renew their certification must have attended a refresher training course within twelve months prior to submittal of the renewal application. The renewal application shall include proof of attendance at such course and a recertification fee of twenty-five dollars. Certification is current for a period of twelve months from the date of the training course. If an asbestos worker does not satisfy the refresher training requirements of this subdivision within two years of the date of the initial training course or of the last refresher training course, then the individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification.

(6) The certification card issued by the department must be available at the worksite for each asbestos worker.

b. Other asbestos disciplines. Any individual, except asbestos workers, acting as or acting on behalf of an asbestos contractor or as a public employee who performs an asbestos abatement service or any individual who performs asbestos abatement project monitoring on behalf of a contracting firm or as a public employee or any other individual who performs asbestos abatement in a public or commercial building must obtain certification as outlined in all paragraphs of this subdivision. This certification requirement applies to asbestos abatement supervisors, asbestos inspectors, asbestos management planners, asbestos abatement project designers, and asbestos abatement project monitors, ~~and to public employees performing these duties~~ except as provided in subdivision h.

(1) Application. Any person desiring certification in the disciplines of asbestos inspector, asbestos management planner, asbestos abatement project designer, asbestos abatement project monitor, and asbestos abatement supervisor shall make an application to the department on forms supplied by

the department. Each application shall be accompanied by a nonrefundable fee of twenty-five dollars for each discipline within which the applicant is seeking certification except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.

(2) The initial training requirements are as follows:

(a) Any applicant desiring certification as an asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement supervisor or any individual required to meet the training requirements of paragraph 8 of subdivision c of subsection 6 shall complete the initial training requirements set forth in title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course in the appropriate discipline. The training course must have received approval in the respective discipline from the environmental protection agency or the department. ~~For the purpose of certification, the four-day asbestos abatement supervisor training course will fulfill the initial training requirements for asbestos abatement project designer.~~

(b) Asbestos abatement project monitors must have a valid state certification as asbestos abatement supervisor or asbestos abatement project designer and shall have completed a NIOSH 582 or equivalent air sampling course of not less than four days in length.

(3) Examination. Any applicant for certification in a specific discipline except asbestos abatement project monitor shall pass a written examination administered by the department for that discipline. The department may accept proof of successful completion of an examination administered by an environmental protection agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three

examinations shall be given before requiring attendance of another initial training course.

- (4) Refresher training. Any asbestos abatement supervisor, asbestos inspector, asbestos management planner, or asbestos abatement project designer who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, or any individual who must meet the training requirements of paragraph 8 of subdivision c of subsection 6 shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial training course. The course content shall ~~must include, but not be limited to,~~ a review of the changes in the federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, these persons shall complete a refresher course designed for the respective disciplines within one year of the last refresher course.
 - (5) Certification renewal. Any asbestos abatement supervisor, asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement project monitor who desires to renew his or her certification must have attended a refresher training course in the appropriate discipline within twelve months prior to submittal of the renewal application. The renewal application shall include proof of attendance at such a course and a recertification fee of twenty-five dollars per discipline. Certification is current for a period of twelve months from the date of the training course. If an individual does not satisfy the refresher training requirements of this subdivision in their respective discipline within two years of the date of the initial training or of the last refresher training, then that individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification. Refresher training of the air sampling course for project monitors is not required.
 - (6) The certification card issued by the department must be available at the worksite.
- c. Asbestos contractor license. Each contractor who performs asbestos abatement services or performs asbestos abatement project monitoring services in the state shall obtain an

asbestos contractor license except as provided in subdivision h.

- (1) Submit an application to the department on forms supplied by the department. An application shall be accompanied by a nonrefundable fee of one hundred dollars.
 - (2) The license fee will cover the period from January first through December thirty-first of each year unless the license is suspended, revoked, or denied as specified in subdivision f. The fee shall be one hundred dollars regardless of the application date. Following the initial submittal, the renewal fee shall be due and payable by January thirtieth of the following year.
 - (3) A contractor seeking an asbestos contractor license must have completed the appropriate training and certification requirements in subdivision b of this subsection. The contractor may designate an employee who has completed this requirement to serve as the contractor's agent for the purposes of obtaining an asbestos contractor license.
 - (4) Asbestos contractors who provide multiple services are not required to pay additional license fees.
 - (5) All certifiable services offered by an asbestos contractor must be performed by persons certified in accordance with subdivisions a and b of this subsection.
 - (6) A copy of the asbestos contractor license shall be made available at the worksite.
 - (7) This license does not exempt, supersede, or replace any other state or local licensing or permitting requirements.
- d. Approved initial and refresher training courses. The department will maintain and provide a listing of approved initial and refresher training courses. Applicants seeking approval of courses, other than those present on the department list, must submit information on the course content ~~on--application--forms---supplied---by~~ to the department. The course content must satisfy the minimum requirements of the model contractor accreditation plan as amended February 3, 1994. The department will advise the applicant whether the course is approved within thirty days of receipt of the necessary information. Training course providers will be required to meet all applicable requirements contained in title 40, Code of Federal

Regulations, part 763, appendix C to subpart E as amended February 3, 1994.

- e. Reciprocity. Each applicant for asbestos worker or asbestos contractor certification who is licensed or certified for asbestos abatement in another state may petition the department for certification without written examination. The department shall evaluate the requirements in such other states and shall issue the certification without examination if the department determines that the requirements in such other states are at least as stringent as the requirements for certification in North Dakota. Each application for certification pursuant to this subdivision shall submit an application accompanied by a nonrefundable fee of twenty-five dollars.
- f. Suspension, revocation, or denial. An asbestos certification or license may be suspended, revoked, or denied if:
 - (1) Violations of the requirements of this section are noted;
 - (2) Another state has revoked, suspended, or denied a license or certification for violations of applicable standards;
 - (3) An incomplete application is filed; or
 - (4) The required fee is not submitted.
- g. Public employees will not be required to pay the twenty-five dollar certification or recertification fees.
- h. Any individual or asbestos contractor engaged in repair, removal, enclosure, or encapsulation activities involving less than or equal to three square feet [0.28 square meters] or three linear feet [0.91 meters] of asbestos-containing materials, are exempt from the certification and licensing requirements of this subsection.
- i. Upon written request, the department, at its discretion, may review training course material and conduct an audit of a training course to determine if the course and examination meet the training requirements of title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994. Under the authority granted to this department by the environmental protection agency ~~on April 21, 1989~~, courses that this department determine to meet the model

contractor accreditation plan shall be listed in the federal register list of approved courses.

- (1) Training courses seeking department approval shall submit the material necessary for the department to conduct the review including the submittal requirements listed in title 40, Code of Federal Regulations, part 763, appendix C, subpart ~~III~~ E, model contractor accreditation plan as amended February 3, 1994.
- (2) The department must be provided access, without cost, to any asbestos course conducted in this state to determine if the course meets the requirement of the environmental protection agency model contractor accreditation plan as amended February 3, 1994. Following such an audit, the department may rescind approval or refuse to accept as adequate any course determined not to meet the training requirements of the environmental protection agency model contractor accreditation plan.
- (3) Any training provider requesting a review of the provider's course for approval by this department shall submit a filing fee of one hundred fifty dollars plus an application processing fee. The application processing fee will be based on the actual processing costs, including time spent by this department to conduct the course review and course audit, and any travel and lodging expenses the department incurs conducting these items. Following the course review and audit, and after making a determination on the accreditation status of the course, a statement will be sent to the applicant listing the remaining application processing costs. The statement must be sent within fifteen months of the submittal of the initial filing fee.

17. **Standard for operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.** Each owner or operator of an operation that converts regulated asbestos-containing material and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

- a. Obtain the prior written approval of this department and the administrator of the United States environmental protection agency to construct the facility. To obtain approval, the owner or operator shall provide the department and the administrator of the United States environmental protection agency with the following information:

- (1) Application to construct pursuant to chapter 33-15-14.
 - (2) In addition to the information requirements of chapter 33-15-14, provide a:
 - (a) Description of the waste feed handling and temporary storage.
 - (b) Description of process operating conditions.
 - (c) Description of the handling and temporary storage of the end products.
 - (d) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.
 - (3) Performance test protocol including provisions for obtaining information required under subdivision b of this subsection.
 - (4) The department may require that a demonstration of the process be performed prior to approval of the application to construct.
- b. Conduct a startup performance test. Test results must include:
- (1) A detailed description of the types and quantities of nonasbestos material, regulated asbestos containing material, and asbestos-containing waste material processed (e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc.). Test feed is to include the full range of materials that will be encountered in actual operation of the process.
 - (2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.
 - (3) Results of analyses using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as eight-hour composite samples (one 200-gram [seven-ounce] sample per hour), beginning with the initial introduction of regulated asbestos-containing material or asbestos-containing waste material and continuing until the end of the performance test.

- (4) A description of operating parameters, such as temperature and residence times, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.
 - (5) The length of the test.
- c. During the initial ninety days of operation;
- (1) Continuously monitor and log the operating parameters identified during startup performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.
 - (2) Monitor input materials to ensure that they are consistent with the test feed materials described during startup performance tests in paragraph 1 of this subdivision.
 - (3) Collect and analyze samples taken as ten-day composite samples (one 200-gram [seven-ounce] sample collected every eight hours of operation) of all output materials for the presence of asbestos. Composite samples may be for fewer than ten days. Transmission electron microscopy must be used to analyze the output materials for the presence of asbestos. During the initial ninety-day period, all output materials must be stored onsite until analysis shows the material to be asbestos-free or be disposed of as asbestos-containing waste material according to subsection 11.
- d. After the initial ninety days of operation:
- (1) Continuously monitor and record the operating parameters identified during startup performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output material shall be:
 - (a) Disposed of as asbestos-containing waste material according to subsection 11;
 - (b) Recycled as waste feed during process operations within the established range of operating conditions; or

- (c) Stored temporarily onsite in a leaktight container until analyzed for asbestos content. Any product material that is not asbestos-free shall either be disposed of as asbestos-containing waste material or recycled as waste feed to the process.
- (2) Collect and analyze monthly composite samples (one 200-gram [seven-ounce] sample collected every eight hours of operation) of the output material. Transmission electron microscopy must be used to analyze the output material for the presence of asbestos.
- e. Discharge no visible emissions to the outside air from any part of the operation or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to or are vented to the outside air.
- f. Maintain records onsite and include the following information:
 - (1) Results of startup performance testing and all subsequent performance testing, including operating parameters, feed characteristics, and analyses of output materials.
 - (2) Results of the composite analysis required during the initial ninety days of operation under subdivision c of this subsection.
 - (3) Results of the monthly composite analysis required under subdivision d of this subsection.
 - (4) Results of continuous monitoring and logs of process operating parameters required under subdivisions c and d of this subsection.
 - (5) Information on waste shipments received as required in subdivision e of subsection 15.
 - (6) For output materials where no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which output materials were sold or deposited and the date of sale or disposal.
 - (7) Retain records required by this subdivision for at least two years.
- g. Submit the following reports to the department:

- (1) A report for each analysis of product composite samples performed during the initial ninety days of operation.
 - (2) A quarterly report, including the following information concerning activities during each consecutive three-month period:
 - (a) Results of analyses of monthly product composite samples.
 - (b) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.
 - (c) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily onsite until analyzed for asbestos content.
 - (d) The information on waste disposal activities as required in subdivision f of subsection 15.
- h. Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this section. Output material in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the startup performance testing, unless shown by transmission electron microscopy analysis to be asbestos-free shall be considered to be asbestos-containing waste and must be handled and disposed of in accordance with subsections 11 and 15 or reprocessed while all of the established operating parameters are being met.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; January 1, 1996.

General Authority: NDCC 23-25-03, 23-25-03.1

Law Implemented: NDCC 23-25-03, 23-25-03.1

CHAPTER 33-15-14

33-15-14-01.1. Definitions. For the purposes of this chapter:

1. "Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
2. "Construction, installation, or establishment" means:
 - a. For sources subject to a standard or requirement under chapters 33-15-13 and 33-15-15 (excluding increment consumption by nonmajor sources), and 33-15-22, it shall have the meaning given for construction in each of the respective chapters.
 - b. For all other sources it means the placement or erection, including fabrication, demolition, or modification, of an air contaminant emissions unit and any equipment, process, or structure that will be used to reduce, physically or chemically change, or transmit to the atmosphere any air contaminant. This does not include the building that houses the source, site work, foundations, or other equipment which does not affect the amount, ambient concentration, or type of air contaminants that are emitted. With respect to a physical change or a change in the method of operation it means those onsite activities which will affect an existing emissions unit or establishment of a new unit that emits to the atmosphere.
3. "Emissions unit" has the meaning given to it in section 33-15-14-06.
4. "Minor source" means any designated air contaminant source under section 33-15-14-01 which is not required to obtain a title V permit to operate under section 33-15-14-06.
5. "Potential to emit" has the meaning given to it in section 33-15-14-06.
6. "Stationary source" has the meaning given to it in section 33-15-14-06.

History: Effective March 1, 1994; amended effective January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-14-06. Title V permit to operate.

1. Definitions. For purposes of this section:

- a. "Affected source" means any source that includes one or more affected units.
- b. "Affected state" means any state that is contiguous to North Dakota whose air quality may be affected by a source subject to a proposed title V permit, permit modification, or permit renewal or which is within fifty miles [80.47 kilometers] of the permitted source.
- c. "Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under title VI of the Federal Clean Air Act.
- d. "Applicable requirement" means all of the following as they apply to emissions units at a source that is subject to requirements of this section (including requirements that have been promulgated or approved by the United States environmental protection agency through rulemaking at the time of issuance but have future-effective compliance dates):
 - (1) Any standard or other requirement provided for in the North Dakota state implementation plan approved or promulgated by the United States environmental protection agency through rulemaking under title I of the Federal Clean Air Act that implements the relevant requirements of the Federal Clean Air Act, including any revisions to that plan.
 - (2) Any term or condition of any permit to construct issued pursuant to this chapter.
 - (3) Any standard or other requirement under section 111 including section 111(d) of the Federal Clean Air Act.
 - (4) Any standard or other requirement under section 112 of the Federal Clean Air Act including any requirement concerning accident prevention under section 112(r)(7) of the Federal Clean Air Act.
 - (5) Any standard or other requirement of the acid rain program under title IV of the Federal Clean Air Act.
 - (6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Federal Clean Air Act.

- (7) Any standard or other requirement governing solid waste incineration, under section 129 of the Federal Clean Air Act.
 - (8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Federal Clean Air Act.
 - (9) Any standard or other requirement for tank vessels under section 183(f) of the Federal Clean Air Act.
 - (10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Federal Clean Air Act.
 - (11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Clean Air Act, unless the administrator of the United States environmental protection agency has determined that such requirements need not be contained in a title V permit.
 - (12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Federal Clean Air Act.
- e. "Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Code of Federal Regulations 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this section, or in any other regulations implementing title V of the Federal Clean Air Act, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.
 - f. "Draft permit" means the version of a permit for which the department offers public participation or affected state review.
 - g. "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based

emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

- h. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
- i. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act. This term does not alter or affect the definition of unit for purposes of title IV of the Federal Clean Air Act.
- j. "Environmental protection agency" or the "administrator" means the administrator of the United States environmental protection agency or the administrator's designee.
- k. "Federal Clean Air Act" means the Federal Clean Air Act, as amended [42 U.S.C. 7401 et seq.] ~~or--the--regulations promulgated thereunder, as they existed on May 1, 1993.~~
- l. "Final permit" means the version of a title V permit issued by the department that has completed all review procedures required in this section.
- m. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- n. "General permit" means a title V permit to operate that meets the requirements of subdivision d of subsection 5.
- o. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph 1 or 2. For the purposes of defining "major source", a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the contaminant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as

described in the standard industrial classification manual, 1987.

- (1) A major source under section 112 of the Federal Clean Air Act, which is defined as:
 - (a) For contaminants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons [9.07 metric tons] per year (tpy) or more of any hazardous air contaminant which has been listed pursuant to section 112(b) of the Federal Clean Air Act, twenty-five tons [22.67 metric tons] per year or more of any combination of such hazardous air contaminants, or such lesser quantity as the administrator of the United States environmental protection agency may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.
 - (b) For radionuclides, "major source" shall have the meaning specified by the administrator of the United States environmental protection agency by rule.
- (2) A major stationary source of air contaminants, that directly emits or has the potential to emit, one hundred tons [90.68 metric tons] per year or more of any air contaminant (including any major source of fugitive emissions of any such contaminant, as determined by rule by the administrator of the United States environmental protection agency). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:
 - (a) Coal cleaning plants (with thermal dryers).
 - (b) Kraft pulp mills.
 - (c) Portland cement plants.

- (d) Primary zinc smelters.
- (e) Iron and steel mills.
- (f) Primary aluminum ore reduction plants.
- (g) Primary copper smelters.
- (h) Municipal incinerators capable of charging more than two hundred fifty tons [226.80 metric tons] of refuse per day.
- (i) Hydrofluoric, sulfuric, or nitric acid plants.
- (j) Petroleum refineries.
- (k) Lime plants.
- (l) Phosphate rock processing plants.
- (m) Coke oven batteries.
- (n) Sulfur recovery plants.
- (o) Carbon black plants (furnace process).
- (p) Primary lead smelters.
- (q) Fuel conversion plants.
- (r) Sintering plants.
- (s) Secondary metal production plants.
- (t) Chemical process plants.
- (u) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input.
- (v) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels.
- (w) Taconite ore processing plants.
- (x) Glass fiber processing plants.
- (y) Charcoal production plants.
- (z) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input.

- (aa) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Federal Clean Air Act, but only with respect to those air contaminants that have been regulated for that category.
- p. "Permit modification" means a revision to a title V permit that meets the requirements of subdivision e of subsection 6.
- q. "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, under this section (whether such costs are incurred by the department or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).
- r. "Permit revision" means any permit modification or administrative permit amendment.
- s. "Potential to emit" means the maximum capacity of a stationary source to emit any air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator of the United States environmental protection agency and the department.
- t. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator of the United States environmental protection agency for review.
- u. "Regulated air contaminant" means the following:
- (1) Nitrogen oxides or any volatile organic compounds.
 - (2) Any contaminant for which a national ambient air quality standard has been promulgated.
 - (3) Any contaminant that is subject to any standard promulgated under section 111 of the Federal Clean Air Act.
 - (4) Any class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.

- (5) Any contaminant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Federal Clean Air Act, including sections 112(g), (j), and (r) of the Federal Clean Air Act, including the following:
 - (a) Any contaminant subject to requirements under section 112(j) of the Federal Clean Air Act. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Federal Clean Air Act, any contaminant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the Federal Clean Air Act; and
 - (b) Any contaminant for which the requirements of section 112(g)(2) of the Federal Clean Air Act have been met, but only with respect to the individual source subject to section 112(g)(2) of the Federal Clean Air Act requirement.
- v. "Regulated contaminant" for fee calculation, which is used only for subsection 8, means any "regulated air contaminant" except the following:
 - (1) Carbon monoxide.
 - (2) Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.
 - (3) Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.
- w. "Renewal" means the process by which a permit is reissued at the end of its term.
- x. "Responsible official" means one of the following:
 - (1) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating

facilities applying for or subject to a permit and either:

- (a) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars).
 - (b) The delegation of authority to such representatives is approved in advance by the department.
- (2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
 - (3) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the United States environmental protection agency).
 - (4) For affected sources:
 - (a) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Federal Clean Air Act or the regulations promulgated thereunder are concerned.
 - (b) The designated representative for any other purposes under this section.
- y. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
 - z. "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act.
 - aa. "Title V permit to operate or permit (unless the context suggests otherwise)" means any permit or group of permits covering a source that is subject to this section that is

issued, renewed, amended, or revised pursuant to this section.

- bb. "Title V source" means any source subject to the permitting requirements of this section, as provided in subsection 2.

2. Applicability.

- a. This section is applicable to the following sources:

- (1) Any major source.
- (2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Federal Clean Air Act.
- (3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Clean Air Act.
- (4) Any affected source.
- (5) Any source in a source category designated by the administrator of the United States environmental protection agency.

- b. The following source categories are exempt from the requirements of this section:

- (1) All sources listed in subdivision a that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Federal Clean Air Act, are exempt from the obligation to obtain a title V permit until such time as the administrator of the United States environmental protection agency completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions.
- (2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Federal Clean Air Act after July 21, 1992, those the administrator of the United States environmental protection agency determines to be exempt from the requirement to obtain a title V source permit at the time that the new standard is promulgated.

- (3) Any source listed as exempt from the requirement to obtain a permit under this section may opt to apply for a title V permit. Sources that are exempted by paragraphs 1 and 2 of this subdivision and which do not opt to apply for a title V permit to operate are subject to the requirements of section 33-15-14-03.
- (4) The following source categories are exempted from the obligation to obtain a permit under this section.
 - (a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 60, subpart AAA - standards of performance for new residential wood heaters.
 - (b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61, subpart M - national emission standard for hazardous air ~~contaminants~~ pollutants for asbestos, section 61.145, standard for demolition and renovation.

c. For major sources, the department will include in the permit all applicable requirements for all relevant emissions units in the major source.

For any nonmajor source subject to the requirements of this section, the department will include in the permit all applicable requirements applicable to the emissions units that cause the source to be subject to this section.

d. Fugitive emissions from a source subject to the requirements of this section shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

3. **Scope.** Nothing within this section shall relieve the owner or operator of a source of the requirement to obtain a permit to construct under section 33-15-14-02 or to comply with any other applicable standard or requirement of this article.

4. **Permit applications.**

a. **Duty to apply.** For each title V source, the owner or operator shall submit a timely and complete permit application in accordance with this subdivision.

(1) **Timely application.**

(a) A timely application for a source applying for a title V permit for the first time is one that is submitted within one year of the United States environmental protection agency approval of this rule or in accordance with the following schedule, whichever is earlier:

[1] The following designated air contaminant sources shall submit their initial application by ~~February~~ May 1, 1995.

[a] Crude oil and natural gas production facilities.

[b] Natural gas processing facilities.

[c] Internal combustion engines used for natural gas transmission or distribution.

[d] Stationary gas turbines used for natural gas transmission or distribution.

[2] Except as provided in subparagraphs b, c, and d of this paragraph, all other applications shall be submitted by ~~November 15, 1995~~ August 7, 1996.

(b) Title V sources required to meet the requirements under section 112(g) of the Federal Clean Air Act, or to have a permit to construct under section 33-15-14-02, shall file a complete application to obtain the title V permit or permit revision within twelve months after commencing operation. Where an existing title V permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than eighteen months, prior to the date of permit expiration.

(d) Applications for initial phase II acid rain permits shall be submitted to the department by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(2) Complete application. To be deemed complete, an application must provide all information required pursuant to subdivision c, except that applications

for a permit revision need supply such information only if it is related to the proposed change. Information required under subdivision c must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with subdivision d. Unless the department determines that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in paragraph 3 of subdivision a of subsection 6. If, while processing an application that has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subdivision b of subsection 6, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.

- (3) Confidential information. If a source has submitted information to the department under a claim of confidentiality, the source must also submit a copy of such information directly to the administrator of the United States environmental protection agency when directed to do so by the department.
- b. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.
- c. Standard application form and required information. All applications for a title V permit to operate shall be made on forms supplied by the department. Information as described below for each emissions unit at a title V source shall be included in the application. Emissions units or activities that have the potential to emit less than the following quantities of air contaminants need not be included in permit applications:

Particulate: 5 2 tons [4-54 1.81 metric tons]
per year
Inhalable particulate: 5 2 tons [4-54 1.81 metric tons]
per year
Sulfur dioxide: 10 2 tons [9-07 1.81 metric tons]
per year
Hydrogen sulfide: 2-5 2 tons [2-27 1.81 metric tons]
per year
Carbon monoxide: 25 2 tons [22-68 1.81 metric tons]
per year
Nitrogen oxides: 10 2 tons [9-07 1.81 metric tons]
per year
Ozone: 10 2 tons [9-07 1.81 metric tons]
per year
Reduced sulfur compounds: 2-5 2 tons [2-27 1.81 metric tons]
per year
Volatile organic compounds: 10 2 tons [9-07 1.81 metric tons]
per year

~~This exemption does not apply to contaminants listed in section 112(b) of the Federal Clean Air Act.~~

All other regulated contaminants including those in section 112.(b) of the Federal Clean Air Act: 0.5 tons [0.45 metric tons] per year.

Where a contaminant could be placed in more than one category, the smallest emission level applies.

However, for exempted activities or emissions units, a list of such activities or units must be included in the application. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under ~~chapter 33-15-23~~ section 33-15-23-04. The application, shall, as a minimum, include the elements specified below:

- (1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact.
- (2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.
- (3) The following emissions-related information:
 - (a) All emissions of contaminants for which the source is major, and all emissions of regulated

air contaminants. A permit application shall describe all emissions of regulated air contaminants emitted from any emissions unit, except where such units are exempted under this subdivision.

- (b) Identification and description of all points of emissions described in subparagraph a in sufficient detail to establish the basis for fees and applicability of requirements of the Federal Clean Air Act and this article.
 - (c) Emissions rates in tons per year and, in such terms ~~as are necessary to establish compliance with~~ of the applicable standard, and terms that are necessary to establish compliance with the applicable compliance method.
 - (d) Fuels, fuel use, raw materials, production rates, and operating schedules.
 - (e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 - (f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated contaminants.
 - (g) Other information required by any applicable requirement including information related to stack height limitations developed pursuant to chapter 33-15-18.
 - (h) Calculations on which the information in subparagraphs a through g is based.
- (4) The following air pollution control requirements:
 - (a) Citation and description of all applicable requirements; and
 - (b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.
 - (5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Federal Clean Air Act or of this article or to determine the applicability of such requirements.
 - (6) An explanation of any proposed exemptions from otherwise applicable requirements.

- (7) Information that the department determines to be necessary to define alternative operating scenarios identified by the source or to define permit terms and conditions.
- (8) A compliance plan for all title V sources that contains all the following:
 - (a) A description of the compliance status of the source with respect to all applicable requirements.
 - (b) A description as follows:
 - [1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - [2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
 - [3] For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
 - (c) A compliance schedule as follows:
 - [1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - [2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
 - [3] A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an

enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

- (d) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.
 - (e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.
- (9) Requirements for compliance certification, including the following:
- (a) A certification of compliance with all applicable requirements by a responsible official consistent with subdivision d and section 114(a)(3) of the Federal Clean Air Act;
 - (b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - (c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement; and
 - (d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Federal Clean Air Act.

(10) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Federal Clean Air Act.

d. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

5. Permit content.

a. Standard permit requirements. Each permit issued under this section shall include, as a minimum, the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(a) The permit must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit must state that, where an applicable requirement of the Federal Clean Air Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Federal Clean Air Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator of the United States environmental protection agency and the department.

(c) Where the state implementation plan ~~of this article~~ allows a determination of an alternative emission limit at a title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the department elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

- (2) Permit duration. Each title V permit to operate shall expire upon the fifth anniversary of its issuance.
- (3) Monitoring and related recordkeeping and reporting requirements.
 - (a) Each permit shall contain the following requirements with respect to monitoring:
 - [1] All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the Federal Clean Air Act;
 - [2] Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subparagraph c. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this item; and
 - [3] As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.
 - (b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:
 - [1] Records of required monitoring information that include the following:
 - [a] The date, place as defined in the permit, and time of sampling or measurements;
 - [b] The dates analyses were performed;

- [c] The company or entity that performed the analyses;
 - [d] The analytical techniques or methods used;
 - [e] The results of such analyses; and
 - [f] The operating conditions as existing at the time of sampling or measurement;
- [2] Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
- (c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:
- [1] Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subdivision d of subsection 4.
 - [2] Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The department shall define "prompt" in the permit consistent with chapter 33-15-01 and the applicable requirements.
- (4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Federal Clean Air Act or the regulations promulgated thereunder.
- (a) No permit revision shall be required for increases in emissions that are authorized by

allowances acquired pursuant to title IV of the Federal Clean Air Act, or the regulations promulgated thereunder, provided that such increases do not require a permit revision under any other applicable requirement.

- (b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - (c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Federal Clean Air Act.
- (5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
- (6) Provisions stating the following:
- (a) The permittee must comply with all conditions of the title V permit. Any permit noncompliance constitutes a violation of the Federal Clean Air Act and this article and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
 - (b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 - (c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
 - (d) The permit does not convey any property rights of any sort, or any exclusive privilege.
 - (e) The permittee must furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the

permit or to determine compliance with the permit. Upon request, the permittee must also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee must also furnish such records directly to the administrator of the United States environmental protection agency along with a claim of confidentiality.

- (7) A provision to ensure that the source pays fees to the department consistent with the fee schedule ~~approved-pursuant-to~~ in chapter 33-15-23.
- (8) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit and the state implementation plan ~~or-this-article~~.
- (9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the department. Such terms and conditions:
 - (a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
 - (b) Shall extend the permit shield described in subdivision f to all terms and conditions under each such operating scenario; and
 - (c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this section.
- (10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements, including ~~this-article~~ and the state implementation plan, provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:
 - (a) Shall include all terms required under subdivisions a and c to determine compliance;

- (b) Shall extend the permit shield described in subdivision f to all terms and conditions that allow such increases and decreases in emissions; and
 - (c) Must meet all applicable requirements and requirements of this section.
- (11) If a permit applicant requests it, the department shall issue permits that contain terms and conditions, including all terms required under subdivisions a and c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements provided the changes in emissions are not modifications under title I of the Federal Clean Air Act and the changes do not exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. The permittee shall supply written notification at least seven days prior to the change to the department and the administrator of the United States environmental protection agency and shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. The permit shield described in subdivision f shall extend to terms and conditions that allow such increases and decreases in emissions.

b. Federally enforceable requirements.

- (1) All terms and conditions in a title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator of the United States environmental protection agency and citizens under the Federal Clean Air Act.
- (2) Notwithstanding paragraph 1, the department shall specifically designate as not being federally

enforceable under the Federal Clean Air Act any terms and conditions included in the permit that are not required under the Federal Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of subsections 6 and 7, or of this subsection, other than those contained in this subdivision.

c. Compliance requirements. All title V permits shall contain the following elements with respect to compliance:

- (1) Consistent with paragraph 3 of subdivision a, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a title V permit shall contain a certification by a responsible official that meets the requirements of subdivision d of subsection 4.
- (2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department or an authorized representative to perform the following:
 - (a) Enter upon the permittee's premises where a title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
 - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - (c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
 - (d) As authorized by the Federal Clean Air Act and this article, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
- (3) A schedule of compliance consistent with paragraph 8 of subdivision c of subsection 4.
- (4) Progress reports consistent with an applicable schedule of compliance and paragraph 8 of subdivision c of subsection 4 to be submitted at

least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

- (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
 - (b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
- (5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
- (a) The frequency, which is annually or such more frequent periods as specified in the applicable requirement or by the department, of submissions of compliance certifications;
 - (b) In accordance with paragraph 3 of subdivision a, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices. The means for monitoring shall be contained in applicable requirements or United States environmental protection agency guidance;
 - (c) A requirement that the compliance certification include the following:
 - [1] The identification of each term or condition of the permit that is the basis of the certification;
 - [2] The compliance status;
 - [3] Whether compliance was continuous or intermittent;
 - [4] The methods used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph 3 of subdivision a; and
 - [5] Such other facts as the department may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the administrator of the United States environmental protection agency as well as to the department; and

(e) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Federal Clean Air Act.

(6) Such other provisions as the department may require.

d. General permits.

(1) The department may, after notice and opportunity for public participation provided under subdivision h of subsection 6, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other title V permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit ~~notwithstanding.~~ Notwithstanding the shield provisions of subdivision f, the source shall be subject to enforcement action for operation without a title V permit to operate if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Federal Clean Air Act. The department is not required to issue a general permit in lieu of individual title V permits.

(2) Title V sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or must apply for a title V permit to operate consistent with subsection 4. The department may, in the general permit, provide for applications which deviate from the requirements of subsection 4, provided that such applications meet the requirements of title V of the Federal Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under subdivision h of subsection 6, the department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

e. Temporary sources. The department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

- (1) Conditions that will assure compliance with all applicable requirements at all authorized locations;
- (2) Requirements that the owner or operator notify the department at least ten days in advance of each change in location; and
- (3) Conditions that assure compliance with all other provisions of this section.

f. Permit shield.

(1) Except as provided in this section, upon written request by the applicant, the department shall include in a title V permit to operate a provision stating that ~~as-of-the-date-of-permit--issuance,--the source--is--considered--to--be-in-compliance-with-any applicable---requirements~~ compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance, provided that:

- (a) Such applicable requirements are included and are specifically identified in the permit; or
- (b) The department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this subdivision or in any title V permit shall alter or affect the following:

- (a) The provisions of section 303 of the Federal Clean Air Act (emergency orders), including the authority of the administrator of the United States environmental protection agency under that section;

- (b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
- (c) The applicable requirements of the acid rain program, consistent with section 408(a) of the Federal Clean Air Act; or
- (d) The ability of the United States environmental protection agency to obtain information from a source pursuant to section 114 of the Federal Clean Air Act.

g. Emergency provision.

- (1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 3 are met.
- (3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (a) An emergency occurred and that the permittee can identify the causes of the emergency;
 - (b) The permitted facility was at the time being properly operated;
 - (c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 - (d) The permittee submitted notice of the emergency to the department within one working day of the time when emission limitations were exceeded due to the emergency. This notice fulfills the

requirement of item 2 of subparagraph c of paragraph 3 of subdivision a of subsection 5. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

- (4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (5) This provision is in addition to any emergency or upset provision contained in any applicable requirement and the malfunction notification required under subdivision b of subsection 2 of section 33-15-01-13 when a threat to health and welfare would exist.

6. Permit issuance, renewal, reopenings, and revisions.

a. Action on application.

- (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:
 - (a) The department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under subdivision d of subsection 5.
 - (b) Except for modifications qualifying for minor permit modification procedures under paragraphs 1 and 2 of subdivision e, the department has complied with the requirements for public participation under subdivision h;
 - (c) The department has complied with the requirements for notifying and responding to affected states under subdivision b of subsection 7;
 - (d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this section; and
 - (e) The administrator of the United States environmental protection agency has received a copy of the proposed permit and any notices required under subdivisions a and b of subsection 7, and has not objected to issuance of the permit under subdivision c of

subsection 7 within the time period specified therein.

- (2) Except for applications received during the initial transitional period described in 40 CFR 70.4(b)(11) or under regulations promulgated under title IV or title V of the Federal Clean Air Act for the permitting of affected sources under the acid rain program, the department shall take final action on each permit application, including a request for permit modification or renewal, within eighteen months after receiving a complete application.
- (3) The department shall provide notice to the applicant of whether the application is complete. Unless the department requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete. For modifications processed through the minor permit modification procedures, ~~such---as---these~~ in paragraphs 1 and 2 of subdivision e, a completeness determination is not required.
- (4) The department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The department shall send this statement to the United States environmental protection agency and to any other person who requests it.
- (5) The submittal of a complete application shall not affect the requirement that any source have a permit to construct under section 33-15-14-02.

b. Requirement for a permit.

- (1) Except as provided in the following sentence, paragraphs 2 and 3, subparagraph e of paragraph 1 of subdivision e, and subparagraph e of paragraph 2 of subdivision e, no title V source may operate after the time that it is required to submit a timely and complete application under this section, except in compliance with a permit issued under this section. If a title V source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have a title V permit is not a violation of this section until the department takes final action on the permit application, except as noted in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to

paragraph 3 of subdivision a, and as required by paragraph 2 of subdivision a of subsection 4, the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application. For timely and complete renewal applications for which the department has failed to issue or deny the renewal permit before the expiration date of the previous permit, all the terms and conditions of the permit, including the permit shield that was granted pursuant to subdivision f of subsection 5 shall remain in effect until the renewal permit has been issued or denied.

- (2) A permit revision is not required for section 502(b)(10) changes provided:
- (a) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or title I of the Federal Clean Air Act.
 - (b) The changes do not exceed the emissions allowable under the title V permit whether expressed therein as a rate of emissions or in terms of total emissions.
 - (c) A permit to construct under section 33-15-14-02 has been issued, if required.
 - (d) The facility provides the department and the administrator of the United States environmental protection agency with written notification at least seven days in advance of the proposed change. The written notification shall include a description of each change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

- (3) A permit revision is not required for changes that are not addressed or prohibited by the permit provided:
- (a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

- (b) The source must provide contemporaneous written notice to the department and the administrator of the United States environmental protection agency of each such change, except for changes that qualify as insignificant under the provisions of subdivision c of subsection 4. Such written notice shall describe each such change, including the date, any change in emissions, contaminants emitted, and any applicable requirement that would apply as a result of the change.
- (c) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air contaminant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.
- (d) The changes are not subject to any requirements under title IV of the Federal Clean Air Act.
- (e) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act.
- (f) A permit to construct under section 33-15-14-02 has been issued, if required.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

c. Permit renewal and expiration.

- (1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and the United States environmental protection agency review, that apply to initial permit issuance; and
- (2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subdivision b of subsection 6 and subparagraph c of paragraph 1 of subdivision a of subsection 4.

d. Administrative permit amendments.

- (1) An "administrative permit amendment" is a permit revision that:

- (a) Corrects typographical errors;
 - (b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (c) Requires more frequent monitoring or reporting by the permittee;
 - (d) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department;
 - (e) Incorporates into the title V permit the requirements from a permit to construct, provided that the permit to construct review procedure is substantially equivalent to the requirements of subsections 6 and 7 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in subsection 5; or
 - (f) Incorporates any other type of change which the administrator of the United States environmental protection agency has approved as being an administrative permit amendment as part of the approved title V operating permit program.
- (2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.
- (3) Administrative permit amendment procedures. An administrative permit amendment may be made by the department consistent with the following:
- (a) The department shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this subdivision.

(b) The department shall submit a copy of the revised permit to the administrator of the United States environmental protection agency.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request provided a permit to construct under section 33-15-14-02 has been issued, if required.

(4) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in subdivision f of subsection 5 for administrative permit amendments made pursuant to subparagraph e of paragraph 1 of subdivision d which meet the relevant requirements of subsections 5, 6, and 7 for significant permit modifications.

e. Permit modification. A permit modification is any revision to a title V permit that cannot be accomplished under the provisions for administrative permit amendments under subdivision d of this subsection. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.

(1) Minor permit modification procedures.

(a) Criteria.

[1] Minor permit modification procedures may be used only for those permit modifications that:

[a] Do not violate any applicable requirement;

[b] Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

[c] Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

[d] Do not seek to establish or change a permit term or condition for which

there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I of the Federal Clean Air Act; and an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Clean Air Act;

[e] Are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act; and

[f] Are not required to be processed as a significant modification.

[2] Notwithstanding item 1 of this subparagraph and subparagraph a of paragraph 2 of subdivision e, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan, this---article or in applicable requirements promulgated by the United States environmental protection agency.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

[1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

[2] The source's suggested draft permit;

[3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of

minor permit modification procedures and a request that such procedures be used; and

[4] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. Within five working days of receipt of a complete permit modification application, the department shall notify the administrator of the United States environmental protection agency and affected states of the requested permit modification. The department shall promptly send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The department may not issue a final permit modification until after the United States environmental protection agency forty-five-day review period or until the United States environmental protection agency has notified the department that the United States environmental protection agency will not object to issuance of the permit modification, whichever is first, although the department can approve the permit modification prior to that time. Within ninety days of the department's receipt of an application under minor permit modification procedures or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later, the department shall:

[1] Issue the permit modification as proposed;

[2] Deny the permit modification application;

[3] Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

[4] Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by subdivision a of subsection 7.

- (e) Source's ability to make change. A source may make the change proposed in its minor permit modification application only after it files such application and the department approves the change in writing. If the department allows the source to make the proposed change prior to taking action specified in items 1, 2, and 3 of subparagraph d, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.
 - (f) The permit shield under subdivision f of subsection 5 shall not extend to minor permit modifications.
- (2) Group processing of minor permit modifications. Consistent with this paragraph, the department may modify the procedure outlined in paragraph 1 to process groups of a source's applications for certain modifications eligible for minor permit modification processing.
- (a) Criteria. Group processing of modifications may be used only for those permit modifications:
 - [1] That meet the criteria for minor permit modification procedures under item 1 of subparagraph a of paragraph 1 of subdivision e; and
 - [2] That collectively are below the threshold level which is ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in subsection 1, or five tons [4.54 metric tons] per year, whichever is least.
 - (b) Application. An application requesting the use of group processing procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:
 - [1] A description of the change, the emissions resulting from the change, and any new

applicable requirements that will apply if the change occurs.

- [2] The source's suggested draft permit.
- [3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.
- [4] A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under item 2 of subparagraph a of paragraph 2 of subdivision e.
- [5] Certification, consistent with subdivision d of subsection 4, that the source has notified the United States environmental protection agency of the proposed modification. Such notification need only contain a brief description of the requested modification.
- [6] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under item 2 of subparagraph a of paragraph 2 of subdivision e, whichever is earlier, the department shall meet its obligation under paragraph 1 of subdivision a of subsection 7 and paragraph 1 of subdivision b of subsection 7 to notify the administrator of the United States environmental protection agency and affected states of the requested permit modifications. The department shall send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

- (d) Timetable for issuance. The provisions of subparagraph d of paragraph 1 of subdivision e shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in items 1 through 4 of subparagraph d of paragraph 1 of subdivision e within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later.
- (e) Source's ability to make change. The provisions of subparagraph e of paragraph 1 apply to modifications eligible for group processing.
- (f) The permit shield under subdivision f of subsection 5 shall not extend to group processing of minor permit modifications.

(3) Significant modification procedures.

- (a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this subsection that would render existing permit compliance terms and conditions irrelevant.
- (b) Significant permit modifications shall meet all requirements of this section, including those for applications, public participation, review by affected states, and review by the United States environmental protection agency, as they apply to permit issuance and permit renewal. The department shall complete review of significant permit modifications within nine months after receipt of a complete application.

f. Reopening for cause.

- (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

- (a) Additional applicable requirements under the Federal Clean Air Act become applicable to a major title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.
 - (b) Additional requirements, including excess emissions requirements, become applicable to an affected source under title IV of the Federal Clean Air Act or the regulations promulgated thereunder. Upon approval by the administrator of the United States environmental protection agency, excess emissions offset plans shall be deemed to be incorporated into the permit.
 - (c) The department or the United States environmental protection agency determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - (d) The administrator of the United States environmental protection agency or the department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.
- (2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
 - (3) Reopenings under paragraph 1 shall not be initiated before a notice of such intent is provided to the title V source by the department at least thirty days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.
- g. Reopenings for cause by the United States environmental protection agency.
- (1) If the administrator of the United States environmental protection agency finds that cause

exists to terminate, modify, or revoke and reissue a permit pursuant to subdivision f, within ninety days after receipt of such notification, the department shall forward to the United States environmental protection agency a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

- (2) The administrator of the United States environmental protection agency will review the proposed determination from the department within ninety days of receipt.
 - (3) The department shall have ninety days from receipt of the United States environmental protection agency objection to resolve any objection that the United States environmental protection agency makes and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.
 - (4) If the department fails to submit a proposed determination or fails to resolve any objection, the administrator of the United States environmental protection agency will terminate, modify, or revoke and reissue the permit after taking the following actions:
 - (a) Providing at least thirty days' notice to the permittee in writing of the reasons for any such action.
 - (b) Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.
- h. Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be subject to procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:
- (1) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice; to persons on a mailing list developed by the department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

- (2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, and all other materials available to the department that are relevant to the permit decision; a brief description of the comment procedures required by this subsection; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled;
- (3) The department shall provide such notice and opportunity for participation by affected states as is provided for by subsection 7;
- (4) The department shall provide at least thirty days for public comment and shall give notice of any public hearing at least thirty days in advance of the hearing; and
- (5) The department shall keep a record of the commenters and also of the issues raised during the public participation process. These records shall be available to the public.

7. Permit review by the United States environmental protection agency and affected states.

a. Transmission of information to the administrator.

- (1) The department shall provide a copy of each permit application including any application for a permit modification (including the compliance plan), to the administrator of the United States environmental protection agency except that the applicant shall provide such information directly to the administrator of the United States environmental protection agency when directed to do so by the department. The department shall provide a copy of each proposed permit and each final title V permit to operate to the administrator of the United States environmental protection agency. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the United States environmental protection agency's national data base management system.

- (2) The department may waive the requirements of paragraph 1 and paragraph 1 of subdivision b for any category of sources (including any class, type, or size within such category) other than major sources upon approval by the administrator of the United States environmental protection agency.
- (3) The department shall keep these records for at least five years.

b. Review by affected states.

- (1) The department shall give notice of each draft permit to any affected state on or before the time that the notice to the public under subdivision h of subsection 6 is given, except to the extent paragraphs 1 and 2 of subdivision e of subsection 6 requires the timing of the notice to be different.
- (2) As part of the submittal of the proposed permit to the administrator of the United States environmental protection agency (or as soon as possible after the submittal for minor permit modification procedures allowed under paragraphs 1 and 2 of subdivision e of subsection 6) the department shall notify the administrator of the United States environmental protection agency and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this section.

c. United States environmental protection agency objection: No permit for which an application must be transmitted to the administrator of the United States environmental protection agency under subdivision a shall be issued if the administrator of the United States environmental protection agency objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.

d. Public petitions to the administrator of the United States environmental protection agency. If the administrator of the United States environmental protection agency does not object in writing under subdivision c, any person may petition the administrator of the United States environmental protection agency within sixty days after the expiration of the administrator's forty-five-day

review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in subdivision h of subsection 6, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator of the United States environmental protection agency objects to the permit as a result of a petition filed under this subdivision, the department shall not issue the permit until the United States environmental protection agency's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five-day review period and prior to the United States environmental protection agency objection. If the department has issued a permit prior to receipt of the United States environmental protection agency objection under this subdivision, the department may thereafter issue only a revised permit that satisfies the United States environmental protection agency's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

- e. Prohibition on default issuance. The department shall issue no title V permit to operate, including a permit renewal or modification, until affected states and the United States environmental protection agency have had an opportunity to review the proposed permit as required under this subsection.
- 8. [Reserved]
- 9. **Enforcement.**

The department may suspend, revoke, or terminate a permit for violations of this article, violation of any permit condition or for failure to respond to a notice of violation or any order issued pursuant to this article. A permit to operate which has been revoked or terminated pursuant to this article must be surrendered forthwith to the department. No person may operate or cause the operation of a source if the department denies, terminates, revokes, or suspends a permit to operate.

History: Effective March 1, 1994; amended effective December 1, 1994; August 1, 1995; January 1, 1996.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-10

CHAPTER 33-15-17

33-15-17-01. General provisions - Applicability and designation of affected facilities.

1. The provisions of this chapter apply to the owner or operator of any source of fugitive emissions whatsoever.
2. No person shall cause or permit fugitive emissions from any source whatsoever, including, ~~but not limited to~~, a building, its appurtenances, or a road, to be used, constructed, altered, repaired, or demolished; or activities such as loading, unloading, storing, handling, or transporting of materials without taking reasonable precautions to prevent such emissions which: may cause injury, detriment, nuisance, or annoyance to any person or to the public or which endangers the comfort, repose, health, or safety of any such person or public or which causes injury or damage to business or property.

History: Amended effective January 1, 1996.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-17-02. Restriction of fugitive particulate emissions. No person shall emit or cause to be emitted into the ambient air from any source of fugitive emissions as specified in section 33-15-17-02 any particulate matter which:

1. ~~Causes the ground level concentrations at points selected by the department at or beyond the property line to exceed two hundred forty micrograms per cubic meter, eight-hour average, above wind concentrations. Samples shall be obtained by using a high volume air sampler or other equivalent method using an eight-hour sampling interval.~~ [Reserved]
2. Exceed the ambient air quality standards of chapter 33-15-02 at or beyond the property line of the source.
3. Exceed the prevention of significant deterioration of air quality increments of chapter 33-15-15 at or beyond the property line of the source for sources subject to chapter 33-15-15.
4. Exceed the restrictions on the emission of visible air contaminants of chapter 33-15-03, at or beyond the property line of the source.
5. Agricultural activities related to the normal operations of a farm shall be exempt from the requirements of this section.

However, agricultural practices such as tilling of land, application of fertilizers, and the harvesting of crops shall be managed in such a manner as to minimize dust from becoming airborne.

History: Amended effective January 1, 1996.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-22

33-15-22-01. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 63, as they exist on ~~July~~ May 1, 1994 1995, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-03. Emission standards.

Subpart A - General provisions.

Subpart B - Requirements for control technology determinations for major sources in accordance with Clean Air Act sections 112(g) and 112(j).

Subpart C - List of hazardous air pollutants, petitions process, lesser quantity designations, source category list. [Reserved]

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emission standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emission standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emission standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart L - National emission standards for coke oven batteries.

Appendix A to subpart L - Operating coke oven batteries as of April 1, 1992.

Subpart M - National perchloroethylene air emission standards for drycleaning facilities.

Subpart N - National emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emission standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emission standards for halogenated solvent cleaning.

Subpart EE - National emission standards for magnetic tape manufacturing operations.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions authority: 42 U.S.C. 7401 et seq.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

FEBRUARY 1996

CHAPTER 33-06-03

33-06-03-02. Insanitary condition. Each health officer shall investigate whenever and wherever the officer has reason to suspect that any insanitary condition dangerous to public health exists within the officer's jurisdiction, and if such insanitary condition is found to exist, the officer shall order its removal within a specified time by a written notice served on the owner or agent of the property whereon such insanitary condition exists. If the owner or agent shall fail to remove or remedy such insanitary condition within the time specified in such written notice, the health officer shall bring the matter to the attention of the county attorney and, if necessary, file a complaint against such owner or agent for maintaining an insanitary condition dangerous to public health and in violation of the laws of the state and regulations of the state department of health and--consolidated laboratories.

History: Amended effective February 1, 1996.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-07-06

33-06-03-03. School may be closed. Whenever, in the judgment of the state department of health and--consolidated-laboratories or of any county or city health officer, it is advisable to close the schools because of the prevalence of any contagious or infectious disease or diseases, the health officer shall serve written notice upon the board of school directors or the responsible officials of any private, parochial, public, or Sunday school in the same district in which such

disease or diseases prevail, directing them to close all schools immediately nor shall any such schools be reopened until ordered by the proper health official.

History: Amended effective February 1, 1996.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03

33-06-03-04. Disclosure of records. Information contained in disease control records and held by the state department of health and ~~consolidated-laboratories~~ is strictly confidential information. Information contained in disease control records ~~must--include~~ includes all information, records of interviews, written reports, statements, notes, memoranda, or other data procured by the department in connection with disease control, or carried on by the department jointly with other persons, agencies, or organizations, or procured by such other persons, agencies, or organizations, for the purpose of disease control or for such purposes of reducing the morbidity or mortality from any cause or condition of health.

No officer or employee of the state department of health and ~~consolidated-laboratories~~ may be examined in any judicial, executive, legislative, or other proceeding regarding the existence or content of any individual's report retained by the department for disease control. The information may not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except that:

1. ~~Release--may--be--made--of--medical~~ Medical or epidemiologic information may be released for statistical purposes in a manner such that no individual person can be identified.
2. ~~Release--may--be--made--of--medical~~ Medical or epidemiologic information may be released to medical personnel to the extent necessary to protect the health or life of any individual.
3. Release Medical or epidemiologic information may be made released to the patient's person to whom the record pertains, that person's attending physician, or the--attending physician's their legal or designated agent or guardian, provided no other person is identified. The department may require a signed consent from the patient prior to such release.
4. Disease control records other than those relating to human immunodeficiency virus infection may be released to a person engaged in a bona fide research project concerning medical, psychological, or sociological issues provided all of the following conditions are met:
 - a. The research project must be sponsored by a public or private college or university; a governmental entity; a

nonprofit medical, sociological, or psychological association; or the pharmaceutical industry.

- b. Identifying information may not appear in any report, summation, thesis, or other document arising out of the research project.
 - c. Identifying information may not be provided to a person engaged in a bona fide research project until that person has submitted a written proposal explaining and justifying the need to examine such information which is satisfactory to the state health officer.
 - d. All documents received by the researcher and all documents containing identifying information made by or on behalf of the researcher, by whatever means, including hard copies, typewritten or handwritten copies, photocopies, facsimiles, and electronic or electromagnetic recording or imaging, must be returned to the department on or before a date which shall be set by the state health officer.
 - e. The researcher shall submit a written plan explaining how all identifying information in the researcher's possession will be kept secure, to the satisfaction of the state health officer, who shall obtain written assurance that the plan will be implemented.
 - f. The researcher shall agree to provide the state health officer a copy of any report, summation, thesis, or other document arising out of the research project for departmental review of compliance with this section before providing it to the publisher.
 - g. The researcher shall consent in writing to the use and reproduction of the document by the department.
 - h. The researcher shall agree in writing to pay all costs of the state health officer or the department incurred in providing copy or search services to the researcher.
5. Release may be made as otherwise provided by statute.
6. For purposes of this section:
- a. "Disease" includes physical, genetic, or environmental conditions, psychological or mental conditions, and addictions.
 - b. "Identifying information" includes any information which, alone or in conjunction with information available to the public, could identify a particular person as having or potentially having been exposed to a disease, having or

potentially having a disease, or having or potentially
having a predisposition for disease.

History: Effective April 1, 1990; amended effective February 1, 1996.

General Authority: NDCC 23-01-03, 23-07-01.2

Law Implemented: NDCC 23-01-15, 23-07-02.2, 23-07-20.1

TITLE 51
Milk Marketing Board

DECEMBER 1995

CHAPTER 51-03-02

51-03-02-01. Authority, savings, and scope.

1. The provisions and prices contained in this stabilization marketing plan are promulgated pursuant to authority delegated to the North Dakota milk stabilization marketing board as set forth in North Dakota Century Code section 4-18.1-07.
2. If any provision of this stabilization marketing plan is hereafter ruled to be illegal or invalid by any tribunal of superior jurisdiction, such ruling shall not affect the balance of this plan as a whole or any part thereof which can be given effect without the provision so ruled to be invalid or illegal.
3. Any persons subject to this stabilization marketing plan must be considered in violation hereof if he or it engages in such violation, directly or indirectly, or through an agent, employee, trust, subsidiary, or affiliated company or corporation.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-02. Terminology. Names of products and finished product test specifications set forth herein are classifications for price purposes under the Milk Stabilization Marketing Act only and are not

intended to interfere with or supersede applicable labeling, packaging, weights and measures, and sanitation laws and regulations.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-03. Contract termination. Any existing institutional contracts must be renegotiated in compliance with the prices ordered herein within ninety days after the effective date of this stabilization marketing plan or on the new bid date, whichever is sooner.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-04. Prices to public institutions. Bid prices for milk products and shake and soft serve sold to state institutions in market area number 1 must not be below the minimum or above the maximum wholesale prices as stated herein by this stabilization marketing plan.

History: Amended effective April 14, 1980; November 1, 1980; November 1, 1983; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-08. Hauling rates from farm to plant. Any substantial or significant increase or raising of rates charged to dairy farmers for hauling their milk from farm to plant after the effective date of this stabilization marketing plan and without good cause shown may be considered to be dilution of the prices paid said dairy farmers for their raw milk and subject to investigation by the board to determine if there is a violation of this stabilization marketing plan.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-09. Products not specified. Any unassigned quantity of new products hereafter marketed but not specifically priced under this plan shall be assigned a price which will be the logical multiple or fraction of the nearest quantity of product to which a specific price has been fixed by this stabilization marketing plan, until a specific price is ordered by this board as a result of the regular hearing procedure and based upon actual cost experience of the industry. This

board must be given thirty days' written notice prior to the introduction of a new product in the market area.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-13. Price filings on frozen dairy products. On or before February 1, 1992, all dealers in all market areas shall file the uniform wholesale price at which ice cream, frozen malt ice cream (frost malt ice cream), flavored ice cream, fruit ice cream, nut ice cream, french ice cream, ice milk, fruit sherbet, fruit sherbines, and the mix from which any such product is made, will be sold by each dealer to retailers within the market area. New prices and amended prices must be filed at the office of the North Dakota milk ~~stabilization~~ marketing board at Bismarck, North Dakota, at least ten days in advance of the effective date of any new price or amended price together with the date on which such filing becomes effective. Placing a price schedule in the mail shall constitute a filing.

Any dealer may meet competition without delay in connection with the sale of any such frozen dairy product provided such dealer shall file an amended price specifically stating that such amended price is for the purpose of meeting lawful competition before actually meeting such competition. A dealer desiring to meet the lower prices of a competitor may do so in such portions of the marketing area as are specified in such dealer's amended price filing for the purpose of meeting competition. The wholesale prices filed by a processor for the marketing area shall automatically be applicable to sales by distributors of that processor's products within such area unless said distributors file their own schedule of prices.

All price filings must be available at the office of the milk board for inspection and copying and may be disclosed by the board upon the written request of any person.

History: Amended effective November 1, 1980; July 1, 1981; November 1, 1983; April 1, 1984; August 1, 1987; June 1, 1990; February 1, 1992; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-15. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-02-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on \$.053, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday,

Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole Milk 1/2 Gallon	\$.0098900	\$(.0001075)
2 % Milk	.0099130	(.0006465)
1 % Milk	.0099130	(.0010775)
Skim Milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole Chocolate	.0094645	(.0001029)
2 % Chocolate	.0094875	(.0006188)
1 % Chocolate	.0094875	(.0010313)
Skim Chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization marketing plan.

History: Amended effective August 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-17. Emergency. This marketing plan is declared to be an emergency pursuant to North Dakota Century Code section 28-32-02. The reason for said emergency is to permit the orderly marketing of milk and milk products.

History: Effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-18. Effective date. These rules are effective at 12:01 a.m., August 1, 1995, and all prior marketing plans for market area number 1 are hereby repealed.

History: Effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-06, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

CHAPTER 51-03-03

51-03-03-01. Authority, savings, and scope.

1. The provisions and prices contained in this stabilization marketing plan are promulgated pursuant to authority delegated to the North Dakota milk stabilization marketing board as set forth in North Dakota Century Code section 4-18.1-07.
2. If any provision of this stabilization marketing plan is hereafter ruled to be illegal or invalid by any tribunal of superior jurisdiction, such ruling shall not affect the balance of this plan as a whole or any part thereof which can be given effect without the provision so ruled to be invalid or illegal.
3. Any person subject to this stabilization marketing plan shall be considered in violation hereof if he or it engages in such violation, directly or indirectly, or through an agent, employee, trust, subsidiary, or affiliated company or corporation.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-02. Terminology. Names of products and finished product test specifications set forth herein are classifications for price purposes under the Milk Stabilization Marketing Act only and are not intended to interfere with or supersede applicable labeling, packaging, weights and measures, and sanitation laws and regulations.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-03. Contract termination. Any existing institutional contracts must be renegotiated in compliance with the prices ordered herein within ninety days after the effective date of this stabilization marketing plan or on the new bid date, whichever is sooner.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-04. Prices to public institutions. Bid prices for milk products and shake and soft serve sold to state institutions in market

areas numbers 2, 5, 7, and 8 must not be below the minimum wholesale prices as stated herein by this stabilization marketing plan.

History: Amended effective April 14, 1980; November 1, 1980; November 1, 1983; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-08. Hauling rates from farm to plant. Any substantial or significant increase or raising of the rates charged to dairy farmers for hauling their milk from farm to plant after the effective date of this stabilization marketing plan and without good cause shown may be considered to be dilution of the prices paid said dairy farmers for their raw milk and subject to investigation by the board to determine if there is a violation of this stabilization marketing plan.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-09. Products not specified. Any unassigned quantity of new products hereafter marketed but not specifically priced under this plan shall be assigned a price which will be the logical multiple or fraction of the nearest quantity or product to which a specific price has been fixed by this stabilization marketing plan until a specific price is ordered by this board as a result of the regular hearing procedure and based upon actual cost experience of the industry. This board must be given thirty days' written notice prior to the introduction of a new product in the market area.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-12.1. Minimum dock price for market area 8. Market area number 8 (Wahpeton) will have a minimum nondelivered dealer price list (dock price) of twenty-three percent off market area number 8 minimum established wholesale price list less additional two percent prompt pay. Prices will change as per section 51-03-03-06. The following stipulations apply to receive this dock price.

1. Hauling of milk products must be done with refrigerated truck equipment that is owned by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment must comply with rules and regulations defined by federal and North Dakota state agencies.
2. Volume of milk products must equal at least one hundred thousand gallons [378541.18 liters] per year from all sources per store. A person or corporation who owns more than one

store can total purchases from all stores to meet one hundred thousand gallons [378541.18 liters].

3. All orders must be preordered prior to pickup.
4. No in-store service, i.e., cleaning cases, stamping products, etc.
5. Personnel for store resets will be limited to dairy case setting only.
6. No returns on merchandise, except when the product is found to be damaged or defective at time of pickup.
7. Delivery of the product by processor or distributor due to incorrect ordering by customer or special orders, to be charged at wholesale price less appropriate volume discount.
8. On all charge sales by retailer not paid for within four weeks (twenty-eight days) from the statement date, the processor or distributor will charge retailer the difference between dock price and wholesale price.

History: Effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-06, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-14. Price filings on frozen dairy products. On or before February 1, 1992, all dealers in all market areas shall file the uniform wholesale price at which ice cream, frozen malt ice cream (frost malt ice cream), flavored ice cream, fruit ice cream, nut ice cream, french ice cream, ice milk, fruit sherbet, fruit sherbines, and the mix from which any such product is made, will be sold by each dealer to retailers within the market area. New prices and amended prices must be filed at the office of the North Dakota milk ~~stabilization~~ marketing board at Bismarck, North Dakota, at least ten days in advance of the effective date of any new price or amended price together with the date on which such filing becomes effective. Placing a price schedule in the mail shall constitute a filing.

Any dealer may meet competition without delay in connection with the sale of any such frozen dairy product provided such dealer shall file an amended price specifically stating that such amended price is for the purpose of meeting lawful competition before actually meeting such competition. A dealer desiring to meet the lower prices of a competitor may do so in such portions of the marketing area as are specified in such dealer's amended price filing for the purpose of meeting competition. The wholesale prices filed by a processor for the marketing area shall automatically be applicable to sales by distributors of that processor's products within such area unless said distributors file their own schedule of prices.

All price filings shall be available at the office of the milk board for inspection and copying and may be disclosed by the board upon the written request of any person.

History: Amended effective November 1, 1983; April 1, 1984; August 1, 1987; June 1, 1990; February 1, 1992; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-03-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on \$.053, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole Milk 1/2 Gallon	\$.0098900	\$(.0001075)
2 % Milk	.0099130	(.0006465)
1 % Milk	.0099130	(.0010775)
Skim Milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole Chocolate	.0094645	(.0001029)
2 % Chocolate	.0094875	(.0006188)
1 % Chocolate	.0094875	(.0010313)
Skim Chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization marketing plan.

History: Amended effective November 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-18. Emergency. This marketing plan is declared to be an emergency pursuant to North Dakota Century Code section 28-32-02. The

reason for said emergency is to permit the orderly marketing of milk and milk products.

History: Effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-19. Effective date. These rules are effective at 12:01 a.m., August 1, 1995, and all prior marketing plans for market areas numbers 2, 5, 7, and 8 are hereby repealed.

History: Effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-06, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

CHAPTER 51-03-04

51-03-04-01. Authority, savings, and scope.

1. The provisions and prices contained in this stabilization marketing plan are promulgated pursuant to authority delegated to the North Dakota milk stabilization marketing board as set forth in North Dakota Century Code section 4-18.1-07.
2. If any provision of this stabilization marketing plan is hereafter ruled to be illegal or invalid by any tribunal of superior jurisdiction, such ruling shall not affect the balance of this plan as a whole or any part thereof which can be given effect without the provision so ruled to be invalid or illegal.
3. Any person subject to this stabilization marketing plan shall be considered in violation hereof if he or it engages in such violation, directly or indirectly, or through an agent, employee, trust, subsidiary, or affiliated company or corporation.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-02. Terminology. Names of products and finished product test specifications set forth herein are classifications for price purposes under the Milk Stabilization Marketing Act only and are not intended to interfere with or supersede applicable labeling, packaging, weights and measures, and sanitation laws and regulations.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-03. Contract termination. Any existing institutional contracts must be renegotiated in compliance with the prices ordered herein within ninety days after the effective date of this stabilization marketing plan or on the new bid date, whichever is sooner.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-04. Prices to public institutions. Bid prices for milk products and shake and soft serve sold to state institutions in market

areas numbers 3, 4, and 6 must not be below the minimum wholesale prices as stated herein by this stabilization marketing plan.

History: Amended effective April 14, 1980; November 1, 1980; November 1, 1983; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-08. Hauling rates from farm to plant. Any substantial or significant increase or raising of the rates charged to dairy farmers for hauling their milk from farm to plant after the effective date of this stabilization marketing plan and without good cause shown may be considered to be dilution of the prices paid said dairy farmers for their raw milk and subject to investigation by the board to determine if there is a violation of this stabilization marketing plan.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-09. Products not specified. Any unassigned quantity of new product hereafter marketed but not specifically priced under this plan shall be assigned a price which will be the logical multiple or fraction of the nearest quantity or product to which a specific price has been fixed by this stabilization marketing plan until a specific price is ordered by this board as a result of the regular hearing procedure and based upon actual cost experience of the industry. This board must be given thirty days' written notice prior to the introduction of a new product in the market area.

History: Amended effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-14. Price filings on frozen dairy products. On or before February 1, 1992, all dealers in all market areas shall file the uniform wholesale price at which ice cream, frozen malt ice cream (frost malt ice cream), flavored ice cream, fruit ice cream, nut ice cream, french ice cream, ice milk, fruit sherbet, fruit sherbines, and the mix from which any such product is made, will be sold by each dealer to retailers within the market area. New prices and amended prices must be filed at the office of the North Dakota milk stabilization marketing board at Bismarck, North Dakota, at least ten days in advance of the effective date of any new price or amended price together with the date on which such filing becomes effective. Placing a price schedule in the mail shall constitute a filing.

Any dealer may meet competition without delay in connection with the sale of any such frozen dairy product provided such dealer shall file an amended price specifically stating that such amended price is

for the purpose of meeting lawful competition before actually meeting such competition. A dealer desiring to meet the lower prices of a competitor may do so in such portions of the marketing area as are specified in such dealer's amended price filing for the purpose of meeting competition. The wholesale prices filed by a processor for the marketing area shall automatically be applicable to sales by distributors of that processor's products within such area unless said distributors file their own schedule of prices.

All price filings must be available at the office of the milk board for inspection and copying and may be disclosed by the board upon the written request of any person.

History: Amended effective November 1, 1983; April 1, 1984; August 1, 1987; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-04-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on \$.053, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole Milk 1/2 Gallon	\$.0098900	\$(.0001075)
2 % Milk	.0099130	(.0006465)
1 % Milk	.0099130	(.0010775)
Skim Milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole Chocolate	.0094645	(.0001029)
2 % Chocolate	.0094875	(.0006188)
1 % Chocolate	.0094875	(.0010313)
Skim Chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization marketing plan.

History: Amended effective November 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-18. Emergency. This marketing plan is declared to be an emergency pursuant to North Dakota Century Code section 28-32-02. The reason for said emergency is to permit the orderly marketing of milk and milk products.

History: Effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-19. Effective date. These rules are effective at 12:01 a.m., August 1, 1995, and all prior marketing plans for market areas numbers 3, 4, and 6 are hereby repealed.

History: Effective August 1, 1995.

General Authority: NDCC 4-18.1-03, 4-18.1-06, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

TITLE 54
Board of Nursing

DECEMBER 1995

CHAPTER 54-02-07

54-02-07-01.1. Nursing practice - Grounds for discipline. Practice inconsistent with acceptable standards of nursing practice by a licensee or registrant means behavior that may place a client or other person at risk for harm. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior indicating the individual is unfit to practice nursing, as well as any of the following:

1. Failure to provide nursing care because of client diagnosis, age, sex, race, religion, creed, color, or lifestyle.
2. Abuse of a client verbally, physically, emotionally, or sexually.
3. Failure to appropriately supervise persons to whom nursing functions have been delegated or assigning unqualified persons to perform functions of licensed nurses.
4. Practice of nursing without sufficient knowledge, skills, or nursing judgment.
5. Performance of nursing tasks or functions in a manner inconsistent with acceptable nursing standards.
6. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of client, employee, or employer records.
7. Diversion of supplies, equipment, or drugs for personal use or unauthorized use.

8. Misuse or betrayal of a trust or confidence.
9. Exploitation of a client or client's family for financial or personal gain.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-02. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Acts or omissions" that are violations of this chapter or are grounds for dicipline, mean patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in chapter 43-12.1 or these rules.
2. "Client" means an individual or group for whom the nurse is providing nursing.
3. "Denial" means the board's refusal to issue a current license or nurse assistant registration upon application.
4. "Major incident" means an act or omission in violation of chapter 43-12.1 or these rules which indicates a licensee's or registrant's continuing to practice poses a risk of harm to the client or another person.
5. "Minor incident" means an act or omission in violation of chapter 43-12.1 or these rules which indicates a licensee's or registrant's continuing to practice does not pose a risk of harm to the client or another person.
- 2- 6. "Probation" means issuance of a current license or registration marked "encumbered", and identification of specific requirements.
- 3- 7. "Reprimand" means written communication to the licensee or registrant stating the board's concerns, and public notification of the licensee's or registrant's name, address, and reason for the reprimand.
- 4- 8. "Revocation" means the withdrawal-by-the board of withdraws the license to practice nursing or nurse assistant registration for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is perpetual.

5. 9. "Suspension" means the withholding-by-the board of withholds the license to practice nursing or a nurse assistant registration for a specified length of time.

6. --"Unprofessional conduct"--includes,--but-is-not-limited-to:

a. --Failure-to-provide-nursing-care-because-of-diagnosis,--age, sex,--race,--religion,--creed,--or-color:

b. --Abusing--a--patient--verbally,--physically,--emotionally,--or sexually:

c. --Failure--to--supervise--persons--to-whom-nursing-functions have-been-delegated-or-assigning--unqualified--persons--to perform-functions-of-licensed-nurses:

d. --The--practice--of--nursing--without--sufficient-knowledge, skills,--or-nursing-judgment:

e. --Inaccurate--or--incomplete--documentation-or-recording,--or the-falsification,--alteration,--or-destruction-of--patient, employee,--or-employer-records:

f. --Performing--an--act--prohibited--by-law-or-rule,--aiding-or abetting-another-person-in-performing-an-act-prohibited-by law-or-rule,--or-failure-to-perform-an-act-required-by-law, rule,--or-standard-of-professional-care:

g. --Diverting--supplies,--equipment,--or-drugs-for-personal-use or-unauthorized-use:

h. --Misuse-or-betrayal-of-a-trust-or-confidence:

i. --Deliberate--exploitation--of-a-patient-or-family,--or-both, for-financial-or-personal-gain:

j. --Failure--to--comply--with--acceptable-standards-of-nursing practice-which-places-a-patient-at-risk:

k. --Suspension-of-prescriptive-authority-for-cause:

l. --Use--of-a-title-denoting-advanced-nursing-practice-without the-advanced-registered-nurse-practitioner-license:

History: Effective August 1, 1988; amended effective October 1, 1989; March 1, 1992; December 1, 1995.

General Authority: NDCC 43-12.1-08(13)

Law Implemented: NDCC 43-12.1-14

54-02-07-03. Complaints. Any---individual---having--personal knowledge-or-information-concerning-an-alleged-violation-of-North-Dakota Century--Code--chapter--43-12:1-may-initiate-the-disciplinary-process-by

~~filing a written request for investigation with the board. The request must include:~~

- ~~1. The full name, address, and telephone number (if available) of the complainant.~~
- ~~2. The name, address, and telephone number (if known) of the licensee.~~
- ~~3. A statement of the facts concerning the alleged violation.~~

~~A request for investigation that does not include the required information shall require a motion by the board before investigation is commenced. Repealed effective December 1, 1995.~~

History: Effective August 1, 1988.
General Authority: NDCG-43-12.1-08
Law Implemented: NDCG-43-12.1-14

54-02-07-03.1. Reporting violations. Protection of the public is enhanced by reporting of incidents that may be violations of North Dakota statutes or grounds for disciplinary action by the board. Licensees, registrants, or citizens should use the following process to report any knowledge of the performance by others of acts or omissions that violate North Dakota Century Code chapter 43-12.1 or these rules:

1. If the act or omission meets the criteria for management of a minor incident, the licensee or registrant should be aware of and follow the established policy within the practice setting for minor incidents. The established policy in the licensee's or registrant's practice setting should detect patterns of unsafe behavior that may be considered minor incidents and take corrective action resulting in safe practice.
 - a. A minor incident may be handled in the practice setting with a corrective action process if all the following factors exist:
 - (1) Potential risk of harm to others is low;
 - (2) There is no pattern of recurrence;
 - (3) The licensee or registrant exhibits evidence of remediation and adherence to standards of nursing practice; and
 - (4) The corrective action process results in the licensee or registrant possessing the knowledge, skills, and abilities to practice nursing safely.
 - b. When a decision is made that the act or omission by a licensee or registrant constitutes a minor violation, a

report must be completed according to the practice setting's policy. Such report will be evidence of compliance with the requirement to report acts or omissions that are violations of this chapter or these rules to the board.

- c. Other factors may be considered in determining the need to report such as the significance of the event in the particular practice setting, the situation in which the event occurred, and the presence of contributing or mitigating circumstances in the nursing care delivery system.
 - d. When a licensee or registrant terminates from the practice setting, either voluntarily or by request, and is in a corrective action process involving nursing practice standards, a report should be made to the board.
 - e. Nothing in this rule is intended to prevent reporting of a minor incident or potential violation directly to the board.
2. If the act or omission is a major incident or factors are present that indicate a duty to report, the licensee or registrant must contact the board office. The report should include requested information about the act or omission, the individuals involved, and the action taken within the practice setting.
 3. Citizens may report any knowledge of unsafe nursing practice to the board by contacting the board office by mail or telephone and providing the requested information.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-11

54-02-07-04. Investigation. ~~The executive director or executive director's designee will investigate complaints~~ Complaints, requests for investigation, and reports of acts or omissions that are in violation of North Dakota Century Code chapter 43-12.1 or are grounds for disciplinary action will be investigated by the board or by its direction in order to determine whether sufficient grounds exist to believe a violation of applicable law or rule has occurred. The investigation will result in one of the following: file a complaint according to North Dakota Century Code chapter 28-32.

- ~~1. Filing of a formal complaint and scheduling a disciplinary hearing pursuant to North Dakota Century Code chapter 28-32.~~
- ~~2. Presentation of the complaint to the board and recommendation for dismissal because insufficient evidence exists.~~

3. -- Requesting -- the -- board -- to -- appoint -- a -- peer -- review -- committee -- to -- review -- the -- complaint -- and -- investigation -- and -- submit -- a -- report -- of -- its -- findings -- to -- the -- board.

4. -- Other -- action -- as -- warranted -- including -- referral -- of -- the -- facts -- alleged -- or -- found -- to -- exist -- to -- another -- affected -- agency.

Subpoena -- for -- the -- attendance -- of -- witnesses, -- the -- production -- of -- documents -- and -- other -- objects -- described -- in -- subpoenas, -- submission -- of -- and -- response -- to -- interrogatories, -- requests -- for -- production, -- depositions, -- and -- other -- discovery -- procedures -- will -- be -- available -- to -- the -- board -- and -- any -- party -- the -- subject -- of -- an -- investigation, -- pursuant -- to -- North -- Dakota -- Century -- Code -- section -- 28 -- 32 -- 09 -- and -- applicable -- rules -- of -- civil -- procedure.

History: Effective August 1, 1988; amended effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-13

54-02-07-05. Settlements. The licensee may request to explore a settlement of the allegations in the complaint at any time prior to the hearing. --- Exploration of a settlement will be with the executive director or the executive director's designee and the attorney for the board. --- If the above persons agree to negotiate a settlement through informal disposition of the complaint, a proposed stipulation and consent order will be written and presented to the licensee for the licensee's signature. --- The signed stipulation and consent order will be presented to the board for final approval. --- The presentation of the signed stipulation and consent order does not divest the board of its authority to either approve or reject the proposed informal disposition. If a stipulation and consent order proposal is rejected by the board, a hearing will be held. Repealed effective December 1, 1995.

History: Effective August 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-05

54-02-07-05.1. Disposition. Requests for investigation may result in:

1. A formal complaint filed according to North Dakota Century Code chapter 28-32;
2. Dismissal by the board for lack of evidence;
3. Referral to another agency; or
4. Other action as directed by the board.

The board may use an administrative law judge to preside over the entire administrative proceeding and prepare findings of fact, conclusions of law, and order for board ratification, or the board may use a procedural

hearing officer for the conduct of the hearing at which a majority of board members must be present at the hearing.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-13

54-02-07-06. Board decision - Revocation - Suspension. The final decision will be adopted by a simple majority of the board and will include findings of fact, conclusions of law, and order. The decision of the board to impose or modify any restrictions upon the licensee or registrant or the licensee's or registrant's practice ~~of nursing~~ or to reinstate a license or registration will be communicated to the licensee or registrant in the form of a board order.

1. If the board issues a revocation order, it may also indicate in the order the specific action necessary for the reapplication for licensure or registration by the individual. The national nursing licensing examination may be waived by the board as a condition for the reissuance of a previously revoked license. The initial licensure or registration fee will be assessed for the reissuance of a revoked license or registration.
2. If the board issues a suspension order, it may also indicate the specific action necessary for the reissuance of the license or registration. An individual whose license or registration is suspended may request reinstatement by the board at any regularly scheduled meeting. The current year's renewal fee will be required for reissuance of a suspended license or registration.

History: Effective August 1, 1988; amended effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-13, 43-12.1-14

54-02-07-07. Costs and disbursements.

1. Reasonable costs and disbursements to be recovered from the licensee or registrant following any hearing at which the licensee's a license or registration is suspended, probated, or revoked, or at which a penalty fee or reprimand is issued by the board, shall include witness fees and reimbursement of the board's reasonable expenses.
2. If a witness is subpoenaed by the board to appear at the request of the licensee or registrant, the licensee or registrant is to deposit with the board sufficient funds to cover expenses for mileage, food, and lodging as allowed by state reimbursement policies plus ~~fifteen~~ twenty-five dollars per day for each day the witness is to appear.

3. In the case of any request by the licensee or registrant for the subpoena by the board of an expert witness, sufficient funds will also be deposited with the board, prior to the issuance of such subpoena, to cover such expert witness fees. The deposit with the board of funds for witness fees and expenses must be made prior to the issuance of the subpoena. The request for the subpoena by the board of a witness for the licensee or registrant must be made in writing.

History: Effective August 1, 1988; amended effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-09, 43-12.1-14

54-02-07-08. Application for reinstatement. Any person whose license or registration has been suspended or revoked by the board may apply in writing for reinstatement at the conclusion of the time period specified in the order. The burden of proof is on the licensee or registrant to prove to the satisfaction of the board that the condition that led to a sanction no longer exists or no longer has a material bearing on the licensee's professional ability or registrant's ability, or both. The board will consider the written application for reinstatement at the next regularly scheduled board meeting. If the board votes for reinstatement, the board may impose reasonable terms and conditions to be imposed prior to reinstatement, or as a condition of reinstatement. If the board denies reinstatement, reasons for denial must be communicated to the applicant.

History: Effective August 1, 1988; amended effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-09. Practice without a license. A licensee who applies for renewal of licensure shall present evidence to the board that the licensee has not been engaged in the practice of nursing without a current license. If evidence is received by the board that the individual has been practicing nursing without a current license, the individual will be offered an opportunity to enter into an administrative settlement for review. Entry into an administrative settlement shall be required of an individual who admits, without other evidence of noncompliance of North Dakota Century Code chapter 43-12.1 and this chapter, to practicing without a license and desires to have the board issue a current license. The maximum fee the board may impose for practicing without a license is one hundred dollars plus ten dollars for each day or part of a day in which the licensee practiced without a license. The total fee imposed by the board may not exceed one thousand dollars. The administrative settlement is a written statement signed by the individual identifying the circumstances of the practice without a license, an agreement to accept a public reprimand, and an agreement to remit the penalty fee. Upon receipt of the written statement and correct fee, the executive director or executive director's authorized designee may issue a current license to practice. The written statement

must be presented to the board at the next regular meeting for acceptance. If the board does not accept the administrative settlement, the licensee shall have the opportunity for a disciplinary hearing as outlined in North Dakota Century Code chapter 28-32 and this chapter.

History: Effective August 1, 1988; amended effective September 1, 1994; December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-10. Nurse assistant without registry status. All persons who provide assistance to the nurse and carry out legally delegated nursing tasks or nursing functions must hold current registry status. Individuals holding current registry status on a board-recognized registry meet this requirement. Individuals who are employed to perform nursing tasks or nursing functions delegated by a licensed nurse who have never held registry status have four months from the date of initial employment to achieve registry status. A lapsed registry status may be reinstated by submission of the required competency verification by the employer and payment of the required fee.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-11. Applicant statement. If an applicant for licensure or registry status reports an arrest, charge, or prior conviction of a crime other than a minor traffic violation, the applicant must provide the necessary information to determine the bearing upon that person's ability to serve as a licensed nurse or nurse assistant. Upon receipt of evidence of sufficient rehabilitation as outlined in North Dakota Century Code section 12.1-33-02.1, the license or registry listing may be issued. If the information does not substantiate the rehabilitation, the applicant may ask for a hearing pursuant to North Dakota Century Code chapter 28-32.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-12. Nurse assistants on board-recognized registries. Individuals listed on a board-recognized registry must be considered to be on the board's registry for purposes of investigation of a nurse assistant and any board action that may result.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

CHAPTER 54-02-08

TEMPORARY LICENSE

[Repealed effective December 1, 1995]

STAFF COMMENT: Chapter 54-02-08.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 54-02-08.1
TRANSITIONAL LICENSE**

Section	
54-02-08.1-01	Definitions
54-02-08.1-02	Initial Transitional License
54-02-08.1-03	Renewal

54-02-08.1-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Program of study" means the written agreement outlining the plan for coursework necessary to accomplish the required degree.
2. "Proof of progression" means submission of an official transcript showing successful completion of coursework within a calendar year toward achievement of the required degree.
3. "Transitional practical nurse license" means the license issued to an individual who meets all of the requirements for licensure by endorsement as a licensed practical nurse except the educational requirements in North Dakota Century Code section 43-12.1-02.
4. "Transitional registered nurse license" means the license issued to an individual who meets all of the requirements for licensure by endorsement as a registered nurse except the educational requirements in North Dakota Century Code section 43-12.1-02.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09

54-02-08.1-02. Initial transitional license. Applicants for a transitional license must:

1. Submit a completed notarized application;

2. Submit verification of a licensing examination acceptable to the board;
3. Submit an official transcript directly from the nursing education program to the board office, with proof acceptable to the board of satisfactory completion of the original nursing education program;
4. Pay the transitional license endorsement fee of seventy-five dollars; and
5. Submit a notice of intent to complete the educational requirements for license by endorsement.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09

54-02-08.1-03. Renewal.

1. A transitional practical nurse license may be renewed for eight calendar years if the licensee meets the following requirements:
 - a. Submit a completed renewal application;
 - b. Pay the calendar year renewal fee of twenty-five dollars;
 - c. For the first renewal year, submit a program of study from the nursing education program;
 - d. For each of the subsequent renewal years, submit proof of progression and an updated program of study; and
 - e. Submit a narrative statement justifying any change in the date of completion on updated programs of study.
2. A transitional registered nurse license may be renewed for eight calendar years if the licensee meets the following requirements:
 - a. Submit a completed renewal application;
 - b. Pay the calendar year renewal fee of thirty dollars;
 - c. For the first renewal year, submit a program of study from the nursing education program;
 - d. For each of the subsequent renewal years, submit proof of progression and an updated program of study; and

- e. Submit a narrative statement justifying any change in the date of completion on updated programs of study.
3. An individual who does not meet the requirements for renewal of the transitional license will be ineligible for renewal. An application for reinstatement will be accepted if accompanied by an updated program of study and proof of progression for the last calendar year of North Dakota licensure. The transitional license may be renewed for no more than eight years unless approved by the board.
4. A petition for extension of renewal of a transitional license may be considered by the board. The licensee is responsible for submitting sufficient information to the board regarding progression in the educational program for determination if an extension of renewal eligibility is to be allowed.

History: Effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09

CHAPTER 54-07-01

54-07-01-03. Recognition of other state registries. The board will acknowledge placement on other state registries in lieu of the nurse assistant registry. Criteria for recognition of other state registries is as follows:

1. The registry is open to the public during normal business hours.
2. The registry contains information about the individual that meets or exceeds the requirements for the nurse assistant registry.
3. The registry provides a mechanism for removal of the individual for cause, or marking of the registry of validated information--regarding--the--individual's--unsuitability--to--care for--North-Dakota--residents disciplinary action by the board.
4. The agency operating the registry has submitted sufficient documentation to the board of nursing to verify compliance with these requirements.

History: Effective November 1, 1992; amended effective September 1, 1994; December 1, 1995.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-08(21)

CHAPTER 54-07-02

54-07-02-02. Disciplinary action of registry listing. The board has the authority to revoke, suspend, or deny a nurse assistant registry listing following disciplinary action if the nurse assistant has been found to have completed any of the acts found in North Dakota Century Code section 43-12.1-14.1. The board shall use North Dakota Century Code chapter 28-32 as the process to determine the action to revoke, suspend, or deny the listing. Disciplinary action must be communicated to all health care agencies or providers of personal care in North Dakota. Repealed effective December 1, 1995.

History: Effective November 1, 1992; amended effective September 1, 1994.

General Authority: NDCC-43-12.1-08(18)

Law Implemented: NDCC-43-12.1-14.1

CHAPTER 54-07-04

NURSE ASSISTANT DISCIPLINARY ACTION

[Repealed effective December 1, 1995]

TITLE 62
Plumbing, Board of

FEBRUARY 1996

CHAPTER 62-02-03

62-02-03-06. License renewal. A certificate and license issued under the provisions of this chapter is valid for not more than one year, beginning the first day of July and expiring on the thirtieth day of June of the following year.

History: Effective February 1, 1996.

General Authority: NDCC 43-18.2-02

Law Implemented: NDCC 43-18.2-09

CHAPTER 62-03-01

62-03-01-01. Definitions. For the purpose of this article, the following terms shall have the meaning indicated in this section. No attempt is made to define ordinary words which are used in accordance with their established dictionary meaning except where it is necessary to define their meaning as used in this article to avoid misunderstanding.

1. "A.B.S." means acrylonitrile-butadiene-styrene.
2. "Accessible" means having access thereto but which first may require the removal of an access panel, door, or similar obstruction. "Readily accessible" means direct access without the necessity of removing or moving any panel, door, or similar obstruction.
3. "Acid waste" means corrosive waste.
4. "Administrative authority" means the individual official, board, department, or agency established and authorized by a state, county, city, or other political subdivision created by law to administer and enforce the provisions of the plumbing code as adopted or amended.
5. "A.G.A." means American gas association.
6. "Air break (drainage system)" means a piping arrangement in which a drain from a fixture, appliance, or device discharges indirectly into a fixture, receptacle, or interceptor at a point below the flood level rim of the receptacle so installed as to prevent backflow or siphonage.
7. "Air chamber" means a pressure surge absorbing device operating through the compressibility of air.
8. "Airgap (drainage systems)" means the unobstructed vertical distance through the free atmosphere between the outlet of waste pipe and the flood level rim of the receptacle into which it is discharging.
9. "Airgap (water distribution system)" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of the receptacle.
- 9.1. "Alkali waste" means waste having a pH factor more than seven.
10. "Anchors" means supports.

11. "A.N.S.I." means the American national standards institute.
12. "Antiscald valve" - see "water temperature control valve".
13. "Approved" means accepted or acceptable under an applicable standard stated or cited in this article, or accepted as suitable for the proposed use under procedures and powers of the administrative authority.
14. "Area drain" means a receptacle designed to collect surface or storm water from an open area.
15. "A.S.M.E." means the American society of mechanical engineers.
16. "Aspirator" means a fitting or device supplied with water or other fluid under positive pressure which passes through an integral orifice or "constriction" causing a vacuum.
17. "Autopsy table" means a fixture or table used for the postmortem examination of a body.
18. "B and S" means Brown and Sharpe.
19. "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of backflow.
20. "Backflow connection" means any arrangement whereby backflow can occur.
21. "Backflow drainage" means a reversal of flow in the drainage system.
22. "Backflow preventer" means a device or means to prevent backflow.
23. "Backflow preventer, reduced pressure zone type" means an assembly of differential valves and check valves including an automatically opened spillage port to the atmosphere.
24. "Backflow, water distribution" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of backflow.
25. "Back pressure backflow" means a condition, which may occur in the potable water distribution system, whereby a higher pressure than the supply pressure is created which causes a reversal of flow into the potable water piping.

26. "Backsiphonage" means the flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel or other sources into a potable water supply pipe due to a negative pressure in the pipe.
27. "Back vent" means individual vent.
28. "Backwater valve" means a device installed in a drain or pipe to prevent backflow.
29. "Bathroom group" means, unless specifically cited in the body of the code, a water closet, a lavatory, and a bathtub or shower stall or both.
30. "Battery of fixtures" means any group of two or more similar adjacent fixtures which discharge into a common horizontal waste or soil branch.
31. "Bedpan steamer" means a fixture used for scalding bedpans or urinals by direct application of steam.
32. "Bedpan washer" means a fixture designed to wash bedpans and to flush the contents into the soil drainage system. It may also provide for steaming the utensils with steam or hot water.
33. "Bedpan washer hose" means a device supplied with hot and cold water and located adjacent to a water closet or clinic sink to be used for cleansing bedpans.
34. "Boiler blowoff" means an outlet on a boiler to permit emptying or discharge of sediment.
35. "Boiler blowoff tank" means a vessel designed to receive the discharge from a boiler blowoff outlet and to cool the discharge to a temperature which permits its safe discharge to the drainage system.
36. "Branch" means any part of the piping system other than a riser, main, or stack.
37. "Branch, fixture" means fixture branch.
38. "Branch, horizontal" means horizontal branch.
39. "Branch interval" means a distance along a soil or waste stack corresponding in general to a story height, but in no case less than eight feet [2.44 meters], within which the horizontal branches from one floor or story of a building are connected to the stack.
40. "Branch vent" means a vent connecting one or more individual vents with a vent stack or stack vent.

41. "Building" means a structure having walls and a roof designed and used for the housing, shelter, enclosure, or support of persons, animals, or property.
42. "Building classification" means the arrangement adopted by the administrative authority for the designation of buildings in classes according to occupancy.
43. "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning three feet [91.44 centimeters] outside the building wall.
44. "Building drain - combined" means a building drain which conveys both sewage and storm water or other drainage.
45. "Building drain - sanitary" means a building drain which conveys sewage only.
46. "Building drain - storm" means a building drain which conveys storm water or other drainage but no sewage.
47. "Building sewer" means that part of the drainage system which extends from the end of the building drain and conveys its discharge to a public sewer, private sewer, individual sewage-disposal system, or other point of disposal.
48. "Building sewer - combined" means a building sewer which conveys both sewage and storm water or other drainage.
49. "Building sewer - sanitary" means a building sewer which conveys sewage only.
50. "Building sewer - storm" means a building sewer which conveys storm water or other drainage but no sewage.
51. "Building subdrain" means that portion of a drainage system which does not drain by gravity into the building sewer.
52. "Building trap" means a device, fitting, or assembly of fittings installed in the building drain to prevent circulation of air between the drainage system of the building and the building sewer.
53. "Cesspool" means a lined and covered excavation in the ground which receives the discharge of domestic sewage or other organic waste from a drainage system, so designed as to retain the organic matter and solids, but permitting the liquids to seep through the bottom and sides.

54. "Chemical waste" means special wastes such as, but not limited to, corrosive wastes or industrial wastes containing chemicals.
55. "Circuit vent" means a branch vent that ~~serves two or more traps and extends from the downstream side of the highest fixture connection of a horizontal branch to the vent stack~~ connects to a horizontal drainage branch and vents from two to eight traps or trapped fixtures connected in a battery.
56. "Clear water waste" means cooling water and condensate drainage from refrigeration, and air-conditioning equipment; cooled condensate from steam heating systems; cooled boiler blowdown water; wastewater drainage from equipment rooms and other areas where water is used without an appreciable addition of oil, gasoline, solvent, acid, etc., and treated effluent in which impurities have been reduced below a minimum concentration considered harmful.
57. "Clinic sink (bedpan hopper)" means a sink designed primarily to receive wastes from bedpans provided with a flush rim, integral trap with a visible trap seal, having the same flushing and cleansing characteristics as a water closet.
58. "Code" means this article, subsequent amendments thereto, or any emergency rule or regulation which the administrative authority having jurisdiction may lawfully adopt.
59. "Combination fixture" means a fixture combining one sink and laundry tray or a two- or three-compartment sink or laundry tray in one unit.
60. "Combination waste and vent system" means a specially designed system of waste piping embodying the horizontal wet venting of one or more sinks or floor drains by means of a common waste and vent pipe adequately sized to provide free movement of air above the flow line of the drain.
61. "Combined building drain" means building drain - combined.
62. "Combined building sewer" means building sewer - combined.
63. "Commercial" means public or public use.
64. "Common vent" means a vent connected at a common connection of two fixture drains and serving as a vent for both fixtures.
65. "Conductor" means the water conductor from the roof to the building storm drain, combined building sewer, or other means of disposal and located inside of the building.
66. "Continuous vent" means a vertical vent that is a continuation of the drain to which it connects.

67. "Continuous waste" means a drain from two or more fixtures connected to a single trap.
68. "Corrosive waste" means waste derived from laboratories or classrooms used for laboratory or demonstration purposes, or from industrial or commercial processes, or from any sink or fixture made to receive discarded chemicals, whereby acid or other harmful chemicals are disposed of, which may destroy or cause damage to the materials and equipment of a plumbing installation, if such materials and equipment are not of a type selected, manufactured, or installed for such special use.
69. "Critical level" on a backflow prevention device or vacuum breaker means a point established by the manufacturer and usually stamped on the device by the manufacturer which determines the minimum elevation above the flood level rim of the fixture or receptacle served at which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or the bottom of any approved device shall constitute the critical level.
70. "Cross-connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems. (See backflow and backsiphonage.)
71. "Dead end" means a branch leading from a soil, waste, or vent pipe, building drain, or building sewer, and terminating at a developed length of two feet [60.96 centimeters] or more by means of a plug, cap, or other closed fitting.
72. "Department having jurisdiction" means administrative authority.
73. "Developed length" means the length of a pipeline measured along the centerline of the pipe and fittings.
74. "Diameter" means the nominal diameter as designated commercially.
75. "Double check valve assembly" means a backflow prevention device consisting of two independently acting check valves, internally force loaded to a normally closed position between two tightly closing shutoff valves, and with means of testing for tightness.
76. "Double offset" means two changes of direction installed in succession or series in a continuous pipe.

77. "Downspout" means the rainleader from the roof to the building storm drain, combined building sewer, or other means of disposal and located outside of the building.
78. "Domestic sewage" means the water-borne wastes derived from ordinary living processes.
79. "Drain" means any pipe which carries wastewater or water-borne wastes in a building drainage system.
80. "Drainage pipe" means drainage system.
81. "Drainage system" means all the piping, within public or private premises, which conveys sewage, rainwater, or other liquid wastes to a point of disposal. It does not include the mains of a public sewer system or private or public sewage-treatment or disposal plant.
82. "Drainage system, building gravity" means a drainage system which drains by gravity into the building sewer.
83. "Drainage system, sub-building" means building subdrain.
84. "Dry well" means leaching well.
85. "Dual vent" means common vent.
86. "Durham system" means a soil, waste, or vent pipe system where all piping is of threaded pipe using recessed drainage fittings.
87. " Dwelling unit - multiple" means a room or group of rooms forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating; and whose sewer connections and water supply within its own premise are shared with one or more other dwelling units.
88. " Dwelling unit - single" means a room or group of rooms forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating; and whose sewer connections and water supply are within its own premise separate from and completely independent of any other dwelling.
89. "D.W.V." means drainage, waste, and venting.
90. "Effective opening" means the minimum cross-sectional area at the point of water supply discharge, measured or expressed in terms of (a) diameter of a circle, or (b) if the opening is not circular, the diameter of a circle of equivalent cross-sectional area.

91. "Existing work" means a plumbing system or any part thereof installed prior to the effective date of this article.
92. "Family" means one or more individuals living together and sharing the same facilities.
93. "Fixture" means plumbing fixture.
94. "Fixture branch supply" means a water-supply-pipe-between-the-fixture-supply-and-water--distributing--pipe branch of the water distribution system supplying one fixture.
95. "Fixture branch - drainage" means a drain serving one or more fixtures which discharges into another drain.
96. "Fixture drain" means the drain from the trap of a fixture to the junction of that drain with any other drainpipe.
97. "Fixture supply tube" means the-water-supply-pipe-connecting-a-fixture-to-a-branch-water-supply-pipe-or-directly--to--a--main-water-supply-pipe a flexible or soft temper water supply tube (or riser), typically three-eighths inch [9.53 millimeters] or one-half inch [12.7 millimeters] nominal size O.D., connecting a water closet ballcock, faucet, appliance or similar fixture to its stop valve or fixture supply branch pipe, or both.
98. "Fixture unit (drainage - d.f.u.)" means a measure of the probable discharge into the drainage system by various types of plumbing fixtures. The drainage fixture-unit value for a particular fixture depends on its volume rate of drainage discharge, on the time duration of a single drainage operation, and on the average time between successive operations.
99. "Fixture unit (supply - s.f.u.)" means a measure of the probable hydraulic demand on the water supply by various types of plumbing fixtures. The supply fixture-unit value for a particular fixture depends on its volume rate of supply, on the time duration of a single supply operation, and on the average time between successive operations.
100. "Flood level" means flood level rim.
101. "Flood level rim" means the edge of the receptacle from which water overflows.
102. "Flooded" means the condition which results when the liquid in a container or receptacle rises to the flood-level rim.
103. "Flow pressure" means the pressure in the water supply pipe near the faucet or water outlet while the faucet or water outlet is wide-open and flowing.

104. "Flushing type floor drain" means a floor drain which is equipped with an integral water supply, enabling flushing of the drain receptor and trap.
105. "Flush valve" means a device located at the bottom of a tank for flushing water closets and similar fixtures.
- 105.1. "Flushometer tank" means a device integrated within an air accumulator vessel which is designed to discharge a predetermined quantity of water to fixtures for flushing purposes.
106. "Flushometer valve" means a device which discharges a predetermined quantity of water to fixtures for flushing purposes and is closed by direct water pressure.
107. "Frostproof closet" means a hopper with no water in the bowl and with the trap and water supply control valve located below frostline.
108. "F.U." means fixture units.
109. "Funnel drain" means a funnel-shaped receptor for receiving the discharge of an indirect waste pipe.
110. "G.P.M." means gallons per minute.
111. "Grade" means the fall (slope) of a line of pipe in reference to a horizontal plane. In drainage it is usually expressed as the fall in a fraction of an inch per foot length of pipe.
112. "Grease interceptor" means interceptor.
113. "Grease trap" means interceptor.
114. "Ground water" means subsurface water occupying the zone of saturation.
 - a. "Confined ground water" is a body of ground water overlain by material sufficiently impervious to sever free hydraulic connection with overlying ground water.
 - b. "Free ground water" is ground water in the zone of saturation extending down to the first impervious barrier.
115. "Hangers" means supports.
116. "Health authority" means the state department of health or a county, city, or multi or combined county or city health unit.
117. "Horizontal branch drain" means a drain branch pipe extending laterally from a soil or waste stack or building drain, with or without vertical sections or branches, which receives the

- discharge from one or more fixture drains and conducts it to the soil or waste stack or to the building drain.
118. "Horizontal pipe" means any pipe or fitting which makes an angle of less than forty-five degrees with the horizontal.
 119. "Hot water" means potable water ~~supplied to plumbing fixtures~~ at a temperature of not less than one hundred ~~ten~~ twenty degrees Fahrenheit [~~12-22~~ 49 degrees Celsius], and not more than one hundred forty degrees Fahrenheit [60 degrees Celsius]; ~~except that commercial dishwashing machines and similar equipment shall be provided with water one hundred eighty degrees Fahrenheit [82-22 degrees Celsius] for sterilization purposes.~~
 120. "House drain" means building drain.
 121. "House sewer" means building sewer.
 122. "House trap" means building trap.
 123. "Individual sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank, cesspool, or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.
 124. "Indirect waste pipe" means a waste pipe which does not connect directly with the drainage system, but which discharges into the drainage system through an air break or airgap into a trap, fixture, receptor, or interceptor.
 125. "Individual vent" means a pipe installed to vent a fixture drain. It connects with the vent system above the fixture served or terminates outside the building into the open air.
 126. "Individual water supply" means a supply other than an approved public water supply which serves one or more families.
 127. "Industrial wastes" means liquid or liquid-borne wastes resulting from the processes employed in industrial and commercial establishments.
 128. "Insanitary" means contrary to sanitary principles - injurious to health.
 129. "Interceptor" means a device designed and installed so as to separate and retain deleterious, hazardous, or undesirable matter from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity.
 130. "Installed" means altered, changed, or a new installation.

131. "Interval" means branch interval.
132. "Invert" means the lowest portion of the inside of a horizontal pipe.
133. "Leaching well or pit" means a pit or receptacle having porous walls which permit the contents to seep into the ground.
134. "Leader" means an exterior vertical drainage pipe for conveying storm water from roof or gutter drains.
135. "~~Liquid---waste"---means---the---discharge---from---any---fixture, appliance, area, or appurtenance, which does not contain human or animal waste matter~~ Reserved.
136. "Load factor" means the percentage of the total connected fixture until flow which is likely to occur at any point in the drainage system.
137. "Local ventilating pipe" means a pipe on the fixture side of the trap through which vapor or foul air is removed from a room or a fixture.
138. "Loop vent" means a circuit vent which loops back to connect with a stack vent instead of a vent stack.
139. "Main" means the principal pipe artery to which branches may be connected.
140. "Main sewer" means public sewer.
141. "Main vent" means ~~the principal artery of the venting system to which vent branches may be connected~~ a stack vent or vent stack that provides air circulation for the building drain and building sewer that it serves.
142. "May" is permissive.
143. "Multiple dwelling" means a building containing two or more dwelling units.
144. "Nonpotable water" means water not safe for drinking or for personal or culinary use.
145. "Nuisance" means public nuisance at common law or in equity jurisprudence; whatever is dangerous to human life or detrimental to health; whatever building, structure, or premise is not sufficiently ventilated, sewered, drained, cleaned, or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink or water supply unwholesome.

146. "Offset" means a combination of elbows or bends which brings one section of the pipe out of line but into a line parallel with the other section.
147. "Oil interceptor" means interceptor.
148. "P.E." means polyethylene.
149. "Person" means a natural person, the natural person's heirs, executors, administrators or assigns, and includes a firm, partnership, or corporation, its or their successors or assigns. Singular includes plural and male includes female.
150. "Pitch" means grade.
151. "Plumbing" means the installation, maintenance, extension, alteration, and removal of all piping, plumbing fixtures, plumbing appliances, and other appurtenances in connection with bringing water into, and using the water in buildings, and for removing liquids and water-carried wastes therefrom. Maintenance does not include making repairs to faucets, valves, appliances, and fixtures, or removal of stoppages in waste or drainage pipes.
152. "Plumbing appliance" means any one of a special class of plumbing fixture which is intended to perform a special plumbing function. Its operation or control may be dependent upon one or more energized components, such as motors, controls, heating elements, or pressure or temperature-sensing elements. Such fixtures may operate automatically through one or more of the following actions: a time cycle, a temperature range, a pressure range, a measured volume or weight; or the fixture may be manually adjusted or controlled by the user or operator.
153. "Plumbing appurtenance" means a manufactured device, or a prefabricated assembly, or an on-the-job assembly of component parts, and which is an adjunct to the basic piping system and plumbing fixtures. An appurtenance demands no additional water supply, nor does it add any discharge load to a fixture or the drainage system. It is presumed that it performs some useful function in the operation, maintenance, servicing, economy, or safety of the plumbing system.
154. "Plumbing fixture" means a receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of water therefrom, or it discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises, or which requires both a water supply connection and a discharge to the drainage system of the premises. Plumbing appliances as a special class of fixture are further defined.

155. "Plumbing fixture" - private or private use" means in the classification of plumbing fixtures, fixtures in residences, apartments, or condominiums, or single fixtures for the intended use of a family or individual.
156. "Plumbing fixture - public or public use" means in the classification of plumbing fixtures, every fixture not defined under private use and includes all installations where a number of fixtures are installed and their use may be restricted or unrestricted.
157. "Plumbing inspector" means administrative authority.
158. "Plumbing system" includes the water supply and distribution pipes, plumbing fixture, and traps; soil, waste, and vent pipes; sanitary and storm drains and building sewers, including their respective connections, devices, and appurtenances to an approved point of disposal.
159. "Pollution" means the addition of sewage, industrial wastes, or other harmful or objectionable material to water. Sources of sewage pollution may be privies, septic tanks, subsurface irrigation fields, seepage pits, sink drains, barnyard wastes, etc.
160. "Pool" means swimming pool.
161. "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the public health service drinking water standards or the regulations of the public health authority having jurisdiction.
- 161.1. "Pressure gradient monitor" means a device used to protect the quality of potable water, fail-safe by design, protecting the water system by isolating the heat exchangers when the positive pressure differential is less than the set point.
162. "Private or private use" means in the classification of plumbing fixtures, fixtures in residences, apartments, private bathrooms of hotels and motels, and similar installations where the fixtures are intended for use by a family or an individual to the exclusion of all others.
163. "Private sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.
164. "Private sewer" means a sewer not directly controlled by public authority.

165. "P.S.I." means pounds per square inch.
166. "Public or public use" means, in the classification of plumbing fixtures, every fixture not defined under private use, and public includes all installations where a number of fixtures are installed and their use may be restricted or unrestricted.
167. "Public sewer" means a common sewer directly controlled by public authority.
168. "Public toilet room means an unrestricted toilet facility that serves the public.
169. "Public water main" means a water supply pipe for public use controlled by public authority.
- 169.1. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year.
170. "P.V.C." means polyvinyl chloride.
171. "Receptor" means a fixture or device which receives the discharge from indirect waste pipes.
172. "Relief vent" means an auxiliary vent which permits additional circulation of air in or between drainage and vent systems.
173. "Return offset" means a double offset installed so as to return the pipe to its original alignment.
174. "Revent pipe" means individual vent.
175. "Rim" means an unobstructed open edge of a fixture.
176. "Riser" means a water supply pipe which extends vertically one full story or more to convey water to branches or to a group of fixtures.
177. "Roof drain" means a drain installed to receive water collecting on the surface of a roof and to discharge it into a leader or a conductor.
178. "Roughing-in" means the installation of all parts of the plumbing system which can be completed prior to the installation of fixtures. This includes drainage, water supply, and vent piping, and the necessary fixture supports, or any fixtures that are built into the structure.
179. "Safe waste" means indirect waste.

180. "Sand filter" means a treatment device or structure, constructed above or below the surface of the ground, for removing solid or colloidal material of a type that cannot be removed by sedimentation, from septic tank effluent.
181. "Sand interceptor" means interceptor.
182. "Sand trap" means interceptor.
183. "Sanitary sewer" means a sewer which carries sewage and excludes storm, surface and ground water.
184. "Scavenger" means any person engaged in the business of cleaning and emptying septic tanks, seepage pits, privies, or any other sewage disposal facility.
185. "Seepage well or pit" means leaching well.
186. "Separator" means interceptor.
187. "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system or part thereof, and is designed and constructed so as to separate solids from the liquid, digest organic matter through a period of detention, and allow the liquids to discharge into the soil outside of the tank through a system of open joint or perforated piping, or a seepage pit.
188. "Sewage" means any liquid waste containing human waste (including fecal matter) or animal or vegetable, or chemical waste matter in suspension or solution,--and--may--include liquids-containing-chemicals-in-solution.
189. "Sewage ejectors" means a device for lifting sewage by entraining it in a high velocity jet of steam, air, or water.
190. "Sewage pump" means a permanently installed mechanical device other than an ejector for removing sewage or liquid waste from a sump.
191. "Shall" is mandatory.
192. "Shock arrestor (mechanical device)" means a device used to absorb the pressure surge (water hammer) that occurs when water flow is suddenly stopped.
193. "Side vent" means a vent connecting to the drainpipe through a fitting at an angle not greater than forty-five degrees to the vertical.
194. "Siphon" means an arrangement of plumbing piping, fittings, or device that will allow liquid to flow from a higher level

to a lower level over an intervening level at a velocity sufficient to break the water seal of a trap.

195. "Size of pipe and tubing" means diameter.
196. "Slope" means grade.
197. "Soil pipe or soil stack" means a pipe pipes which conveys convey sewage containing human-or-animal-waste fecal matter to the building drain or building sewer.
198. "~~Soil-vent~~-means-stack-vent Reserved."
199. "Special waste pipe" means a pipe which conveys special wastes.
200. "Special wastes" means wastes which require special treatment before entry into the normal plumbing system.
201. "S.P.S." means standard pipe size.
202. "Stack" means any vertical line of soil, waste, vent, or inside conductor piping extending through one or more stories.
203. "Stack group" means a group of fixtures located adjacent to the stack so that by means of proper fittings, vents may be reduced to a minimum.
204. "Stack vent" means the extension of a soil or waste stack above the highest horizontal drain connected to the stack.
205. "Stack venting" means a method of venting a fixture or fixtures through the soil or waste stack.
206. "Static line pressure" means the pressure existence without any flow.
207. "Sterilizer, boiling type" means a fixture (nonpressure type) used for boiling instruments, utensils, or other equipment (used for disinfection) and may be portable or connected to the plumbing system.
208. "Sterilizer instrument" means a sterilizer, boiling type.
209. "Sterilizer, pressure, instrument washer" means a fixture (pressure vessel) designed to both wash and sterilize instruments during the operating cycle of the fixture.
210. "Sterilizer, pressure (autoclave)" means a fixture (pressure vessel) designed to use steam under pressure for sterilizing. See Sterilizer, boiling type.

211. "Sterilizer vent" means a separate pipe or stack, indirectly connected to the building drainage system at the lower terminal, which receives the vapors from nonpressure sterilizers, or the exhaust vapors from pressure sterilizers, and conducts the vapors directly to the outer air. Sometimes called a vapor, steam, atmosphere, or exhaust vent.
212. "Sterilizer, water" means a device for sterilizing water and storing sterile water.
213. "Still" means a device used in distilling liquids.
214. "Storm drain" means building storm drain.
215. "Storm sewer" means a sewer used for conveying rainwater, surface water, condensate, cooling water, or similar liquid wastes.
216. "Subsoil drain" means a drain which collects subsurface or seepage water and conveys it to a place of disposal.
217. "Sump" means a tank or pit, which receives sewage or liquid waste, located below the normal grade of the gravity system and which must be emptied by mechanical means.
218. "Sump drainage" means a liquid and airtight tank that receives sewage or liquid waste, or both, located below the elevation of the gravity system, and is emptied by pumping.
219. "Sump pump" means a permanently installed mechanical device other than an ejector for removing sewage or liquid waste from a sump.
220. "Supports" means devices for supporting and securing pipe, fixtures, and equipment.
221. "Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, wading, or recreational bathing.
222. "Tailpiece" means a connection used from outlet of fixture strainer to trap connection.
223. "Tempered water" means water at a temperature of not less than ninety degrees Fahrenheit [32.22 degrees Celsius] and not more than one hundred five degrees Fahrenheit [40.56 degrees Celsius].
224. "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater through it.

225. "Trap arm" means that portion of a fixture drain between a trap and its vent.
226. "Trap primer" means a device or system of piping to maintain a water seal in a trap.
227. "Trap seal" means the vertical distance between the crown weir and the top of the dip of the trap.
228. "Vacuum" means any pressure less than that exerted by the atmosphere.
229. "Vacuum breaker" means backflow preventer.
230. "Vacuum breaker, nonpressure type (atmospheric)" means a vacuum breaker which is not designed to be subject to static line pressure.
231. "Vacuum breaker, pressure type" means a vacuum breaker designed to operate under conditions of static line pressure.
232. "Vacuum relief valve" means a device to prevent excessive vacuum in a pressure vessel.
233. "Vent pipe" means part of the vent system.
234. "Vent stack" means a vertical vent pipe installed to provide circulation of air to and from the drainage system and which extends through one or more stories.
235. "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system or to provide a circulation of air within such system to protect trap seals from siphonage and back pressure.
236. "Vertical pipe" means any pipe or fitting which makes an angle of forty-five degrees or less with the vertical.
237. "Wall hung water closet" means a water closet installed in such a way that no part of the water closet touches the floor.
238. "Waste" means liquid-waste-and-industrial-waste any liquid or liquid-borne material or residue intended to be discarded which remains after any activity or process but does not include any such materials that contain animal or human fecal matter.
239. "Waste stack, pipe, or piping" means a--pipe pipes which conveys--only-waste convey the discharge from fixtures (other than water closets), appliances, areas, or appurtenances, which does not contain fecal matter.

- 240. "Water distributing pipe" means a pipe within the building or on the premises which conveys water from the water-service pipe to the point of usage.
- 241. "Water lifts" means sewage ejector.
- 242. "Water main" means a water supply pipe for public use.
- 243. "Water outlet" means a discharge opening through which water is supplied to a fixture, into the atmosphere (except into an open tank which is part of the water supply system), to a boiler or heating system, to any devices or equipment requiring water to operate but which are not part of the plumbing system.
- 244. "Water riser pipe" means riser.
- 245. "Water service pipe" means the pipe from the water main or other source of potable water supply to the water distributing system of the building served.
- 246. "Water supply system" means the water service pipe, the water-distributing pipes, and the necessary connecting pipes, fittings, control valves, and all appurtenances in or adjacent to the building or premises.
- 246.1. "Water temperature control valve" means a valve of the pressure balancing, thermostatic mixing, or combination pressure balance thermostatic mixing type, which is designed to control water temperature to reduce the risk of scalding.
- 247. "Wet vent" means a vent which receives the discharge of wastes other than from water closets and kitchen sinks.
- 247.1. "Whirlpool bathtub" means a bathtub fixture which is equipped and fitted with a circulation piping system, pump, and other appurtenances and is so designed to accept, circulate, and discharge bathtub water upon each use.
- 248. "Yoke vent" means a pipe connecting upward from a soil or waste stack to a vent stack for the purpose of preventing pressure changes in the stack.

History: Amended effective July 1, 1985; October 1, 1989; September 1, 1990; January 1, 1992; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

CHAPTER 62-03-02

62-03-02-12. Sleeves.

1. Sleeves must be provided to protect all piping through concrete or masonry exterior or bearing walls.
2. Sleeves must be sized so there is a minimum of one-half-inch [12.7-millimeter] clearance around the pipe or insulation, or both.
3. Piping through concrete or masonry walls shall not be subject to any load from building construction.
4. In exterior walls, annular space between sleeves and pipes must be filled or tightly caulked with coal tar asphaltum compound, lead, or other material found equally effective and approved as such by the administrative authority.
5. ~~Any pipe sleeve through a firewall must have the space around the pipe completely sealed with an approved fire resistive material in accordance with all other codes~~ All penetrations of construction required to have a fire resistance rating must be protected in accordance with the applicable building regulations.

History: Amended effective October 1, 1989; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

CHAPTER 62-03-03.1

62-03-03.1-03. Fittings, fixtures, appliances, and appurtenances.

1. Cleanout plugs and cap.

- a. Cleanout plugs must be of brass, plastic, stainless steel, or other approved materials and must be raised or countersunk square heads, except that where raised heads will cause a tripping hazard, countersunk heads must be used.
- b. Cleanout caps must be of brass, plastic, reinforced neoprene, cast iron, or other approved material and shall be readily removable.

2. Fixtures.

- a. Plumbing fixtures must be constructed from approved materials having smooth, nonabsorbent surfaces and be free from defects, and except as permitted elsewhere in this article, must conform to the standards cited in Table 62-03-03.1-01.3.
- b. Materials for special use fixtures not otherwise covered in this article must be constructed of materials especially suited to the use for which the fixture is intended.

3. Floor flanges and mounting bolts.

- a. Floor flanges for water closets or similar fixtures may not be less than one-eighth inch [3.18 millimeter] thick for brass, one-fourth inch [6.35 millimeter] thick and not less than one and one-half inches [38.1 millimeters] caulking depth for cast iron or galvanized malleable iron. Approved copper and plastic flanges may be used.
- b. If of hard lead, they must weigh not less than one pound nine ounces [70.87 decigrams] and be composed of lead alloy with not less than seven and seventy-five hundredths percent antimony by weight. Flanges must be soldered to lead bends, or shall be caulked, soldered, or threaded into other metal.
- c. All plastic flanges shall conform to current national sanitation foundation standards.
- d. Closet screws and bolts shall be brass.

- e. The top of the closet flange must be installed above the finished floor not to exceed more than one-fourth inch [6.35 millimeters].
4. **Flush pipes and fittings.** Flush pipes and fittings must be of nonferrous material. When of brass or copper tube, the material must be at least three hundred thirteen ten-thousandths of an inch [.795 millimeter] in thickness [No. 20 U.S. gauge].
 5. **Hangers and supports.** Hangers, anchors, and supports must be of metal or other material of sufficient strength to support the piping and its contents. Piers may be of concrete, brick, or other approved material.
 6. **Interceptors.** Interceptors must ~~comply, in all respects, with the type or model of each size thereof approved by the administrative authority~~ meet the requirements of chapter 62-03-06.
 7. **Pressure tanks and vessels.**
 - a. Hot water storage tanks must meet construction requirements of American society of mechanical engineers, American gas association, or underwriter's laboratory as appropriate (see standards Table 62-03-03.1).
 - b. Storage tanks less in volume than those requirements specified by American society of mechanical engineers shall be of durable materials and constructed to withstand one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] with a safety factor of two.
 8. **Roof drains.** Roof drains must be of cast iron, copper, lead, or other approved corrosion-resistant materials.
 9. **Safety devices for pressure tanks.** Safety devices must meet the requirements of the American national standards institute, the American society of mechanical engineers, or the underwriters laboratories. Listing by underwriters laboratories, American gas association, or national board of boiler and pressure vessel inspectors constitutes evidence of conformance with these standards. Where a device is not listed by any of these, it must have certification by an approved laboratory as having met these requirements.
 10. **Septic tank.**
 - a. Plans for all septic tanks must be submitted to the approving authority for approval. The plans must show all dimensions, reinforcing, structural calculations, and such other pertinent data as may be required.

- b. Septic tanks must be constructed of sound durable materials, not subject to excessive corrosion or decay, and must be watertight. (See subsection 2 of section 62-03-16-06).

History: Effective July 1, 1985; amended effective October 1, 1989; January 1, 1992; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-06. Sanitary drainage and indirect waste systems.

1. **Aboveground piping - Sanitary and indirect drainage.** Soil and waste piping aboveground in buildings must be of brass--pipe; copper--pipe; copper--tube--drainage; waste--and--venting--weight--or heavier; cast--iron--soil--pipe; galvanized--steel--pipe; or acrylonitrile--butadiene--styrene; or polyvinyl--chloride; drainage; waste--and--venting; schedule--40--or--heavier--plastic pipe materials listed for such use in table 62-03-03.2. When plastic pipe is installed each for soil or waste stack--(does not include stack-vent)--may not exceed thirty-five feet--[10.67 meters]--in height; horizontal stacks, horizontal offsets in stacks, horizontal branches connected to stacks and, or building drains aboveground are limited to a maximum developed length of thirty-five feet--[10.67 meters]; if provisions are made; provision for expansion must be made at thirty-five foot [10.67-meter] intervals; the distance may exceed thirty-five feet--[10.67-meters].
2. **Underground building sanitary drains.** All underground building drains must be cast--iron--soil--pipe; hard--temper copper--tube--type--L; or heavier; or acrylonitrile--butadiene--styrene; or polyvinyl--chloride; drainage; waste--and--venting; schedule--40--or--heavier--plastic pipe. Where ferrous threaded joints are used underground, they must be coal--tar--coated or equivalent approved protection applied when installed and other underground sanitary drain and waste piping within buildings must be of materials listed for such use in table 62-03-03.2.
3. **Building sanitary sewer.**
 - a. In trench separate from water service. If the building sewer is installed in a trench separate from the water service; the sewer pipe material must be bituminized fiber; cast--iron; concrete; vitrified--clay; copper; acrylonitrile--butadiene--styrene; or polyvinyl--chloride; drainage; waste--and--venting--schedule--40--or--heavier; or acrylonitrile--butadiene--styrene; or polyvinyl--chloride; sewer pipe--(SDR--35--or--heavier)--plastic pipe. Joints must be watertight and rootproof Sanitary sewer piping outside

of buildings must be of materials listed for such use in table 62-03-03.2.

- b. In trench with water service. If the building sewer is installed in the same trench as the water service, the sewer pipe material must be cast iron, acrylonitrile-butadiene-styrene, or polyvinyl chloride, drainage, waste and venting, schedule 40 or heavier. The conditions in subsection 1 of section 62-03-10-06 must also be met.
4. **Fittings.** The materials of which drainage system pipe fittings are made must conform to the type of piping materials used in the drainage system. The fittings may have no ledges, shoulders, or reductions which can retard or obstruct flow in the piping. Threaded drainage pipe fittings must be of the recessed drainage type, black or galvanized.
5. Plastic piping. Pipe and fittings classified by standard dimension ration that are underground outside of buildings must be SDR 35 or heavier (lower SDR number). Pipe and fittings within buildings must be SDR 26 or heavier (lower SDR number), except that SDR 35 fittings must be permitted. Pipe and fittings classified by pipe stiffness that are underground outside of buildings must be PS-45 or heavier (higher PS number). Pipe and fittings within buildings must be PS-100 minimum.

History: Effective July 1, 1985; amended effective October 1, 1989; February 1, 1994; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-08. Potable water supply systems.

1. **Water service pipe.** Water service pipe to point of entrance to the building must be ~~made of brass pipe, copper tube or copper pipe, cast iron water pipe, or galvanized steel pipe, or approved plastic pipe (minimum pressure rating of~~ materials listed for such use in table 62-03-03.3 and shall be water pressure rated for not less than one hundred sixty pounds per square inch at 73F). ~~Copper tube when used underground may not be less than type L. All threaded ferrous pipe and fittings must be galvanized or cement lined and, when used underground in corrosive soil or filled ground, must be coal tar enamel coated and threaded joints must be coated and wrapped when installed (see subsection 4).~~
2. **Water distribution system pipe.** Water distribution system pipe must be of brass pipe, copper tube or copper pipe, galvanized steel pipe, or approved plastic pipe material listed for such use in table 62-03-03.3 and must be water

pressure rated for not less than one hundred pounds per square inch, at one hundred eighty degrees Fahrenheit [82 degrees Celsius]. Piping for hot water must be applied within the limits of its listed standard and the manufacturer's recommendations. Copper tube when used underground shall be not less than type L (see subsection 4).

3. **Fittings.** The materials of which water supply system pipe fittings are made must be compatible with the type of piping materials used in the water supply system (see subsection 4).
4. **Material strength.**
 - a. All materials used for water piping must be suitable for use with the maximum temperature, pressure, and velocity that may be encountered in the installation, including temporary increases and surges.
 - b. When the standards for the piping material used for hot and cold water distribution limit the working pressure or temperature to values lower than usually encountered, the relief valve may be set no higher than the limits of the standard.
5. **Limitation of lead content.** Pipe and fittings used in the potable water supply system may not contain more than eight percent lead.
6. Plastic piping. Plastic piping materials used for the conveyance of potable water must comply with NSF 14 and be marked accordingly.

History: Effective July 1, 1985; amended effective January 1, 1988; October 1, 1989; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-09. Storm drainage systems.

1. **Interior conductors.** Interior conductors installed aboveground in buildings must be of brass-pipe,--copper--pipe, copper--tube,--drainage,--waste-and-venting-weight-or-heavier, cast--iron--soil--pipe,--galvanized--steel--pipe,--lead--pipe, acrylonitrile-butadiene-styrene----or----polyvinyl--chloride, drainage,--waste-and-venting--schedule-40--or--heavier--plastic pipe,--or-acrylonitrile-butadiene-styrene-or-polyvinyl-chloride sewer-pipe materials listed for such use in table 62-03-03.4. Plastic pipe SDR 35 or heavier is allowed for interior conductors six inches [15.24 centimeters] in diameter or larger. When plastic pipe is installed for interior conductors, and-the--vertical--or--horizontal--length--exceeds

thirty-five-feet-[10.67-meters]; provisions for expansion must be made at thirty-five-foot ([10.67-meter] intervals).

2. **Exterior gutters and leaders.** Exterior gutters and rain leaders must be of approved galvanized sheet metal, aluminum, plastic, or other acceptable approved material.
3. **Underground building storm drains.** All underground building storm drains must be cast-iron-soil-pipe,--hard-temper--copper tube---type---drainage,--waste---and---venting,--or--heavier, acrylonitrile-butadiene-styrene----or----polyvinyl----chloride drainage,--waste--and--venting,--schedule-40-or-heavier-plastic pipe-or-acrylonitrile-butadiene-styrene-or-polyvinyl--chloride sewer---pipe of materials listed for such use in table 62-03-03.4. Plastic pipe SDR 35 is allowed for building drains six inches [15.24 centimeters] in diameter or larger. Where ferrous threaded joints are used underground, they must be coal tar coated or equivalent approved protection applied when installed.
4. **Building storm sewer.** The building storm sewer outside of buildings must be of asbestos-cement,--bituminized-fiber,--cast iron--soil--pipe,--concrete,--vitrified-clay,--copper-tube-type drainage,--waste-and-venting,--acrylonitrile-butadiene-styrene, or--polyvinyl-chloride-drainage,--waste-and-venting-schedule-40 or-heavier-plastic-pipe,--or--acrylonitrile-butadiene-styrene, or--polyvinyl--chloride-sewer-pipe-SDR-35-or-heavier materials listed for such use in table 62-03-03.4.

History: Effective July 1, 1985; amended effective October 1, 1989; February 1, 1994; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-10. Venting systems.

1. **Aboveground.** Vent piping aboveground in buildings must be of brass-pipe,--copper-pipe,--copper--tube,--drainage,--waste--and venting--weight--or--heavier,--cast-iron-soil-pipe,--galvanized steel-pipe,--lead-pipe,--or-acrylonitrile-butadiene-styrene,--or polyvinyl--chloride-drainage,--waste-and-venting-schedule-40-or heavier--plastic--pipe serving sanitary, waste, or storm drainage systems must be of materials listed for such use in table 62-03-03.5.
2. **Underground.** All underground vent piping must be cast-iron soil-pipe,--hard-temper-copper-tube-type--drainage,--waste--and venting---or---heavier,---acrylonitrile-butadiene-styrene,--or polyvinyl-chloride-drainage,--waste-and-venting-schedule-40--or heavier--plastic-pipe,--where-ferrous-threaded-joints-are-used underground,--they--must--be--coal--tar--coated--or--equivalent

approved-protection-applied-when-installed of materials listed for such use in table 62-03-03.5.

3. **Fittings.** Fittings must be compatible with the type of pipe used in the vent system as required by subsections 1 and 2 or when used with galvanized pipe they may be black drainage fittings, black steam pattern fittings, or galvanized malleable fittings.

History: Effective July 1, 1985; amended effective October 1, 1989; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

STAFF COMMENT: Table 62-03-03.1 is all new and is not underscored so as to improve readability.

**TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING
MATERIALS AND EQUIPMENT**

I. FERROUS PIPE AND FITTINGS

1. Hub and Spigot Cast-Iron Soil Pipe and Fittings: ASTM A74-87.
2. Hubless Cast-Iron Soil Pipe and Fittings: CISPI 301-90, ASTM A888-90.
3. Ductile-Iron Pressure Pipe: ASTM A377-89, ANSI/AWWA C151/A21.51-86.
4. Ductile-Iron and Gray-Iron Fittings (3" and larger): ANSI/AWWA C110/A21.10-87.
5. Cement-Mortar Lining for Ductile-Iron Pipe and Fittings: ANSI/AWWA C104/A21.4-1990.
6. Steel Pipe, Galvanized, Welded and Seamless: ASTM A53-90b, ANSI/ASME B36.10M-1985.
7. Cast-Iron Threaded Drainage Fittings: ANSI/ASME B16.12-1991.
8. Cast-Iron Fittings (UPC Fittings): IAPMO PS 5-84.
9. Cast-Iron Threaded Fittings, Class 125 and 250: ANSI/ASME B16.4-1985.
10. Malleable-Iron Threaded Fittings, Classes 150 & 300: ANSI/ASME B16.3-1985.
11. Ferrous Pipe Plugs, Bushings, and Locknuts with Pipe Threads: ANSI/ASME B16.14-1991.

II. NONFERROUS METALLIC PIPE AND FITTINGS

1. Brass Pipe, Red, Seamless, Standard Sizes: ASTM B43-91.
2. Cast Bronze Threaded Fittings, Classes 125 & 250: ANSI/ASME B16.15-1985.
3. Cast Copper Alloy Pipe Flanges, Class 150, 300, 400, 600, 900, 1500, 2500, and Flanged Fittings, Class 150 and 300: ASME B16.24-1991.
4. Cast Copper Alloy Solder Joint Drainage Fittings - DWV: ANSI B16.23-1984.

5. Cast Copper Alloy Solder Joint Pressure Fittings: ANSI B16.18-1984.
6. Copper Drainage Tube (DWV): ASTM B306-92.
7. Copper Pipe, Seamless, Standard Sizes: ASTM B42-93.
8. Copper Pipe, Threadless (TP): ASTM B302-92.
9. Copper Water Tube, Seamless (K,L,M): ASTM B88-93.
10. Grooved & Shouldered Joints (Split Couplings, for Copper Tube): ANSI/AWWA C606-87.
11. Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings - DWV: ANSI/ASME B16.29-1986.
12. Wrought Copper and Copper Alloy Solder Joint Pressure Fittings: ANSI/ASME B16.22-1989.
13. Lead Pipe, Bends, Traps, Caps and Plugs: FSWW-P-325B (June 9, 1976).

III. NONMETALLIC PIPE AND FITTINGS

1. Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe (SDR-PR) (1/8" - 12"): ASTM D2282-89.
2. Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe, Schedules 40 and 80 (1/8" - 12"): ASTM D1527-89.
3. Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings, Schedule 40 (1/8" - 8"): ASTM D2468-93.
4. Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40 Plastic Drain, Waste, and Vent Pipe and Fittings (1-1/4" - 6"): ASTM D2661-93a.
5. Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40 Plastic Drain, Waste, and Vent Pipe With a Cellular Core (1-1/4" - 6"): ASTM F628-93.
6. Acrylonitrile-Butadiene-Styrene (ABS) Sewer Pipe and Fittings (3" - 12"): ASTM D2751-93.
7. Acrylonitrile-Butadiene-Styrene (ABS) and Poly (Vinyl Chloride) (PVC) Composite Sewer Piping (6"-15"): ASTM D2680-93.
8. Poly (Vinyl Chloride) (PVC) Pressure Pipe for Water (4"-12"): AWWA C900-89.

9. Poly (Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80, and 120 (1/8"-24"): ASTM D1785-93.
10. Poly (Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 40; Socket-Type (1/8"-8"): ASTM D2466-93.
11. Poly (Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80; Socket-Type (1/8"-8"): ASTM D2467-93.
12. Poly (Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80, Threaded (1/8"-6"): ASTM D2464-93.
13. Poly (Vinyl Chloride) (PVC) Pressure-Rated Pipe, (SDR Series) (1/8"-36"): ASTM D2241-93.
14. Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings (1-1/4"-12"): ASTM D2665-93a.
15. 3.25" Outside Diameter Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings: ASTM D2949-93a.
16. Poly (Vinyl Chloride) (PVC) Sewer Pipe and Fittings (2"-6"): ASTM D2729-93.
17. Poly (Vinyl Chloride) (PVC) Gasketed Sewer Fittings (4"-27"): ASTM F1336-93.
18. Coextruded Poly (Vinyl Chloride) (PVC) Plastic Pipe With a Cellular Core; Nonpressure Uses, IPS Schedule 40 (3"-18"): ASTM F891-93a.
19. Coextruded Poly (Vinyl Chloride) (PVC) Plastic Pipe With a Cellular Core; Nonpressure Uses, Sewer and Drain Series (3"-18"): ASTM F891-93a.
20. Type PS-46 Poly (Vinyl Chloride) (PVC) Plastic Gravity Flow Sewer Pipe and Fittings (4"-18"): ASTM F789-89.
21. Type PSM Poly (Vinyl Chloride) (PVC) Sewer Pipe and Fittings (4"-15"): ASTM D3034-93.
22. Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot and Cold Water Distribution Systems (3/8"-2"): ASTM D2846-93.
23. Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe (SDR-PR) (1/4"-12"): ASTM F442-93.
24. Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe, Schedules 40 and 80 (1/4"-12"): ASTM F441-93.
25. Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe Fittings, Schedule 80; Socket-type (1/4"-8"): ASTM F439-93a.

26. Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe Fittings, Schedule 80; Threaded (1/4"-6"): ASTM F437-93.
27. Polybutylene (PB) Pressure Pipe and Tubing for Water (1/2"-3"): AWWA C902-88.
28. Polybutylene (PB) Plastic Hot and Cold Water Distribution Systems (1/4"-2"): ASTM D3309-93.
29. Polybutylene (PB) Plastic Pipe (SDR-PR) Based on Outside Diameter (1/2"-6"): ASTM D3000-93.
30. Polybutylene (PB) Plastic Pipe (SIDR-PR) Based on Controlled Inside Diameter (1/2"-6"): ASTM D2662-93.
31. Polybutylene (PB) Plastic Tubing (1/2"-2"): ASTM D2666-93.
32. Metal Insert Fittings for Polybutylene (PB) Tubing (3/8"-3/4"): ASTM F1380-92.
33. Copper Crimp Rings for Joints using Insert Fittings in Polybutylene (PB) Tubing (3/8"-3/4"): ASTM F845-93. (Plastic insert fittings are not approved).
34. Polyethylene (PE) Pressure Pipe and Tubing for Water Service (1/2"-3"): ANSI/AWWA C901-88.
35. Polyethylene (PE) Plastic Pipe (SDR-PR) Based on Controlled Outside Diameter (1/2"-6"): ASTM D3035-93.
36. Polyethylene (PE) Plastic Pipe (SIDR-PR) Based on Controlled Inside Diameter (1/2"-6"): ASTM D2239-93.
37. Polyethylene (PE) Plastic Pipe, Schedule 40 (1/2"-6"): ASTM D2104-93.
38. Polyethylene (PE) Plastic Pipe, Schedules 40 and 80, Based on Outside Diameter (1/2"-12"): ASTM D2447-93.
39. Polyethylene (PE) Plastic Tubing (1/2"-2"): ASTM D2737-93.
40. Butt Heat Fusion Polyethylene (PE) Plastic Fittings for Polyethylene (PE) Plastic Pipe and Tubing (1/2"-48"): ASTM D3261-93.
41. Crosslinked Polyethylene (PEX) Tubing (1/4"-2"): ASTM F876-93.
42. Crosslinked Polyethylene (PEX) Plastic Hot and Cold Water Distribution Systems (1/4"-2"): ASTM F877-93.
43. Plastic Insert Fittings for Polyethylene (PE) Plastic Pipe (1/2"-4"): ASTM D2609-93.

44. Corrugated Polyethylene (PE) Tubing and Fittings (3"-6"): ASTM F405-93.
45. Smoothwall Polyethylene (PE) Pipe for use in Drainage and Waste Disposal Absorption Fields (3"-6"): ASTM F810-93.
46. Styrene-Rubber (SR) Plastic Drainpipe and Fittings (2"-6"): ASTM D2852-93.
47. Thermoplastic Accessible and Replaceable Plastic Tube and Tubular Fittings; for Waste Connections (1-1/4", 1-1/2"): ASTM F409-93.
48. Fiberglass Pressure Pipe (1" and larger): ANSI/AWWA C950-88.
49. Fiberglass (GFR) Sewer and Industrial Pressure Pipe (8" and larger): ASTM D3754-91.
50. Fiberglass (GFR) Sewer Pipe (8" and larger): ASTM D3262-93.
51. Fiberglass (GFR) Nonpressure Pipe Fittings (8" and larger): ASTM D3840-88.
52. Clay Drain Tile, Perforated (4"-18"): ASTM C498-65 (1986).
53. Vitrified Clay Pipe, Extra Strength, Standard Strength, and Perforated (3" and larger): ASTM C700-89a (e1).
54. Concrete Drain Tile (4" and larger): ASTM C412-90.
55. Concrete Sewer, Storm Drain, and Culvert Pipe; Nonreinforced (4" and larger): ASTM C14-90.
56. Reinforced Concrete Culvert, Storm Drain, and Sewer Pipe (12" and larger): ASTM C76-90.
57. Perforated Concrete Pipe (4" and larger): ASTM C444-90.

IV. PIPE JOINTS, JOINING MATERIALS, COUPLINGS, GASKETS

1. Pipe Threads, Tapered, General Purpose: ANSI/ASME B1.20.1-1983.
2. Liquid and Paste Fluxes for Soldering Applications of Copper and Copper Alloy Tube: ASTM B813-91.
3. Solder Metal: ASTM B32-93.
4. Brazing Filler Metal: AWS A5.8-89.
5. Pig Lead: ASTM B29-79 (1984).

6. Grooved and Shouldered Joints (Split Couplings): ANSI/AWWA C606-87.
7. Flexible Transition Couplings for Underground Piping Systems: ASTM C-1173-91.
8. Rubber Sheet Gaskets: ASTM D1330-85 (1990).
9. Rubber Gasket Joints for Ductile-Iron and Gray-Iron Pressure Pipe and Fittings: ANSI/AWWA C111/A21.11-90.
10. Rubber Gaskets for Cast-Iron Soil Pipe and Fittings: ASTM C564-88.
11. Couplings for Hubless Cast-Iron Soil Pipe and Fittings: FM 1680, CISPI 310-90.
12. Compression Joints for Vitrified Clay Pipe and Fittings: ASTM C425-90a.
13. Rubber Gasket Joints in Circular Concrete Sewer and Culvert Pipe: ASTM C443-85a (1990).
14. Elastomeric Seals (gaskets) for Push-On Joints in Plastic Pipe: ASTM F477-93.
15. Flexible Elastomeric Seals for Plastic Pressure Pipe: ASTM D3139-89.
16. Flexible Elastomeric Seals for Plastic Drain and Sewer Pipe: ASTM D3212-92.
17. Socket-end IPS PVC Pipe Joints: ASTM D2672-93.
18. Primers for Solvent Cement Joints in PVC Plastic Pipe and Fittings: ASTM F656-93.
19. Solvent Cement for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe and Fittings: ASTM D2235-93a.
20. Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems: ASTM D2564-93.
21. Solvent Cements for Transition Joints Between Acrylonitrile-Butadiene-Styrene (ABS) and Poly (Vinyl Chloride) (PVC) Nonpressure Piping Components: ASTM D3138-93.
22. Solvent Cements for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe and Fittings: ASTM F493-93a.
23. Solvent Cements for Styrene-Rubber (SR) Plastic Pipe and Fittings: ASTM D3122-93.

V. PLUMBING FIXTURES

1. Bathtubs, Plastic: ANSI Z124.1-1987 and addendum Z1241a-1990.
2. Ceramic Plumbing Fixtures, Nonvitreous: ANSI/ASME A112.19.9M-1990.
3. Drains for Prefabricated and Precast Showers: IAPMO PS-4-90.
4. Drinking Fountains and Water Coolers, Self-contained, Mechanically Refrigerated: ANSI/ARI 1010-1984, ANSI/UL 399-1986.
5. Enameled Cast-Iron Plumbing Fixtures: ANSI/ASME A112.19.1M-1987.
6. Enameled Steel Plumbing Fixtures: ANSI/ASME A112.19.4M-1984.
7. Floor Drains: ANSI A112.21.1M-1980 (R1990).
8. Lavatories, Plastic: ANSI Z124.3-1986 and addendum Z124.3a-1990.
9. Roof Drains: ANSI A112.21.2M-1983.
10. Shower Receptors and Shower Stalls, Plastic: ANSI Z124.2-1987 and addendum Z124.2a-1990.
11. Stainless Steel Plumbing Fixtures (Residential Design): ANSI/ASME A112.19.3M-1987.
12. Vitreous China Plumbing Fixtures: ANSI/ASME A112.19.2M-1990.
13. Water Closet Bowls and Tank, Plastic: ANSI Z124.4-1986 and addendum Z124.4a-1990.
14. Whirlpool Bathtub Appliances: ANSI/ASME A112.19.7M-1987.
15. Backflow Prevention Requirements for Fixture Fittings with Hose Connected Single Movable Outlets: CSA B-125-93; IAPMO PS-49-92.

VI. PLUMBING FIXTURE TRIM

1. Ballcock (Water Closet Flush Tank Fill Valve): ANSI/ASSE 1002-1979, ASSE 1002-1986.
2. Control Valves for Bath Facilities; Individual Thermostatic, Pressure Balance, and Combination Type: ANSI/ASSE 1016-1990.
3. Divertors for Plumbing Faucets with Hose Spray, Antisiphon Type, Residential Application: ASSE 1025-1978.

4. Faucets and Fixture Fittings: ANSI/ASME A112.18.1M-1989.
5. Flushometers (Pressurized Flushing Devices): ANSI/ASSE 1037-1990.
6. Laboratory Faucet Vacuum Breakers: ANSI/ASSE 1035-1981.
7. Showers, Hand Held: ANSI/ASSE 1014-1990.
8. Supports for Off-The-Floor Plumbing Fixtures: ANSI/ASME A112.6.1M-1988.
9. Trim for Water Closet Bowl, Tanks, and Urinals (Dimensional Standards): ANSI A112.19.5-1979 (R1990).
10. Water Connectors, Flexible Metallic: IAPMO PS-14-89.
11. Water Closet Seats, Plastic: ANSI Z124.5-1989.
12. Whirlpool Suction Fittings: ANSI/ASME A112.19.8-1987.

VII. PLUMBING APPLIANCES

1. Clothes Washers: ANSI/AHAM HLW-2PR-1986, ANSI/ASSE 1007-1986.
2. Dishwashing Machines, Commercial: ANSI/UL 921-1985, ANSI/ASSE 1004-1990.
3. Dishwashers, Household: ANSI/UL 749-1984, ANSI/AHAM DW-2PR-1986, ANSI/ASSE 1006-1986.
4. Food Waste Grinder Units, Commercial: ANSI/ASSE 1009-1990.
5. Food Waste Disposal Units, Household: AHAM FWD-1-1991, ANSI/ASSE 1008-1980, ASSE 1008-1986, ANSI/UL 430-1986.
6. Hot Water Dispensers: ASSE 1023-1979.
7. Water Heaters, Gas, Volume I, Storage Type, 75,000 BTUH Input or Less: ANSI Z21.10.1-1990 and addendum Z21.10.1a-1991.
8. Water Heaters, Gas, Volume III, Storage Type with Input Above 75,000 BTUH, Circulating and Instantaneous Water Heaters: ANSI Z21.10.3-1990 and addendum Z21.10.3a-1990.
9. Water Heaters, Household Electric Storage Tank Type: ANSI/UL 174-1989.
10. Water Heaters, Instantaneous, Electric, Point-of-Use: ANSI/UL 499-1987.
11. Water Heaters, Oil-Fired Storage Type: ANSI/UL 732-1987.

12. Water Heater Relief Valve Drain Tubes: ASME A112.4.1-1993.

VIII. VALVES AND APPURTENANCES

1. Backwater Valves: ANSI A112.14.1-1975 (R1990), IAPMO P5-8-77, CSA B181.1-M85 (ABS), CSA B181.2-M87 (PVC).
2. Ballcocks (Water Closet Flush Tank Fill Valve): ASSE 1002-1986.
3. Bronze Gate, Globe, Angle and Check Valves: MSS SP-80-1987.
4. Check Valves, Swing, Cast-Iron: MSS SP-71-1984.
5. Cleanouts: ANSI A112.36.2M-1983.
6. Drain Valves, Water Heater: ASSE 1005-1986.
7. Flushometers (Pressurized Flushing Devices): ANSI/ASSE 1037-1990.
8. Gate Valves, Cast-Iron, 125# and 250#: MSS SP-70-1976.
9. Gate Valves, Iron Body (3" and Larger): AWWA C500-86.
10. Pressure Reducing and Regulating Valves: ANSI/ASSE 1003-1981.
11. Relief Valves and Automatic Gas Shut-off Devices for Hot Water Supply Systems: ANSI Z21.22-1986.
12. Relief Valves, Thermal Expansion: ANSI/ASSE 1046-1990.
13. Thermostatic Mixing Valves, Self-Actuated, Primary Domestic Use: ASSE 1017-1986.
14. Trap Seal Primer Valves, Water Pressure Type: ASSE 1018-1986.
15. Trap Seal Primer Valves, Drainage Type: ASSE 1044-1986.
16. Wall Hydrants, Frost Proof, Automatic Draining, Antibackflow Type: ASSE 1019-1978.
17. Water Hammer Arrestors: ANSI/ASME A112.26.1M-1984, ASSE 1010-1982, PDI WH201.

IX. BACKFLOW PREVENTION DEVICES

1. Airgap Drain for Domestic Dishwashers: ASSE 1021-1977.
2. Backflow Preventers with Intermediate Atmospheric Vent: ASSE 1012-1978.
3. Detector Assembly, Double Check Type: ANSI/ASSE 1048-1990.

4. Detector Assembly, Reduced Pressure Type: ANSI/ASSE 1047-1990.
5. Double Check Valve Assembly: ASSE 1015-1988.
6. Dual Check Valve Type Backflow Preventer: ANSI/ASSE 1024-1990.
7. Reduced Pressure Principle Backflow Preventer: ASSE 1013-1988.
8. Vacuum Breaker, Atmospheric (Pipe-Applied): ANSI/ASSE 1001-1990.
9. Vacuum Breaker, Hose Connection: ANSI/ASSE 1011-1982.
10. Vacuum Breaker, Laboratory Faucet: ANSI/ASSE 1035-1981.
11. Vacuum Breaker, Pressure (Recommended for Outdoor Use): ANSI/ASSE 1020-1990.
12. Backflow Prevention Requirements for Fixture Fittings with Hose Connected Single Movable Outlets: CSA B125-93; IAPMO PS-49-92.
13. Hose Connection Backflow Preventers: ASSE 1052-93.
14. Vacuum Breakers, Pressure (Indoor) Back Siphonage Backflow: ASSE 1056-93.

X. MISCELLANEOUS

1. Copper Flashing (Sheet): ASTM B370-92.
2. Lead Flashing (Sheet): ASTM B749-85.
3. Pipe Hangers and Supports (Materials, Design, Manufacture): MSS SP-58-1988.
4. Poly (Vinyl Chloride) (PVC) Plastic Flexible Concealed Water-Containment Membrane: ASTM D4551-91.
5. Shower Pan Liner (PVC Plastic Sheeting): ASTM D4551-91.
6. Water Containment Membrane, Concealed (Polyethylene Sheeting): ASTM D4068-91.
7. Shower Pan Liner (Plastic Sheeting): ASTM D4068-91.
8. Grease Interceptors: PDI-G101-85.

XI. RECOMMENDED PRACTICES, INSTALLATION STANDARDS

1. Installation of Ductile-Iron Water Mains and Appurtenances: ANSI/AWWA C600-87.

2. Installing Vitrified Clay Pipe Lines: ASTM C12-86.
3. Safe Handling of Solvent Cements, Primers and Cleaners Used for Joining Thermoplastic Pipe and Fittings: ASTM F402-93.
4. Practice for Making Solvent-Cemented Joints with Poly (Vinyl Chloride) (PVC) Pipe and Fittings: ASTM D2855-93.
5. Underground Installation of Thermoplastic Pressure Pipe (up to 6"): ASTM D2774-72 (1983).
6. Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity Flow Applications: ASTM D2321-89.
7. Practice for Installation of Thermoplastic Pipe and Corrugated Tubing in Septic Tank Leach Fields: ASTM F481-93.
8. Plastic Fitting Patterns; Drain, Waste, and Vent (DWV): ASTM D3311-92.
9. Selection and Application of Pipe Hangers and Supports: MSS SP-69-1983.
10. Fabrication and Installation Standards for Pipe Hangers and Supports: MSS SP-89-1985.
11. Field Test Procedures for Backflow Prevention Devices: ASSE 5010.
12. Professional Qualification, Series 5000, Backflow Prevention - Assemblies Standards Program: ANSI/ASSE 5000.
13. Practice for Heat-Joining Polyolefin Pipe and Fittings: ASTM D2657-90.
14. Practice for Electrofusion Joining Polyolefin Pipe and Fittings: ASTM F1290-93.
15. Making Capillary Joints by Soldering of Copper and Copper Alloy Tube and Fittings: ASTM B828-92.

NOTES FOR TABLE 62-03-03.1

1. See application sections of Chapter 62-03-03.1 for limitations on specific piping materials.
2. Pipe sizes contained in parentheses () are provided for general information on the scope of the referenced standard and are not intended to limit use.

TABLE 62-03-03.2 MATERIALS FOR SANITARY WASTE & DRAIN (1)	ABOVEGROUND WITHIN BUILDINGS		
	UNDERGROUND WITHIN BUILDINGS		
	SEWERS OUTSIDE OF BUILDINGS		
ABS Pipe and Fittings, Schedule 40 DWV (ASTM D2661)	*	*	*
ABS Pipe - Cellular Core (ASTM F628) and DWV Fittings	*	*	*
ABS Sewer Pipe and Fittings (ASTM D2751) (2) (3)	*		
ABS and PVC Composite Sewer Pipe (ASTM D2680)	*		
Brass Pipe (ASTM B43)			*
Cast-Iron Soil Pipe and Fittings - Bell and Spigot (ASTM A74)	*	*	*
Cast-Iron Soil Pipe and Fittings - Hubless (CISPI 301, ASTM A888)	*	*	*
Cellular Core PVC Sewer and Drain Pipe (ASTM F891) (3)	*		
Cellular Core PVC Sewer and Drain Pipe (ASTM F891) (4)	*	*	
Cellular Core PVC DWV Pipe, IPS Schedule 40 (ASTM F891)	*	*	*
Concrete Drain Pipe. Nonreinforced (ASTM C14)	*		
Concrete Drain Pipe, Reinforced (ASTM C76)	*		
Copper Pipe (ASTM B42)			*
Copper Tube - DWV (ASTM B306) and Copper Drainage Fittings (ANSI B16.23)	*	*	*
Copper Water Tube - K,L,M, (B88) and Copper Drainage Fittings (ANSI B16.23)	*	*	*
Fiberglass Sewer and Pressure Pipe (ASTM D3754) and Fiberglass Non-Pressure Pipe Fittings (ASTM D3840)	*		
Fiberglass Sewer Pipe (ASTM D3262) and Fiberglass Non-Pressure Pipe Fittings (ASTM D3840)	*		
Galvanized Steel Pipe (A53) and Cast-Iron Drainage Fittings (ASME B 16.12)			*
PVC Pipe and Fittings, DWV (ASTM D2665)	*	*	*
PVC Sewer Pipe (PS-46) and Fittings (ASTM F789)	*		
PVC Sewer Pipe (PSM) and Fittings (ASTM D3034) (2) (3)	*		
Vitrified Clay Pipe - Standard Strength (ASTM C700)	*		
Vitrified Clay Pipe - Extra Strength (ASTM C700)	*	*	

- (1) Piping shall be applied within the limits of its listed standards and the manufacturer's recommendations.
(2) SDR 35 pipe or heavier (lower SDR number).
(3) PS-45 pipe or stiffer (higher PS number).
(4) PS-100 pipe or stiffer (higher PS number).

TABLE 62-03-03.3 MATERIALS FOR POTABLE WATER	HOT WATER DISTRIBUTION		
	COLD WATER DISTRIBUTION		
	WATER SERVICE PIPING		
ABS Plastic Pipe, SDR (ASTM D2282)	*		
ABS Plastic Pipes, Schedule 40 or 80 (ASTM D1527)	*		
Brass Pipe (ASTM B43)	*	*	*
Copper Pipe (ASTM B42)	*	*	*
Copper Water Tube, Type K or L (ASTM B88)	*	*	*
Copper Water Tube, Type M (ASTM B88)		*	*
CPVC Plastic Pipe, Schedule 40, 80 (ASTM F441)	*	*	*
CPVC Plastic Pipe, SDR (ASTM F442)	*	*	*
CPVC Plastic Water Distribution Systems (ASTM D2846)	*	*	*
Ductile Iron Pipe, Cement-Lined (ASTM A377, ANSI/AWWA C151/A21.51)	*		
Fiberglass Pressure Pipe (AWWA C950)	*		
Galvanized Steel Pipe (ASTM A53)	*	*	*
PB Plastic Pipe, SDR (ASTM D3000)	*		
PB Plastic Pipe, SIDR (ASTM D2662)	*		
PB Plastic Tubing (ASTM D2666)	*		
PB Plastic Water Distribution Systems (ASTM D3309)	*	*	*
PB Plastic Pressure Pipe and Tubing (AWWA C902)	*		
PE Plastic Pipe, Schedule 40 (ASTM D2104)	*		
PE Plastic Pipe, Schedule 40, 80 (ASTM D2447)	*		
PE Plastic Pipe, SDR (ASTM D3035)	*		
PE Plastic Pipe, SIDR (ASTM D2239)	*		
PE Plastic Tube (ASTM D2737)	*		
PE Plastic Pressure Pipe and Tubing (AWWA C901)	*		
PEX Plastic Water Distribution Systems (ASTM F877)		*	*
PEX Plastic Tubing (ASTM F876)		*	*
PVC Plastic Pressure Pipe (AWWA C900)	*		
PVC Plastic Pipe, Schedule 40, 80, 120 (ASTM D1785)	*		
PVC Plastic Pipe, SDR (ASTM D2241)	*		

TABLE 62-03-03.4 MATERIALS FOR STORM DRAINAGE (1)	ABOVEGROUND WITHIN BUILDINGS		
	UNDERGROUND WITHIN BUILDINGS		
	SEWERS OUTSIDE OF BUILDINGS		
ABS Pipe and Fittings, Schedule 40 DWV (ASTM D2661)	*	*	*
ABS Pipe - Cellular Core (ASTM F628) and DWV Fittings	*	*	*
ABS Sewer Pipe and Fittings (ASTM D2751) (2) (3)	*		
ABS and PVC Composite Sewer Pipe (ASTM D2680)	*		
Brass Pipe (ASTM B43)			*
Cast-Iron Soil Pipe and Fittings - Bell and Spigot (ASTM A74)	*	*	*
Cast-Iron Soil Pipe and Fittings - Hubless (CISPI 301, ASTM A888)	*	*	*
Cellular Core PVC Sewer and Drain Pipe (ASTM F891) (3)	*	(5)	(5)
Cellular Core PVC Sewer and Drain Pipe (ASTM F891) (4)	*	*	(5)
Cellular Core PVC DWV Pipe, IPS Schedule 40 (ASTM F891)	*	*	*
Concrete Drain Pipe. Nonreinforced (ASTM C14)	*		
Concrete Drain Pipe, Reinforced (ASTM C76)	*		
Copper Pipe (ASTM B42)			*
Copper Tube - DWV (ASTM B306) and Copper Drainage Fittings (ANSI B16.23)	*	*	*
Copper Tube - K,L,M, (B88) and Copper Drainage Fittings (ANSI B16.23)	*	*	*
Galvanized Steel Pipe (A53) and Cast-Iron Drainage Fittings (ASME B 16.12)			*
PVC Pipe and Fittings, DWV (ASTM D2665)	*	*	*
PVC Sewer Pipe (PS-46) and Fittings (ASTM F789)	*		
PVC Sewer Pipe (PSM) and Fittings (ASTM D3034) (2) (3)	*	(5)	(5)
Vitrified Clay Pipe - Standard Strength (ASTM C700)	*		
Vitrified Clay Pipe - Extra Strength (ASTM C700)	*	*	

- (1) Piping shall be applied within the limits of its listed standards and the manufacturer's recommendations.
- (2) SDR 35 pipe or heavier (lower SDR number).
- (3) PS-45 pipe or stiffer (higher PS number).
- (4) PS-100 pipe or stiffer (higher PS number).
- (5) Plastic piping 6 inches or larger only.

TABLE 62-03-03.5 MATERIALS FOR VENT PIPING (1)	ABOVEGROUND	
	UNDERGROUND	
ABS Pipe and Fittings, Schedule 40 DWV (ASTM D2661)	*	*
ABS Pipe - Cellular Core (ASTM F628) and DWV Fittings	*	*
Brass Pipe (ASTM B43)		*
Cast-Iron Soil Pipe and Fittings - Bell and Spigot (ASTM A74)	*	*
Cast-Iron Soil Pipe and Fittings - Hubless (CISPI 301, ASTM A888)	*	*
Cellular Core PVC DWV Pipe, IPS Schedule 40 (ASTM F891)	*	*
Copper Pipe (ASTM B42)		*
Copper Tube - DWV (ASTM B306) and Copper Drainage Fittings (ANSI B16.23)	*	*
Copper Water Tube - K,L,M, (B88) and Copper Drainage Fittings (ANSI B16.23)	*	*
Galvanized Steel Pipe (A53) and Cast-Iron Drainage Fittings (ASME B 16.12)		*
PVC Pipe and Fittings, DWV (ASTM D2665)	*	*
3.25" OD PVC Pipe and Fittings, DWV (ASTM D2949)	*	*
Vitrified Clay Pipe - Extra Strength (ASTM C700)	*	

(1) Piping shall be applied within the limits of its listed standards and the manufacturer's recommendations.

CHAPTER 62-03-04

62-03-04-02. Types of joints for piping materials.

1. Caulked.

- a. Cast iron soil pipe. Every lead caulked joint for cast iron hub and spigot soil pipe shall be firmly packed with oakum or hemp and filled with molten lead not less than one inch [2.54 centimeters] deep and not to extend more than one-eighth inch [3.18 millimeters] below the rim of the hub. No paint, varnish, or other coatings shall be permitted on the jointing material until after the joint has been tested and approved. Lead shall be run in one pouring and shall be caulked tight.
- b. Cast iron water pipe. Every lead caulked joint for cast iron bell and spigot water pipe shall be firmly packed with clean, sound asbestos rope or treated paper rope. The remaining space in the hub shall be filled with molten lead according to the following schedule:

<u>Pipe Size</u>	<u>Depth of Lead</u>
Up to twenty inches	Two and one-fourth inches
Twenty-four, thirty, thirty-six inches	Two and one-half inches
Larger than thirty-six inches	Three inches

Lead shall be run in one pouring and shall be caulked tight.

2. **Threaded.** Every threaded joint shall conform to the American National Taper Pipe Thread, ANSI B2.1-1960. All burrs shall be removed. Pipe ends shall be reamed or filed out to size of bore, and all chips shall be removed. Pipe joint compound shall be used only on male threads.
3. **Wiped.** Every joint in lead pipe or fittings, or between lead pipe or fittings and brass or copper pipe, ferrules, solder nipples, or traps, shall be full-wiped joints. Wiped joints shall have an exposed surface on each side of a joint not less than three-fourths inch [19.05 millimeters] and at least as thick as the material being jointed. Wall or floor flange lead-wiped joints shall be made by using a lead ring or flange placed behind the joints at wall or floor. Joints between lead pipe and cast iron, steel, or wrought iron shall be made by means of a caulking ferrule, soldering nipple, or bushing.

4. **Soldered.** Joints in copper tubing shall be made by the appropriate use of approved brass or copper fittings. The surface to be joined by soldering shall be cleaned bright by manual or mechanical means. The joints shall be properly fluxed with an approved noncorrosive paste type flux and made up with approved solder. Joints for potable water used in copper, brass, or wrought copper fittings must be made with a solder and flux containing not more than 0.2 percent lead. Soldered joints shall not be used for tube installed underground.
5. **Flared.** Every flared joint for annealed-temper copper water tube shall be made with fittings meeting approved standards. The tube shall be reamed and then expanded with a proper flaring tool.
6. **Precast.** Every precast collar shall be formed in both the spigot and bell of the pipe in advance of use. Collar surfaces shall be conical with side slopes of three degrees with the axis of the pipe and the length shall be equal to the depth of the socket. Prior to making joint contact, surfaces shall be cleaned and coated with solvents and adhesives as recommended in the standard. When the spigot end is inserted in the collar, it shall bind before contacting the base of the socket. Material shall be inert and resistant to both acids and alkalies.
7. **Brazed joints and extracted mechanical joints.**
 - a. Brazed joints must be made by first cleaning the surface to be joined down to the base metal, applying flux approved for such joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.
 - b. An extracted mechanical joint may be made in copper tube. It must be produced with an appropriate tool and joined by brazing. To prevent the branch tube from being inserted beyond the depth of the extracted joint, depth stops must be provided. The brazed joint must be made according to subdivision a.
8. **Cement.** Except for repairs and connections to existing lines constructed with such joints, cement mortar joints are prohibited. Where permitted, cement mortar joints shall be made in the following manner: A layer of jute or hemp shall be inserted into the base of the annular joint space and packed tightly to prevent mortar from entering the interior of the pipe or fitting. Not more than twenty-five percent of the annular space shall be used for jute or hemp. The remaining space shall be filled in one continuous operation with a thoroughly mixed mortar composed of one part cement and two

parts sand, with only sufficient water to make the mixture workable by hand. Additional mortar of the same composition shall then be applied to form a one to one slope with the barrel of the pipe. The bell or hub of the pipe shall be left exposed and when necessary the interior of the pipe shall be swabbed to remove any mortar or other material which may have found its way into such pipe.

9. **Burned lead (welded).** Every burned (welded) joint shall be made in such manner that the two or more sections to be joined shall be uniformly fused together into one continuous piece. The thickness of the weld shall be at least as thick as the lead being joined.
10. **Mechanical (flexible or slip joint).**
 - a. **Cast iron pipe.**
 - (1) **Mechanical joint.** Every mechanical joint in cast iron pipe shall be made with a flanged collar, rubber ring gasket, and appropriate number of securing bolts.
 - (2) **Hubless pipe.** Joints for hubless cast iron soil pipe and fittings shall be made with an approved elastomeric sealing sleeve and stainless steel clamp, clamping screw, and housing.
 - (3) **Bell and spigot pipe.** Joints for bell and spigot cast iron soil pipe and fittings may be made by caulking with lead and oakum or by use of a compression gasket that is compressed when the spigot is inserted into the hub of the pipe.
 - b. **Clay pipe.** Flexible joints between lengths of clay pipe may be made using approved resilient materials both on the spigot end and in the bell end of the pipe.
 - c. **Concrete pipe.** Flexible joints between lengths of concrete pipe may be made using approved elastomeric materials both on the spigot end and in the bell end of the pipe. For plain end pipe, see American society for testing and materials C-594; for bell and spigot, see American society for testing and materials C-425.
11. **Tapered couplings.** Every joint in bituminized fiber pipe shall be made with tapered type couplings of the same material as the pipe. Joints between bituminized fiber pipe and metal pipe shall be made by means of an adapter coupling caulked as required in subsection 1.
12. **Plastic.**

- a. Every joint in plastic piping shall be made with approved fittings by either solvent-cemented or heat-joined connections, approved couplings consisting of elastomeric gaskets, metal clamps and screws of corrosion-resistant materials sleeves with corrosion-resisting metal screw clamps, approved insert fittings, approved mechanical fittings, or threaded joints according to approved standards. The commingling of acrylonitrile-butadiene-styrene and polyvinyl chloride material is prohibited.
 - b. An approved primer appropriate for the material used which is of contrasting color to the pipe and solvent cement must be used in joining P.V.C. and C.P.V.C. pipe and fittings. A mechanical method of preparing P.V.C. or C.P.V.C. pipe for solvent cement is not acceptable in lieu of using primer. Solvent-cemented plastic joints may not be installed when the temperature in the installation area is less than forty degrees Fahrenheit [4.4 degrees Celsius] or more than ninety degrees Fahrenheit [32.22 degrees Celsius].
13. **Slip.** Every slip joint shall be made using approved packing or gasket material, or approved ground joint brass compression rings. Ground joint brass connections which allow adjustment of tubing but provide a rigid joint when made up shall not be considered as slip joints.
 14. **Expansion.** Every expansion joint shall be of approved type and its material shall conform with the type of piping in which it is installed.
 15. **Split couplings.** Couplings made in two or more parts and designed for use with plain end or grooved pipe or approved fittings and with compression gaskets may be used for hot and cold water piping and conductors and leaders. Each manufacturer must have the manufacturer's complete joining assembly approved for the intended use by one of the organizations listed in chapter 62-03-03 or by the administrative authority.

History: Amended effective April 1, 1984; July 1, 1985; January 1, 1988; December 1, 1988; October 1, 1989; January 1, 1992; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-04-03. Types of joints between different piping materials.

1. **Vitrified clay to other material.** Every joint between vitrified clay and other piping materials should be specially formed to vitrified clay and resilient material to meet the

test conditions of American society for testing and materials C-425. All adapters must meet requirements of positive jointing and smooth flow line.

2. **Cast iron to vitrified clay.** Every joint between cast iron piping and vitrified clay piping shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. This ring shall, after ramming, completely fill the annular space between the cast iron spigot and the vitrified clay hub.
3. **Threaded pipe to cast iron.** Every joint between wrought iron, steel, or brass, and cast iron pipe shall be either caulked or threaded or shall be made with approved adapter fittings.
4. **Lead to cast iron, wrought iron, or steel.** Every joint between lead and cast iron, wrought iron, or steel pipe shall be made by means of wiped joints to a caulking ferrule, soldering nipple, bushing, or by means of a mechanical adapter.
5. **Cast iron to copper tube.** Every joint between cast iron and copper tube shall be made by using an approved brass or copper caulking ferrule and properly soldering the copper tube to the ferrule.
6. **Copper tube to threaded pipe joints.** Every joint from copper tube to threaded pipe shall be made by the use of brass or copper converter fittings. The joint between the copper pipe and the fitting shall be properly soldered, and the connection between the threaded pipe and the fitting shall be made with a standard pipe size screw joint.
7. **Special joints for drainage piping.** Different types of drainage piping materials shall or different size piping must be jointed either by adapter fittings or by means of an acceptable---prefabricated---sealing---ring---or---sleeve---as specifically mechanical couplings that are designed for the specific application. Fittings and couplings must comply with standards listed in table 62-03-03.1 or be approved by the administrative authority. The use of flexible unshielded couplings must be limited to joints in underground sewer, drain, or vent piping. For aboveground installations an exterior corrosion-resistant shield to prevent outward expansion of the coupling must be included.
8. **Acrylonitrile-butadiene-styrene or polyvinyl plastic drainage, waste, and venting to other material.**
 - a. Threaded joints. Acrylonitrile-butadiene-styrene or polyvinyl drainage, waste, and venting joints when threaded shall use the proper male or female threaded adapter. Use only approved thread tape or lubricant seal

or other approved material as recommended by the manufacturer.

Threaded joints shall not be overtightened. After hand tightening the joint, one-half to one full turn with a strap wrench will be sufficient.

- b. Cast iron hub joints. Joints may be made by caulking with lead and oakum or by use of a compression gasket that is compressed when the plastic pipe is inserted into the cast iron hub end of the pipe. No adapters are required for this connection.
- c. Cast iron spigot ends or schedule 40 steel pipe-copper drainage, waste, and venting tube. Joints where the outside diameter of the two pipes or fittings to be joined are the same may be joined with an approved elastomeric sealing sleeve and stainless steel clamp, clamping screw, and housing.

History: Amended effective October 1, 1989; January 1, 1992; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

CHAPTER 62-03-05

62-03-05-01. Separate traps for each fixture. Each plumbing fixture shall be separately trapped by a water seal trap, except as otherwise permitted in this article, placed as close as possible to the fixture outlet. The vertical distance from the fixture outlet to the trap weir shall not exceed twenty-four inches [60.96 centimeters]. No fixture shall be double trapped unless a relief vent is provided between the two traps. Fixture designs having integral dual traps within the fixture are permitted. Exceptions to the separate trapping requirements are as follows:

1. Fixtures which have integral traps.
2. A combination plumbing fixture may be installed on one trap provided one compartment is not more than six inches [15.24 centimeters] deeper than the other and the waste outlets are not more than thirty inches [76.2 centimeters] apart and neither outlet is equipped with a food-waste grinder.
3. One trap may be installed for a set of not more than three single compartment sinks, laundry trays, or lavatories immediately adjacent to each other in the same room, and the trap is centrally located when three such fixtures are installed.
4. No clothes washer or laundry tub shall be discharged to a trap serving a kitchen sink.

History: Amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

CHAPTER 62-03-06

62-03-06-01. Interceptors and separators.

1. **Interceptors and separators required.** All necessary floor drains, sand interceptors, catch basins, oil and flammable liquids separators, and grease interceptors shall be provided when, in the opinion of the administrative authority, they are necessary for the proper handling of liquid wastes containing grease, flammable wastes, sand, solids, and other ingredients harmful to the building drainage system, the public sewer, or sewage-treatment plant or processes.
2. **Approval of interceptors and separators.** The size, and type, and location of each ~~interceptor and of each~~ interceptors or separator, or both, shall be as approved by the administrative authority ~~and no.~~ Mechanical interceptors and separator must be certified by the manufacturer to provide effluent meeting the environmental requirements of the sewer. Nonmechanical, gravity-type grease interceptors must comply with the standard listing in table 62-03-03.1. No wastes other than those requiring treatment or separation shall be discharged into any interceptor or separator.
3. ~~All interceptors to follow type approved. No interceptor shall be hereinafter installed which does not comply, in all respects, with the type or model of each size thereof approved by the administrative authority.~~
4. **Separation of liquids.** A mixture of light and heavy liquids having various specific gravities may be treated and then separated in a receptacle as approved by the administrative authority.
5. 4. **Venting of interceptors and separators.** Interceptors and separators shall be so designed that they will not become airbound if tight covers are used. Each interceptor or separator shall be properly vented if loss of trap seal is possible.
6. 5. **Interceptors and separators to be accessible.** Each interceptor and separator shall be so installed that it is readily accessible for removal of cover, servicing, and maintenance. Need for use of ladders or moving of bulky objects in order to service interceptors shall constitute a violation of accessibility.
7. 6. **Maintenance of interceptors and separators.** Interceptors and separators shall be maintained in efficient operating condition by periodic removal of accumulated grease, scum,

oil, or other floating substances, and solids deposited in the interceptor or separator.

- 8- 7. **Discharge.** The ~~waste--pipe~~ effluent from oil and sand interceptors shall ~~discharge--into--the--storm--sewer;--or--as~~ otherwise be to a sanitary sewer or as approved by the administrative authority.

History: Amended effective January 1, 1992; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-06-03. Oil and flammable liquids separator.

1. ~~Separators--required.---All--commercial;--repair~~ Where required. Repair garages; gasoline stations with grease racks, grease pits, work or wash racks; all motor vehicle laundries with degreasing provisions; and all buildings where oily or flammable wastes are produced shall be provided with oil and flammable liquids separator. When a hazard exists, the administrative authority may require the oil separator be provided with an overflow line to a waste oil tank, underwriters' laboratories approved, of adequate size, and such tank shall be vented with a minimum two-inch [5.08-centimeter] vent terminating in the open air at an approved location at least twelve feet [3.66 meters] above grade and with a minimum two-inch [5.08-centimeter] pumpout opening at grade.
2. **Design of separators.**
 - a. Overall requirements. Each separator shall be of watertight construction and have a depth of not less than two feet [60.96 centimeters] below the invert of the discharge drain. The outlet opening of the separator shall have not less than an eighteen-inch [45.72-centimeter] water seal. The minimum size of the inlet and outlet drain must be three inches [7.62 centimeters] with a full size cleanout to grade on the discharge drain. Whenever the outlet branch drain serving a separator is more than twenty-five feet [7.62 meters] from a vented drain, the branch drain must be provided with a two-inch [5.08-centimeter] vent pipe.
 - b. Construction and size. Separators must be constructed of monolithic poured reinforced concrete with a minimum floor and wall thickness of four inches [10.16 centimeters], or of a prefabricated cast iron or other watertight material approved by the administrative authority. A nonperforated iron or steel cover and ring of not less than twenty-four inches [60.96 centimeters] in diameter shall be provided. Separator capacity shall be based on a net capacity of

one cubic foot [.03 cubic meter] for each one hundred square feet [9.29 square meters] of surface to be drained into the separator with a minimum of six cubic feet [.17 cubic meters].

3. **Vapor venting.** Oil separators shall have a minimum size two-inch [5.08-centimeter] vapor vent from the air space in the top of the separator extending separately to the open air at an approved location at least twelve feet [3.66 meters] above grade.
4. **Combination oil and sand interceptor.** A combination oil and sand interceptor may be installed when the design is approved by the administrative authority.

History: Amended effective January 1, 1992; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

CHAPTER 62-03-07

62-03-07-25. Facilities for persons with disabilities. ~~Plumbing~~ Licensees installing plumbing fixtures in toilet rooms in newly constructed or remodeled buildings and facilities subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 317] ~~must conform to~~ inform the property owner of the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36, [28 CFR 36], and in accordance with North Dakota Century Code section 54-21.3-04.1.

NOTE: Drawings in diagram 62-03-07 and on the following pages may be used in part as a guideline for specifications and clear floor spaces for plumbing fixtures.

History: Amended effective April 1, 1984; January 1, 1992; February 1, 1994; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

CHAPTER 62-03-10

62-03-10-13. Water supply distribution.

1. **Size of water service.** The water service pipe from the street main to the water distribution system for the building shall be of brass, copper (type K or L), cast iron, or plastic national sanitation foundation approved, minimum continuous working pressure of at least one hundred sixty pounds at seventy-three and four-tenths degrees Fahrenheit [72.57 kilograms at 23 degrees Celsius], with appropriate approved fittings. The water service pipe shall be of sufficient size to furnish an adequate flow of water to meet the requirements of the building at peak demand, and in no case shall be less than the size shown in the following table. Exceptions to this section must be approved in writing by the administrative authority.

MINIMUM SIZE OF WATER SERVICE
Based on Maximum Flow Eight Foot Second
and Predominately for Flush Tanks

Maximum Number of Fixture Units **	Minimum Size of Pipe *** (Inches)
14	3/4 *
34	1
77	1 1/4
135	1 1/2
290	2
900	3
2000	4
6500	6

* Does not include residential type buildings unless water main pressure exceeds 60 PSI.

** When provision is made for the future installation of fixtures, those provided for shall be considered in determining the size of the water service.

*** Larger pipe sizes must be considered if building to be served is more than three stories in height, if developed length of pipe exceeds 100 feet, or if available main pressure is less than 40 PSI.

2. **Supply demand.** The supply demand in gallons per minute in the building water distributing system shall be determined on the

basis of the load in terms of supply fixture units and of the relationship between load and supply demand as shown in the following two tables:

SIZING-THE-WATER-SUPPLY-SYSTEM-*

Fixture-----Occupancy-----	Type-of-----Supply-Control-----	Load Fixture Units
Bathroom-group----Private-----	Flushometer-valve--- for closet	8
Bathroom-group----Private-----	Flush-tank----- for closet	6
Bathtub-----Private-----	Faucet-----	2
Bathtub-----Public-----	Faucet-----	4
Clothes-washer----Private-----	Faucet-----	2
Clothes-washer----Public-----	Faucet-----	4
Combination-----Private----- fixture	Faucet-----	3
Kitchen-sink-----Private-----	Faucet-----	2
Kitchen-sink-----Hotel, restaurant	Faucet-----	4
Laundry-trays----Private----- (1-to-3)	Faucet-----	3
Lavatory-----Private-----	Faucet-----	1
Lavatory-----Public-----	Faucet-----	2
Separate-shower---Private-----	Mixing-valve-----	2
Service-sink-----Office,-etc.--	Faucet-----	3
Shower-head-----Private-----	Mixing-valve-----	2
Shower-head-----Public-----	Mixing-valve-----	4
Urinal-pedestal--Public-----	Flushometer-valve--	10
Urinal-----Public-----	Flushometer-valve--	5
Urinal-----Public-----	Flush-valve-----	3
Water-closet----Private-----	Flushometer-valve--	6
Water-closet----Private-----	Flushometer-tank---	3
Water-closet----Private-----	Flush-tank-----	3
Water-closet----Public-----	Flushometer-valve--	10
Water-closet----Public-----	Flushometer-tank---	5
Water-closet----Public-----	Flush-tank-----	5

Water-supply-outlets-for-items-not-listed-above-shall-be computed-at-their-maximum-demand,-but-in-no-case-less than:

Fixture-----	Number-of-Fixture-Units	
	Private-Use-----	Public-Use-----
3/8-inch-----	1-----	2-----
1/2-inch-----	2-----	4-----

3/4-inch-----	3-----	6
1-inch-----	6-----	10

- *-For supply outlets likely to impose continuous demands, estimate continuous supply separately and add to total demand for fixtures.
- *-The given weights are for total demand.--For fixtures with both hot and cold water supplies, the weights for maximum separate demands may be taken as 3/4 the listed demand for the supply.
- *-A bathroom group for the purposes of this table consists of not more than one water closet, one lavatory, one bathtub, one shower stall or not more than one water closet, two lavatories, one bathtub, or one separate shower stall.

STAFF COMMENT: The following two tables, along with the notes, are all new material and are not underscored so as to improve readability.

TABLE 62-03-10.1

WATERSUPPLY FIXTURE UNITS (WSFU) AND MINIMUM FIXTURE BRANCH PIPE SIZES

TYPE OF FIXTURES	HEAVY USE ASSEMBLY		OTHER THAN DWELLING UNITS	
	SERVING 3 OR MORE DWELLING UNITS		INDIVIDUAL DWELLING UNITS	
	MINIMUM BRANCH PIPE SIZE		MINIMUM BRANCH PIPE SIZE	
BATHROOM GROUPS HAVING 1.6 GPF GRAVITY-TANK WATER CLOSETS				
Half-bath or Powder Room		3.5	2.5	
1 Bathroom Group		5.0	3.5	
1-1/2" Bathrooms		6.0		
2 Bathrooms		7.0		
2-1/2 Bathrooms		8.0		
3 Bathrooms		9.0		
Each Additional 1/2 Bath		0.5		
Each Additional Bathroom Group		1.0		
BATHROOM GROUPS HAVING 1.6 GPF PRESSURE-TANK WATER CLOSETS				
Half-bath or Powder Room		3.5	2.5	
1 Bathroom Group		5.0	3.5	
1-1/2 Bathrooms		6.0		
2 Bathrooms		7.0		
2-1/2 Bathrooms		8.0		
3 Bathrooms		9.0		
Each Additional 1/2 Bath		0.5		
Each Additonal Bathroom Group		1.0		
BATHROOM GROUPS HAVING 3.5 GPF GRAVITY-TANK WATER CLOSETS				
Half-bath or Powder Room		4.0	3.0	
1 Bathroom Group		6.0	5.0	
1-1/2 Bathrooms		8.0		
2 Bathrooms		10.0		
2-1/2 Bathrooms		11.0		
3 Bathrooms		12.0		
Each Additional 1/2 Bath		0.5		
Each Additional Bathroom Group		1.0		

BATH GROUP (1.6 GPF Flushometer Valve)		6.0	4.0		
BATH GROUP (3.5 GPF Flushometer Valve)		8.0	6.0		
KITCHEN GROUP (Sink and Dishwasher)		2.0	1.5		
LAUNDRY GROUP (Sink and Clothes Washer)		5.0	3.0		
INDIVIDUAL FIXTURES					
Bathtub or Combination Bath/Shower	1/2"	4.0	3.5		
Bidet	1/2"	1.0	0.5		
Clothes Washer, domestic	1/2"	4.0	2.5	4.0	
Dishwasher, domestic	1/2"	1.5	1.0	1.5	
Drinking Fountain or Watercooler	3/8"			0.5	0.75
Hose Bibb	1/2"	2.5	2.5	2.5	
Hose Bibb, each additional	1/2"	1.0	1.0	1.0	
Kitchen Sink, domestic	1/2"	1.5	1.0	1.5	
Laundry Sink	1/2"	2.0	1.0	2.0	
Lavatory	3/8"	1.0	0.5	1.0	1.0
Service Sink or Mop Basin	1/2"			3.0	
Shower	1/2"	2.0	2.0	2.0	
Shower, continuous use	1/2"			5.0	
Urinal, 1.0 GPF	3/4"			4.0	5.0
Urinal, greater than 1.0 GPF	3/4"			5.0	6.0
Water Closet, 1.6 GPF Gravity Tank	1/2"	2.5	2.5	2.5	4.0
Water Closet, 1.6 GPF Pressure Tank	1/2"	1.5	1.5	2.5	3.5
Water Closet, 1.6 GPF Flushometer Valve	1"	5.0	5.0	5.0	8.0
Water Closet, 3.5 GPF Gravity Tank	1/2"	3.0	3.0	5.5	7.0
Water Closet, 3.5 GPF Flushometer Valve	1"	7.0	7.0	8.0	10.0
Whirlpool Bath or Combination Bath/Shower	1/2"	4.0	4.0		

NOTES:

1. A bathroom group, for the purposes of this table, consists of not more than one water closet, up to two lavatories, and either one bathtub or one shower stall.
2. A half-bath or powder room, for the purposes of this table, consists of one water closet and one lavatory.
3. For unlisted fixtures, refer to a listed fixture having a similar flow rate and frequency of use.
4. The listed fixture unit values for bathroom groups and individual fixtures represent their load on the cold water service. The separate cold water and hot water fixture unit values for fixtures having both cold and hot water connections shall each be taken as three-fourths of the listed total value for the individual fixture.
5. When water supply fixture unit (WSFU) values are added to determine the demand on the water distribution system or portions thereof, round the sum to the nearest whole number before referring to table for estimating demand for the corresponding gallons per minute (GPM) flow. WSFU values of 0.5 or more should be rounded up to the next higher whole number (9.5 = 10 WSFU). Values of 0.4 or less should be rounded down to the next lower whole number (9.4 = WSFU).
6. The listed minimum supply branch pipe sizes for individual fixtures are the nominal (I.D.) pipe size in inches.
7. "Other than dwelling units" applies to business, commercial, industrial, and assembly occupancies other than those defined under "heavy-use assembly". Included are the public and common areas in hotels, motels, and multidwelling buildings.
8. "Heavy-use assembly" applies to toilet facilities in occupancies which place heavy, but intermittent, time-based demands on the water supply system, such as schools, auditoriums, stadiums, race courses, transportation terminals, theaters, and similar occupancies where queuing is likely to occur during periods of peak use.
9. For fixtures or supply connections likely to impose continuous flow demands, determine their required flow in gallons per minute (GPM) and add it separately to the demand (in GPM) for the distribution system or portion thereof.

ESTIMATING DEMAND

Supply Systems Predominately For Flush Tanks and Flushometer Tanks		Supply Systems Predominately For Flush Valves	
Load (Water Supply Fixture Units)	Demand GPM	Load (Water Supply Fixture Units)	Demand GPM
6	5		
8	6.5		
10	8	10	27
12	9.2	12	28.6
14	10.4	14	30.2
16	11.6	16	31.8
18	12.8	18	33.4
20	14	20	35
25	17	25	38
30	20	30	41
35	22.5	35	43.8
40	24.8	40	46.5
45	27	45	49
50	29	50	51.5
60	32	60	55
70	35	70	58.5
80	38	80	62
90	41	90	64.8
100	43.5	100	67.5
120	48	120	72.5
140	52.5	140	77.5
160	57	160	82.5
180	61	180	87
200	65	200	91.5
225	70	225	97
250	75	250	101
275	80	275	105.5
300	85	300	110
400	105	400	126
500	125	500	142
750	170	750	178
1,000	208	1,000	208
1,250	240	1,250	240
1,500	267	1,500	267
1,750	294	1,750	294
2,000	321	2,000	321
2,250	348	2,250	348
2,500	375	2,500	375
2,750	402	2,750	402
3,000	432	3,000	432

4,000	525	4,000	525
5,000	593	5,000	593
6,000	643	6,000	643
7,000	685	7,000	685
8,000	718	8,000	718
9,000	745	9,000	745
10,000	769	10,000	769

History: Amended effective July 1, 1985; October 1, 1989; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-14. Procedure--in--sizing--the Minimum requirements for water distribution system systems.

1. Design-of-building-water-distribution-system Maximum velocity. Water piping systems shall be designed and installed so that the maximum velocity at any time shall not exceed eight feet [2.44 meters] per second. If a manufacturer's recommendations, or an industry's standards, limits the recommended velocities in any particular piping material to a value lower than eight feet [2.44 meters] per second, then the reduced velocity limit shall be the maximum design.
2. Size of individual fixture supply branches. The minimum sizes of a individual fixture supply branch pipe shall be as shown in the table contained--in--this-subsection 62-03-10.1. The fixture supply pipe shall be extended to within at least thirty inches [76.2 centimeters] of the point of connection to the fixture, and be within the same area and physical space as the point of connection to the fixture. Not more than two fixtures shall be supplied by a one-half-inch [12.7-millimeter] pipe. All future fixture connections must be considered in sizing pipe at the time of initial installation. For design purposes, the required pressure with flow at each fixture inlet shall be fifteen pounds per square inch gauge minimum for all fixtures, except twenty-five pounds per square inch gauge for blowout water closets and blowout urinals. The following waterflow rates shall be used for the purpose of sizing individual fixture supply branch pipes:
 - a. 5.0 GPM for hose bibbs and wall hydrants;
 - b. 4.0 GPM for bath faucets and clothes washers;
 - c. 0.75 GPM for drinking fountains and water coolers;
 - d. 2.5 GPM for lavatory and sink faucets; and
 - e. 2.5 GPM for showers.

MINIMUM-SIZES-OF-FIXTURE-WATER-SUPPLY-PIPES

Type-of-Fixture-or-Device	Nominal-Pipe-Size	Type-of-Fixture-or-Device	Nominal-Pipe-Size
Bathtubs	1/2	Shower (single-head)	1/2
Combination-sink and-tray	1/2	Sinks (service)	1/2
Drinking-fountain	3/8	Sinks (flushing-rim)	3/4
Dishwasher (domestic)	1/2	Urinal (flush-tank)	1/2
Electric-drinking-water-cooler	3/8	Urinal (direct-flush valve)	3/4
Kitchen-sink, residential	1/2	Water-closet (tank-type)	3/8
Kitchen-sink, commercial	3/4	Water-closet (flush-valve type)	1
Lavatory	3/8	Hose-bibb	1/2
Laundry-tray 1,-2,-or-3 compartments	1/2	Wall-hydrant	1/2

3. Flow-rates Sizing water distribution piping.

- a. Minimum-flow-rates-and-pressures-required-in-water distribution system. Based on the minimum static pressure available, pipe sizes shall be selected so that under conditions of peak demand a minimum flow pressure at the point of discharge shall be not less than required to maintain minimum flow rates listed in the table contained in this subsection. Pipe sizes for flush-valve water closets and urinals shall be adequate to maintain flow pressures of twenty-five pounds per square inch [11.34 kilograms per 6.45-square-centimeters] for blowout action and fifteen pounds per square inch [6.80 kilograms per 6.45-square-centimeters] for jet action fixtures or as required by the manufacturer. The supply demand in gallon per minute in the building hot and cold water distribution system must be determined on the basis of the load in terms of water supply fixture units (WSFU) as shown in table 62-03-10.1 and the relationship between the load in WSFU and the supply demand in gallons per minute (GPM) as shown in the table. For fixtures having both hot water and cold water connections, the separate hot water and cold water loads must be taken as seventy-five percent of the listed fixture unit value.
- b. Maximum-flow-rates. Flow-rates-for-fixtures-in-commercial and-public-buildings shall be regulated at the fixture to

prevent--flow-rates-from-exceeding-maximum-rates-listed-in the-table-contained-in-this-subsection-for-either--hot--or cold--water. Main risers and branches of the water distribution system must be sized based on the minimum available water pressure at the source, any elevation differences between the source and the fixtures, pressure losses in the distribution system, and the pressure (with flow) required at each connection of the fixture supply branches.

MINIMUM-AND-MAXIMUM-FLOW-RATES-PER-OUTLET

Fixture-----	Flow-Rate-----	Flow-Rate
	Minimum-----	Maximum
Lavatory-----		3.0
Sink-----		3.0
Bath tub-----	4	
Laundry-tray-----		3.0
Shower-----		3.0
Drinking-fountain--	0.75	2.0
Wall-hydrant-----	5	

4. **Inadequate water pressure.** Whenever water pressure from the street main or other sources of supply is insufficient to provide flow pressures at fixture outlets as required under subsection 3, a booster pump and pressure tank or other approved means shall be installed on the building water supply system.
5. **Variable street pressures.** Where street water main pressures fluctuate, the building water distribution system shall be designed for the minimum pressure available.
6. **Excessive pressures.** When street main pressure exceeds eighty pounds per square inch [36.29 kilograms per 6.45 square centimeters], an approved pressure reducing valve shall be installed in the water service pipe near its entrance to the building to reduce the water pressure to eighty pounds per square inch [36.29 kilograms per 6.45 square centimeters] or lower except where the water service pipe supplies water directly to a water pressure booster system, an elevated water gravity tank, or to pumps provided in connection with a hydropneumatic or elevated gravity water supply tank system. Pressure at any fixture shall be limited to no more than eighty pounds per square inch [36.29 kilograms per 6.45 square centimeters] under no-flow conditions.
7. **Water hammer.** All building water supply systems in which quick acting valves are installed shall be provided with

devices to absorb high pressures resulting from the quick closing of these valves. These pressure absorbing devices shall be either air chambers or approved mechanical devices. Water pressure absorbers shall be placed as close as possible to the quick acting valves or installed also at the ends of long pipe runs or near batteries of fixtures.

- a. Air chambers. Where air chambers are installed, they shall be in an accessible place and each air chamber shall be provided with an accessible means for restoring the air in event the chamber becomes waterlogged.
- b. Mechanical devices. Where mechanical devices are used, the manufacturer's specifications shall be followed as to location and method of installation.

History: Amended effective July 1, 1985; January 1, 1992; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-15. Hot water distribution.

1. **Hot water supply system.** In residences and buildings intended for human occupancy, hot water shall be supplied to all plumbing fixtures and equipment used for bathing, washing, culinary purpose, cleansing, laundry, or building maintenance, at a minimum temperature of one hundred ten degrees Fahrenheit [43 degrees Celsius] and a maximum leaving temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius].
2. **Temperature maintenance - where required.** Hot water supply systems in buildings four or more stories high or in buildings where developed length of hot water piping from the source of hot water supply to the farthest fixture supplied exceeds one hundred feet [30.48 meters] shall be of the return circulation type, or other alternative method.
3. **Minimum requirements for hot water storage tanks.** Hot water storage tanks shall be adequate in size, when combined with the British thermal unit input of the water heating equipment to provide the rise in temperature necessary.

The water heater and storage tank shall be sized to provide sufficient hot water to provide both daily requirements and hourly peak loads of the occupants of the building.

Hot water storage tanks shall meet construction requirements of the American society of mechanical engineers, American gas association, or underwriters' laboratories as appropriate.

Storage tanks less in volume than those requirements specified by the American society of mechanical engineers shall be of durable materials and constructed to withstand one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] with a safety factor of two.

The water inlets and outlets of a hot water storage tank shall be not less than the hot water distribution pipe served.

All storage tanks shall be protected against excessive temperatures and pressure conditions as specified in this article.

4. **Drain cocks or valves for hot water storage tanks.** Drain cocks or valves for emptying shall be installed at the lowest point of each hot water storage tank.
5. **Mixed water temperature control.**
 - a. The temperature of mixed water to multiple or gang showers must be controlled by a master or remote thermostatic blender or such showers may be individually regulated by balanced pressure mixing valves.
 - b. Showers and bathtub/shower combinations in buildings other than single dwelling units must be protected with water temperature control valves of the balanced pressure mixing type or the thermostatic mixing valve type, or the combination pressure balance, thermostatic type.
6. **Thermal expansion control.** Whenever a check valve or backflow prevention device is installed, which prevents the expansion of water from a water heater to the building water service, a device for controlling thermal expansion must be installed.
7. Plastic piping.
 - a. Plastic pipe or tube may not be used downstream from instantaneous water heaters, immersion water heaters, or other heaters not having approved temperature safety devices.
 - b. Piping within two feet [.61 meters] of flue or vent connectors must be approved metallic pipe or tube.

History: Amended effective April 1, 1984; July 1, 1985; October 1, 1989; January 1, 1992; February 1, 1994; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

CHAPTER 62-03-11

62-03-11-04. Fixture units :-

1: Load on drainage piping. The load on drainage system piping shall be computed in terms of drainage fixture unit values in accordance with the table in this subsection--and--with subsection-2 section.

DRAINAGE-FIXTURE-UNIT-VALUES-FOR-VARIOUS-PLUMBING-FIXTURES

Type-of-Fixture----- or-Group-of-Fixtures-----	Drainage-Fixture Unit-Value-(d.f.u.)
Automatic-clothes-washer-(two-inch-standpipe)-----	3
Bathroom-group-consisting-of-a-water-closet, lavatory-and-bathtub-or-shower-stall: Flushometer-valve-closet-----	8
Tank-type-closet-----	6
Bathtub-#-(with-or-without-overhead-shower)-----	2
Bidet-----	4
Clinic-sink-----	6
Combination-sink-and-tray-with-food-waste-grinder-----	4
Combination-sink-and-tray-with-one one-and-one-half-inch-trap-----	2
Combination-sink-and-tray-with-separate one-and-one-half-inch-traps-----	3
Dental-unit-or-cuspidor-----	1
Dental-lavatory-----	1
Drinking-fountain-----	1/2
Dishwasher,-domestic-----	2
Floor-drains-with-two-inch-waste-----	3
Kitchen-sink,-domestic,-with-one one-and-one-half-inch-trap-----	2
Kitchen-sink,-domestic,-with-food-waste-grinder-----	2
Kitchen-sink,-domestic,-with-food-waste-grinder and-dishwasher-one-and-one-half-inch-trap-----	3
Kitchen-sink,-domestic,-with-dishwasher one-and-one-half-inch-trap-----	3
Lavatory-with-one-and-one-fourth-inch-waste-----	1
Laundry-tray-(one-or-two-compartments)-----	2
Shower-stall,-domestic-----	2
Showers-(group)-per-head-#-----	2

Sinks:

Surgeon's-----	3
Flushing-rim-(with-valve)-----	6
Service-(trap-standard)-----	3
Service-(P-trap)-----	2
Pot,-seullery-etc,-**-----	4
Urinal,-wall-hung-blowout-----	6
Urinal,-wall-hung-syphon-jet-----	4
Urinal-trough-(each-six-foot-section)-----	2
Wash-sink-(circular-or-multiple)-each-set-of-faucets-----	2
Water-closet,-tank-operated-----	4
Water-closet,-valve-operated-----	6
Fixtures-not-listed-above:	
Trap-size-one-and-one-fourth-inch-or-less-----	1
Trap-size-one-and-one-half-inch-----	2
Trap-size-two-inches-----	3
Trap-size-two-and-one-half-inches-----	4
Trap-size-three-inches-----	5
Trap-size-four-inches-----	6

*-A shower-head-over-a bathtub does-not-increase-the-fixture unit-value.

** - See subsection 2 of section 62-03-11-04 for method of computing equivalent-fixture-unit-values-for-devices-or-equipment-which discharge-continuous-or-semicontinuous-flows-into-sanitary drainage-systems:

2.--Values---for---continuous---flow:---For---a---continuous---or semicontinuous-flow-into-a-drainage-system;--such--as--from--a pump;--ejector;--air-conditioning-equipment;--or-similar-device; two-fixture-units-shall-be-allowed-for-each--gallon-per-minute of-flow.

3.--Diversity--factors:---In-certain-structures-such-as-hospitals, laboratory-buildings;--and--other--special--use--or--occupancy buildings-where-the-ratio-of-plumbing-fixtures-to-occupants-is proportionally-more-than-required-by-building-occupancy-and-in excess--of--one--thousand--fixture--units;--the-administrative authority-may-permit-the-use-of-a-diversity-factor-for--sizing branches;--stacks;--and-building-sewers.

DRAINAGE FIXTURE UNIT VALUES (DFU)			
TYPE OF FIXTURE	OTHER THAN DWELLING UNITS		HEAVY-USE ASSEMBLY
	SERVING 3 OR MORE DWELLING UNITS		
	INDIVIDUAL DWELLING UNITS		
BATHROOM GROUPS HAVING 1.6 GPF GRAVITY-TANK WATER CLOSETS			
Half-bath or Powder Room	3.0	2.0	
1 Bathroom Group	5.0	3.0	
1-1/2 Bathrooms	6.0		
2 Bathrooms	7.0		
2-1/2 Bathrooms	8.0		
3 Bathrooms	9.0		
Each Additional 1/2 Bath	0.5		
Each Additional Bathroom Group	1.0		
BATHROOM GROUPS HAVING 1.6 GPF PRESSURE-TANK WATER CLOSETS			
Half-bath or Powder Room	3.5	2.5	
1 Bathroom Group	5.5	3.5	
1-1/2 Bathrooms	6.5		
2 Bathrooms	7.5		
2-1/2 Bathrooms	8.5		
3 Bathrooms	9.5		
Each Additional 1/2 Bath	0.5		
Each Additional Bathroom Group	1.0		
BATHROOM GROUPS HAVING 3.5 GPF GRAVITY-TANK WATER CLOSETS			
Half-bath or Powder Room	3.0	2.0	
1 Bathroom Group	6.0	4.0	
1-1/2 Bathrooms	8.0		
2 Bathrooms	10.0		
2-1/2 Bathrooms	11.0		
3 Bathrooms	12.0		
Each Additional 1/2 Bath	0.5		
Each Additional Bathroom Group	1.0		
BATH GROUP (1.6 GPF Flushometer Valve)	5.0	3.0	
BATH GROUP (3.5 GPF Flushometer Valve)	6.0	4.0	

INDIVIDUAL FIXTURES				
Bathtub or Combination Bath/Shower	3.0	3.0		
Bidet, 1-1/4" trap	1.0	1.0		
Clothes Washer, domestic, 2" standpipe	3.0	3.0	3.0	
Dishwasher, domestic, with independent drain	2.0	2.0	2.0	
Drinking Fountain or Watercooler			0.5	
Food-waste-grinder, commercial, 2" min trap			3.0	
Floor Drain, emergency			0.0	
Kitchen Sink, domestic, with one 1-1/2" trap	2.0	2.0	2.0	
Kitchen Sink, domestic, with food-waste-grinder	2.0	2.0	2.0	
Kitchen Sink, domestic with dishwasher	3.0	3.0	3.0	
Kitchen Sink, domestic, w/grinder and dishwasher	3.0	3.0	3.0	
Laundry Sink, one or two compartments, 1-1/2" waste	2.0	2.0	2.0	
Laundry Sink, with discharge from clothes washer	2.0	2.0	2.0	
Lavatory, 1-1/4" waste	1.0	1.0	1.0	1.0
Mop Basin, 3" trap			3.0	
Service Sink, 3" trap			3.0	
Shower Stall, 2" trap	2.0	2.0	2.0	
Showers, group, per head (continuous use)			5.0	
Sink, 1-1/2" trap	2.0	2.0	2.0	
Sink, 2" trap	3.0	3.0	3.0	
Sink, 3" trap			5.0	
Urinal, 1.0 GPF			4.0	5.0
Urinal, greater than 1.0 GPF			5.0	6.0
Washfountain, 1-1/2" trap			2.0	
Washfountain, 2" trap			3.0	
Wash Sink, each set of faucets			2.0	
Water Closet, 1.6 GPF Gravity Tank	3.0	3.0	4.0	6.0
Water Closet, 1.6 GPF Pressure Tank	3.5	3.5	5.0	8.0
Water Closet, 1.6 GPF Flushometer Valve	3.0	3.0	4.0	6.0
Water Closet, 3.5 GPF Gravity Tank	4.0	4.0	6.0	8.0
Water Closet, 3.5 GPF Flushometer Valve	4.0	4.0	6.0	8.0
Whirlpool Bath or Combination Bath/Shower	3.0	3.0		

NOTES

1. A bathroom group, for the purposes of this table, consists of not more than one water closet, up to two lavatories, and either one bathtub or one shower stall.
2. A half-bath or powder room, for the purposes of this table, consists of one water closet and one lavatory.
3. For unlisted fixtures, refer to a listed fixture having a similar drainage rate and frequency of use.
4. When drainage fixture unit (DFU) values are added to determine the load on the drainage system or portions thereof, round the sum to the nearest whole number before referring to tables for sizing the drainage and vent piping. Values of 0.5 or more should be rounded up to the next higher whole number (9.5 = 10 DFU). Values of 0.4 or less should be rounded down to the next lower whole number (9.4 = 9 DFU).
5. "Other than dwelling units" applies to business, commercial, industrial, and assembly occupancies other than those defined under "heavy-use assembly". Included are the public and common areas in hotels, motels, and multidwelling buildings.
6. "Heavy-use assembly" applies to toilet facilities in occupancies which place heavy, but intermittent, time-based loads on the drainage system, such as schools, auditoriums, stadiums, racecourses, transportation terminals, theaters, and similar occupancies where queuing is likely to occur during periods of peak use.
7. Where other than water-supplied fixtures discharge into the drainage system such as from a pump, ejector, refrigeration equipment, or similar device, allow two drainage fixture units (DFU) for each gallon per minute (GPM) of flow.

History: Amended effective July 1, 1985; January 1, 1992; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-11-08. Drainage below curb level.

1. **Fixtures subject to backflow.** The installation of backwater devices must be in accordance with lawful requirements of the administrative authority having jurisdiction over the public sewer system.
2. **Fixture branches subject to backflow.** Backwater valves may be installed only in that branch or section of the drainage system which receives the discharge from fixtures located as

stated in subsection 1. Manually operated shutoff valves may also be installed in the building drain near the junction of the building drain and the building sewer.

3. **Materials for backwater valves and accessibility.** Backwater valves must have all bearing parts of corrosion-resistant material conform to the standard listed in table 62-03-03.1 and be installed so that their internal working parts are accessible for periodic cleaning, repair, or replacement.
4. **Construction of backwater valves.** Backwater valves must be constructed so a mechanical seal against backflow will be provided and when fully opened, must have a capacity of not less than that of the pipes in which they are installed.
5. ~~Diameter of backwater valves: Backwater valves, when fully opened, must have a capacity of not less than that of the pipes in which they are installed.~~
6. ~~Location of backwater valves: Backwater valves must be installed so their working parts will be accessible for service and repairs.~~

History: Effective July 1, 1985; amended effective February 1, 1996.

General Authority: 43-18-09

Law Implemented: 43-18-09

CHAPTER 62-03-14

62-03-14-07. Ice storage chest drains. ~~The state department of health does not approve the installation of ice storage chests or boxes~~ Any drain serving an ice chest or box must discharge over an indirect waste receptor and shall be separate from all other fixture wastes. Each terminal must discharge through an airgap above the receptor.

History: Amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-14-08. Clinic Bedpan washers and clinic sinks. ~~Clinic sinks shall be connected to the soil pipe system and vented following the requirements as applied to water closets. The state department of health does not approve the use of bedpan washers.~~ Bedpan washers and clinic sinks must be connected to the soil pipe system and vented following the requirements as applied to water closets except that bedpan washers require additional local vents. See definition for local vent.

History: Amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-14-09. Sterilizer wastes.

- 1. Indirect wastes required.** All sterilizers shall be provided with individual and separate indirect wastes, with airgaps of not less than two diameters of the waste tailpiece. The upper rim of the receptor, funnel, or basket type waste fitting shall be not less than two inches [5.08 centimeters] below the vessel or piping, whichever is lower.
- 2. Floor drain required.** In all recess rooms containing the recessed, or concealed, portions of sterilizers, not less than one acceptable floor drain, connecting to the drainage system, shall be installed in a manner to drain the entire floor area.
- 3. Recess room floor drains, trap seal maintenance.** The recess room floor drain waste and trap shall be a minimum diameter of three inches [7.62 centimeters]. It shall receive the drainage from at least one sterilizer within the recess room to assure maintenance of the floor drain trap seal. The sterilizer drain shall be installed on a branch taken off between the floor drain trap and the drain head. No individual sterilizer waste trap shall be required on this type of installation.
- 4. Prohibited connections.** Branch funnel and branch basket type fittings, except as provided in subsection 5, are prohibited

on any new installation or when relocating existing equipment. Existing branch funnel or branch basket type installations shall be provided with an acceptable indirect waste below the branch connections.

5. **Battery assemblies.** A battery assembly of not more than three sterilizer wastes may drain to one trap, provided the trap and waste are sized according to the combined fixture unit rating. The trap shall be located immediately below one of the indirect waste connections and the developed distance of a branch shall not exceed eight feet [2.44 meters]. Changes in direction shall be made by a tee-wye or wye pattern fitting.
6. **Bedpan steamers, additional trap required.** A trap with a minimum seal of three inches [7.62 centimeters] shall be provided in a bedpan steamer drain located between the fixture and the indirect waste connection. ~~The--state--department--of health--does--not--approve--the--use--of--bedpan--steamers--~~
7. **Pressure sterilizer.** Except when an exhaust condenser is used, a pressure sterilizer chamber drain connected to the exhaust drip tube before terminating at the indirect waste connection is acceptable. If a vapor trap is used, it shall be designated and installed to prevent moisture being aspirated into the sterilizer chamber. The jacket steam condensate return, if not connected to a gravity steam condensate return, shall be separately and indirectly wasted. If necessary to cool a high temperature discharge, a cooling receiver, trapped on its discharge side, may serve as the fixture trap.
8. **Pressure sterilizer exhaust condensers.** The drain from the condenser shall be installed with an indirect waste as prescribed in this article. If condensers are used on pressure sterilizers, the chamber drain shall have a separate indirect waste connection.
9. **Water sterilizer.** All water sterilizer drains, including tank, valve leakage, condenser, filter, and cooling shall be installed with indirect wastes.
10. **Pressure instrument washer-sterilizer.** The pressure instrument washer-sterilizer chamber drain and overflow may be interconnected. Also, they may be interconnected with the condenser. The indirect waste shall follow the provision set forth in this article.

History: Amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-14-10. Aspirators. ~~The state department of health does not approve the use of water operated aspirators.~~ Water operated aspirators may be installed only with the specific approval of the health authority. In operating rooms, emergency rooms, recovery rooms, delivery rooms, examining rooms, autopsy rooms, and other locations except laboratories where aspirators are installed for removing blood, pus, or other fluids, the discharge from any aspirator must be indirectly connected to the drainage system. The suction line must be provided with a bottle or similar trap to protect the water supply.

History: Amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-14-21. Radioactive materials. All radioactive materials shall be disposed of in compliance with the appropriate rules of the state department of health, North Dakota Administrative Code section 33-10-04-04 chapter 33-10-04.1.

History: Amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

CHAPTER 62-03-16

62-03-16-01. General provisions.

1. All sewage disposal treatment systems shall be constructed, added to, or altered in accordance with this chapter. When a public or noncommunity sewerage system is deemed available to a premise used for human occupancy if such premise is within two hundred feet [60.96 meters], the approving authority shall require that sewage be discharged into that system.
2. Where public or noncommunity sewage disposal treatment systems are not available and construction of an individual sewage treatment system is contemplated for a building of human occupancy or use or addition to, or alteration of any existing sewage disposal treatment system, the master plumber or sewer and water contractor, or septic system installer, previous to beginning any construction may be required to make application to the local or district health units for a written permit to make the desired installation.
3. "Sewage disposal treatment" under this section means all private methods of collecting and disposing of domestic sewage including septic tanks, privies, chemical toilets, and any others.
4. All domestic sewage shall be disposed of by an approved method of collection, treatment, and effluent discharge. Domestic sewage or sewage effluent shall not be disposed of in any manner that will cause pollution of the ground surface, ground water, bathing area, lake, pond, watercourse, or create a nuisance. It shall not be discharged into any abandoned or unused well, or into any crevice, sink hole, or other opening either natural or artificial in a rock formation.
5. Where water under pressure is not available, all human body wastes shall be disposed of by depositing them in approved privies, chemical toilets, or such other installations acceptable to the administrative authority.
6. Water-carried sewage from bathrooms, kitchens, laundry fixtures, and other household plumbing shall pass through a septic or other approved sedimentation tank prior to its discharge into the soil or into an alternative system. Where underground disposal ~~or--and--filtration~~ for treatment is not feasible, consideration will be given to special methods of collection and disposal.
7. The building contractor, owner, plumbing contractor, or disposal system installer are jointly responsible for compliance with this chapter.

8. Abandoned disposal systems, septic tanks, pumping and other chambers, and seepage beds shall be disconnected from the buildings. The tanks and chambers shall be pumped out, and filled with earth.
9. No property shall be improved in excess of its capacity to properly absorb sewage effluent in the quantities and by the means provided in this code.
10. When there is insufficient lot area or improper soil conditions for adequate sewage disposal treatment for the building or land use proposed, and the administrative authority so finds, no building permit shall be issued and no private sewage disposal treatment shall be permitted. Where space or soil conditions are critical, no building permit shall be issued until engineering data and test reports satisfactory to the administrative authority have been submitted and approved or a private sewage disposal treatment system complying with the provisions of this article has first been installed designed.
11. Nothing contained in this chapter shall be construed to prevent the administrative authority from requiring compliance with higher requirements than those contained herein where such higher requirements are essential to maintain a safe and sanitary condition.
12. "Administrative authority" under this section means the North Dakota state plumbing board, North Dakota state department of health, district health units, county or city health departments which have expertise in onsite sewage treatment systems, or individual official, board, department, or agency established and authorized by a state, county, city, or other political subdivision created by law to administer and enforce the provisions of this chapter.
13. "Continuing education" under this section means a structured, professionally presented curriculum dealing with onsite sewage treatment systems sanctioned wholly or in part by the administrative authority.
14. "Installer" under this section means an individual or contractor that engages in the construction of onsite sewage treatment systems. Homeowners who work on their own systems are not included in this definition.
15. "Mottled soil" under this section means soil from a soil boring which is marked with spots of contrasting colors. Any soil having spots of contrasting colors is considered to be mottled.
16. "Sewage treatment" under this section means all private methods of collecting and disposing of domestic sewage

including septic tanks, privies, chemical toilets, and any others.

17. A "chamber or pump chamber" under this section means a watertight receptacle for receiving effluent from the septic tank which will be used for placement of an effluent grade pump to distribute that effluent to the treatment area.

18. "Noncommunity" under this section means a collector system for sewage disposal serving a group of homes which uses lagoons or other collective methods of disposal and treatment which are not otherwise regulated by the environmental protection agency or state regulations.

History: Amended effective October 1, 1989; September 1, 1990; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-01.1. Installation - Excavator and installer requirements.

1. Individuals or business contractors may be required by the administrative authority to have or obtain a license or permit to install individual onsite sewage treatment systems as described in this chapter.

2. Where required by administrative authority, installers of septic systems must obtain at least eight contact hours of suitable continuing education every two years which pertains to onsite septic system installation. Reciprocity for training in other states can be made on an individual basis by the administrative authority.

3. The installer of a treatment system shall submit an "as built" drawing of the system to the administrative authority within thirty days after the system has been completed.

History: Effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-03. Design of individual sewage system.

1. **Design.** The design of the individual sewage disposal treatment system must take into consideration location with respect to wells or other sources of water supply, topography, water table, soil characteristics, area available, and maximum occupancy of the building.

2. **Type of system.** The type of system to be installed shall be determined on the basis of location, soil permeability, and ground water elevation.
3. **Sanitary sewage.** The system shall be designed to receive all sanitary sewage, including laundry waste, from the building. Drainage from footings or roofs shall not enter the system.
4. **Discharge.** The system shall consist of a septic tank discharging into either a subsurface disposal treatment field or one or more seepage beds or into a combination of both, if found adequate as such and approved by the administrative authority.
5. **Ground water.** No plumbing fixture may be connected to any individual sewage disposal treatment system where ground water may collect above the sewage disposal treatment system causing a flooded condition, unless the elevation of the fixture trap is a sufficient height above the elevation of the finished grade of the ground in which the seepage--pit--or--disposal sewage treatment field are is installed to prevent backup. The minimum separation distance from the bottom of the treatment area must equal or exceed twenty-four inches [60.96 centimeters].
6. **Alternate design.** Where soil conditions are such that neither of the systems mentioned in subsection 4 can be expected to operate satisfactorily, approval of an alternate design shall be secured from the administrative authority.
7. **Sewage flow.** Design criteria for sewage flow according to the type of establishment is indicated in the following table.

SEWAGE FLOWS ACCORDING TO TYPE OF ESTABLISHMENT

Type of Establishment	Gallons Per Person Per Day (Unless Otherwise Noted)
Airports (per passenger)	5
Apartments-multiple family (per resident)	60
Assembly halls (per seat)	2
Bars (per customer seat)	5
Bathhouses and swimming pools	10
Bowling alleys (per lane)	75
Camps:	
Campground with central comfort stations	35
With flush toilets, no showers	25
Construction camps (semipermanent)	50
Day camps (no meals served)	15
Resort camps (night and day) with limited plumbing	50

Luxury camps	100
Churches (per sanctuary seat)	5
Churches with kitchens (per sanctuary seat)	7
Cottages and small dwellings with seasonal occupancy	50
Country clubs (per member present)	25
Dwellings:	
Boardinghouses	50
additional for nonresident boarders	10
Luxury residences and estates	150
Multiple family dwellings (apartments)	60
Roominghouses	40
Single family dwellings	75
Factories (gallons per person, per shift, exclusive of industrial wastes)	35
Hospitals (per bed space)	250
Hotels (per guest)	50
Institutions other than hospitals (per bed space) ...	100
Laundries, self-service (gallons per machine)	500
Mobile home parks (per space)	250
Motels (per bed space)	50
Picnic parks (sanitary waste only)	5
Picnic parks with bathhouses, showers, and flush toilets	10
Restaurants (toilet and kitchen wastes per patron) ..	10
Restaurants (kitchen wastes per meal served)	3
Restaurants additional for bars and cocktail lounges	2
Schools:	
Boarding	75
Day, without gyms, cafeterias, or showers	15
Day, with gyms, cafeteria, and showers	25
Day, with cafeteria, but without gyms, or showers	20
Service stations (per vehicle served)	10
Theaters:	
Movie (per auditorium seat)	5
Drive-in (per car space)	5
Travel trailer parks without individual water and sewer hookups (per space)	50
Travel trailer parks with individual water and sewer hookups (per space)	100
Workers:	
Construction (at semipermanent camps)	50
Day, at school and offices (per shift)	15

History: Amended effective October 1, 1989; September 1, 1990;
February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-04. Location of individual sewage system.

1. The minimum lot size in which a private disposal treatment system may be installed is forty thousand square feet [3716.00 square meters]. Smaller lot sizes may be approved by the administrative authority if a centralized water--supply--or sewage disposal treatment system is provided or the soil conditions present throughout the lot are such that a second treatment area is able to be installed in the lot.
2. The following table provides for the minimum distances that shall be observed in locating the various components of the disposal treatment system.

Well-Septic-Distribution-Disposal-Seepage-Property-Building
Tank---Box-----Field----Bed-----Line

Bldg-Sewer---	(50)	-----				
Septic-Tank--	(50)	5	10	10	(10) ¹	
(10)						
Distribution						
Box-----	(50)	5	5	5	(10)	(20)
Disposal						
Field-----	(50)	10	5		(10)	(20)
Seepage						
Bed-----	(50)	10	5		(10)	(20)
Well-----	(50)	(50)	(50)	(50)		
Suction						
Line-----	(50)	(50)	(50)	(50)		

¹ May-be-closer-to-building-when-permission-is-given
by-the-administrative-authority:

STAFF COMMENT: The table in section 62-03-16-04 is all new material but is not underscored to improve readability.

	Well 100'	Well 100'	Distribution Device	Treatment Area	Property Lines	Building
Bldg Sewer	100	50	-	-	-	-

Septic Tank	100	50	5	10	10	10
Distribution Device	100	50	-	-	10	20
Treatment Area	100	50	5	-	10	10
Well < 100'	-	-	100	100	n/a	n/a
Well > 100'	-	-	50	50	n/a	n/a
Water line (pressure)	-	-	10	10	n/a	n/a
(suction)	-	-	50	50	n/a	n/a
Surface Water bodies	n/a	n/a	100	100	n/a	n/a

3. All proposed sites for individual sewage treatment systems must be evaluated as to:
 - a. Depth to the highest known or calculated ground water table or bedrock;
 - b. Soil conditions, properties, and permeability;
 - c. Slope;
 - d. The existence of lowlands, local surface depressions, and rock outcrops;
 - e. All legal setback requirements from existing and proposed buildings, property lines, sewage tanks, soil treatment systems, water supply wells, buried water pipes and utility lines, the ordinary high water mark of lakes, rivers, streams, flowages, and the location of all soil treatment systems and water supply wells on adjoining lots to the proposed soil treatment system, sewage tank, and water supply well; and
 - f. Surface water flooding probability.
4. Privies, septic tanks, and underground disposal treatment means shall not be within two hundred feet [60.96 meters] measured horizontally from the high water level in the reservoir or the banks of tributary streams when situated less than three thousand feet [914.4 meters] upstream from potable water intake structures. Sewage disposal treatment facilities situated beyond three thousand feet [914.4 meters] upstream from intake structures shall be located no less than one

hundred feet [30.48 meters] measured horizontally from the high water level in the reservoir or the banks of the tributary streams.

History: Amended effective August 1, 1981; October 1, 1989; September 1, 1990; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-05. Percolation tests. Where percolation tests are required, they must be made as follows: (See appendix I)

1. **Test hole dimensions and locations.** Each test hole must be six inches to eight inches [15.24 centimeters to 20.32 centimeters] in diameter, have vertical sides, and be bored or dug to the depth of the bottom of the proposed individual sewage treatment system. Soil texture descriptions must be recorded noting depths where texture changes occur.

2. **Preparation of the test hole.** The bottom and sides of the hole must be carefully scratched to remove any smearing and to provide a natural soil surface into which water may penetrate.

All loose material must be removed from the bottom of the test hole and two inches [5.08 centimeters] of one-fourth-inch to three-fourths-inch [.635-centimeter to 1.90-centimeter] gravel must be added to protect the bottom from scouring.

3. **Soil saturation and swelling.** The hole must be carefully filled with clear water to a minimum depth of twelve inches [30.48 centimeters] over the soil at the bottom of the test hole and maintained for no less than four hours. The soil must then be allowed to swell for at least sixteen, but no more than thirty hours. In sandy soils, the saturation and swelling procedure is not required and the test may proceed if one filling of the hole has seeped away in less than ten minutes.

4. **Percolation rate measurement.**

a. In sandy soils. Adjust the water depth to eight inches [20.32 centimeters] over the soil at the bottom of the test hole. From a fixed reference point, the drop in water level must be measured in inches [centimeters] to the nearest one-eighth inch [.34 centimeter] at approximately ten-minute intervals. A measurement can also be made by determining the time it takes for the water level to drop one inch [2.54 centimeters] from an eight-inch [20.32-centimeter] reference point. If eight inches [20.32 centimeters] of water seeps away in less than ten minutes, a shorter interval between measurements must be used, but in no case may the water depth exceed

eight inches [20.32 centimeters]. The test must continue until three consecutive percolation rate measurements vary by a range of no more than ten percent.

- b. In other soils. Adjust the water depth to eight inches [20.32 centimeters] over the soil at the bottom of the test hole. From a fixed reference point, the drop in water level must be measured in inches [centimeters] to the nearest one-eighth inch [.34 centimeter] at approximately thirty-minute intervals, refilling between measurements to maintain an eight-inch [20.32-centimeter] starting head. The test must continue until three consecutive percolation rate measurements vary by a range of no more than ten percent. The percolation rate can also be made by observing the time it takes the water level to drop one inch [2.54 centimeters] from an eight-inch [20.32-centimeter] reference point if a constant water depth of at least eight inches [20.32 centimeters] has been maintained for at least four hours prior to the measurement.

5. **Calculating the percolation rate.** Divide the time interval by the drop in water level to obtain the percolation rate in minutes per inch [2.54 centimeters].

Percolation rates determined for each test hole must be averaged to determine the final soil treatment system design.

A percolation test may not be run where frost exists below the depth of the proposed soil treatment system.

History: Amended effective September 1, 1990; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-09. Absorption trenches. (See appendix III)

1. **Design.** Absorption trenches shall be designed and constructed on the basis of the percolation test results or other soil data. Trench bottom area required is shown in the table in subsection 4. The bottom of the trench shall be dug so it is dead level throughout its length. The maximum depth to the bottom of absorption trenches may not exceed forty-eight inches [121.92]. The trench bottom must be at least twenty-four inches [60.96 centimeters] above the mottled soil condition indicating a water table or from standing water in the borehole.
2. **Filter material.** The filter material shall cover the ~~tile~~ four-inch [10.16-centimeter] diameter pipe to a depth of two inches [3.08 centimeters] measured from the crown of the pipe and extend the full width of the trench and shall be not less

than six inches [15.24 centimeters] deep beneath the bottom of the tile, and two inches [5.08 centimeter] above the top of the tile four-inch [10.16 centimeter] diameter pipe. The filter material may be washed rock or crushed stone ranging in size from one inch to three inches [2.54 centimeters to 7.62 centimeters]. The filter material shall be covered by red rosin paper, hay, straw, or approved filter fabric, as the laying of the pipe drain proceeds. Approved graveless systems may be used in lieu of rockfill providing an equal equivalent surface area of soil is utilized.

3. **Spacing.** Trenches must have a minimum spacing of undisturbed earth of six feet [1.83 meters] for eighteen-inch to twenty-four-inch [45.72 centimeter to 60.96 centimeter] trench widths, and nine feet [2.74 meters] for trenches up to thirty-six inches [91.44 centimeters] wide.
4. **Absorption field.** The size and requirements for absorption fields shall conform to those given in the following table:

Table---Recommended-absorption-trench-area-

Percolation-rate-----min/in	Depth-of-Rock below-distribution-pipe			
	6"	12"	18"	24"
--Trench-bottom-area-loading-rate, gal/ft ² /day-				
1-to-5-----	1.2	1.5	1.80	2.1
6-to-15-----	0.8	1.0	1.20	1.4
16-to-30-----	0.6	0.75	0.90	1.05
31-to-45-----	0.5	0.63	0.76	0.89
46-to-60-----	0.45	0.57	0.68	0.79
-Square-feet-of-trench-bottom/bedroom-*				
1-to-5-----	125	100	85	70
6-to-15-----	190	150	125	110
16-to-30-----	250	200	165	145
31-to-45-----	300	240	200	170
46-to-60-----	330	265	220	190

*-Based-on-sewage-volume-of-150/GPD/Bedroom

STAFF COMMENT: The table in section 62-03-16-09 is all new material but is not underscored to improve readability.

Table - Recommended absorption trench area.

Percolation rate minutes/inch	Soil Classification	Depth of Rock below distribution pipe			
		6"	12"	18"	24"
-Trench bottom area loading rate, gal/ft ² ./day					
.1 to 5	Sand	1.2	1.5	1.80	2.1

6 to 15	Sandy loam	0.8	1.0	1.20	1.4
16 to 30	Loam	0.6	0.75	0.90	1.05
31 to 45	Silt loam	0.5	0.63	0.76	0.89
46 to 60	Clay loam	0.45	0.57	0.68	0.79
-Square feet of trench bottom/bedroom ¹					
.1 to 5		125	100	85	70
6 to 15		190	150	125	110
16 to 30		250	200	165	145
31 to 45		300	240	200	170
46 to 60		330	265	220	190

¹Based on sewage volume of 150/GPD/Bedroom

5. Absorption lines.

- a. Gravity distribution. Absorption lines shall be constructed of four-inch [10.16-centimeter] pipe. For approved plumbing materials, see table 62-03-03.1 of chapter 62-03-03.1 of the North Dakota state plumbing code, as amended.
- b. Pressure distribution. Absorption lines must be constructed of one and one-half-inch to two-inch [3.81-centimeter to 5.08-centimeter] rigid plastic pipe with one-fourth-inch [6.35-millimeter] holes drilled in the bottom of the pipes every-three-feet-[0.91-meters]. The number of perforations and spacing of perforations for different diameter pipes for pressure distribution laterals must not exceed ten percent of the average pressure head on the perforations. The pipe and connections must be able to withstand a pressure of at least forty pounds per square inch. The perforated laterals should be attached to a two-inch [5.08-centimeter] manifold pipe and should have the ends capped. The laterals should be spaced no further than forty inches [101.6 centimeters] on center and no further than twenty inches [50.80 centimeters] from the edge of the rock. Pipe must be installed level and capped at ends. Manifold The manifold must be supported and backfilled by hand.

6. Grade. The absorption trench bottom must be level.

History: Amended effective October 1, 1989; September 1, 1990; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-11. Piping material. All piping from building drain to sewage disposal treatment system shall be four inches [10.16 centimeters] or larger service ~~or heavier-weight-cast-iron~~; schedule 40

acrylonitrile-butadiene-styrene or polyvinyl chloride plastic pipe, type PSP PVC sewer pipe SDR 35, and fittings A.S.T.M. D3033 or D3034, exclusive of the absorption lines, which shall be as in subsection 5 of section 62-03-16-09.

History: Amended effective April 1, 1984; September 1, 1990; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-11.1. Pumps and pump systems. This section pertains to pumps installed after the septic tank. Sumps and ejectors installed before the septic tank must meet the requirements set forth in section 62-03-11-07. (See appendix IV)

1. **Pumping stations chambers.**

- a. The pumping station chambers must be watertight and constructed of corrosion-resistant material.
- b. The working capacity of the pumping chamber must equal one-fourth of the daily sewage flow. Total capacity of the pumping chamber must equal or exceed daily sewage flow.
- c. A secure cover must be provided that is either bolted on or heavy enough to prevent ~~children from moving the~~ cover unauthorized entry.
- d. An external electrical outlet must be provided for connection to the pump and control switches. Openings for wiring into the pump chamber must be sealed.
- e. No electrical splices or connections shall be located in the pump chamber or riser.

2. **Pumps.**

- a. Effluent lift pumps must be of cast bronze, cast iron, or plastic construction and must be designed for handling septic tank effluent. Pedestal sump pumps with an open motor are not allowed.
- b. Set the pump on a pedestal on the bottom of the pump chamber to minimize grit and solids entering the impeller.
- c. The pump must have maximum lift capability at least five feet [1.52 meters] greater than the actual elevation, plus pipe friction loss. A pump to a sewage mound ("Wisconsin mound") shall deliver seven and five-tenths gallons [28.38

liters] per minute for each one hundred square feet [9.29 square meters] of rock area.

- d. Outlet piping must be one and one-fourth inches [31.75 millimeters] in diameter or greater. The pipe must be laid below frostline or uniformly graded to drain back to the pump chamber. Volume of ~~drainage~~ drain back should not exceed ten percent of the working capacity of the pump chamber. If piping is set to drain back, any check valves on the pump should be removed and a one-fourth-inch [6.35-millimeter] drainhole drilled on the low point of the outlet pipe. Piping connection to the pump must be with a union or quick disconnect coupling near the top of the pump chamber.

3. Pump controls.

- a. On-off switching for sewage pumps must be sealed mercury float switches or of a type approved by the administrative authority.
- b. Electrical connections ~~within--the--pump-chamber-must-be soldered-and-have-watertight-connections~~ must not be made in the pump chamber or pump chamber riser.

History: Effective September 1, 1990; amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-11.2. Alternative systems.

1. **Mounds.** Mounds may be constructed on soils having a percolation rate faster than one hundred twenty minutes per inch [2.54 centimeters]. For soils slower than one hundred twenty minutes per inch [2.54 centimeters], either the system must be moved to more amenable soil, or see subsection 2 on lagoons. (See appendix V)
 - a. **Location.** Mounds may not be located on sites of greater than ~~three~~ twelve percent slope. For moderately permeable soils, the administrative authority may approve construction on slopes ~~of-up-to~~ over six percent. Mounds may not be built in areas where water may pond.
 - b. **Design.** The basal sand area of the mound must be sized on the basis of eighty-three hundredths gallons [3.12 liters] per square foot [0.09 square meter] per day. The basal sand may be twelve inches to twenty-four inches [30.48 centimeters to 60.96 centimeters] deep and must extend at least five feet [1.52 meters] beyond the rock filter material in all directions. The rock layer may be twelve

inches to twenty-four inches [30.48 centimeters to 60.96 centimeters] deep, and may not exceed ten feet [3.05 meters] in width. Only pressure distribution may be used in the mound, so piping shall be one and one-half-inch to two-inch [38.10-millimeter to 50.80-millimeter] diameter rigid ABS or PVC. One and one-fourth-inch [31.75-millimeter] hole must be drilled every thirty-six inches [91.44 centimeters] and ends shall be capped the ends of the lateral must be capped. A one-quarter inch [6.35 millimeters] hole shall be drilled in the top of the cap to serve as a siphon break. Laterals shall be spaced no further than forty inches [101.60 centimeters] on center and no further than twenty inches [50.80 centimeters] from the edge of the filter rock. Surface water must be diverted by a berm located uphill from the base of the mound.

- c. Specifications. Sand must be uniformly graded, with no more than fifteen percent fines. Filter rock must be one inch to three inches [25.40 millimeters to 76.20 millimeters] in diameter, washed or screened to less than ten percent fines.

A jar test should be used to determine sand suitability. In a one quart [.95 liters] jar, place two inches [50.8 millimeters] of the sand. Add water to three-fourths level, cap, shake, and set aside to settle. If a layer of silt is present on top which is more than one-eighth inch [3.18 millimeter] thick, the sand is not suitable for mound construction.

d. Construction.

- (1) Scarify the area with backhoe teeth or a cultivator. Do not remove topsoil. Bring outlet pipe from pump up into the center of the mound area.
- (2) Lay sand on scarified area. Do not compact the soil with machinery tires. Level sand to desired depth.
- (3) Lay filter rock down the center of the sand layer. Level.
- (4) Connect piping to manifold and lay pipe on rock. Cover pipe with rock and level by hand. Holes must be on bottom of the pipe.
- (5) Lay sand up to the top of the rock on all sides, sloping sand away at a three to one or four to one slope.
- (6) Cover rock with red rosin paper, hay, or filter fabric.

- (7) Backfill entire mound to a three to one or four to one grade. Downhill side of mound on slopes must be backfilled at a four to one or longer grade. Cover mound with topsoil.
 - (8) Seed grass over mound. Trees and shrubs may be planted on the toe and up the sides of the mound, but do not plant shrubs or trees on top. If vegetation is not established before winter, cover mound with hay or straw to prevent freezing.
2. **Lagoons - Total containment.** In areas where normal septic systems will not function, and where the administrative authority finds that a nuisance will not be presented, a lagoon may be used for onsite sewage disposal.
- a. Design. Depth may not exceed five feet [1.52 meters], and side berms shall be graded to three, to one for proper aeration. The site must be fenced, and the berms must be seeded. The berms must be at least one foot [0.30 meter] higher than the liquid level at design capacity. Inlet pipes must discharge onto a splash pad to minimize erosion. Outlet pipes may not be installed without the approval of the administrative authority.
 - b. Maintenance. Weeds must be controlled in the lagoon and on the berms to maximize aeration.
 - c. Prohibitions. Lagoons may not be constructed on sand, gravel, or light loamy soils. No lagoon may be discharged into receiving waters or onto the ground without the approval of the state department of health and consolidated laboratories.
3. **Alternative design.** Alternate designs for construction of sewage disposal treatment systems complying with the intent of this code may be submitted to the administrative authority for approval.

History: Effective September 1, 1990; amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-14. Privies.

- 1. ~~Privies--and--privy--vaults.~~ All requests for permission to erect and use privies shall be approved by the administrative authority.
- 2. General specifications for the design and construction of a privy. A privy pit may must be constructed ~~by--boarding--~~

~~square--or--rectangular--pit--to--prevent--earth--caving--or~~ by providing a watertight structure in the pit. The ~~pit~~ watertight structure shall provide a minimum capacity of sixty cubic feet [1.70 cubic meters]. ~~The--pit--should--be--lined--with--boards--and--a~~ A privy building shall be placed over the ~~pit~~ structure. The floor of this building shall be of wood or concrete with the privy seat of ~~wood~~ suitable material which is easily cleaned and serviceable. A vent located adjacent to the seat shall extend from the ~~pit~~ vault to a point above the roof of the building. The seat shall be provided with a cover which shall be self-closing.

All openings in the building shall be screened to prevent the entrance of flies. ~~Earth--shall--be--mounded--on--all--sides--of--the~~ The building shall be so constructed so as to prevent the entrance of rats to the ~~pit~~ vault. The privy door shall be self-closing.

3. Removable cans. When removable cans are used in a privy, they shall be placed in watertight vaults and provision made for removing the seat so the cans can be moved for disposal of the contents in a manner acceptable to the administrative authority. The privy building shall comply with the above specifications for a pit privy building.

History: Amended effective October 1, 1989; February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-15. Septic tank pumpers.

1. Every person engaged in the business of removing and disposing of the solid and liquid contents of private sewage ~~disposal~~ treatment systems shall obtain an annual license from the state department of health ~~and--consolidated--laboratories~~.
2. All solid and liquid contents of chemical toilets, septic tanks, ~~seepage--pits~~ pump chambers, and watertight pits for septic tank effluent shall be removed, when necessary, and disposed of in conformance with subsections 3 through 9.
3. Every pumper shall obtain a license to engage in such operations as specified in the appropriate rules of the state department of health ~~and--consolidated--laboratories~~, chapter 33-21-01.
4. A metal license tag with the number of the license issued shall be posted in a conspicuous place on the left side of the servicing unit.

5. Every vehicle used for pumping purposes shall be equipped with a watertight tank so that there will be no spillage on private premises or on highways or roads.
6. All portable receptacles used for transporting liquid or solid waste shall be watertight, equipped with tight-fitting lids, and shall be cleaned daily.
7. All pumps and hose lines shall be maintained so as to prevent leakage.
8. All waste material shall be disposed of in such a place and in such a manner as will not constitute a nuisance or a menace to public health.
9. Waste material collected by a pumper shall not be discharged into ditches, watercourses, lakes, ponds, tidewater, or at any point where it can pollute any water supply, bathing area, or shellfish growing area. It shall not be deposited on the surface of the ground within one thousand feet [304.8 meters] of any residence or public road.

History: Amended effective February 1, 1996.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

TITLE 67.1
Education Standards and Practices Board

FEBRUARY 1996

STAFF COMMENT: Articles 67.1-01, 67.1-02, and 67.1-03 of newly created title 67.1 contain all new material but are not underscored so as to improve readability.

ARTICLE 67.1-01

GENERAL ADMINISTRATION

Chapter
67.1-01-01 Organization of Board

**CHAPTER 67.1-01-01
ORGANIZATION OF BOARD**

Section
67.1-01-01-01 Organization of the Education Standards and
Practices Board
67.1-01-01-02 Duties of the Education Standards and
Practices Board

**67.1-01-01-01. Organization of the education standards and
practices board.**

1. **History.** The education standards and practices board was established by legislation in 1993. The board came into

existence effective January 1, 1995, and assumed its duties on July 1, 1995. The board has its origins in the teacher professional practices commission which served in an advisory capacity to the superintendent of public instruction for teacher certification, teacher preparation program approval, and professional development.

2. **Meetings.** The education standards and practices shall hold a minimum of four meetings annually. The year, for purposes of the board, begins July first and ends the last day of June during the ensuing calendar year. The meetings shall be scheduled by the membership at large, or at the call of the chairperson, or may be held upon the request in writing by a majority of the board members. The meetings may be held only after ten days prior to notice. A majority of the members constitutes a quorum that will have the authority to act upon any items of business properly placed before the board. Members should notify the secretary if unable to attend.
3. **Officers.** The officers are a chairperson, vice chairperson, and secretary, who will be the board executive director. The officers will be elected for one-year terms at the reorganization meeting, which will be the first meeting called following July first of each year.
 - a. The duties of the chairperson are to:
 - (1) Recognize members, state motions, and confine debate to the motion under discussion;
 - (2) Call for special meetings upon the request of a majority of the board in writing;
 - (3) Assist the director in preparing an agenda to be sent with the announcement of the next meeting;
 - (4) Designate board members to attend special meetings at board expense;
 - (5) Appoint standing committees and subcommittees;
 - (6) Be responsible for communicating all statements on the actions of the board in the execution of its duties; and
 - (7) Perform other duties as deemed necessary by the board.
 - b. The duties of the vice chairperson are to:
 - (1) Preside when the chairperson is absent or when called to the chair by the chairperson;

- (2) Perform the duties of the chairperson until a new chairperson is elected in case of a vacancy in the office of the chairperson;
- (3) Be acquainted with the duties and responsibilities of the chairperson; and
- (4) Perform other duties as deemed necessary by the board.

c. The duties of the executive director are to:

- (1) Record attendance of the board members;
- (2) Keep an accurate record of all proceedings and distribute them to the members;
- (3) Assist the chairperson in the preparation and distribution of the agenda;
- (4) Notify all board members ten days in advance of any meeting;
- (5) Send out all mailings and notices required by the board;
- (6) Prepare a financial statement for each regular meeting and coordinate vouchers;
- (7) Release statements to the media, subject to board approval; and
- (8) In the absence of the chairperson and the vice chairperson, call the meeting to order and preside while a temporary chairperson is elected.

4. **Board members.** Board members will have regular and functional attendance at all regular meetings. They will send materials to the chairperson and director for inclusion in the mailings. They will prepare input for each regular meeting. Members will file a written report with the director after attending any special meetings.

History: Effective July 1, 1995.

General Authority: NDCC 15-38-17, 28-32-02.1

Law Implemented: NDCC 15-38-17

67.1-01-01-02. Duties of the education standards and practices board.

1. **Standards for professional ethics, performance, and practices.**
The board continuously reviews the North Dakota educator's

code of ethics and rules, standards, and procedures pertaining to certification, teacher education program approval, and professional development of educators. As part of the education standards and practices board, the board will solicit input from the teaching profession and representatives of school administrators, school board members, teacher educator professors, and other interested citizens. The board will be responsible for the interpretation of the North Dakota educator's code of ethics with requests for interpretation being placed in writing.

2. **Consideration of written complaints relative to code violations.** Procedures for an inquiry from any interested citizen will be accepted by the board against any North Dakota certificated educator. The inquiry must be requested in writing. Any educator named in an inquiry will be notified and will be informed of the procedures that will be taken.

History: Effective July 1, 1995.

General Authority: NDCC 15-38-17, 28-32-02.1

Law Implemented: NDCC 15-38-18, 26-32-02.1

ARTICLE 67.1-02

TEACHER CERTIFICATION

Chapter	
67.1-02-01	Student Teaching
67.1-02-02	Educator's Professional Certificate - Entrance
67.1-02-03	Reeducation
67.1-02-04	Emergency Certificates
67.1-02-05	Certification Policies

CHAPTER 67.1-02-01 STUDENT TEACHING

Section	
67.1-02-01-01	Student Teachers
67.1-02-01-02	Cooperating Teachers
67.1-02-01-03	College Supervisors
67.1-02-01-04	Program Approval of Teacher Education for Certification
67.1-02-01-05	Program Approval Standards

67.1-02-01-01. Student teachers. A student teacher is one who teaches in a regular classroom situation as part of the requirements in professional preparation.

1. All college students in education must have classroom-related preprofessional experience prior to student teaching. This experience must be provided as early as possible. Formal admittance to the teacher education program includes meeting appropriate state program approval requirements.
2. The student teacher should be assigned by a college or university to a cooperating school on a full-time block. A full-time block is construed as a full day for ten consecutive weeks with exceptions documented. The student teacher must be placed in a classroom where the cooperating teacher is regularly assigned. Additional student teaching experiences shall be determined by the training institution.
3. In the event of an emergency, the student teacher may once during the student teaching semester be placed as a substitute in the student teacher's regularly assigned classroom for a period of time not to exceed two consecutive days.
4. Student teachers may be placed only in accredited schools.

5. Teaching experience cannot be used for a waiver of student teaching.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-01-02. Cooperating teachers. A cooperating teacher is the teacher in the local situation who works with, helps, and advises the student teacher.

1. Every cooperating teacher must have acquired a minimum of two semester hours or three quarter hours in a supervision of student teaching course as an inservice requirement that meets the necessary essentials in preparing cooperating teachers to supervise student teachers. Those cooperating teachers who have served prior to July 1, 1976, may have this requirement waived at the discretion of the host college and cooperating school.
2. The cooperating teacher must have at least two years of teaching experience. The cooperating teacher must have at least one year of teaching experience in the school system in which the student teacher is being supervised.
3. Before being accepted and approved as a cooperating teacher, the teacher must be recommended by the administration of the school in which student teaching is performed.
4. A cooperating teacher who cannot recommend a student teacher for teaching or certification shall have a conference with the college supervisor and the student teacher prior to the student teaching evaluation and recommendation.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-01-03. College supervisors. A college supervisor is the college faculty member who is in charge of guiding, helping, and directing the student teacher.

1. The college supervisor must have elementary or secondary teaching experience at the level of supervision.
2. A college supervisor, after meeting with the administration of the school in which student teaching is to be done, shall meet with the cooperating teacher and provide a copy of the state student teaching guidelines.

3. The college supervisor shall make a copy of the student teacher's file available to the cooperating teacher prior to the arrival of the student teacher. Such file may contain a brief biography and general information, but may not contain any specific information that would be in violation of a student's right to privacy.
4. A college supervisor shall make at least two visitations during the student's teaching experience. Following each visitation the college supervisor shall hold a joint conference with the cooperating teacher and the student teacher, or provide each a written critique of the visitation.
5. The teacher education program staff may provide consultation and assistance for the first year teacher in North Dakota.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-01-04. Program approval of teacher education for certification. The education standards and practices board shall supervise a system of program approval for teacher education programs for state certification of teachers.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-38-18

67.1-02-01-05. Program approval standards. The education standards and practices board shall adopt a set of North Dakota teacher education program approval standards.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-38-18

CHAPTER 67.1-02-02
EDUCATOR'S PROFESSIONAL CERTIFICATE - ENTRANCE

Section	
67.1-02-02-01	Life Certificates
67.1-02-02-02	Entrance Certificates
67.1-02-02-03	Distance Learning Instructor - Definition - Qualifications - Certification
67.1-02-02-04	Two-Year and Five-Year Renewals
67.1-02-02-05	Credit
67.1-02-02-06	Denial and Appeal
67.1-02-02-07	Indian Studies
67.1-02-02-08	State Model for Inservice Education and Staff Development
67.1-02-02-09	Reentry

67.1-02-02-01. Life certificates. First grade and second grade professional life certificates issued prior to July 1, 1976, are valid for life. However, it is recommended that teachers show professional gain by college attendance, workshops, conferences, travel, and other professional activities.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-02-02. Entrance certificates.

1. Initial teacher certification for in-state graduates requires completion of a state agency approved teacher education program of a bachelor's level minimum with an overall grade point average of 2.5 or more and a recommendation from the institution. The program must include twenty-six semester hours or forty quarter hours for secondary professional education of thirty-four semester hours or fifty quarter hours for elementary professional education. This education must include ten weeks of full-time successful participation in student teaching at appropriate grade levels under the supervision of a teacher training institution approved by the education standards and practices board.
2. An out-of-state applicant must hold a four-year bachelor's degree with twenty-six semester hours or forty quarter hours in secondary professional education or thirty-four semester hours or fifty quarter hours in elementary professional education with a minimum overall grade point average of 2.5. The professional education must be part of a state program approved for teacher education training and include successful student teaching at the appropriate grade level. Three

recommendations are required. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, the recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. Verification of eligibility for home state certification may be requested. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.

3. An application fee of five dollars must accompany a request for an initial application form.
4. A fee of fifty dollars must accompany the application for initial certification for in-state and out-of-state candidates. An additional fee of thirty-five dollars for transcript review from out-of-state candidates must also accompany the certification application.
5. All initial certificates are valid for only two consecutive school years.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 15-36-18, 28-32-02

Law Implemented: NDCC 15-36-01, 15-36-08, 15-38-18

67.1-02-02-03. Distance learning instructor - Definition - Qualifications - Certification.

1. "Distance learning instructor" means an out-of-state teacher who conducts a class that is broadcast or delivered to a location in North Dakota from outside North Dakota by any form of electronic transmission, including fiber optic cable, satellite, television, computer, telephone, or microwave.
2. Every distance learning instructor seen or heard in North Dakota must hold a valid North Dakota teaching certificate issued by the education standards and practices board. A distance learning instructor shall obtain such a certificate by providing to the education standards and practices board:
 - a. A certified copy of a current teaching certificate issued by the state of broadcast origin; and
 - b. Certification that the distance learning instructor meets that state's regular certification standards in the subject area taught via electronic transmission.

3. A North Dakota teaching certificate issued pursuant to this section only allows a distance learning instructor to teach in North Dakota via electronic transmission from outside this state. If a teacher desires to teach in North Dakota while being physically present in North Dakota, the teacher must obtain a teaching certificate pursuant to this section.
4. A North Dakota teaching certificate issued pursuant to this section has an application fee of five dollars, a certification fee of fifty dollars, an out-of-state review fee of thirty-five dollars and is valid for two years.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-02-04. Two-year and five-year renewals.

1. A two-year renewal will be issued to those applicants reentering the profession or to applicants with less than eighteen months of contracted teaching in North Dakota and has a fee of thirty dollars per renewal.
2. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota certificate. All five-year certification applications must be accompanied by a fee of seventy-five dollars. Succeeding five-year renewals require evidence of thirty teaching days of contracted service to avoid reverting to entry status. Three recommendations are required. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. If recommendations are not adequate to issue a five-year certificate, the education standards and practices board shall provide a hearing following North Dakota Century Code chapter 28-32. The procedure must be as provided in North Dakota Century Code section 28-32-05. Following the hearing procedure, the education standards and practices board shall make a determination whether to:
 - a. Issue a five-year renewal to the applicant;
 - b. Issue a two-year probationary certificate; or

c. Deny recertification.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01, 15-36-08, 15-38-18

67.1-02-02-05. Credit. The succeeding renewal of the five-year certificate requires verification of a minimum of four semester hours or six quarter hours of college or university credit earned within the dates of the certificate, contracted teaching of a minimum of thirty days, and three recommendations as outlined in subsection 2 of section 67.1-02-02-04. Applicants not meeting these requirements will be processed as reentry applicants under this section.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-02-06. Denial and appeal. The education standards and practices board may deny an application for the issuance of a certification made by an applicant:

1. Who failed to comply with certification statutes;
2. Who failed to submit appropriate recommendations;
3. Who has been convicted of a crime under the laws of the state or the United States;
4. Who is currently under license suspension; or
5. Who has had certification revoked.

If the application for the issuance of certification is denied, an applicant may request a review of the denial before the education standards and practices board. In the event of denial by the education standards and practices board the applicant may request a public hearing of the matter under North Dakota Century Code chapter 28-32.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 15-38-18, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-02-07. Indian studies. Any teacher who graduated from a teacher education program after September 1, 1980, is required to meet the North Dakota native American studies requirement which is two semester hours or three quarter hours of college credit in North Dakota native American studies, or the equivalent in inservice pursuant to approval by the education standards and practices board. The two-year certificate will be used for compliance for reentry and out-of-state

applicants. Substitute teachers are exempt in the Indian studies requirement until a contracted position is accepted.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-02-08. State model for inservice education and staff development. The education standards and practices board shall adopt a model for inservice education and staff development. The model must include the assessment of statewide and staff development needs, a projection of programs responsive to those needs, and the identification of the resources needed to implement those programs.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-02-09. Reentry. An applicant who has been out of teaching for a period of more than five years must earn a total of eight semester hours or twelve quarter hours of college or university credit in the area in which the teacher wishes to renew certification during the first two years of reentry contracted service. One-half of the required credit hours must be earned before entering the second year of the renewal period. Substitute teachers are exempt from the eight semester hour requirement until the individual accepts a contracted position.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

**CHAPTER 67.1-02-03
REEDUCATION**

Section	
67.1-02-03-01	Elementary Endorsement
67.1-02-03-02	Kindergarten Endorsement
67.1-02-03-03	Secondary Endorsement
67.1-02-03-04	Middle School Endorsement for Grades Five Through Eight
67.1-02-03-05	Bilingual Education or English as a Second Language

67.1-02-03-01. Elementary endorsement. Reeducation of a certified teacher for elementary schoolteaching may be accomplished by completing a college-approved elementary teacher education program of twenty-six semester hours or forty quarter hours including a regular classroom student teaching experience of six quarter hours or a minimum of five consecutive weeks between grades kindergarten through sixth. A verified successful year of college-supervised internship with credit may be substituted for student teaching. The coursework must contain the elementary methods in reading, language arts, mathematics, science, and social studies along with additional appropriate elementary education coursework.

History: Effective July 1, 1995.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67.1-02-03-02. Kindergarten endorsement. Reeducation of elementary teachers for kindergarten schoolteaching may be accomplished by presenting a minimum of eight semester hours or twelve quarter hours of kindergarten coursework in curriculum, methods, materials, skills, and activities for the kindergarten child. The applicant must have a minimum of one year successful teaching experience in grades kindergarten or one, or student teaching of four semester hours or six quarter hours or a minimum of five consecutive weeks applicable to the endorsed area.

History: Effective July 1, 1995.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67.1-02-03-03. Secondary endorsement. Reeducation for secondary schoolteaching may be accomplished in one of the following two ways:

1. By completing a college major or minor in secondary education;
or

2. By presenting a minimum of eight semester hours or twelve quarter hours of secondary education professional courses for endorsement in addition to the major or minor field. The applicant must have a minimum of one year successful teaching experience in grades seven through twelve or have supervised student teaching as part of the above program.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-03-04. Middle school endorsement for grades five through eight. Endorsement for teaching in a middle school is available on a voluntary basis to teachers certified to teach at the elementary or grades one through twelve levels. The middle school endorsement is mandatory for teachers certified for grades seven through twelve to qualify for work with grades five and six in the subject fields of their certification and voluntary for work with students in grade seven and eight. A review of past coursework will be conducted and a program of studies needed for completion will be established. The middle school endorsement requires a minimum of ten semester hours including all of the following:

1. Development of young adolescents.
2. Philosophy and curriculum (foundations) of middle school education.
3. Reading in the content areas.
4. Methods or strategies of teaching in the middle grades (two semester hours minimum).

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-03-05. Bilingual education or English as a second language. Reeducation for a "bilingual education or English as a second language" endorsement for any certified teacher may be accomplished by presenting at least sixteen semester hours or twenty-four quarter hours of college coursework in all of the following areas:

1. **Foundations.** Four semester hours or six quarter hours of college coursework from the following:
 - a. Multicultural education, which involves a knowledge of ethnic groups in North Dakota and the United States, different instructional methods to use with different ethnic and language groups.

- b. Foundations of bilingual education, which involves models of bilingual education; research on the effectiveness, or lack thereof, of bilingual education; history of bilingual education; and significant laws and court decisions affecting language minority students.
2. **Linguistics.** Six semester or nine quarter hours of college coursework from the following areas:
 - a. Linguistics, which involves the nature of language, organizational principles of language (phonology, morphology, syntax, and semantics), principles of language change, and development of language families.
 - b. Psycholinguistics, which involves first and second language, oral and written acquisition processes, and learning theories.
 - c. Sociolinguistics, which involves basic sociocultural variables in language use and language learning, types of bilingual and multilingual educational situations, and social determinants of dialect and style.
3. **Methods.** Two semester or three quarter hours of college coursework from the following:
 - a. Methods of teaching English as a second language to students, which involves an exploration of historical and current instructional approaches in teaching English as second language, from the grammar-translation method to the natural method.
 - b. Methods of teaching bilingual education, which involves an understanding of instructional programs in bilingual education, such as immersion, transitional, early entry, and late entry.
4. **Assessment.** Two semester hours or three quarter hours of college coursework from assessment and testing of culturally diverse students, which involves a study of culturally appropriate assessment tools and methods of identifying and assessing limited English proficient students.
5. **Field experience.** Two semester or three quarter hours of college coursework from field teaching experience with limited English proficient students in a bilingual or English as a second language setting.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

CHAPTER 67.1-02-04
EMERGENCY CERTIFICATES

Section
67.1-02-04-01 Emergency Certificates

67.1-02-04-01. Emergency certificates. Emergency certificates will be issued under the following conditions:

1. Consideration for emergency certificates will not be granted until after August fifteenth in any year.
2. The request for an emergency certificate must be initiated by a school. The school board or administration must make the request in writing to the education standards and practices board for consideration of an emergency certificate, indicating intent to offer a contract if certification can be arranged. The request must certify that it is improbable that a regularly certified teacher can be employed to fill the position.
3. The candidate must write a letter indicating willingness to accept the position if offered.
4. A complete official transcript of all college work must be sent to the education standards and practices board.
5. The applicant must have proficiency and hold minimal qualifications of a bachelor's degree to teach in the area to be assigned.
6. Renewal of emergency certificates will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced by documented efforts to obtain a certified person for the position.
7. The renewal, if permitted, is contingent upon presentation of at least eight semester hours or twelve quarter hours of additional college credit in the area of study leading to regular certification.
8. The fee for the emergency certificate is one hundred dollars for each year the certificate is issued.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 15-36-08, 28-32-02

Law Implemented: NDCC 15-36-01

**CHAPTER 67.1-02-05
CERTIFICATION POLICIES**

Section	
67.1-02-05-01	Reciprocity
67.1-02-05-02	Experience
67.1-02-05-03	Reserve Officers' Training Corps Instructors
67.1-02-05-04	Endorsements and Restrictions
67.1-02-05-05	Alternate

67.1-02-05-01. Reciprocity. North Dakota will have reciprocity for suspensions and revocations with other states during the suspension time and will determine acceptance of applicants case by case based on applicable North Dakota laws and denial procedures under section 67.1-02-02-06.

History: Effective July 1, 1995.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67.1-02-05-02. Experience. Teaching experience in approved kindergarten, elementary, secondary, and postsecondary teacher education programs will be granted as experience for certificate renewal.

History: Effective July 1, 1995.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67.1-02-05-03. Reserve officers' training corps instructors. Reserve officers' training corps instructors will receive regular certification with a restriction to that area.

History: Effective July 1, 1995.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67.1-02-05-04. Endorsements and restrictions. The North Dakota educator's professional certificate is issued as described in section 67.1-02-02-02. This certificate qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. The endorsements could be recently acquired college granted majors or minors or a new degree, endorsements in kindergarten, elementary, middle school, bilingual, secondary or any other endorsement issued by the education standards and practices board. The restricted certification is for psychology (master's degree with major in school psychology), speech therapy, mental retardation, deaf education, visually impaired, early childhood

education, preschool handicapped, and reserve officers' training corps. All other special education categories require regular elementary or secondary qualifications. If a certificate holder requests the addition of an endorsement to a certificate at any time other than renewal, a fee of thirty-five dollars must accompany the request for the addition if it is any endorsement other than a newly acquired major or minor or new degree, and seventy-five dollars if the request for change is for a new major or minor or degree. An additional five years is also added to the certificate at the time of the addition of the new major, minor, or degree. No additional fee for an endorsement will be assessed if any endorsement is added at a regularly scheduled renewal.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 15-36-08, 28-32-02

Law Implemented: NDCC 15-36-01

67.1-02-05-05. Alternate. The content of the laws and rules for teacher certification may be fulfilled by providing the required documentation through a third party authorized by the candidate through an affidavit provided by the education standards and practices board.

History: Effective July 1, 1995.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

ARTICLE 67.1-03
EDUCATOR'S CODE OF ETHICS

Chapter
67.1-03-01 Educator's Code of Ethics

CHAPTER 67.1-01-03
EDUCATOR'S CODE OF ETHICS

Section
67.1-03-01-01 Professional Beliefs
67.1-03-01-02 Principle I - Commitment to the Student
67.1-03-01-03 Principle II - Commitment to the Profession
67.1-03-01-04 Principle III - Commitment to the Community

67.1-03-01-01. Professional beliefs. The educator believes in the worth and dignity of each human being and strives to help each student realize the student's potential as a worthy, effective member of society. The educator, therefore, works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. The profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service. The quality of the services of the education profession directly influences the nation and its citizens. The educator shall exert every effort to raise professional standards, to promote a climate that encourages persons worthy of trust to exercise careers in education, and to assist in preventing the practice of the profession by unqualified persons. The educator believes that patriotism in its highest form requires dedication to the principles of our democratic heritage and assumes full political and citizenship responsibility. The educator shares with all other citizens the responsibility for the development of educational programs and policies and for interpreting these to the public. The professional educator regards the employment agreement as a solemn pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service.

History: Effective July 1, 1995.
General Authority: NDCC 15-38-18, 28-32-02
Law Implemented: NDCC 15-38-18

67.1-03-01-02. Principle I - Commitment to the student. In fulfillment of the obligation to the student, the educator shall:

1. Deal justly and considerately with each student.
2. Share the professional responsibilities for improving educational opportunities.
3. Provide reasonable opportunity for the student to study varying concepts and respect the student's right to form one's own views.
4. Disperse information about the student obtained in the course of professional service only as prescribed by law.
5. Avoid using professional relationships with students for private advantage.

History: Effective July 1, 1995.

General Authority: NDCC 15-38-18, 28-32-02

Law Implemented: NDCC 15-38-18

67.1-03-01-03. Principle II - Commitment to the profession. In fulfillment of the obligation to the profession, the educator shall:

1. Recognize that the profession must accept responsibility for the professional conduct of its members and understand that their own conduct may be regarded as representative.
2. Evaluate conditions within a district or an institution of learning and make known serious deficiencies by taking action deemed necessary and proper through established professional, legal, or legislative channels.
3. Not knowingly misrepresent one's own or another's professional qualifications or competencies.
4. Refrain from assigning professional duties to unqualified personnel.
5. Disclose information about colleagues obtained in the course of professional service only when such disclosure serves a compelling purpose or is required by law.
6. Not accept any gratuity, gift, or favor that might impair or appear to influence professional decisions or actions.
7. Study and adhere to the terms and conditions of a contract.

8. Present only factual information regarding the assignment or conditions of employment to an applicant.

History: Effective July 1, 1995.

General Authority: NDCC 15-38-18, 28-32-02

Law Implemented: NDCC 15-38-18

67.1-03-01-04. Commitment to the community. In fulfilling this obligation to the community, the educator shall:

1. Acknowledge and encourage the right and responsibility of the public to participate in the formulation of educational policy.
2. Recognize that each educational institution may have a person authorized to interpret its official policies.
3. Assume full political and citizenship responsibilities, but refrain from exploiting the institutional privileges of one's professional position to promote political candidates or partisan activities.

History: Effective July 1, 1995.

General Authority: NDCC 15-38-18, 28-32-02

Law Implemented: NDCC 15-38-18

TITLE 69
Public Service Commission

FEBRUARY 1996

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of January 1, 1994 1995, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-10-01

69-10-01-01. Definitions. As used in this chapter:

1. "Automatic bulk weighing system" means a weighing system which weighs grain in successive drafts, automatically records the no-load and loaded weight values, and accumulates the net weight of each draft.
2. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
3. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
4. "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.
5. "NIST" means the United States department of commerce, national institute of standards and technology.
6. "Not sealed" means a sticker or seal applied to a device which has not been inspected and tested, does not meet applicable design or tolerance requirements, or is no longer being used commercially. A device that is not sealed shall not be used in commerce.
7. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested under the self-certification rules.
- 7- 8. "Registered service person" means a person or agency authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.
- 8- 9. "Retail fuel device" means a commercial, indicating fuel pump used to deliver fuel to individual highway vehicles in quantities of one hundred gallons [378.54 liters] or less per transaction.
- 9- 10. "Security seal" means either a lead and wire pressure-sensitive seal, a plastic and wire pressure-sensitive seal, or a sealing sticker, permanently attached to a weighing or measuring device to prevent unauthorized access to the tolerance adjusting mechanisms of that device.

- ~~10-~~ 11. "Seal" means marking a weighing or measuring device to show certification or rejection.
- ~~11-~~ 12. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
13. "Split-weighing" means determining the weight of a vehicle, combination vehicle, or a commodity by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combinations.
- ~~12-~~ 14. "Standard" means test equipment used for certifying weighing or measuring devices.
- ~~13-~~ 15. "Variance" means a temporary or permanent suspension of a particular rule.
- ~~14-~~ 16. "Weights and measures inspector" means a commission employee in the testing and safety division performing duties set by the commission.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-01-02.1. Certification. A weighing and measuring device may only be certified by the commission or a registered service person, and only at the location of intended use. However, if so designed, devices may be repaired, tested, and sealed outside the location of intended use by a registered service person, and may be used for a period not to exceed thirty days, or until retested and certified by the commission at the location of intended use. The commission may certify a weighing or measuring device by actual testing of the device, or by witnessing the test.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-04.1. Variance requests. The operator of any commercial weighing or measuring device, other than an operator seeking a split-weigh variance under section 69-10-01-04.2, may make written request for a variance from the commission under North Dakota Century Code section 64-02-02. The request for a variance must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;
2. A plan for compliance over a period not to exceed one hundred eighty days {if the variance request results from a rejection}; or, a plan for compliance over a period not to exceed five years if the variance request results from economic hardship. Through reapplication, the economic hardship variance may be a permanent variance provided the applicant can show that compliance will continue to cause economic hardship;
3. The name, type, location, and capacity of the device;
4. The maximum amount that will be weighed on the device, along with a certified letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard (if applying for a variance to use that will allow a scale to be used beyond its rated capacity);
5. Detailed information showing that compliance with specific regulations will cause economic hardship (if applicable to the variance request); and
6. Any other information the operator believes may expedite the variance request.

A variance granted by the commission is a temporary variance and does not become permanent until sufficient time to conclude inspection and testing (usually two years) has elapsed. A notice of the variance must be conspicuously posted on the device during the time the temporary variance is in effect.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-04.2. Split-weigh variance requests. The operator of any motor truck or motor truck dump scale installed after April 1, 1965, may make written request for a permanent split-weigh variance from the commission under North Dakota Century Code section 64-02-02. The request for a variance must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;
2. The name, type, location, and capacity of the device;

3. The maximum amount of weight that will be placed upon the device at any time during the split-weighing operation. If that maximum weight exceeds the rated sectional capacity or scale capacity of the device, the applicant must also include a letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard;
4. The maximum distance between the outer axles of the vehicle or coupled-combination vehicle that will be split-weighed;
5. A statement in the variance request certifying that each axle of the vehicle or each axle of the coupled-combination vehicle will rest on a straight surface, in the same plane with, and not to exceed one-third inch [8.47 millimeters] per foot [30.48 centimeters] out of level with, the scale deck during the split-weighing operation;
6. A statement in the variance request agreeing to the following procedures to be observed during the split-weighing operation:
 - a. Use of the vehicle brakes is prohibited;
 - b. The vehicle transmission must be in neutral; and
 - c. Chocking of the vehicle's wheels should be discouraged.
7. For an operator of a motor truck or motor truck dump scale installed after April 1, 1995, a temporary variance will be issued only if the operator has substantiated that it is unable to install a scale of sufficient length to allow single-draft weighing due to economic hardship. If the operator chooses to pursue the plea of economic hardship, then the operator's split-weigh variance request must also include a plan for compliance over a period not to exceed five years. Through reapplication, at the end of the five-year period, the economic hardship temporary variance may be made a permanent variance provided the operator can show that compliance will continue to cause economic hardship.

History: Effective February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-04

69-10-01-06.1. Liquefied petroleum gas meters - Temperature compensation. All sales of liquefied petroleum gas in a liquid state shall be made through a meter having an automatic temperature

compensator. The compensator shall be connected, operable, and in use at all times.

History: Effective February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03

69-10-01-08. Assisting inspector. When requested, the owner or operator of any commercial weighing or measuring device shall supply access and assistance to the division inspector in movement of the test weights to and from and on and off the scale for testing purposes, or for returning liquids to aboveground or belowground storage tanks. Failure to provide inspector access and assistance in a timely manner may be grounds for tagging the device "not sealed".

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-02

69-10-02-05. Portable pitless scales and portable hopper scales.

Self-contained portable pitless scales and self-contained portable hopper scales used solely to weigh gravel, sand, rock, or fill or to check materials associated with used for government highway construction are exempt from the provisions of this article. Installation and operation of portable pitless scales for commercial use without a variance from the commission is prohibited.

History: Amended effective April 1, 1984; August 1, 1993; September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-05.1. Fixed pitless scales. ~~A variance under North Dakota Century Code section 64-02-02 for the construction and operation of all fixed pitless scales to be used in commerce must be approved by the commission before construction may begin. The variance request must be filed with the commission at least thirty days prior to construction and must include a copy of the construction plans. All~~ A fixed pitless scales scale must have at least twelve inches [304.80 millimeters] of clearance between the "I" beam and the slab and the piers must extend down below the frostline. ~~Walls tying the piers together must be sufficient in strength and must be installed to manufacturer's specifications~~ to support the device, prevent shifting, and provide protection from the environment.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-09. Deck lengths.

1. A motor truck or motor truck dump scale installed and operational before January 1, 1995, must have at least twelve feet [3.66 meters] or a distance equal to one-third of deck length, whichever is greater, of straight driveway on either end of the scale deck not over one-third inch [8.38 millimeters] per foot [30.48 centimeters] out of level with the platform. The first twelve feet [3.66 meters] from the scale must be of a hard surface (concrete or asphalt). An inside scale must measure a minimum of four feet [1.22 meters] of metal, wood, asphalt, or reinforced concrete between the scale deck and the inside of the doorsill at both ends of the scale.

2. A motor truck or motor dump scale installed on or after January 1, 1995, must have at least twelve feet [3.66 meters] or a distance equal to one-third of deck length, whichever is greater, of straight approaches beginning in a level plane with the surface of the scale deck. The slope of the approaches away from the scale deck may not exceed one-third inch [8.38 millimeters] per foot [30.48 centimeters]. The first twelve feet [3.66 meters] of approach from the scale must be of metal or concrete. An inside scale must measure a minimum of five feet [1.52 meters] of reinforced concrete between the scale deck and the inside of the doorsill at both ends of the scale. However, grating of sufficient strength to withstand all loads equal to the concentrated load capacity of the scale may be installed on either end of that inside scale.

History: Amended effective September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-10. Indicating and printing elements. A beam-type or dial-type indicating element must be installed in a level and plumb position, mounted on concrete piers, or on a concrete slab, and fastened securely to the concrete walls or neck of the scale pit. These mechanical indicating element foundations must be independent of the scalehouse floor, weighing room, or other similar ~~structure~~ structures. In case of a dial installation there should be adequate clearance for service between the cabinet of the dial and the wall. Motor truck, motor truck dump, railroad track, and livestock scales installed after July 1, 1973, and used in commerce, must be equipped with a ticket printing device. The ticket printing device must be used for all sales. A copy of the printed receipt must be issued to the customer at the time of the delivery. Notwithstanding the above date, a scale installed prior to July 1, 1973, equipped with any type of ticket printing capability must use that ticket printing capability for all sales, with a copy of the printed ticket to be issued to the customer at the time of the delivery. A shoulder or stop must be provided on each weighbeam bar to prevent the poise from traveling and remaining back of the zero graduation. Indicating and printing elements must be adequately protected from all environmental elements detrimental to their efficient operation.

History: Amended effective August 1, 1993; September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-19. Single-draft weighing - Exceptions. It shall be unlawful to weigh a vehicle or a combination vehicle in any method other than the single-draft method, as outlined in the National Institute of Standards and Technology Handbook No. 44, section 2.20. scales, UR.3.3., Single-draft Vehicle Weighing, except for the following:

1. When the sale of the commodity being weighed is determined by destination weight;
2. For a motor truck or motor truck dump scale installed prior to April 1, 1965; or
3. For a motor truck or motor truck dump scale installed after April 1, 1965, provided a split-weigh variance has first been granted by the commission under section 69-10-01-04.2, and the parties involved have complied with section 69-10-02-20 prior to split-weighing.

History: Effective February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-20. Split-weigh agreements. Upon approval by the commission of a variance allowing split-weighing, and before an individual customer is split-weighed, an approved split-weigh agreement form must be signed by both the business and that customer, and kept on file at the place where the split-weighing occurs.

History: Effective February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-21. Shift test - Load-bearing and section testing. After January 1, 1996, all motor truck, motor truck dump, and railroad track/truck combination scales shall be load-bearing and section tested. The load-bearing test must be conducted with a minimum standard of the lesser value of either ten thousand pounds [4535.9 kilograms] or one-quarter the device capacity in test weights, with the test weights centered, as nearly as possible, successively over each main load support. Section testing shall be conducted with a minimum standard of either twenty thousand pounds [9071.8 kilograms] or one-half the device capacity in test weights, with the test weights centered, as nearly as possible, successively at the center of each quarter of the load receiving element. Applicable tolerances from NIST Handbook No. 44, scale section, T.N.3.1. and T.N.3.2., shall be applied to the amount of test load used.

History: Effective February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

CHAPTER 69-10-03

69-10-03-01. National Institute of Standards and Technology (NIST) Handbook No. 44. Except as modified in this article, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices in North Dakota shall conform to the requirements of the 1994 1995 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference except table 4, section 2.20, of NIST Handbook No. 44, wherein North Dakota shall retain the 1993 version of NIST Handbook No. 44 table 4 until August 1, 1996. In the event of a conflict between the NIST Handbook No. 44 and North Dakota laws and rules, North Dakota laws and rules shall prevail. Copies of the handbook may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective October 1, 1988; December 1, 1990; February 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

69-10-03-02. Adequate standards. Except as modified below, only standards annually certified by the commission may be used to certify weighing and measuring devices. However, standards annually certified by any national institute of standards and technology certified laboratory, or the national institute of standards and technology may be used if a legible copy of the certification is first filed with the commission. The annual recertification requirements are modified as follows:

1. The twelve-month recertification period may be extended after consultation with the state metrologist, but not to exceed fifteen months.
2. The standard weights or "test weights" used in a commercial automatic bulk-weighing system must initially be ~~recertified~~ certified by the commission or by another national institute of standards and technology certified state laboratory at ~~least-onece-every-three-years.~~
3. The volumetric provers used to certify loading-rack meters must initially be certified by the commission or by another national institute of standards and technology certified state laboratory, and at least once every three years thereafter.
4. The commission may require recertification of the "test weights" described in subsection 2, and the volumetric provers described in subsection 3 if, upon inspection, physical condition indicates a need.

5. Unless otherwise approved by the commission, the operator of a coal belt conveyor scale jurisdictional to the commission must conduct a material load test at least once every two years provided that electronic or other simulated load testing is done at least once every three months.

History: Amended effective April 1, 1992; September 1, 1994; February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-04

69-10-04-05. Standardized report forms. All test report forms filed with the commission after July 1, 1994, must be in a standardized format. The commission will issue copies of the standardized prototype to all newly permitted registered service persons ~~at least thirty days prior to that date.~~

History: Effective August 1, 1993; amended effective February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-06. Quality control - Witnessing. The commission may observe or reinspect work performed by a registered service person to ensure that the person is performing proper inspections and tests. The commission shall consider the following criteria while evaluating that person:

1. The results of a random sampling of ~~four percent~~ { at least one inspection and test per year, or more if so ordered by the commission}, of the devices certified by a registered service person;
2. Complaints filed against a registered service person, and whether those complaints are valid; and
3. Other factors deemed relevant by the commission.

The quality control reinspection must be completed within thirty days of the date the work is completed by the registered service person and at no charge.

History: Effective September 1, 1994; amended effective February 1, 1996.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

TITLE 75
Department of Human Services

DECEMBER 1995

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code Chapter 75-03-05 Family Boarding Homes for Special Education Students.

A public hearing was conducted on July 13, 1995, in Bismarck, concerning proposed amendments to North Dakota Administrative Code Chapter 75-03-05, Family Boarding Homes for Special Education Students. These proposed rules provide standards for North Dakota's programs and services for supervision of family boarding homes for special education students who must live outside of the familial home to maximize their educational opportunities.

Chapter 75-03-05 contains the new definition of "department", reflects changes in the organization of the Department of Human Services, and contains nonsubstantive changes to conform the rule's language to present statutory usage.

CHAPTER 75-03-05

75-03-05-01. Authority--and--objective Definition. Under--the authority-vested-in-the-social-service-board-of-North-Dakota-pursuant-to North--Dakota--Century-Code-chapter-15-59.3,-the-social-service-board-of North-Dakota-is-empowered-to-prescribe-and--promulgate--such--rules--and regulations--as--are-necessary-to-assure-that-special-education-students needing-boarding-home-care-are-provided-proper-food,-shelter,-security, and--safety--while--receiving--such--care--in--a--family--boarding--home "Department" means the department of human services.

History: Effective October 1, 1979; amended effective December 1, 1995.

General Authority: NDCC 15-59.3-06

Law Implemented: NDCC 15-29-08(22), 15-59.3-06

75-03-05-02. State organization. The social-service-board-of North-Dakota department is the official state agency charged with the regulation of family boarding home care activities for special-education students with disabilities in the state with exclusive authority to issue registration certificates to homes providing family boarding home care for special-education students with disabilities.

History: Effective October 1, 1979; amended effective December 1, 1995.

General Authority: NDCC 15-59.2-06

Law Implemented: NDCC 15-59.3-01, 15-59.3-04

75-03-05-03. Registration required. All persons individuals, partnerships, voluntary organizations, limited liability companies, or corporations who desire to establish or operate a family boarding home shall first obtain a registration certificate, except that those providing family boarding home care in the following situations need not register:

1. The home of a relative of the student;
2. A home under the management and control of the state or the public school district; or
3. A home or facility furnishing "foster care for children" as defined in subsection-1-of North Dakota Century Code section 50-11-00.1.

History: Effective October 1, 1979; amended effective December 1, 1995.

General Authority: NDCC 15-59.3-06

Law Implemented: NDCC 15-59.3-02

75-03-05-04. Registration process.

1. Any person individual desiring to provide boarding home care for special-education students with disabilities in a family boarding home shall apply for a registration certificate, ~~therein-certifying-compliance-with-the-applicable-provisions-of-North-Dakota-Century-Code-chapter-15-59.3-and-the-standards-for-such-care-established-by-the-social-service-board-of-North-Dakota-and-shall-secure-a-registration-certificate-from-the-board.~~
2. Application for registration certificates shall must be made in a manner prescribed and on forms provided by the social service-board-of-North-Dakota-for-such-purposes department.
3. Application shall must be made to the special education director in the special education district wherein the applicant proposes to provide registered family boarding home care.

4. Upon acceptance by the ~~social-service-board-of-North-Dakota~~ department of the applicant's affidavit of standard compliance, the applicant shall, within ten days and subject to the provisions of North Dakota Century Code chapter 15-59.3, be entitled to a registration certificate issued by the ~~board~~ department.
5. Any registration certificate issued by the ~~social-service-board-of-North-Dakota~~ department shall must serve as public documentation that the provider of registered family boarding home care has, in writing, certified to the ~~board~~ department compliance at the time of registration with the provisions of North Dakota Century Code chapter 15-59.3.

History: Effective October 1, 1979; amended effective December 1, 1995.

General Authority: NDCC 15-59.3-06

Law Implemented: NDCC 15-59.3-04

75-03-05-05. Denial or revocation of registration certificate.

1. The right to provide family boarding home care is dependent upon compliance with the applicable provisions of North Dakota Century Code chapter 15-59.3 and the applicable standards contained herein.
2. The ~~social-service-board-of-North-Dakota~~ department may revoke a registration certificate issued to a family boarding home, provided the registrant and the district affected by the revocation of ~~such~~ the registration certificate shall be informed, in writing, of the charges and reasons for revocation, and provided further that the registrant shall be afforded an administrative hearing in a manner prescribed by North Dakota Century Code chapter 28-32, if written request for ~~such~~ a hearing is made within ten days of receipt of the written charges.
3. The ~~social-service-board-of-North-Dakota~~ department may deny a registration certificate for a family boarding home, provided, ~~that~~ the registrant and the district affected by ~~such~~ the denial shall be informed, in writing, of the charges and the reasons for denial, and provided further that the registrant shall be afforded an administrative hearing in a manner prescribed by North Dakota Century Code chapter 28-32, if written request for ~~such~~ a hearing is made within ten days of receipt of the written charges.

History: Effective October 1, 1979; amended effective December 1, 1995.

General Authority: NDCC 15-59.3-06

Law Implemented: NDCC 15-59.3-08, 15-59.3-09

75-03-05-06. Inspections. Family boarding homes functioning within the purview of these ~~regulations~~ rules, or any premises proposed to be operated as a family boarding home shall must be open to investigation and inspection at any time by the ~~social-service-board--of~~ North-Dakota department or its authorized agents designees.

History: Effective October 1, 1979; amended effective December 1, 1995.

General Authority: NDCC 15-59.3-06

Law Implemented: NDCC 15-59.3-07

75-03-05-07. Records. All records ~~which are~~ maintained by the family boarding home care provider with respect to students receiving family boarding home care shall must be deemed confidential and shall may not be disclosed, except:

1. In a judicial proceeding;
2. To officers of the law or agents of legally constituted boards or agencies; or
3. To ~~persons~~ individuals with a legitimate interest in the student's well-being.

History: Effective October 1, 1979; amended effective December 1, 1995.

General Authority: NDCC 15-59.3-06

Law Implemented: NDCC 15-59.3-07

75-03-05-08. Standards for affidavit of compliance. Applicants for a family boarding home registration certificate shall comply with the following standards, and shall certify ~~that~~ compliance by affidavit:

1. That the operators of the family boarding home:
 - a. Are of sufficient age and maturity to carry out the proper functions of providing family boarding home care;
 - b. Are mentally, physically, and emotionally able to provide adequate care for the students in their charge;
 - c. Have completed the self-administered health form assuring that, to the best of their knowledge, they are physically able to care for students and are free of any communicable diseases;
 - d. ~~Will~~ Shall provide care to no more than four students, unless all students provided family boarding home care are related to each other;
 - e. ~~Will~~ Shall provide adequate and nutritious meals and other care as needed by the ~~special--education~~ student with disabilities during those hours the student is required to

live away from the student's home because of educational needs-;

- f. ~~Must~~ Shall certify that all milk served in the family boarding home is pasteurized or obtained from a dairy herd certified disease-free by the department of health-; and
- g. ~~Must~~ Shall certify that the water supply is from an approved ~~municipal~~ system, or, if from some other source, has been tested and approved by the department of health.

2. That the family boarding home:

- a. Is clean, reasonably neat and free from accumulation of dirt, rubbish, and other health hazards-;
- b. Has adequate heating, ventilation, and lighting facilities for the comfort and protection of the health of the students-;
- c. Has, before placement, received a statement documenting a fire inspection by the local fire chief or other qualified individual, or by the state fire marshal if the home is located in an area without an organized local fire department-;
- d. Has at least two doors that function for ingress and egress-;
- e. Has a separate bed for each student, except for instances where two students have the same family of origin, with no student six years of age or older sharing a bedroom with a student of the opposite sex. Triple bunk beds are not allowed-;
- f. Provides within the student's bedroom a window to the outside ~~which~~ that can serve as an emergency exit. Basement and attic bedrooms must have a second means of egress accessible to the student using them-; and
- g. Meets the city code applicable to family residential structures, if within a city, or, if not within a city, meets the code of the city within which the school the student attends is located.

3. That special provisions be met for family boarding home care provided in mobile homes. In addition to compliance with the ~~above-prescribed~~ standards of subsections 1 and 2, any ~~person~~ individual desiring to provide family boarding home care in a mobile home shall:

- a. Have a qualified ~~person~~ individual inspect the furnace within a period of one month prior to application for a

- registration certificate and thereafter on an annual basis;
- b. Provide a minimum of two doors at opposite ends of the home which are functional for ingress and egress;
 - c. Provide that rooms in which the students will be housed have adequate ventilation, lighting, and heat, and at least one window in such rooms, suitable for fire escape;
 - d. Have an electrician inspect the home within one month prior to the application for a family boarding home registration certificate; and
 - e. Provide that the mobile home meets the standards established for mobile homes as prescribed in the rules and regulations of the American standards institute (ANSI A119.1 1969) as adopted by the state of North Dakota.
4. That family boarding home registrants shall attempt to consult with the parents of students in their charge regarding the methods that may be employed for maintaining proper discipline. Registrants may take reasonable disciplinary actions with respect to students in their charge for the purpose of maintaining proper discipline. Disciplinary methods employed shall must be moderate and appropriate to the circumstances and shall must not create a risk of emotional or physical harm. Corporal punishment is prohibited by the family boarding home care provider.
5. That the following records will documents must be maintained by the family boarding home care provider:
- a. The registration certificate ~~for the family boarding home shall be kept in the premises to which it applies;~~
 - b. A copy of the current standards for family boarding homes ~~shall be kept in the premises;~~ and
 - c. ~~The following records shall be kept and maintained~~ Documentation of:
 - (1) The name of the student, home address, names of parents, and business and home addresses and telephone number where parents can be reached;
 - (2) A written statement from the parents authorizing emergency medical care; and

(3) A daily record documenting of all medications dispensed to the student.

History: Effective October 1, 1979; amended effective December 1, 1995.

General Authority: NDCC 15-59.3-06

Law Implemented: NDCC 15-59.3-06

CHAPTER 75-04-01

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code Chapter 75-04-01 Licensing of Programs and Services for Individuals with Developmental Disabilities.

A public hearing was conducted on July 13, 1995, in Bismarck, concerning proposed amendments to North Dakota Administrative Code Chapter 75-04-01, Licensing of Programs and Services for Individuals with Developmental Disabilities. The proposed amendments modify licensure standards for programs and services for individuals with developmental disabilities. General policy changes within the department initiated these changes.

Chapter 75-04-01 has definitional changes to reflect changes in departmental general policy and in the field of programs and services for individuals with developmental disabilities. "Case management", "client", "developmental day activity", "developmental work activity", "extended services", "group home", "individualized supported living arrangements", "infant development", "mental retardation", and "standards" reflect substantive changes, while the balance of the definitions in the section reflect general linguistic changes only.

Chapter 75-04-01 encompasses changes in licensure. A nonprofit corporation that receives no support from the state or a political subdivision will be exempt from licensure if certain work or day activity is provided to six or fewer clients. Section 75-04-01-08 incorporates language changes to reflect current accreditation bodies and standards. Section 75-04-01-10 clarifies the basis for a special provisional license. A special provisional license could be issued for new services or as required by natural calamity.

Section 75-04-01-15 incorporates language changes to reflect current accreditation bodies and standards. Section 75-04-01-15 updates the catalogue of basic services subject to licensure. Those services are residential services and day services. Section 75-04-01-20 includes linguistic changes to clarify some of the assurances. Section 75-04-01-20.1 provides that individuals with developmental disabilities may receive subminimum wages, but that the organization must submit certification as provided by the United States Department of Labor. Section 75-04-01-20.2 establishes new guidelines for the recording of and reporting of abuse, neglect, and use of restraint.

Section 75-04-01-21 adds the requirement that licensure applicants must record and make known to the department the amount of any payments made to any members of the governing or related board except for reimbursement for actual and reasonable personal expenses. Sections 75-04-01-22 and 75-04-01-23 reflect current Americans with Disabilities Act standards. Section 75-04-01-34 is repealed.

75-04-01-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Adult day care" means comprehensive and coordinated activities provided on an ongoing basis to adults with developmental disabilities residing in the community. Programs involve social, physical, recreational, and personal care training and activity with emphasis on stimulation, exposure, community orientation, and participation.
3. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
4. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
5. "Case management" means a process of interconnected steps ~~designated-by-the-department,-and-implemented-by-a-specific individual,-designed-to-maximize-delivery-of-the-full-range-of services-to-individuals-with-developmental-disabilities~~ which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.
6. "Client" means ~~a-person-accepted-for-or-receiving-services from-a-licensee~~ an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for services coordinated through mental retardation - developmental disabilities case management.
7. "Congregate care" means a specialized program to serve elderly individuals with developmental disabilities whose health and medical conditions are stable and do not require continued nursing and medical care, and are served within a community group-living arrangement.
8. "Department" means the North Dakota department of human services.
9. "Developmental day activity" means a ~~physically-separated department-or-entity-having-an~~ program with identified program and space, separate supervision, and separate records in which ~~very-basi~~ functional ~~habilitative~~ skills are developed through ~~repetitive-instruction.~~ Training emphasis is stimulation-exposure-and-reinforcement-in-activities-of-daily living-which-include-communication-skills,-education-skills,-self-awareness,-physical-and-emotional-development,-grooming,-hygiene,-and-recreation.-Skill-development,-when-appropriate,

~~would-be-preliminary-to-and-in-preparation-for--entry--into--a~~
~~work--activity--program~~ focused on acquisition, retention, or
improvement in self-help, socialization, and adaptive skills
which takes place in a nonresidential setting.

10. "Developmental disability" means a severe, chronic disability of a ~~person~~ an individual which:
- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the ~~person~~ individual attains age twenty-two;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and
 - e. Reflects the ~~person's~~ individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
11. "Developmental work activity" means ~~those-services-provided-in~~
~~a-workshop,-or-physically-separated-department-of--a--workshop~~
~~having--an--identifiable--program~~ a program with identified
space, separate supervision, and separate records,-planned-and
designed--exclusively--to--provide--therapeutic-activities-for
~~workers-with-handicapping-conditions-whose-physical-or-mental~~
~~impairment--is--so-severe-as-to-make-their-productive-capacity~~
~~inconsequential-as-defined-in-29-CFR--525--et--seq.~~ in which
prevocational services are provided to clients or individuals
with developmental disabilities not expected to be able to
join the general work force within one year. Training is
habilitative and directed at goals, including attention span
and motor skills improvement and concepts, including
compliance, attending, task completion, problem solving, and

safety. When compensated, clients are generally paid at less than fifty percent of the minimum wage. Developmental work activity does not include supported employment programs.

12. "Extended--employment"--means-a-work-situation-in-a-supervised noncompetitive---environment---which---provides---remunerative employment--opportunities--for--indefinite-periods-of-time-and which-is-subject-to-29-CFR--524--et--seq.,--and--525--et--seq. "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training; or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss, and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.
13. "Family support services" means a family centered support service contracted for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.
14. "Governing body" means the person individual or persons individuals designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.
- 14- 15. "Group home" means any community residential service facility licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than four persons individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.
16. "Individualized supported living arrangements" means a residential support services option in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
- 15- 17. "Infant development" means a systematic application of an individual-program individualized family service plan designed to alleviate or mediate the--handicapping--conditions--in children developmental delay of the client from birth through age two.

- 16- 18. "Intermediate care facility for the mentally retarded" means a residential health facility operated pursuant to regulation under 42 CFR 442 and 483, et seq.
- 17- 19. "License" means authorization by the department to provide a service to persons individuals with developmental disabilities, pursuant to North Dakota Century Code chapter 25-16.
- 18- 20. "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16, to provide a service or services to persons individuals with developmental disabilities.
21. "Mental retardation" means a diagnosis of the condition of mental retardation, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.
- 19- 22. "Minimally supervised living arrangements" means a either:
- a. A group home with an available client adviser; or
 - b. A community complex which provides self-contained rented units, with an available client adviser, to clients that provides self-contained rented units with an available client adviser.
- 20- 23. "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.
- 21- 24. "Resident" means a ~~client~~ an individual receiving services provided ~~in~~ through any licensed residential facility or service.
- ~~22- "Respite care" means a service, consisting of short-term placement out of the home or temporary care within the home, provided to the family of an individual with developmental disabilities.~~
- 23- 25. "Standards" means requirements which, or when complied with, result in accreditation by the accreditation council for service services for mentally retarded and other developmentally disabled persons individuals with disabilities, or for extended service results in accreditation by the rehabilitation accreditation commission (carf).
- 24- 26. "Supported living arrangement" means a program providing a variety of types of living arrangements that enable persons individuals with handicapping conditions disabilities to enjoy have choice and options comparable to those available to the general population. Clients entering this service shall have

the effects of any skill deficits subject to mitigation by the provision of individualized training and follow-along services.

25- 27. "Transitional community living facility" means a residence for clients with individualized programs consisting of social, community integration, and daily living skills development preliminary to entry into less restrictive settings.

26--"Vocational--development"--means--a--program--of--vocational preparation preliminary to competitive or extended employment, administered through a rehabilitation facility subject to 29 CFR 525 et seq.; for participants who have demonstrated productivity in excess of fifty percent of normal. The service shall be a physically separate department of a workshop, with separate supervision and records, and with a separately identifiable program. Vocational education and training may be provided in a manner or setting not subject to regulation by the department of labor.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-02. License required. No person individual, association of persons individuals, partnership, limited liability company, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than four persons individuals with developmental disabilities without first having obtained a license from the department unless the facility is exempted:

1. Exempted by subsection 1 or 2 of North Dakota Century Code section 15-59.3-02 or is a;
2. A health care facility, as defined in North Dakota Century Code section 23-17.2-02, other than an intermediate care facility for the mentally retarded; or
3. Operated by a nonprofit corporation that receives no payments from the state or any political subdivision and provides only developmental day activity or developmental work activity services for six or fewer individuals with developmental disabilities. "Payment" does not include donations of goods and services or discounts on goods and services.

Licensure does not create an obligation for the state to purchase services from the licensed facility.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-02

75-04-01-05. Notification of denial, suspension, or revocation of license.

1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify the applicant or licensee's principal officer of the department's intent to grant, deny, suspend, or revoke a license.
2. ~~Notification shall be in writing.~~ The department shall notify the applicant or licensee in writing. Notification is made upon deposit with the United States postal service. The notice of denial, suspension, or revocation shall identify any rule or standard alleged to have been violated and the factual basis for the allegation, the date after which the denial, suspension, or revocation is final, and the procedure for appealing the action of the department.
3. The applicant or licensee may appeal the denial, suspension, or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten days of receipt of the notice of intent to deny, suspend, or revoke. The hearing shall must be governed by the provisions of chapter 75-01-03.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-08

75-04-01-06. Disclosure of criminal record.

1. Each member of the governing body of the applicant, the chief executive officer, and any employees or agents who receive and disburse funds on behalf of the governing body, or who provide any direct service to clients, shall disclose to the department any conviction of a criminal offense.
2. Such disclosure shall must not disqualify the applicant from licensure, unless the conviction is for a crime having direct bearing on the capacity of the applicant to provide a service under the provision of this chapter and the convicted person

individual is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.

3. The department shall determine the effect of a conviction of an offense.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03.1

75-04-01-07. Content of license. A license issued by the department shall must include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations of the licensee, and the expiration date of the license.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-05

75-04-01-08. Types of licenses.

1. A license issued pursuant to this chapter shall must be denominated "license", "provisional license", or "special provisional license".
2. A "license" is unrestricted and. The department shall be issued issue a license to any applicant which who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and which who is accredited by the accreditation council for services for ~~mentally-retarded-and-other-developmentally--disabled--persons~~ individuals with disabilities, or for extended services accredited by the rehabilitation accreditation commission (carf). The license shall--be is nontransferable, expire expires not more than one year from the date--of--issuancee effective date of the license, and shall-be is valid for only those services or facilities identified thereon.
3. A "provisional license" may be issued subject to the provision of section 75-04-01-09.
4. A "special provisional license" may be issued subject to the provision of section 75-04-01-10.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-09. Provisional license.

1. A provisional license may be issued to an applicant notwithstanding a finding of noncompliance with the rules of the department and of North Dakota Century Code section 25-16-03. A provisional license shall must not be issued to an applicant whose practices or facilities pose a clear and present danger to the health and safety of persons individuals with developmental disabilities.
2. Upon a finding that the applicant is not in compliance of with the rules, the department may notify the applicant, in writing, of its intent to issue a provisional license. This The notice shall must provide the reasons for the action and shall must describe the corrective actions required of the applicant, which, if taken, will result in the issuance of an unrestricted license.
3. The applicant shall, within ten days of the receipt of notice under subsection 2, submit to the department, on a form provided, a plan of correction. The plan of correction shall must include, ~~--but--not--be--limited--to;~~ the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the applicant's plan of correction. If the plan of correction is rejected, the department shall notify the applicant that the license has been denied or revoked. The department may conduct periodic inspection of the facilities and operations of the applicant to evaluate the implementation of a plan of correction.
4. A provisional license may be issued for any period not exceeding one year. A provisional license may be renewed only upon successful completion of an accepted plan of correction. A provisional license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a provisional license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of denial or revocation of a license.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-10. Special provisional license.

1. A licensee or applicant may, ~~--while--a--valid--license--is--in--effect;~~ submit an application, on a form provided, for a special provisional license, permitting the provision of a new

service ~~or reduction in a service~~, or the occupancy of a facility, or the vacation of a facility provided that:

- a. The new service is in conformity with the service definitions of these rules or is a service designed by and recognized through policy issued by the developmental disabilities division of the department and, upon completion of the rule promulgation process, will be a service able to be licensed under this chapter; and or
 - b. ~~The alternative element is subject to licensure under the provisions of these rules;~~
 - c. ~~The alternative element shall substantially improve the services or facilities of the licensee;~~
 - d. The issuance of the special provisional license is required by a natural disaster, calamity, fire, or other dire emergencies.
2. A special provisional license issued for this purpose shall ~~remain in effect, from its issuance until the expiration of the existing license and shall~~ must include the dates of issuance and expiration, a description of the service or facility authorized, an identification of the licensee to whom the special provisional license is issued, and any conditions required by the department.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-14. Unlicensed entities - Notification. Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the parties thereto that such the activities are subject to licensure. The notice shall must include a citation of the applicable provisions of these rules, an application for a license, a date certain when such the application shall must be submitted, and, if applicable, a request for the parties to explain that the activities identified in the notification are not subject to licensure.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-01-15. Standards of the department. The department herein adopts and makes a part of the these rules the standards used for ~~services for developmentally disabled individuals; accreditation by the accreditation council for on services for mentally retarded and other developmentally disabled persons; current edition~~ individuals with

disabilities, or for extended service, by the rehabilitation accreditation commission (carf). If a licensee fails to meet an accreditation standard, the department may analyze the licensee's failure using the appropriate 1990 standards of the accreditation council on services for individuals with disabilities.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-17. Identification of basic services subject to licensure. Services provided to more than four developmentally-disabled persons--in--treatment individuals with developmental disabilities in treatment or care centers shall must be identified and licensed by the following titles:

1. Residential services:
 - a. Intermediate--care--facility--for--the--mentally--retarded Individualized supported living arrangement;
 - b. Transitional--community--living-facility Intermediate care facility for the mentally retarded;
 - c. Minimally supervised living arrangement;
 - d. Supported Transitional community living arrangement facility;
 - e. Respite-care; or Supported living arrangement;
 - f. Family support services; or
 - g. Congregate care.
2. Day services:
 - a. Developmental day activity;
 - b. Developmental work activity;
 - c. Vocational-development Extended service;
 - d. Extended-employment; Infant development; or

e. ~~Infant-development;~~ or Adult day care.

f. ~~Adult-day-care.~~

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-20. Applicant guarantees and assurances.

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:
 - a. Guarantees each client an individual program plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;
 - b. Guarantees that each client, parent, guardian, or advocate receives written notice of the client's rights in the manner provided by North Dakota Century Code section 25-01.2-16;
 - c. Guarantees that each client admission is subject to a multidisciplinary determination that placement is appropriate pursuant to North Dakota Century Code section 25-01.2-02;
 - d. Guarantees the client the opportunity to vote, to worship, to interact socially, to freely communicate and receive guests, to own and use personal property, to unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-04 and 25-01.2-05;
 - e. Guarantees that such restrictions as may be imposed upon a client relate solely to capability and are imposed pursuant to the provisions of an individual program plan;
 - f. Guarantees the confidentiality of all client records;
 - g. Guarantees that the client receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to 29 CFR 525, et seq., that restrictions upon client access to money are subject to the provisions of an individual program plan, that assets managed by the applicant on behalf of the client shall inure solely to the benefit of that client, that each client has a money management plan or documented evidence of the client's

capacity to manage money, and that, in the event the applicant is a representative payee of a client, the informed consent of the client is obtained and documented;

- h. Guarantees the client access to appropriate and timely medical and dental care and adequate protection from infectious and communicable diseases, and guarantees effective control and administration of medication, as well as prevention of drug use as a substitute for programming;
- i. Guarantees the client freedom from corporal punishment, guarantees the client freedom from imposition of isolation, seclusion, chemical, physical, or mechanical restraint, except as prescribed by North Dakota Century Code section 25-01.2-10; or these rules, and guarantees the client freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, and electroconvulsive therapy, and shock treatment except as prescribed by North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;
- j. Guarantees, where applicable, that a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the client's dietary needs;
- k. Guarantees the client the right to refuse services, the right of the client and the client's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the client or others;
- l. Assures the client safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
- m. Assures the existence and operation of both behavior management and human rights committees; ~~pursuant to standards of the accreditation council for services for mentally retarded and other developmentally disabled persons for these committees;~~
- n. Assures that residential services will coordinate with the developmental and remedial services outside the group-home residential setting in which a client engages lives;
- o. Assures that adaptive equipment, where appropriate for toilet training, toileting, mobility, or eating is provided in the service facility for use by individuals with multiple handicaps is provided in the service facility disabilities;

- p. Assures that all direct service staff demonstrate basic professional competencies as required by their job descriptions;
 - q. Assures that annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
 - r. Assures that all vehicles transporting clients are subject to routine inspection and maintenance, licensed by the department of transportation, equipped with a first-aid kit and a fire extinguisher, to carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license;
 - s. Assures that an annual inspection with written report of safety program and practices is conducted in facilities providing day services;
 - t. Guarantees that incidents of alleged abuse and neglect are thoroughly investigated and reported to the governing body, chief executive officer, parent, guardian or advocate, the protection and advocacy project, and the department with written records of these proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify a client's behavior are recorded and reported to the governing body; guarantees that any incident resulting in injury to the client or agency staff that requires medical attention or hospitalization shall must be recorded and reported to the governing body immediately, and as soon thereafter as possible to the parent, guardian, or advocate; and guarantees that incidents resulting in injury to the client or agency staff that requires extended hospitalization, endangers life, or results in permanent disability shall must also be reported to the department immediately; and
 - u. Guarantees that a grievance procedure, reviewed and approved by the department, affords the client or the client's parent or parents, guardian, or advocate a fair hearing of any complaint; and guarantees that records of such hearings are maintained and shall must note therein the complaint, persons the names of the individuals complaining, and the resolution of the grievance.
2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.

3. The degree to which the unaccredited applicant's policies and procedures are in compliance with the standards shall must be determined by the department.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-20.1. Wages of individuals with developmental disabilities. Licensees generating income from the direct labor of individuals with developmental disabilities and paying subminimum wages shall submit to the department a true, correct, and current copy of a certificate from the United States department of labor authorizing the payment of subminimum wages.

History: Effective December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-20.2. Recording and reporting abuse, neglect, and use of restraint.

1. Licensees shall implement policies and procedures to assure that incidents of alleged abuse and neglect:
 - a. Are reported to the governing board, administrator, parent, guardian, advocate, and the protection and advocacy project;
 - b. Are thoroughly investigated, the findings reported to the governing board, parent, guardian, advocate, and the protection and advocacy project and that the report and the action taken are recorded in writing and retained for three years; and
 - c. Are immediately reported to the department.
2. Licensees shall record and report to the governing board any and all incidents of restraint utilized to control or modify the behavior of individuals with developmental disabilities.
3. Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, requiring medical attention or hospitalization, must be recorded and reported to the chairman of the governing board and to the department immediately, and as soon thereafter as possible to the parent, guardian, or advocate.
4. Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, which require

extended hospitalization, endanger life, or result in a permanent disability, must also be immediately reported to the department.

History: Effective December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06, 50-25.1-02

75-04-01-21. Legal status of applicant. The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity-;
2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States-;
3. A current list of partners or members of the governing body and any advisory board with their address, phone number, principal occupation, term of office, and status as a consumer or consumer representative-;
4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and-~~if any,~~ the cost, if any, of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property-;
5. A statement disclosing any financial benefit which may accrue to the applicant or applicants to be diverted to personal use, including-~~but not limited to,~~ director's fees or expenses, dividends, return on investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities-; and
6. The amount of any payments made to any member or members of the governing board of the applicant or board of a related organization, exclusive of reimbursement for actual and reasonable personal expenses.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-22. Applicant's buildings. Applicants occupying buildings, whether owned or leased, must provide the department with a

license or registration certificate properly issued pursuant to North Dakota Century Code chapter 15-59.3 or 50-11 or with:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building pursuant to section 75-04-01-23, which states:
 - a. Rated occupancy and approval of the building for occupancy; or
 - b. Existing hazards, and recommendations for correction which, if followed, would result in approval of the building for occupancy;
2. A statement prepared by a sanitarian or authorized public health officer, following an initial or subsequent annual inspection, that the building's plumbing, water supply, sewer disposal, and food storage and handling ~~comply with the applicable rules and regulations of the state department of health and consolidated laboratories~~ meet acceptable standards to assure a healthy environment;
3. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
4. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or
5. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-23. Safety codes.

1. Applicant's intermediate care facilities for the mentally retarded shall meet the provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code of the national fire protection association, 1985 edition, as determined by the department.
2. Applicant's residential service facilities which are not intermediate care facilities for the mentally retarded shall meet the applicable life safety standards established by the

local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, such the residential service facilities shall meet the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, 1985 edition, as determined by the department.

3. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility.
4. Applicant's facilities housing ~~wheelchair-bound or~~ multiple physically-handicapped individuals with multiple physical disabilities or impairments of mobility shall conform to American National Standards Institute Standard No. A117.1 (1980), or, if remodeled or newly constructed after July 1, 1995, with appropriate standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336.
5. Applicant's and licensee's buildings used to provide day services shall ~~must~~ must conform to the chapters pertaining to new or existing educational occupancies of the Life Safety Code of the national fire protection association, 1985 edition, and must meet applicable accessibility standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336.

History: Effective April 1, 1982; amended effective June 1, 1986; August 1, 1987; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-24. Entry and inspection. The applicant shall affirm the right of duly authorized representatives of the department to enter any of the applicant's buildings or facilities ~~in order~~ to determine the extent to which the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints. Inspections shall must be scheduled for the mutual convenience of the department and the provider unless the effectiveness of the inspection would be substantially diminished by prearrangement.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-26. Denial of access to facilities and records. Any applicant or licensee which denies access, by the authorized

representative of the department, to a facility or records, for the purpose of determining the applicant's state of compliance with the rules of the department, shall have its license revoked or its application denied.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-27. Group home design.

1. Group home facilities shall be small enough and of a modest design, minimizing the length of hallways, the number of exterior corners, and the complexity of construction, to ensure the development of meaningful interpersonal relationships and the provision of proper programming, services, and direct care. New or remodeled homes completed after July 1, 1985, are limited to occupancy by no more than eight individuals with developmental disabilities.
2. Group home facilities shall simulate the most homelike atmosphere possible in order to encourage a personalized environment.
3. Group home facilities shall provide, at a minimum, enough living space, based on the needs of both males and females, with provisions for privacy and appropriate access to quiet areas where an individual can be alone.
4. Group home facilities shall provide arrangement of space to permit clients to participate in different kinds of activities, both in groups and singly. Space shall must be arranged to minimize noise and permit communication at normal conversational levels.
5. Group home facilities shall be accessible to nonambulatory visitors and employees.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-28. Group home location.

1. Group home facilities shall be located at least three hundred feet [91.44 meters] from hazardous areas such--as, including bulk fuel or chemical storage, anhydrous ammonia facilities, or other fire hazards or sources of noxious or odoriferous emissions.

2. Group home facilities shall not be located in such areas subject to adverse environmental conditions such as, including mud slides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibrations, or vehicular traffic.
3. Group home facilities shall not be located in an area within the one-hundred-year base flood elevations unless:
 - a. The facility is covered by flood insurance as required by 42 U.S.C. 4101; or
 - b. The finished lowest floor elevation is above the one-hundred-year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during the one-hundred-year flood.
4. Group home facilities shall be located in residential neighborhoods reasonably accessible to shops, commercial facilities, and other community facilities; and shall be located not less than six hundred feet [182.88 meters] from existing group homes or day service facilities licensed by the department to serve persons individuals with developmental disabilities, schools for the disabled, long-term care facilities, or other institutional facilities. Upon written application, and good cause shown, the department may grant a variance from the provisions of this subsection upon such terms as the department may prescribe.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-29. Group home bedrooms.

1. Bedrooms in group home facilities shall must accommodate no more than two individuals.
2. Bedrooms in group home facilities shall must provide at least eighty square feet [7.43 square meters] per individual in a single occupancy bedroom, and at least sixty square feet [5.57 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space. Bedrooms in newly constructed homes or existing homes converted to group home facilities completed after July 1, 1985, shall must provide at least one hundred square feet [9.29 square meters] per individual in a single occupancy bedroom, and at least eighty square feet [7.43 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space.

3. Bedrooms in group home facilities shall must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.
4. Bedrooms in group home facilities shall must not have doors with vision panels and shall must not be capable of being locked, except where individuals may lock their own rooms as consistent with their programs.
5. Bedrooms in group home facilities shall must provide furnishings which are appropriate to the psychological, emotional, and developmental needs of each individual. Each individual shall be provided a separate bed of proper size and height, a clean comfortable mattress, bedding appropriate to the climate, and a place for personal belongings. Individual furniture, such as a chest of drawers, table, or desk, and an individual closet with clothes racks and shelves shall must be provided. A mirror shall must be available to mobile individuals and a tilted mirror shall must be available to nonambulatory individuals.
6. Bedrooms in group home facilities shall must provide storage space for clothing in the bedroom which is accessible to all, including nonambulatory individuals.
7. ~~Bedrooms--in--group~~ Group home facilities shall provide space outside the bedrooms to be equipped for out-of-bed activities for all individuals not yet mobile, except for those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-30. Group home kitchens.

1. Kitchens in group home facilities shall must provide sufficient space to permit participation by both staff and clients in the preparation of food.
2. Kitchens in group home facilities shall must provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
3. Kitchens in group home facilities shall must have hot water supplied to sinks in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees

Celsius], as controlled by a tempering valve, located to preclude client access.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-31. Group home bathrooms.

1. Bathrooms in group home facilities shall must be located in such places as--~~to~~ that facilitate maximum self-help by clients.
2. Bathrooms in group home facilities shall must provide showers, bathtubs, and lavatories approximating normal patterns found in homes, unless specifically contraindicated by program needs.
3. Bathrooms in group home facilities shall must serve only up to four individuals each.
4. At least one bathroom per group home facility shall must be accessible and usable by nonambulatory visitors and employees.
5. Bathrooms in group home facilities shall must have hot water supplied to lavatories and bathing facilities in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude client access.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-32. Group home laundry.

1. Laundry space within group home facilities shall must provide a washer and dryer, storage for laundry supplies, accommodations for ironing, and counterspace for folding clothing and linen.
2. Hot water supplied to clothes washers shall must be in the range of one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-33. Group home use of space.

1. Group home facilities shall provide free use of space within the living unit, with due regard for privacy, personal possessions, and programs; with limitations of personal areas of supervisory staff.
2. Group home facilities shall provide for individuals an individual to personalize ~~their~~ the individual's portion of the living unit and mount pictures on the walls.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-34. Group home staff accommodations.

~~1. Group home facilities shall provide staff accommodations for onsite living, if a condition of employment, of a living room, efficiency kitchen, one full bathroom, and a double occupancy bedroom; or~~

~~2. For employees working in shifts, adequate sleeping facilities.~~
Repealed effective December 1, 1995.

~~**History:** Effective June 1, 1986.~~

~~**General Authority:** NDCC 25-16-06, 50-06-16~~

~~**Law Implemented:** NDCC 25-16-03~~

75-04-01-35. Water supply.

1. Group home facilities for individuals with developmental disabilities shall be located in areas where public or private water supplies approved by the state department of health and ~~consolidated laboratories~~ are available. Approved public water supplies shall must be used where available.

2. When a private water supply is used, water samples shall must be submitted at the earliest possible date prior to occupancy and every six months thereafter to determine chemical and bacteriological acceptability.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-36. Sewage disposal.

1. Group home facilities for individuals with developmental disabilities shall be located in areas where public or private sewage disposal systems approved by the state department of health and ~~consolidated laboratories~~ are available. Approved

public sewage disposal systems shall must be used, where available.

2. Plans and specifications for proposed private sewage disposal system or alteration to such systems must be approved by the state department of health and ~~consolidated laboratories~~ prior to the construction, maintenance, and operation of such systems.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-37. Emergency plans. There shall must be written plans and procedures, which are clearly communicated to and periodically reviewed with staff and clients for meeting emergencies such as, including fire, serious illness, severe weather, and missing persons individuals. Applicable requirements of state law and regulations by the state fire marshal and applicable licensing authorities shall must be met.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-38. Insurance and bond requirements.

1. Licensees shall secure and maintain insurance and bonds appropriate for the size of the programs, including, ~~but not limited to:~~
 - a. ~~Blanket~~ A blanket fidelity bond equal to not less than ten percent of the total operating costs of the program;
 - b. Property insurance covering all risks at replacement costs and costs of extra expense ~~of~~ for loss of use;
 - c. Liability insurance covering bodily injury, property damage, personal injury, teacher liability, professional liability, and umbrella liability as applicable; and
 - d. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.
2. The department shall determine the adequacy of the insurance coverages maintained by the applicant.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

JANUARY 1996

CHAPTER 75-02-02

75-02-02-08. Amount, duration, and scope of medical assistance.

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medical and remedial care and services which are described in the approved state plan for medical assistance in effect at the time the service is rendered and which may include:
 - a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" are those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.
 - b. Outpatient hospital services. "Outpatient hospital services" are those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an

outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

- c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- d. Skilled nursing home services (other than services in an institution for mental diseases) for individuals twenty-one years of age or older. "Skilled nursing home services" means those items and services furnished by a licensed and otherwise eligible skilled nursing home or swing-bed hospital maintained primarily for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- e. Intermediate nursing care (other than services in an institution for mental diseases). "Intermediate nursing care" means those items and services furnished by a currently licensed intermediate care facility or swing-bed hospital maintained for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age, and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and

services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.

- g. Physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere. "Physician's services" are those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.
- i. Home health care services. "Home health care services" in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, are any of the following items and services when they are provided on recommendation of a licensed physician to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing home:
 - (1) Intermittent or part-time nursing services furnished by a home health agency.
 - (2) Intermittent or part-time nursing services of a professional registered nurse or a licensed practical nurse when under the direction of the patient's physician, when no home health agency is available to provide nursing services.
 - (3) Medical supplies, equipment, and appliances recommended by the physician as required in the care of the patient and suitable for use in the home.
 - (4) Services of a home health aide who is an individual assigned to give personal care services to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and the home health agency which assigns a professional registered nurse to provide continuing supervision of the aide

on the aide's assignment. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

- j. Private duty nursing services. "Private duty nursing services" are nursing services provided by a professional registered nurse or a licensed practical nurse, under the general direction of the patient's physician, to a patient in the patient's own home or extended care facility when the patient requires individual and continuous care beyond that available from a visiting nurse or that routinely provided by the nursing staff of the hospital, nursing home, or extended care facility.
- k. Dental services. "Dental services" are any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Such services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. "Dentist" means a person licensed to practice dentistry or dental surgery. Any procedure related to the preparation of "fixed bridgework" which involves the use of crowns and bridgework materials in concert with one another, but not including single crowns, is excluded from coverage unless a prior treatment authorization request, submitted by the attending dentist and approved by the department's dental consultant, describes a condition or combination of conditions which render the use of dentures impracticable or which may be more economically ameliorated by fixed bridgework than by dentures.
- l. Physical therapy and related services. "Physical therapy and related services" means physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, and the use of such supplies and equipment as are necessary.
 - (1) "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist. A qualified physical therapist is a graduate of a program of physical therapy approved by the council on medical education of the American medical association in collaboration with the American physical therapy association, or its equivalent, and where applicable, is licensed by the state.

(2) "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist. A qualified occupational therapist is registered by the American occupational therapy association or is a graduate of a program in occupational therapy approved by the council on medical education of the American medical association and is engaged in the required supplemental clinical experience prerequisite to registration by the American occupational therapy association.

(3) "Services for individuals with speech, hearing, and language disorders" are those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the practice of the pathologist's or audiologist's profession for which a patient is referred by a physician. A speech pathologist or audiologist is one who has been granted the certificate of clinical competence in the American speech and hearing association, or who has completed the equivalent educational requirements and work experience necessary for such a certificate, or who has completed the academic program and is in the process of accumulating the necessary supervised work experience required to qualify for such a certificate.

m. Prescribed drugs, prosthetic devices, and dentures where a request is submitted by the attending dentist and granted prior approval by the department's dental consultant; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.

(1) "Prescribed drugs" are any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law. With respect to "prescribed drugs" federal financial participation is available in expenditures for drugs dispensed by licensed pharmacists and licensed authorized practitioners in accordance with North Dakota Century Code chapter 43-17. When dispensing, the practitioner must do so on the practitioner's written prescription and maintain records thereof.

- (2) "Dentures" means artificial structures prescribed by a dentist to replace a full or partial set of teeth and made by, or according to the directions of, a dentist. The term does not mean those artificial structures, commonly referred to as "fixed bridgework", which involve the use of crowns and bridgework materials in concert with one another.
 - (3) "Prosthetic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
 - (4) "Eyeglasses" are lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision.
- n. Other diagnostic, screening, preventive, and rehabilitative services.
- (1) "Diagnostic services" other than those for which provision is made elsewhere in these definitions, include any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.
 - (2) "Screening services" consist of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
 - (3) "Preventive services" are those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other health deviations or their progression, prolong life, and promote physical and mental health and efficiency.

- (4) "Rehabilitative services" in addition to those for which provision is made elsewhere in these definitions, include any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
- o. Care and services in a certified mental institution for individuals under twenty-one years of age or sixty-five years of age or over.
 - p. Any other medical care and any other type of remedial care recognized under state law, specified by the secretary. This term includes, but is not limited to, the following items:
 - (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the agency to be necessary in the individual case. "Travel expenses" are defined to include the cost of transportation for the individual by ambulance, taxicab, common carrier, or other appropriate means; the cost of outside meals and lodging en route to, while receiving medical care, and returning from a medical resource; and the cost of an attendant may include transportation, meals, lodging, and salary of the attendant, except that no salary may be paid a member of the patient's family.
 - (2) Family planning services, including drugs, supplies, and devices, when such services are under the supervision of a physician. There will be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals can choose in accordance with the dictates of their consciences.
 - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.
 - (4) Skilled nursing home services, as defined in subdivision d, provided to patients under twenty-one years of age.
 - (5) Emergency hospital services which are necessary to prevent the death or serious impairment of the health

of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act, or definitions of inpatient or outpatient hospital services set forth in subdivisions a and b.

2. The following limitations exist with respect to medical and remedial care and services covered or provided under the medical assistance program.
 - a. Coverage will not be extended and payment will not be made for diet remedies prescribed for eligible recipients.
 - b. Coverage will not be extended and payment will not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage will not be extended and payment will not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage and payment for eye examinations and eyeglasses for eligible recipients shall be limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames is available for a reasonable number of frames, and in a reasonable amount, not to exceed limits set by the department. The department shall make available to all practitioners dispensing eyeglass frames, and to anyone else who may make inquiry, information concerning established limits. No coverage exists, and no payment will be made, for eyeglass frames which exceed the limits.
 - e. Coverage and payment for home health care services and private duty nursing services must be limited to a monthly amount determined by taking the monthly charge, to the medical assistance program, for the most intensive level of nursing care in the most expensive nursing home in the state and subtracting therefrom the cost, in that month, of all medical and remedial services furnished to the recipient (except physician services and prescribed drugs). For the purposes of determining this limit, remedial services include, but are not limited to, home and community-based services, service payments to the elderly and disabled, homemaker and home health aide services, and rehabilitative services, regardless of the source of payment for such services. This limit may be exceeded, in unusual and complex cases, if the provider

has submitted a prior treatment authorization request describing each medical and remedial service to be received by the recipient, stating the cost of that service, describing the medical necessity for the provision of the home health care services or private duty nursing services, and explaining why less costly alternative treatment will not afford necessary medical care; and has had the request approved.

f. Coverage and payment for the following transportation services is limited to:

- (1) Twenty cents per mile for travel in a private motor vehicle;
- (2) Seventeen dollars per day for meals en route to, while receiving medical care, and while returning from a medical resource, for the person receiving medical care, and where medically necessary, an attendant; provided that days during which meals are provided by the medical resource are not counted; and
- (3) Thirty-five dollars per night, in state, and fifty dollars per night, out of state, for lodging en route to, while receiving medical care, and while returning from a medical resource, for the person receiving medical care, and where medically necessary, an attendant; provided that nights during which lodging is provided by the medical resource are not counted.

g. Coverage and payment for physician's services furnished in the physician's office are subject to a copayment of two dollars for each office visit unless the medicaid recipient receiving the service:

- (1) Lives in a nursing facility, intermediate care facility for the mentally retarded, the state hospital, or the Anne Carlsen school-hospital;
- (2) Receives swing bed services in a hospital;
- (3) Has not reached the age of twenty-one years;
- (4) Is pregnant;
- (5) Is entitled to have a portion of the cost of the visit paid for by medicare;
- (6) Requires emergency services; or
- (7) Receives family planning services during the visit.

h. Coverage will not be extended and payment will not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.

3. Remedial services provided by residential facilities such as licensed homes for the aged and infirm, licensed foster care homes or facilities, and specialized facilities are not covered services but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility. For the purposes of this chapter, "remedial services" means those services, provided in the above-identified facilities, which produce the maximum reduction of physical or mental disability and restoration of a recipient to the recipient's best possible functional level.
4. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured, but shall consider making payment if the vendor demonstrates that the failure to secure the required prior treatment authorization request was the result of oversight and the vendor has not failed to secure a required prior treatment authorization request within the twelve months prior to the month in which the services or procedures were furnished.
5. A vendor of medical services which provides a covered service but fails to receive payment due to the operation of subsection 4, and which attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the operation of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.
6. a. Effective January 1, 1994, and for so long thereafter as the single state agency may have in effect a waiver (issued pursuant to 42 U.S.C. 1396n(b)(1)) of requirements imposed pursuant to 42 U.S.C. chapter 7, subchapter XIX, no payment may be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:
 - (1) Who are required by this subsection to select, or have selected on their behalf, a primary care physician, but who have not selected, or have not had selected on their behalf, a primary care physician; or
 - (2) By a provider who is not the primary care physician selected by or on behalf of the recipient or who has not received a referral of such a recipient from the primary care physician.

- b. A primary care physician must be selected by or on behalf of the members of a medical assistance unit which includes:
- (1) Persons who are receiving cash assistance payments through aid to families with dependent children.
 - (2) Persons who are deemed to be recipients of aid to families with dependent children, including:
 - (a) Persons denied an aid to families with dependent children payment solely because the amount would be less than ten dollars;
 - (b) Persons whose aid to families with dependent children payments are reduced to zero by reason of recovery of overpayment of aid to families with dependent children funds; and
 - (c) Families who were receiving aid to families with dependent children cash assistance payments in at least three of the six months immediately preceding the month in which they became ineligible as a result (wholly or partly) of the collection or increased collection of child or spousal support and are deemed to be recipients of aid to families with dependent children, and continue eligible for medicaid for four calendar months following the month for which the final cash payment was made.
 - (3) Families that received aid to families with dependent children payments in at least three of the six months immediately preceding the month in which the family became ineligible for aid to families with dependent children solely because of increased hours of, or income from, employment of the caretaker relative; or which became ineligible for aid to families with dependent children solely because a member of the family lost one of the time-limited aid to families with dependent children earned income disregards (the thirty dollar earned income disregard and the disregard of one-third of earned income).
 - (4) Pregnant women whose pregnancy has been medically verified and who would be eligible for an aid to families with dependent children cash payment on the basis of the income and asset requirements of the state-approved aid to families with dependent children plan.
 - (5) Children born to eligible pregnant women who have applied for and been found eligible for medicaid on

or before the day of the child's birth, for sixty days after the day of the child's birth and for the remaining days of the month in which the sixtieth day falls.

- (6) Persons who are members of families who would be eligible for aid to families with dependent children if that program did not limit, under 42 U.S.C. 607(b)(2)(B)(i), the number of months with respect to which a family receives such aid.
- (7) All individuals under age twenty-one who are not receiving aid to families with dependent children, but whose income and assets are at or below the aid to families with dependent children program limits.
- (8) Eligible caretaker relatives and individuals under age twenty-one in aid to families with dependent children families who do not meet financial or certain technical aid to families with dependent children requirements (i.e., work requirements) for a cash payment, but meet medically needy income and asset standards.
- (9) All individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income and assets, but who do not qualify as categorically needy, including children in stepparent families who are ineligible for aid to families with dependent children, but not including children in foster care.
- (10) Pregnant women whose pregnancy has been medically verified and who, except for income and assets, would be eligible as categorically needy.
- (11) Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility.
- (12) Eligible pregnant women who applied for medicaid during pregnancy, and for whom recipient liability for the month was met no later than on the date each pregnancy ends, continue to be eligible, as though pregnant, for sixty days after the day each pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.
- (13) Pregnant women whose pregnancy has been medically verified and who meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.

- (14) Eligible pregnant women who applied for medicaid during pregnancy who continue to be eligible, as though pregnant, for sixty days after the day each pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.
 - (15) Children under the age of six who meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.
 - (16) Children, age six or older, born after September 30, 1983, who meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level.
- c. Physicians practicing in the following specialties, practices, or locations may be selected as primary care physicians:
- (1) Family practice;
 - (2) Internal medicine;
 - (3) Obstetrics;
 - (4) Pediatrics;
 - (5) Osteopathy;
 - (6) General practice;
 - (7) Physicians employed at rural health clinics;
 - (8) Physicians employed at federally qualified health centers; and
 - (9) Physicians employed at Indian health clinics.
- d. A recipient identified in subdivision b need not select, or have selected on the recipient's behalf, a primary care physician if:
- (1) Aged, blind, or disabled;
 - (2) The period for which benefits are sought is prior to the date of application;
 - (3) Despite diligent effort, the recipient is unable to find a physician willing to act as primary care physician;

- (4) Receiving foster care or subsidized adoption benefits; or
 - (5) Receiving home and community-based services.
- e. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care physician:
- (1) Certified family nurse practitioner services;
 - (2) Certified pediatric nurse practitioner services;
 - (3) Early and periodic screening of recipients under twenty-one years of age;
 - (4) Family planning services;
 - (5) Certified nurse midwife services;
 - (6) Podiatric services;
 - (7) Optometric services;
 - (8) Chiropractic services;
 - (9) Clinic services;
 - (10) Dental services;
 - (11) Intermediate care facility services for the mentally retarded;
 - (12) Emergency services;
 - (13) Transportation services;
 - (14) Case management services;
 - (15) Home and community-based services;
 - (16) Nursing facility services;
 - (17) Prescribed drugs;
 - (18) Psychiatric services;
 - (19) Ophthalmic services;
 - (20) Obstetrical services; and
 - (21) Psychological services.

- f. A primary care physician must be selected for each recipient.
- g. Primary care physicians may not be changed more often than once every six months without good cause. Good cause for changing primary care physicians less than six months after a previous selection of a primary care physician exists if:
 - (1) The recipient relocates;
 - (2) Significant changes in the recipient's health require the selection of a primary care physician with a different specialty;
 - (3) The primary care physician relocates or is reassigned;
 - (4) The selected physician refuses to act as a primary care physician or refuses to continue to act as a primary care physician; or
 - (5) The department, or its agents, determine, in the exercise of sound discretion, that a change of primary care physician is necessary.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53, 42 CFR 431.110, 42 CFR 435.1009, 42 CFR Part 440, 42 CFR Part 441, subparts A, B, & D, 45 CFR 435.732

CHAPTER 75-02-04.1

OBJECTION

THE--LEGISLATIVE--COUNCIL'S--COMMITTEE--ON--ADMINISTRATIVE--RULES--OBJECTS--TO
NORTH--DAKOTA--ADMINISTRATIVE--CODE--CHAPTER--75--02--04.1--RELATING--TO--CHILD
SUPPORT--GUIDELINES.

The--committee--objects--to--this--rule--because:

- 1.--Both--parents--have--a--legal--duty--to--support--their--children.
- 2.--Any--guidelines--adopted--to--ensure--proper--child--support--amounts
are--paid--upon--divorce--must--be--based--on--the--best--interests--of
the--child.
- 3.--The--obligor--model--adopted--by--the--Department--of--Human--Services
establishes--child--support--amounts--by--using--a--percentage--of--the
obligor's--income--and--does--not--take--into--consideration--the
income--of--the--custodial--parent.
- 4.--The--income--shares--model--considered,--but--not--adopted,--by--the
department--combines--the--income--of--both--parents--and--requires
the--parties--to--contribute--child--support--in--proportion--to--the
income--each--receives.
- 5.--Public--opinion--expressed--by--the--parties--directly--affected--(the
parents)--strongly--supports--the--income--shares--model--over--the
obligor--model--because--of--the--inherent--fairness--of--that
proposal.--The--best--interests--of--the--child--would--be--better
served--by--adoption--of--the--income--shares--model--as--it--would
provide--not--only--sufficient--financial--resources--for--the--child
but--should--provide--for--more--harmonious--relationships--due--to
the--fairness--of--the--income--shares--model.

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

History: Effective--August--9,--1991.
General Authority: NDCG--28--32--03.3

CHAPTER 75-02-05.1

AGENCY SYNOPSIS: The repeal of North Dakota Administrative Code chapter 75-02-05.1, Nursing Home Sanctions and the adoption of new North Dakota Administrative Code chapter 75-02-05.2, Nursing Facility Enforcement Action.

A public hearing was conducted on August 3, 1995, in Bismarck, concerning the proposed repeal of North Dakota Administrative Code chapter 75-02-05.1, Nursing Home Sanctions, and the adoption of new North Dakota Administrative Code chapter 75-02-05.2, Nursing Facility Enforcement Action, as interim final rules effective July 1, 1995.

The repeal of chapter 75-02-05.1, Nursing Home Sanctions, was necessary because it conflicts with 42 CFR, part 488, adopted effective July 1, 1995.

New chapter 75-02-05.2, Nursing Facility Enforcement Action, implements federal requirements relating to state procedures on enforcement actions required by 42 U.S.C. section 1396r(h) and 42 CFR, part 488, effective July 1, 1995.

CHAPTER 75-02-05.1
NURSING HOME SANCTIONS

[Repealed effective July 1, 1995]

STAFF COMMENT: Chapter 75-02-05.2 contains all new material but is not underscored so as to improve readability.

**CHAPTER 75-02-05.2
NURSING FACILITY ENFORCEMENT ACTION**

Section	
75-02-05.2-01	Definitions
75-02-05.2-02	Available Enforcement Remedies
75-02-05.2-03	Enforcement Action
75-02-05.2-04	Civil Money Penalties
75-02-05.2-05	Imposition of Enforcement Remedies
75-02-05.2-06	Notice of Enforcement Action - Delivery or Mailing - Posting
75-02-05.2-07	Prohibition on Submission of Claims Through Other Providers
75-02-05.2-08	Appeals
75-02-05.2-09	Application

75-02-05.2-01. Definitions.

1. "Certification of compliance" means a facility is in at least substantial compliance and is eligible to participate in medicaid as a nursing facility.
2. "Certification of noncompliance" means a facility is not in substantial compliance and is not eligible to participate in medicaid as a nursing facility.
3. "Deficiency" means the occurrence of a violation recorded by the survey agency, including a violation found during a standard survey, during an extended survey, or in response to a complaint, investigation, visit, or otherwise. A deficiency may include a violation that occurred at a time prior to the date of the survey or visit, even if the violation no longer exists at the time of the survey or visit.
4. "Department" means the department of human services.
5. "Enforcement action" means the process of imposing one or more remedies available under this chapter.
6. "Facility" means an institution or a distinct part of an institution which:
 - a. Is primarily engaged in providing:
 - (1) Nursing care and related services for residents who require medical or nursing care;

- (2) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
 - (3) On a regular basis, health-related care and services to individuals who because of mental or physical conditions require care and services above the level of basic care that can be made available only through an institutional facility;
- b. Is required to have in effect a transfer agreement, meeting the requirements of 42 U.S.C. 1396x(1), with one or more hospitals having agreements in effect under 42 U.S.C. 1395cc;
 - c. Is required to meet the requirements for a nursing facility described in 42 U.S.C. 1396r(b), (c), and (d); and
 - d. Is not primarily engaged in providing care and treatment of mental diseases.
7. "Medicaid agency" means the department of human services.
 8. "New admission" means a resident is admitted to a facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before the effective date of a denial of payment. A resident admitted before the effective date of the denial of payment and taking temporary leave is not considered a new admission.
 9. "Noncompliance" means any deficiency that causes a facility not to be in substantial compliance.
 10. "Regional office" means the health care financing administration's regional office responsible for program administration in North Dakota.
 11. "Repeated noncompliance" means a facility has received three consecutive findings of substandard quality of care on three consecutive standard surveys. The consecutive findings need not be based on the exact tag number of a deficiency.
 12. "Secretary" means the secretary of the United States department of health and human services.
 13. "Substandard quality of care" means a facility has one or more deficiencies related to participation requirements for resident behavior and facility practices, quality of life, or quality of care that constitute immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimum harm, but less than immediate jeopardy, with no actual harm.

14. "Substantial compliance" means compliance with the participation requirements and includes any identified deficiencies posing no greater risk to resident health or safety than the potential for causing minimal harm.
15. "Survey agency" means the state department of health.

History: Effective July 1, 1995.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396r(h)

75-02-05.2-02. Available enforcement remedies. The following enforcement remedies may be imposed on a facility that is not in substantial compliance.

1. Category one remedies:

- a. A directed plan of care.
- b. Directed in-service training.
- c. State monitoring.

2. Category two remedies:

- a. Denial of payment for all new medicaid admissions.
- b. A ban on new admissions of residents.
- c. A civil money penalty ranging from a minimum of fifty dollars to a maximum of three thousand dollars for each day the facility is not in substantial compliance.

3. Category three remedies:

- a. Termination of the provider agreement.
- b. Appointment of a receiver to oversee the operation of the facility.
- c. A civil money penalty ranging from a minimum of three thousand fifty dollars to a maximum of ten thousand dollars for each day the facility is not in substantial compliance.
- d. In case of an emergency, transfer of residents to other facilities.

- e. In case of an emergency, transfer of residents to other facilities with closure of the facility.

History: Effective July 1, 1995.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396r(h)

75-02-05.2-03. Enforcement action.

1. The department may impose the enforcement remedies described in section 75-02-05.2-02 if the facility is not in substantial compliance. The scope and severity matrix established by the health care financing administration must be used to determine the appropriate category of enforcement remedy or remedies to be imposed.
 - a. If immediate jeopardy to the health or safety of residents exists, the department shall impose a remedy provided in paragraph 1 or 2 and may, in addition, impose any or all remedies provided in paragraphs 3, 4, and 5. The department may:
 - (1) Terminate the provider agreement no later than twenty-three days after the immediate jeopardy is identified if the immediate jeopardy is not removed by the twenty-first day;
 - (2) Appoint a receiver to oversee the operation of the facility to ensure the health and safety of residents, where there is a need for a temporary management while:
 - (a) There is an orderly closure of the facility; or
 - (b) Improvements are made in order to bring the facility into substantial compliance;
 - (3) Impose a civil money penalty of at least three thousand fifty dollars per day and not exceeding ten thousand dollars per day, effective as of the date the noncompliance was identified;
 - (4) Immediately impose state monitoring; or
 - (5) Impose any other remedy identified in section 75-02-05.2-02, beginning at least two days from the date the provider receives notice of the remedy to be imposed.
 - b. If immediate jeopardy does not exist, the department may terminate the provider agreement in effect or apply one or more of the enforcement remedies identified in section

75-02-05.2-02 instead of, or in addition to, termination.
The department may:

- (1) Impose a denial of payment for new admissions no sooner than fifteen days after the survey, but must impose a denial of payment for new admissions effective no later than three months after the last day of a standard survey if substantial compliance is not achieved;
 - (2) Impose state monitoring without notice;
 - (3) Impose a civil money penalty effective as of the date the noncompliance was identified;
 - (4) Authorize the survey agency to impose one or more category one remedies; or
 - (5) Impose other remedies available under section 75-02-05.2-02 no sooner than fifteen days from the date the provider receives notice.
- c. If a provider has been found to have provided substandard quality of care on the last three consecutive standard surveys, the department shall:
- (1) Deny payment for all new admissions as soon as possible within, but no later than, ninety days from the last day of the third consecutive survey;
 - (2) Impose state monitoring; and
 - (3) Provide notification of the finding of substandard quality of care to the attending physician of each resident found to have received the substandard quality of care.
- d. If the provider fails to properly post a notice of enforcement action, removes a posted notice without authorization, fails to inform a person inquiring about availability of beds of the enforcement action, or fails to publish a required notice, the department shall impose a civil money penalty.
- e. The department may not enter into a provider agreement with any prospective provider who is not in substantial compliance.
2. Except for a civil money penalty, an enforcement action may be imposed by the department while the provider is appealing the decision that resulted in that enforcement action.

3. The department shall provide written notice of enforcement action, when that notice is not provided by the regional office, to the provider of the imposition of category two and three remedies. That notice must also include any applicable category one remedies imposed in addition to the category two or three remedies.

History: Effective July 1, 1995.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396r(h)

75-02-05.2-04. Civil money penalties.

1. The department may impose a civil money penalty for the number of days a provider is not in substantial compliance with one or more participation requirements.
2. The department may impose a civil money penalty for the number of days of past noncompliance since the last standard survey.
3. A minimum of fifty dollars per day and a maximum of three thousand dollars per day in penalties may be imposed when immediate jeopardy does not exist, but deficiencies either caused actual harm or caused no actual harm, but have the potential for more than minimal harm.
4. A minimum of three thousand fifty dollars per day and a maximum of ten thousand dollars per day in penalties may be imposed when immediate jeopardy exists or when immediate jeopardy does not exist if a penalty in the lower range of penalty identified in subsection 3 was previously imposed and deficiencies are repeated.
5. A civil money penalty imposed under subsection 4 must be decreased to the range of penalties provided in subsection 3 when the penalty was imposed for a situation of immediate jeopardy and the immediate jeopardy is removed, but noncompliance continues.
6. The following factors must be considered in determining the amount of a civil money penalty to impose.
 - a. The seriousness of the deficiency determined by:
 - (1) Severity measured as:
 - (a) No actual harm with a potential for minimal harm;
 - (b) No actual harm with a potential for more than minimal harm, but not immediate jeopardy;

- (c) Actual harm that is not immediate jeopardy; or
 - (d) Immediate jeopardy to residents' health or safety; and
 - (2) Scope measured as:
 - (a) Isolated;
 - (b) Patterned; or
 - (c) Widespread;
 - b. The relationship of one deficiency to another;
 - c. History of noncompliance:
 - (1) For all deficiencies; and
 - (2) For deficiencies specifically related to deficiencies currently cited;
 - d. The provider's financial condition; and
 - e. The likelihood the civil money penalty may achieve correction and continued compliance.
7. A civil money penalty may be increased when continued noncompliance by a provider becomes sufficiently serious to pose immediate jeopardy.
8. The department shall increase a civil money penalty by twenty-five percent if the provider has repeated deficiencies. The increased civil money penalty may exceed the maximum amount per day established in this section.
9. A civil money penalty is collectible for the number of days of noncompliance from the date the penalty starts until the date the provider achieves substantial compliance or, if applicable, the date of termination.
10. The provider may, in accordance with 42 CFR part 431, appeal the decision that resulted in imposition of a civil money penalty.
- a. The collection of the civil money penalty must be delayed if a hearing is requested.
 - b. The civil money penalty must be reduced by thirty-five percent if the provider, in writing, waives the right to appeal no later than sixty days from the date of the notice of the imposition of the civil money penalty.

11. Payment of a civil money penalty is due:
 - a. Fifteen days after a provider comes into substantial compliance or the provider agreement is terminated;
 - b. Fifteen days after a final administrative decision is made upholding the imposition of the civil money penalty if the provider has achieved substantial compliance or was terminated prior to the final administrative decision; or
 - c. Fifteen days after the time period for requesting a hearing has expired and the provider has achieved substantial compliance or was terminated prior to the final day the hearing request was due.
12. Interest is payable on the unpaid civil money penalty balance beginning on the due date. Interest will accrue at three times the legal rate.
13. Civil money penalties and applicable interest, if any, not paid within thirty days after the due date must be deducted from any payment owing to the provider.
14. Civil money penalties collected must be used for the protection of the health or property of residents of facilities found deficient.

History: Effective July 1, 1995.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396r(h)

75-02-05.2-05. Imposition of enforcement remedies.

1. The survey agency shall recommend enforcement action.
2. The department shall consider the survey agency recommendation when determining the appropriate enforcement action, except the appointment of a receiver must be as provided in North Dakota Century Code chapter 23-16.1. The department shall provide for the imposition of incrementally more severe remedies for repeated, uncorrected, or pervasive deficiencies or deficiencies presenting a threat to the health, safety, or welfare of residents.
3. The provisions of 42 U.S.C. 1396r(h)(6) govern the imposition of remedies when the department and the regional office do not agree.

4. Enforcement action must cease upon recommendation of the survey agency indicating the conditions or circumstances causing a deficiency appear to be corrected.

History: Effective July 1, 1995.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396r(h)

75-02-05.2-06. Notice of enforcement action - Delivery or mailing - Posting.

1. A written notice of enforcement action must be hand delivered or mailed to the facility owner, administrator, or head of the facility's governing board.
2. The facility shall place the notice of enforcement action at all facility entrances and exits. In the event of the imposition of a ban on admission, denial of payment for new admissions, receivership, closure, or termination, the facility shall inform every person inquiring about the availability of beds in the facility of the deficiencies and the enforcement actions. The department may require the facility to publish a notice in area newspapers to achieve public dissemination of information concerning enforcement action.

History: Effective July 1, 1995.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396r(h)

75-02-05.2-07. Prohibition on submission of claims through other providers. A facility subject to termination from participation or to any limitation or denial of payment may not submit claims for payment, either directly or indirectly through any clinic, group, corporation, or other association, to the department or any fiscal agent for any services or supplies provided under the medical services program except for any services or supplies provided prior to the effective date of an enforcement action.

History: Effective July 1, 1995.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396r(h)

75-02-05.2-08. Appeals.

1. A nonstate-owned facility, participating only in medicaid, dissatisfied with an informal dispute resolution decision of the survey agency may appeal the issue of whether or not a deficiency occurred. Correction of the deficiency may not be used as a reason for appealing a decision.

2. A facility not entitled to appeal under subsection 1 may appeal under 42 CFR part 498.
3. An appeal may be perfected by mailing or delivering the information described in subdivisions a through d to the department's appeals supervisor. The mailed or delivered material must arrive at the office of the appeals supervisor on or before five p.m. on the thirty-first day after the date of the informal dispute resolution decision by the survey agency. The following information must be included in the facility's appeal request:
 - a. A copy of the notice received from the survey agency advising of the informal dispute resolution decision;
 - b. A statement of each disputed deficiency and the reason or basis in fact for the dispute;
 - c. The authority in statute or rule upon which the appealing party relies for each disputed item; and
 - d. The name, address, and telephone number of the person upon whom all notices regarding the appeal must be served.
4. An appeal of a deficiency may not suspend or delay enforcement action except as provided for in this chapter.

History: Effective July 1, 1995.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396r(h)

75-02-05.2-09. Application. The department is responsible for the application of this chapter to nonstate-operated nursing facilities participating only in the medicaid program. The department may make recommendations to the regional office for the application of this chapter to other nursing facilities. This chapter must be applied on or after July 1, 1995.

History: Effective July 1, 1995.
General Authority: NDCC 50-24.1-04
Law Implemented: 42 USC 1396r(h)

CHAPTER 75-02-06

AGENCY SYNOPSIS: The proposed amendments to North Dakota Administrative Code chapter 75-02-06, Ratesetting for Nursing Home Care.

A public hearing was conducted on August 3, 1995, in Bismarck, concerning proposed amendments to North Dakota Administrative Code chapter 75-02-06, Ratesetting for Nursing Home Care.

The rules relate to property costs, clarify the application of a depreciable cost basis for assets acquired as an ongoing operation, provide for a decrease in recaptured depreciation, and clarify policy relating to existing rules. The changes conform this chapter to the requirements of North Dakota Century Code section 50-24.4-15, as amended by section 1 of 1995 Senate Bill No. 2034.

75-02-06-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factors" means indices used to adjust reported costs for inflation or deflation based on forecasts for the rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's length transaction. It does not include:
 - a. A stock purchase of a facility;
 - b. A sale and leaseback to the same licensee;

- c. A transfer of an interest to a trust;
 - d. Gifts or other transfers for nominal or no consideration;
 - e. A merger of two or more related organizations;
 - f. A change in the legal form of doing business;
 - g. The addition or deletion of a partner, owner, or shareholder; or
 - h. A sale, merger, reorganization, or any other transfer of interest between related organizations.
7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.
8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
9. "Chain organization" means a group of two or more health care facilities which are owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations which are engaged in other activities not directly related to health care.
10. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
- 7- 11. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
- 8- 12. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
- 9- 13. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.

- ~~10-~~ 14. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.
- ~~11-~~ 15. "Department" means the department of human services.
- ~~12-~~ 16. "Depreciable asset" means ~~any-building,-furniture,-fixture,-or-equipment~~ a capital asset for which the cost must be capitalized for ratesetting purposes.
- ~~13-~~ 17. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
18. "Depreciation guidelines" means the American hospital association's guidelines as published by American Hospital Publishing, Inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1993 edition.
- ~~14-~~ 19. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an actual audit of the cost report.
- ~~15-~~ 20. "Direct care costs" means the cost category for allowable nursing and therapy costs.
- ~~16-~~ 21. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
- ~~17-~~ 22. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.
- ~~18-~~ 23. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, and employee child care benefits, and payroll taxes.
- ~~19-~~ 24. "Established rate" means the rate paid for services.
- ~~20-~~ 25. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for the mentally retarded.
- ~~21-~~ 26. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
- ~~22-~~ 27. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for

reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.

- 23- 28. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
29. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
- 24- 30. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.
- 25- 31. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.
- 26- 32. "Highest market driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
- 27- 33. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
34. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.
35. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.
- 28- 36. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient.
- 29- 37. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
- 30- 38. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was

not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.

- ~~39.~~ 39. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, intermediate care facility for the mentally retarded, or basic care facility.
- ~~40.~~ 40. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
- ~~31.~~ 41. "Limit rate" means the rate established as the maximum allowable rate for a cost category.
- ~~32.~~ 42. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
- ~~33.~~ 43. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
- ~~34.~~ 44. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
- ~~45.~~ 45. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
- ~~35.~~ 46. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
- ~~36.~~ 47. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- ~~37.~~ 48. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a nursing facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.

- 38- 49. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare.
- 39- 50. "Private room" means a room which is equipped for use by only one resident.
- 40- 51. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
- 41- 52. "Provider" means the organization or individual who has executed the a provider agreement with the department.
- 42- 53. "Rate year" means the calendar year from January first through December thirty-first.
- 43- 54. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
- 44- 55. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, to significantly to influence or direct the policies of an organization or provider.
- 45- 56. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
- 46- 57. "Resident" means a person who has been admitted to the facility, but not discharged.
- 47- 58. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission ~~will be counted.~~ and the day of death is a are resident day days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.

59. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
- 48- 60. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
- 49- 61. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean such an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.
- 50- 62. "Standardized resident day" means a resident day times the classification weight for the resident.
- 51- 63. "Therapeutic leave day" means any day that a resident is not in the facility or in a hospital, another nursing facility, an intermediate care facility for the mentally retarded, a basic care facility, or an acute care setting, or, if not in an institutional setting, is not receiving home and community-based waived services.
- 52- 64. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
65. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02. Financial reporting requirements.

1. Records.

- a. The facility shall maintain on the premises the required census records and financial information in a manner sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.

- b. Where several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be lacking support at the reporting facility, with the cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost. Home office cost reporting and cost allocation must be in conformance with this chapter and HCFA-15 paragraphs 2150 and 2153.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, accurate financial and statistical records of the period covered by such cost report in sufficient detail to substantiate the cost data reported. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives of the secretary.
- d. Except for motor vehicles used exclusively for resident-related activities, the provider shall maintain a mileage log for all motor vehicles which identifies mileage and purpose of each trip. Vehicle mileage for nonresident-related activities must be documented.

2. Accounting and reporting requirements.

- a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported. Ratesetting procedures will must prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.
- b. To properly facilitate auditing, the accounting system shall must be maintained in a manner that ~~will--allow~~ allows cost accounts to be grouped by cost center and readily traceable to the cost report.
- c. ~~The--method--for--annual--reporting--of--costs--for--ratesetting purposes--shall--be--prescribed--by--the--department.---A--cost report--for--the--report--year,--satisfying--all--departmental reporting--requirements,--must--be--filed--with--the--management services--division,--provider--audit--unit--on--forms--prescribed by--the--department,--on--or--before--October--first--of--each year,---The--report--must--include:~~ No later than October first of each year, each facility shall provide to the department:

- (1) A cost report for the report year ended June thirtieth, on forms prescribed by the department.
- (2) A copy of an audited report of the facility's financial records from an independent certified public accountant which must include an audited statement of the rates charged to private-pay residents. The examination must be conducted in accordance with generally accepted auditing standards. For provider organizations that operate more than one nursing facility, a consolidated audit report may be provided. The information must be reconciled to each facility's cost report.
- (3) A complete statement of fees and charges for private-pay residents for the report year.
- {2} (4) A statement of ownership for the facility, including the name, address, and proportion of ownership of each owner.
 - (a) If a privately held or closely held corporation or partnership has an ownership interest in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the facility's cost report must be identified regardless of the proportion of ownership interest.
 - (b) If a publicly held corporation has an ownership interest of fifteen percent or more in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of ten percent or more.
- (5) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility or a certification that the content of the document remains unchanged since the most recent statement given pursuant to this subsection.
- {3} (6) Supplemental information reconciling the costs on the financial statements with costs on the cost report.
- ~~{4}--A--provider--organization--which--operates--more--than--one--nursing--facility--may--provide--a--consolidated--audit~~

report.---The--information-must-be-reconciled-to-each facility's-cost-report.

(5)--Information--requested-by-the-department,-pursuant-to subdivision-d-of-subsection-1-of-North-Dakota-Century Code---section---50-24.4-23,--must--be--furnished--by financial--statements,--together--with---supplemental information--which--reconciles-costs-on-the-financial statement-with-costs-on-the-cost-report.

(6)--The-audited-report-provided-pursuant-to-subdivision-a of-subsection-1-of-North-Dakota-Century-Code--section 50-24.4-23-must-be-for-the-facility's-fiscal-year.

(7) The following information upon request by the department:

(a) Access to certified public accountant's audit workpapers that support the audited financial statements.

(b) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs.

(c) Separate audited financial statements for any organization, excluding individual nursing facilities of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year.

(d) Separate audited financial statements for every organization with which the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year.

d. In the event a facility fails to file the required cost report on or before the due date, the department may reduce the current payment rate to eighty percent of the rate in effect on October first. Reinstatement of the rate will must occur on the first of the month beginning after receipt of the required information, but is not retroactive.

- e. The facility shall make all adjustments, allocations, and projections necessary to arrive at allowable costs. The department may reject any cost report when the information filed is incomplete or inaccurate. If a cost report is rejected, the department may reduce the current payment rate to eighty percent of its most recently established rate until the information is completely and accurately filed.
 - f. Costs reported must include total costs and be adjusted to allowable costs. Adjustments required by the provider audit unit, to attain allowable cost, though not meeting the medicaid state agency or the state medicaid investigative group criteria of fraud or abuse on their initial identification, ~~could~~ may, if repeated on future cost filings, be considered as possible fraud or abuse. The provider audit unit ~~will~~ may forward all such items identified to the appropriate medicaid investigative group.
 - g. The department may grant an extension of the reporting deadline to a facility for good cause.
3. The department ~~will~~ may perform an audit of the latest available report year of each facility at least once every six years and retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations used and generated by audit staff in performance of audits and in the establishment of rates. Audits ~~will~~ must meet generally accepted governmental auditing standards.
4. Penalties for false reports.
- a. A false report is one where a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:
 - (1) Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;
 - (2) Terminate the department's agreement with the provider;
 - (3) Prosecute under applicable state or federal law; or
 - (4) Use any combination of the foregoing actions.
 - b. The department may determine a report is a false report if a facility claims previously adjusted costs as allowable costs. Previously adjusted costs being appealed must be identified as nonallowable costs. The provider may

indicate that the costs are under appeal and not claimed under protest to ~~protect~~ perfect a claim should if the appeal be is successful.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.1. General cost principles.

1. For ratesetting purposes, a cost must:
 - a. Be ordinary, necessary, and related to resident care;
 - b. Be what a prudent and cost-conscious business person would pay for the specific good or service in the open market in an arm's-length transaction; and
 - c. Be for goods or services actually provided in the facility.
2. The cost effects of transactions which circumvent this chapter are not allowable under the principle that the substance of the transaction prevails over form.
3. Costs incurred due to management inefficiency, unnecessary care, unnecessary facilities, agreements not to compete, or activities not commonly accepted in the nursing facility industry are not allowable.
4. Reasonable resident-related costs will must be determined in accordance with the ratesetting procedures of this chapter, instructions issued by the department, and health care financing administration manual 15 (HCFA-15). If conflicts occur between this chapter, the ratesetting manual, or instructions issued by the department and HCFA-15, this chapter, the ratesetting manual, or instructions issued by the department will must prevail.

History: Effective January 1, 1990; amended effective November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.2. Direct care costs. Direct care costs include only those costs identified in this section.

1. Therapies:.

- a. Salary and employment benefits for speech, occupational, and physical therapists, or for personnel, who are not reported in subsection 2, performing therapy under the direction of a licensed therapist.
- b. The cost of noncapitalized therapy equipment or supplies used to directly provide therapy; ~~not including office supplies.~~
- c. Training required to maintain licensure, certification, or professional standards, and the related travel costs.

2. Nursing:

- a. Salary and employment benefits for the director of nursing, nursing supervisors, inservice trainers for nursing staff, registered nurses, licensed practical nurses, quality assurance personnel, nurse aides, orderlies, and ward clerks.
- b. Routine nursing care supplies including items furnished routinely and relatively uniformly to all residents; items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities; and reusable items used by individual residents which that are reusable, vary by the needs of an individual, and are expected to be available in the facility except ~~for motorized, heavy-duty, specialized wheelchairs purchased at a cost in excess of one thousand dollars, and wheelchairs other than the type normally provided by the facility.~~
- c. Training required to maintain licensure, certification, or professional standards requirements, and the related travel costs.
- d. Routine hair care.
- e. The cost of noncapitalized wheelchairs.

History: Effective January 1, 1990; amended effective January 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.3. Other direct care costs. Other direct care costs include only those costs identified in this section.

1. The cost of consumable food products.
2. Dietary supplements, including supplements used for tube feedings such as elemental high nitrogen diet.

3. Laundry costs:
 - a. Salary and employment benefits for a director of laundry, laundry aides, seamstresses, and other people who gather, transport, sort, and clean linen and clothing.
 - b. The cost of laundry supplies such as including detergents, softeners, and linens; ~~but not including office supplies.~~
 - c. Contracted services for laundry.
4. Social service costs: Salary and employment benefits or consultant fees for social workers or social worker designees.
5. Activities costs:
 - a. Salary and employment benefits for an activities director and activities aides.
 - b. The cost of leisure and recreational activities and supplies including games, ceramics, pets, out-of-house activities, and noncapitalized exercise equipment; ~~but not including office supplies.~~

History: Effective January 1, 1990; amended effective January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.4. Indirect care costs. Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

1. **Administration:** Direct costs for administering the overall activities of the facility include; ~~but are not limited to:~~
 - a. Salary and employment benefits for administrators, except ~~that~~ in a facility of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.
 - b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries and receptionists, data processing personnel, purchasing, receiving, and store personnel, medical director, security personnel, and of all personnel not designated in other cost categories.
 - c. Board of directors' fees and related travel expenses.

- d. Security personnel or services.
- e. Supplies except as specifically provided for in the direct care, other direct care, and other cost centers of the indirect care cost category.
- f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.
- g. Telephone and telegraph.
- h. Postage and freight.
- i. Membership dues and subscriptions.
- j. Professional fees for services such as legal, accounting, and data processing.
- k. Central or home office costs including property costs except as provided for in section 75-02-06-06.1.
- l. Advertising and personnel recruitment costs.
- m. Management consultants and fees.
- n. Bad debts and collection fees as provided for in section 75-02-06-10.
- o. Business meetings, conventions, association meetings, and seminars.
- p. Travel, except as necessary for training programs for personnel required to maintain licensure, certification, or professional standards requirements.
- q. Training, except for training for personnel required to maintain licensure, certification, or professional standards requirements.
- r. Business office functions.
- s. Computer software costs, except costs that must be capitalized, and computer maintenance contracts.
- t. Working capital interest.
- u. Any costs which that cannot be specifically classified to other cost categories.

2. **Chaplain:**

- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
 - b. Supplies and other expenses related to meeting the spiritual needs of the residents.
3. **Pharmacy+.** Compensation for pharmacy consultants.
4. **Plant operations+.**
- a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant operations.
 - b. The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.
 - c. Repairs and maintenance contracts and purchased services.
 - d. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.
 - e. Motor vehicle operating and resident transportation expenses.
5. **Housekeeping+.**
- a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning personnel.
 - b. Cost of cleaning supplies such-as including soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.
 - c. Contracted services for housekeeping.
6. **Dietary+.**
- a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.
 - b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.

7. **Medical records.** Salary and employment benefits for ~~medical records~~ personnel performing medical records maintenance.

History: Effective January 1, 1990; amended effective November 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.5. Property costs. Property-related costs and other passthrough costs include only those costs identified in this section:

1. Depreciation.
2. Interest expense on capital ~~and-working-capital~~ debt.
3. Property taxes including special assessments as provided for in section 75-02-06-09.
4. Lease and rental costs.
5. Startup costs.
6. Reasonable legal and related expenses:
 - a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after January 1, 1990, regarding a rate year beginning on or after January 1, 1990;
 - b. Related to legal services furnished on or after January 1, 1990; and
 - c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal expenses paid.

History: Effective January 1, 1990; amended effective November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.6. Cost allocations.

1. Direct costing of allowable costs ~~will~~ must be used whenever possible. For ~~facilities-which~~ a facility that cannot direct cost, the following allocation methods ~~are-to~~ must be used:
 - a. ~~For--nursing-facilities-that-are~~ If a facility is combined with a hospital or have has more than one license

(including basic care), the following allocation methods must be used:

- (1) Nursing salaries which that cannot be reported based on actual costs are-~~to~~ must be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. ~~The--time-study~~ Time studies must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies are-~~to~~ must be used starting with the next pay period following completion of the time study studies or averaged for the report year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, nursing salaries will must be allocated based on revenues for resident services.
- (2) Salaries for a director of nursing or nursing supervisors which that cannot be reported based on actual costs or time studies must be allocated based on nursing salaries or full-time equivalents (FTEs) of nursing staff.
- (3) Salaries for cost center supervisors must be allocated based on cost center salaries or full-time equivalents (FTEs) of supervised staff.
- (4) Staff development or inservice trainer salaries must be allocated to nursing and therapies based on the ratio of nursing and therapy salaries to total salaries, to non-long-term care based on the ratio of non-long term care salaries to total salaries, and to administration based on the ratio of total salaries less nursing salaries, therapy salaries, and non-long term care salaries to total salaries.
- (5) Other nursing costs must be allocated based on resident days.
- (6) Therapy costs, other than therapy salaries and purchased services, must be allocated based on the ratio of therapy salaries and purchased services in the nursing facility to total therapy salaries and purchased services.
- (7) Dietary and food costs must be allocated based on number of meals served or in-house resident days.
- (8) Laundry costs must be allocated on the basis of pounds of laundry.

- (9) Activity costs must be allocated based on in-house resident days.
 - (10) Social service costs must be allocated based on resident days.
 - (11) Housekeeping costs must be allocated based on weighted square footage.
 - (12) Plant operation costs must be allocated based on weighted square footage.
 - (13) Medical records costs must be allocated based on the number of admissions or discharges and deaths.
 - (14) Pharmacy costs for consultants must be allocated based on in-house resident days.
 - (15) Administration costs must be allocated on the basis of the percentage of total adjusted cost, excluding property, administration, and chaplain, in each facility.
 - (16) Property costs must be allocated first to a cost center based on square footage. The property costs allocated to a given cost center ~~will then~~ must be allocated using the methodologies set forth in this section for that particular cost center.
 - (17) Chaplain costs must be allocated based on the percentage of total adjusted costs, excluding property, administration, and chaplain.
 - (18) Employment benefits must be allocated based on the ratio of salaries to total salaries.
- b. If any of the allocation methods in subdivision a cannot be used by a facility, a waiver request may be submitted to the medical services division. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility ~~must~~ shall also provide a rationale for the proposed allocation method. Based on the information provided, the department ~~will~~ shall determine the allocation method ~~that will be~~ used to report costs.
 - c. Malpractice, professional liability insurance, therapy salaries, and purchased therapy services must be direct costed.
 - d. The costs of operating a pharmacy must be included as non-long-term care costs.

- e. For purposes of this subsection, "weighted square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described in this subsection for that cost category.
2. ~~For--nursing--facilities--that~~ If a facility cannot directly identify salaries and employment benefits to a cost category, the following cost allocation methods must be used:
- a. Salaries, excluding staff development and inservice trainer salaries, must be allocated using time studies. Time studies must be conducted semiannually for a two-week period or quarterly for a one-week period. ~~The-time-study~~ Time studies must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies ~~are-to~~ must be used starting with the next pay period following completion of time study or averaged for the reporting year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, salaries and employment benefits ~~will~~ must be allocated entirely to the indirect care costs, if any of the employee's job duties are included in this cost category. Otherwise, salaries and employment benefits ~~will~~ must be other direct care costs.
 - b. Staff development and inservice trainer salaries must be allocated to nursing and therapies based on the ratio of nursing and therapy salaries to total salaries and to administration based on the ratio of total salaries less nursing and therapy salaries to total salaries.
 - c. Employment benefits must be allocated based on the ratio of salaries in the cost category to total salaries.
3. ~~Nursing--facilities--which-operate~~ A facility that operates or are is associated with nonresident-related activities, ~~i.e.,~~ such as apartment complexes, shall allocate all costs, except administration costs, in the manner required by subsection 1, and shall allocate administration costs as follows:
- a. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain costs, exceed five percent of total nursing facility cost costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated on the basis of the percentage of total cost, excluding property, administration, and chaplain costs.

- b. If total costs of all nonresident-related activities, exclusive of property, administration, and chaplain costs, are less than five percent of total nursing facility costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated to each such activity based on the percent gross revenues for the activity is of total gross revenues; provided, however, except that the allocation will may not be based on a percentage exceeding two percent for each activity.
 - c. If the provider can document, to the satisfaction of the department, that none of the nursing facility resources or services are used in connection with the nonresident-related activities, no allocation need be made.
 - d. The provisions of this subsection do not apply to the activities of hospital and basic care facilities associated with a nursing facility.
4. All costs associated with a vehicle not exclusively used by a facility must be allocated between resident-related and nonresident-related activities based on usage logs.

History: Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-03. Depreciation.

- 1. Ratesetting principles require that payment for services ~~should include~~ includes depreciation on all ~~depreciable~~ capital assets used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets used in a normal standby or emergency capacity. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report.
- 2. Depreciation methods.
 - a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax

purposes, ~~are unacceptable~~ such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets shall ~~must~~ be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.

b. ~~Providers shall project a useful life at least as long as the useful life guidelines published by the American Hospital Association. The provider may choose to use a composite useful life of ten years for all equipment and four years for vehicles. With the exception of assets purchased prior to July 1, 1989, all assets must be depreciated using the same methodology. Once the composite useful life methodology is chosen, the provider may not change to using the American Hospital Association guidelines without the approval of the department.~~ Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:

(1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or

(2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.

c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:

(1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and

(2) A composite remaining useful life for movable equipment, determined from the seller's records.

3. Acquisitions.

a. If a depreciable asset ~~or special assessment~~ has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and

depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, etc., ~~should~~ must be capitalized as a part of the cost of the asset.

- b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.
4. Proper records ~~will~~ must provide accountability for the fixed assets and ~~also provide~~ adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.
 5. ~~For purposes of this chapter, donated~~ Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal ~~must~~ may be made. The appraisal ~~will~~ must be made by a recognized appraisal expert and ~~will~~ may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated assets asset thereby negating the need for a fair market value determination.
 6. Purchase of a facility and its depreciable Basis for depreciation of assets acquired as an ongoing operation.
 - a. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide. The cost basis of a facility and its depreciable assets acquired as an ongoing operation is limited to the lowest of the following:
 - (1) Current reproduction cost of the assets, depreciated on a straight-line basis over its useful life to the time of the sale;

a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:

(2) (1) Price Purchase price paid by the purchaser (actual cost);

(3) (2) Fair market value of the facility or asset at the time of the sale;

~~(4) In a sale not bona fide, the seller's cost basis, less accumulated depreciation; or~~

~~(5) With respect to sales made on or after July 18, 1984, the seller's cost basis less accumulated depreciation, plus recaptured depreciation.~~

~~(6) In the case of assets previously owned by a hospital, or facility, and for which such hospital or facility has received payment, for services provided to recipients of benefits under title XVIII (medicare) or XIX (medicaid) of the Social Security Act, at a rate which reflects depreciation expense concerning those assets, the allowable acquisition cost of such assets to the first owner on or after July 18, 1984.~~

(3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes, plus recaptured depreciation; or

(4) The seller's cost basis, increased by one-half of the increase in the Dodge construction index from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes, plus recaptured depreciation;

b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes.

c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes.

7. The seller shall always use the sale price in computing the gain or loss on the disposition of assets.

e. 8. Appraisal--guidelines. To properly provide for costs or valuations of fixed capital assets, an appraisal will--be is required if the provider:

(1)--Has has no historical cost records or has incomplete records of depreciable-fixed capital assets;--or.

(2)--Prior--to--July--18,--1984,--purchases--a--facility--without designation--of--purchase--price--for--the--classification of--assets--acquired.---Prior--to--having--an--appraisal made,--the--provider--must--inform--the--state--that--it intends--to--have--the--appraisal--made.---At--this--time--the provider--shall--also--set--forth--the--reasons--for--the appraisal--and--will--make--available--to--the--department the--agreement--between--the--provider--and--the--appraiser. The--appraisal--agreement--should--contain--the--appraisal date,--the--estimated--date--of--completion,--the--scope--of the--appraisal,--and--the--statement--that--the--appraisal will--conform--to--the--current--medicare--regulation--on principles--of--reimbursement--for--provider--cost.

(3)--Limitation.---With--respect--to--purchases--occurring before--July--18,--1984,--the--department--will--recognize appraised--value--not--to--exceed--cost--basis--for--tax purposes.---In--all--cases--of--major--change,--proper authority--for--expenditure--shall--be--obtained.

7.--For--rate--years--beginning--on--or--after--January--1,--1990,--the department--will--recognize--for--depreciation--purposes--the difference--of--the--actual--purchase--price--of--building--and equipment--for--nonrelated--party--purchases--finalized--before July--1,--1987,--and--the--cost--basis--established--at--the--time--of purchase.---The--department--will--continue--to--use--the--useful--life and--the--cost--basis--established--at--the--time--the--purchases--were made--in--determining--the--basis--of--depreciation--for--a--facility purchased--as--an--ongoing--operation--on--or--after--July--1,--1987. No--adjustments--will--be--allowed--for--any--depreciable--costs--that exceeded--the--basis--in--effect--for--rate--periods--prior--to January--1,--1990.

9. An adjustment may not be allowed for any depreciable cost that exceeded the basis in effect for rate periods prior to January 1, 1996.

8- 10. Recapture of depreciation.

a. At any time that the operators owners of a facility sell an asset in a bona fide sale, or otherwise remove that an asset from service in or to the facility, except as provided for in subdivisions c and d, any depreciation costs asserted--after paid by the medical assistance program after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or

disposal price exceeds the undepreciated value. If ~~the department--determines--that--a--sale--or--disposal--was--made--to--a--related--party--or--if~~ a facility terminates participation as a provider of services in the medicaid medical assistance program, except as provided in subdivisions c and d, any depreciation costs asserted paid by the medical assistance program after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent ~~that~~ the fair market value of the asset or facility exceeds the depreciated value.

- b. The seller and the purchaser may, by agreement, determine which who shall pay the recaptured depreciation. If the depreciation recapture amount is not paid in full to the department within thirty days after ~~the date of--the--sale~~ notification by the department of the amount due, the department ~~will~~ shall offset the amount of depreciation to be recaptured against any amounts owed, or to be owed, by the department to the seller and buyer. The department ~~will~~ shall first exercise the offset against the seller, and shall only exercise the offset against the buyer to the extent ~~that~~ the seller has failed to repay the amount of the recaptured depreciation, plus interest. If the depreciation recapture amount is not paid in full to the department within thirty days of ~~the--date--of--the--sale~~ notification by the department of the amount due, interest on the depreciation recapture amount from the date of sale is due to the department in addition to the depreciation recapture amount. The interest accrues at the rate at which interest accrues against the state of North Dakota, under the Cash Management Improvement Act of 1990, [Pub. L. 101-453; 31 U.S.C. 6501 et seq.] for refunds of federal medicaid funds received by the state, but not repaid to the federal agency, or six percent per annum, whichever is greater. Depreciation recapture amounts and interest payments made thereon to the department and the cost of borrowing for the purpose of repaying recaptured depreciation and interest on recaptured depreciation are not costs ~~which are~~ related to resident care.
- c. If a facility has been owned twenty years or longer at the time a sale, removal from service, or termination of participation occurs, there may be no recapture of depreciation.
- d. If a facility has been owned more than ten years, but fewer than twenty years at the time a sale, removal from service, or termination of participation in the medical assistance program occurs, the depreciation recapture amount determined in subdivision a must be decreased by a percentage equal to ten times the number of full years the facility was owned after the tenth year.

11. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.
 - a. The per bed limitation basis for double occupancy must be calculated averaging the cost basis reported on the June 30, 1994, cost report, as adjusted by the Dodge construction index, to June 30, 1995, for nonstate-owned facilities with construction of new occupancy space completed on or after January 1, 1990, and before July 1, 1994.
 - b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by 1.34.
 - c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the Dodge construction index.
 - d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.
 - e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.
 - f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-04. Interest expense.

1. To be allowable, interest expense must be+ meet all of the following criteria.
 - a. Supported Interest expense must be supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required+.

- b. Identifiable Interest expense must be identifiable in the provider's facility's accounting records;
 - c. Related Interest expense must be related to the reporting period in which the costs are incurred;
 - d. Necessary Interest expense must be necessary and proper for the operation, maintenance, or acquisition of the facility;
 - e. Unrelated Interest expense must not relate to funds borrowed to purchase finance costs of assets in excess of the depreciable cost basis established at the time of purchase and, construction, or renovation, as recognized under the provisions of section 75-02-06-03; and
 - f. When representative of borrowing for the purpose of making capital expenditures for assets that were owned by any other hospital or facility on or after July 18, 1984, limited to that amount of interest cost which such hospital or facility may have reported, for Medicaid ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership. If associated with borrowing for the purpose of acquiring assets as an ongoing operation in a bona fide sale, interest expense must be limited to the amount of interest associated with borrowing, occurring at the time of the sale, that does not exceed ninety percent of the cost basis, as determined in section 75-02-06-03.
 - g. In a sale not bona fide, interest expense may not exceed the amount that would have been allowable had the sale not occurred.
 - h. If associated with refinancing or refunding debt, interest expense associated with the original borrowing must have been allowable when the debt was initially incurred.
2. In cases where it was necessary to issue bonds for financing, any bond premium or discount shall must be amortized over the life of the bond issue.
 3. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost. Where the owner loans funds to a facility, the funds are considered capital, rather than borrowed funds.
 4. If a facility incurs interest expense because of late payments for resident services and charges a service charge or interest for late payments, such the income must be offset against interest expense. If no interest expense is incurred by the facility because of late payments for resident services,

interest or service charges paid must be offset against administrative expense.

5. Repayment of ~~operating loans~~ working capital debt must be made within three years of the borrowing.

6. For the purposes of this section:

a. "Necessary" means that the interest is incurred on a ~~loan~~ debt made to satisfy a financial need of the facility and for a purpose reasonably related to resident care; and

b. "Proper" means that the interest is incurred at a rate not in excess of what a prudent borrower would be obliged to pay in an arm's-length transaction:

~~7. Interest must be paid to~~ and is incurred on debt obtained from a lender ~~that is~~ not related to the borrower through common ownership or control, except for funds borrowed in accordance with section 75-02-06-04.1.

~~8.~~ 7. For refinanced or refunded debt, the total net aggregate allowable costs to be incurred for all reporting periods may not exceed the total net aggregate costs that would have been allowed had the refinancing or refunding not occurred. Annual allowable costs ~~will~~ must be limited to the lesser of the costs ~~which that~~ would have been allowed had the refinancing or refunding not occurred or the costs associated with the refinancing or refunding plus the portion, if any, of adjustments not recognized in prior cost reporting periods.

8. Interest expense must be allocated between allowable and nonallowable expense based on the ratio of the principal balance of allowable debt to the principal balance of nonallowable debt at the time the debt was incurred, except that the ratio may be adjusted to reflect principal payments on nonallowable debt made in excess of scheduled repayments, provided no funded depreciation or borrowed funds are used to make the excess principal payment.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-04.1. Funded depreciation.

1. Funding of depreciation is the practice of placing funds, including nonborrowed bond reserve and sinking funds, in a segregated account for the acquisition of depreciable capital assets used in rendering resident care or for other capital

purposes related to resident care. Other capital purposes include capital debt liquidation, such as principal payments for bonds and mortgages.

2. All provisions of this subsection must be met in order to qualify as funding of depreciation. If the provisions are not met, income earned on investments will must be offset to interest expense.
 - a. The action to fund depreciation must be approved by the appropriate managing body of the facility.
 - b. The fund or funds must be clearly designated in the facility's records as funded depreciation accounts.
 - c. The total market value of the funded depreciation fund, including loans made pursuant to subsection 5, must be available, unless contractually committed as provided in subsection 8 or 9, on an as-needed basis for the acquisition of the facility's depreciable capital assets used to render resident care, or for other capital purposes related to resident care. Loans made from funded depreciation do not alter the requirement that funded depreciation must be available.
 - d. Income earned on investments in the fund must be deposited in and become part of the funded depreciation account.
 - e. Deposits to the funded depreciation account must remain for six months or more to be considered as funded depreciation. Deposits of less than six months are not eligible for the benefits of the funded depreciation account. Investment income earned prior to elapse of the six-month period will may not be offset unless the deposits are actually withdrawn and then only if the withdrawal is not for capital purposes.
 - f. Funded depreciation may not be restricted for a specific or future purpose.
 - g. When a provider invests or transfers the assets of the fund to a home office of a chain organization, or the motherhouse or governing body of a religious order or to other related parties, these the assets are considered to be the facility's funds and are subject to all provisions of this section.
3. Total funded depreciation from deposits in excess of accumulated depreciation on resident-related assets will must be considered as ordinary investments and the income therefrom will must be used to offset interest expense.

4. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these the assets, and for other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for loans to the general fund are made on a last-in, first-out basis.
5. The facility may borrow from funded depreciation to obtain working capital for normal operating expenses used for resident care. In addition, the facility may borrow from funded depreciation accounts of related nursing and hospital facilities if the funded depreciation accounts of the related facilities are maintained in accordance with HCFA-15, section 226. The interest incurred by the general fund is allowable provided the loans are necessary and proper, and provided the funds withdrawn have met the six-month funding requirement. If the funds withdrawn do not meet the six-month funding requirement, interest paid on the loan is not an allowable cost. Funds loaned under the provisions of this subsection are available funded depreciation. Costs incurred to secure lines of credit to ensure availability are not allowable costs.
6. Interest paid by the general fund to the funded depreciation account is not an allowable cost if the facility borrows the funds to acquire ~~depreciable~~ capital assets. The facility is expected to use funded depreciation for that purpose.
7. Deposits of funds into the funded depreciation account must be first applied to reduce loans outstanding from the funded depreciation account to the general fund. Until such loans, including related-party loans, are repaid in full, funds deposited in the funded depreciation account ~~will~~ must be considered as repayments on the loans and any subsequent interest expense of the general fund to the extent of the repaid loans is not allowable.
8. Available funded depreciation must be withdrawn and used before resorting to borrowing for the acquisition of ~~depreciable~~ capital assets or other capital purposes. Because it is frequently difficult to time a bond offering or other borrowing to coincide with the exhaustion of available funded depreciation, it is sufficient if available funded depreciation is contractually committed to and expended during the course of construction.
9. Funds are considered available unless committed, by virtue of contractual arrangements, to the acquisition of ~~depreciable~~ capital assets used to render resident care, or to other capital purposes. Borrowing for a purpose intended by funded depreciation is unnecessary to the extent funded depreciation is available. Thus, interest expense for borrowing up to the amount of available funded depreciation is not an allowable cost.

10. When funded depreciation is used by the facility for other than the acquisition of depreciable capital assets, other capital purposes related to resident care, or loans to the general fund for current operating costs, the income earned on these funds while on deposit in the funded account will must be adjusted in the report year the withdrawal was made. The adjustment will must include all offsets not made in prior reporting periods for earnings applicable to these funds.
11. Borrowing for a purpose for which funded depreciation account funds may have been used makes the borrowing unnecessary to the extent that funded depreciation account funds were available at the time of the borrowing. Available funds in the funded depreciation account, to the extent of the unnecessary borrowing, are tainted funds. Interest expense incurred on borrowing for a capital purpose is not an allowable cost to the extent that funded depreciation account funds were available at the time of the borrowing.
12. A provider may remove the unnecessary characterization of borrowing, and thereby cure tainted funded depreciation, by using the tainted funds for a proper purpose described in subsection 1. Any funded depreciation that existed at the time of the unnecessary borrowing and is not classified as tainted must be used before any of the tainted funds.
13. When only a portion of the borrowing is considered unnecessary under subsection 11, subsequent repayments of the borrowing from general funds must first be applied to the allowable portion of the borrowing and then, when all of the allowable borrowing is repaid, to the unallowable portion of the borrowing. When funds from the funded depreciation account are used for the repayment of the unnecessary borrowing, an equivalent amount of tainted funds is cured without regard to the provisions of subsections 11 and 12. Where general funds are used to pay for the unallowable borrowing after the necessary borrowing has been repaid, an equivalent amount of tainted funded depreciation is cured without regard to the provisions of subsections 11 and 12.

History: Effective January 1, 1990; amended effective November 1, 1992; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-05. Compensation.

1. Compensation on an annual basis for top management personnel will must be limited, prior to allocation, if any, to the highest market-driven compensation of an administrator employed by a freestanding facility during the report year. Compensation for top management personnel employed for less

than a year must be limited to an amount equal to the limitation divided by three hundred sixty-five times the number of calendar days the individual was employed.

2. Compensation includes:
 - a. Salary amounts---paid for managerial, administrative, professional, and other services.
 - b. Amounts paid by the facility for the personal benefits of the person, e.g., housing allowance, flat-rate automobile allowance.
 - c. The cost of assets and services which the person receives from the facility.
 - d. Deferred compensation (~~pension~~, pensions, and annuities).
 - e. Supplies and services for the personal use of the person.
 - f. The cost of a domestic or other employee who works in the home of the person.
 - g. Life and health insurance premiums paid for the person and medical services furnished at nursing facility expense.
3. Reasonable compensation for a person with a at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount normally required to be paid for the same services if provided by a nonrelated employee. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable compensation on an hourly basis may not exceed the amount determined to be the limitation in subsection 1, divided by two thousand eighty.
4. Costs otherwise nonallowable under this chapter may not be included as personal compensation.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; September 1, 1987; January 1, 1990; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-06.1. Home office costs.

1. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish central administration or other services such as including centralized accounting, purchasing, personnel, or management services. To the extent that the home office furnishes services related to resident care to a facility, the reasonable resident-related costs, not to exceed actual costs of such services, are includable in the facility's cost report and are includable as part of the facility's rate.
2. Where the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.
3. Home office costs incurred for expansion of a chain organization must be directly allocated to the appropriate component of the chain. The costs of abandoned plans are not allowable.
4. Central or home office costs representing services of consultants required by law in areas for social services, nursing, therapies, or activities and central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of nursing or therapies may be allocated to the appropriate cost category of a facility according to subdivisions a through e.
 - a. Only the salaries, ~~fringe~~ benefits, and payroll taxes employment benefits associated with the individual performing the service may be allocated. No other costs may be allocated.
 - b. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services in the facility.
 - c. The cost in subdivision a for each consultant ~~must~~ may not be allocated to more than one cost category in the facility. If more than one facility is served by a consultant, all facilities shall allocate the consultant's cost to the same operating category.
 - d. Top management personnel may not be considered consultants.

- e. The An allocation may not be made unless the consultant's full-time responsibilities must--be are to provide the services allocated under this section.

History: Effective January 1, 1990; amended effective November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-07. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider by a related organization may not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers The provider shall identify such the related organizations and costs in the cost report.
2. The relationship between a provider and a related organization at the time a transaction between the two parties occurs must govern the treatment of cost regardless of subsequent events that may change the relationship between the parties.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-08. Rental expense paid to a related organization. A provider may lease a facility from a related organization within the meaning of ratesetting principles. In such case, the rent paid to the lessor by the provider is not allowable as cost unless the rent paid is less than the allowable costs of ownership. The provider, however, if rent paid exceeds the allowable costs of ownership, the provider may include the allowable costs of ownership of the facility. These costs are property insurance, depreciation, interest on the mortgage, and real estate taxes. Other operating expenses of the related organization are not includable by the provider as an allowable cost of ownership, but may be included as allowable operating expenses subject to the provisions of section 75-02-06-07.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-09. Taxes.

1. Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes identified as nonallowable costs in section 75-02-06-12.1.
2. Whenever exemptions to taxes are legally available the provider is to take advantage of them. If the provider does not take advantage of available exemptions, the expense incurred for such taxes is not an allowable cost.
3. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-10. Bad debts.

1. Bad debts for charges incurred on or after January 1, 1990, and fees paid for the collection of those bad debts, are allowable, provided all the requirements of this subsection are met:
 - a. The bad debt ~~results~~ must result from nonpayment of the payment rate or part of the payment rate.
 - b. The facility ~~documents~~ shall document that reasonable collection efforts have been made, the debt was uncollectible, and there is no likelihood of future recovery. Reasonable collection efforts include pursuing all avenues of collection available to the facility, including liens and judgments. In instances where the bad debt is owed by a person determined to have made a disqualifying transfer or assignment of property for the purpose of securing eligibility for medical assistance benefits, the facility shall document that it has made all reasonable efforts to secure payment from the transferee, including the bringing of an action for a transfer in fraud of creditors.
 - c. The collection fee ~~does~~ may not exceed the amount of the bad debt.
 - d. The bad debt ~~does~~ may not result from the facility's failure to comply with federal and state laws, state rules, and federal regulations.

- e. The bad debt ~~does~~ may not result from nonpayment of a private room rate in excess of the established rate ~~or~~, charges for special services not included in the established rate, or charges for bed hold days not billable to the medical assistance program under subsections 3, 4, and 5 of section 75-02-06-14.
 - f. The facility has ~~shall~~ shall have an aggressive policy of avoiding bad debt expense ~~which--will--limit~~ that limits potential bad debts. The facility shall document that the facility has taken action to limit bad debts for individuals who refuse to make payment. ~~In no instances may allowable~~
2. Allowable bad debt expense may not exceed one hundred twenty days of resident care for any one individual.
- 2- 3. Finance charges on bad debts allowed in subsection allowable under subsections 1 and 2 are allowable only if the finance charges have been offset as interest income in prior years.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-11. Startup costs. In the first stages of operation, a new facility incurs certain costs in developing its ability to care for residents prior to admission. Staff is obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to resident care during that period because there are no residents receiving services. ~~Such~~ These costs are commonly referred to as startup costs. Actual allowable startup costs may be considered as deferred charges and allocated over a number of periods which benefit from such costs. Where a facility has properly capitalized startup costs as a deferred charge, the startup costs will be recognized as allowable costs amortized over sixty consecutive months starting with the month in which the first resident is admitted.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12. Offsets to cost.

- 1. Several items of income ~~will~~ must be considered as offsets against various costs as recorded in the books of the facility. ~~Any income, whether in cash or~~ Income in any ~~other~~ form, received by the facility, with the exception of ~~the~~ an established rate, income from payments made under the Job

Training Partnership Act, and income from charges for private rooms or special services, ~~will~~ or bed holds must be offset up to the total of the appropriate actual allowable cost. If actual costs are not identifiable, income ~~will~~ must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. ~~These--sources~~ Sources of income include, ~~but-are-not-limited-to:~~

- a. "Activities income". Income from the activities department and the gift shop ~~will~~ must be offset to activity costs.
- b. "Dietary income". Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks ~~will~~ must be offset to dietary and food costs.
- c. "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as residents ~~will~~ must be offset to nursing supplies. Medicare part B income for drugs and supplies must be offset to nursing supplies.
- d. "Insurance recoveries income". Any amount received from insurance for a loss incurred ~~shall~~ must be offset against the appropriate cost category, regardless of when or if the cost was is incurred, if the facility did not adjust the basis for depreciable assets.
- e. "Interest or investment income". Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, ~~shall~~ must be offset to interest expense.
- f. "Laundry income". All amounts received for laundry services rendered to or on behalf of employees, doctors, or others ~~will~~ must be offset to laundry costs.
- g. "Private duty nurse income". Income received for the providing of a private duty nurse ~~will~~ must be offset to nursing salaries.
- h. "Rentals of facility space income". Income received from outside sources for the use of facility space and equipment ~~will~~ must be offset to property costs.
- i. "Telegraph and telephone income". Income received from residents, guests, or employees ~~will~~ must be offset to administration costs. Income from emergency answering services need not be offset.

- j. "Therapy income". ~~Income~~ Except for income from medicare part A, income from all therapy services will must be offset to therapy costs.---This---includes---income---for nonresident-related-therapy-services-not-separately-costed out---and---all---medicare-part-A-and-B-therapy-income unless the provider has elected to make therapy costs nonallowable under subsection 40 of section 75-02-06-12.1.
- k. "Vending income". Income from the sale of beverages, candy, or other items will must be offset to the cost of the vending items or, if the cost is not identified, all vending income will must be offset to ~~administrative-costs~~ the cost category where vending costs are recorded.
- l. "Bad debt recovery". Income for bad debts ~~which have been~~ previously claimed shall must be offset to administrative costs in total in the year of recovery.
- m. "Other cost-related income". Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, e.g., supplies or equipment, must be offset, in total, to the cost category where the item was expensed or depreciated.
2. Payments to a provider by its vendor will must ordinarily be treated as purchase discounts, allowances, refunds, or rebates ~~in-determining-allowable-costs,~~ even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. ~~However,--such-payments-may~~ Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples include,--but-are--not--limited--to,--when:--(1)--they--are of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited;--or--(2) or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider must shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.
3. Where an owner, agent, or ~~other--official~~ employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or official's employee's own personal use as a result of the provider's purchases from the vendor, the value of such the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
4. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the

provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.

5. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; June 1, 1988; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12.1. Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of resident care facilities and activities. These costs are not allowed in computing the rates. Nonallowable costs. Nonallowable costs include:

1. Political contributions;
2. Salaries or expenses of a lobbyist;
3. Advertising designed to encourage potential residents to select a particular facility;
4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;
5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-06-02.5;
6. Costs incurred for activities directly related to influencing employees with respect to unionization;
7. Cost of memberships in sports, health, fraternal, or social clubs or organizations, such as elks, country clubs, knights of columbus;
8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies (including all dues unless an allocation of dues to such costs is provided);
9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, or kiwanis, in excess of one thousand five hundred dollars per cost reporting period;

10. Home office costs which would not otherwise be allowable if incurred directly by the facility;
11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors which that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission ~~proposes~~ purposes, stock transfer agent fees, and stockholder and investment analysis;
12. Corporate costs not related to resident care, including reorganization costs, costs associated with acquisition of capital stock, and costs relating to the issuance and sale of capital stock or other securities;
13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;
14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
15. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to resident care;
16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility;
17. Costs incurred by the provider's subcontractors, or by the lessor of property which that the provider leases, ~~and--which become~~ that are an element in the subcontractor's or lessor's charge to the provider, if such the costs would not have been allowable had they the costs been incurred by a provider directly furnishing the subcontracted services, or owning the leased property; ~~provided, however, that no provider~~ except no facility shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction which was completed before July 18, 1984;
18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;
19. Depreciation expense for facility assets not related to resident care;

20. Nonnursing facility operations and associated administration costs;
21. Direct costs or any amount claimed to medicare for medicare utilization review costs;
22. All costs for services paid directly by the department to an outside provider, such as prescription drugs;
23. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:
 - a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;
 - b. Resident-care related vehicle travel costs do not exceed the a standard mileage rate established by the internal revenue service; and
 - c. The facility documents all costs associated with a vehicle not exclusively used by the facility;
24. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;
25. Additional compensation paid to ~~employees~~ an employee, who are ~~members~~ is a member of the board of directors, for service on the board;
26. Fees paid to ~~members~~ a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to ~~members~~ a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;
27. Travel costs associated with ~~meetings-of-boards~~ a board of directors ~~meeting~~ to the extent ~~such-meetings-are~~ the meeting is held in a location where the organization has no facility;
28. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion of the cost which relates to costs that ~~benefits~~ benefit all eligible employees;
29. Employment benefits associated with salary costs not includable in a rate set under this chapter.
30. Premiums for top management personnel life insurance policies, except that ~~such~~ the premiums shall ~~must~~ be allowed if the policy is included within a group policy provided for all employees, or if ~~such-a~~ the policy is required as a condition

of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;

- ~~30-~~ 31. Personal expenses of owners and employees, ~~such as~~ including vacations, ~~boats, airplanes, personal travel or vehicles,~~ and entertainment;
- ~~31-~~ 32. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;
- ~~32-~~ 33. The following taxes:
- a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
 - b. State or local income and excess profit taxes;
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes ~~in~~ on the issuance of bonds, property transfers, or issuance or transfer of stocks, ~~etc.~~; which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
 - d. Taxes ~~such as~~, including real estate and sales tax, for which exemptions are available to the provider;
 - e. Taxes on property not used in the provision of covered services;
 - f. Taxes, ~~such as~~ including sales taxes, levied against the residents and collected and remitted by the provider;
 - g. Self-employment (FICA) taxes applicable to persons including individual proprietors, partners, members of a joint venture, ~~etc.~~;
- ~~33-~~ 34. The unvested portion of a facility's accrual for sick or annual leave;
- ~~34-~~ 35. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds;
- ~~35-~~ 36. Hair care, other than routine hair care, furnished by the facility;
- ~~36-~~ 37. The cost of education unless:

- a. The education was provided by an accredited academic or technical educational facility;
 - b. The expenses were for materials, books, or tuition;
 - c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility, and is in that position; and
 - d. The facility claims the cost of the education at a rate ~~which~~ that does not exceed one dollar per hour of work performed by the employee in the position for which the employee received education at the facility's expense, provided ~~that~~ the amount claimed per employee may not exceed two thousand dollars per year, or an aggregate of eight thousand dollars, and in any event may not exceed the cost to the facility of the employee's education.
37. 38. Interest expense on the portion of operating loans equal to nonallowable costs incurred for the current and prior reporting periods;
39. Increased lease costs of a facility, unless:
- a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;
 - b. The increased costs related to the ownership are charged to the lessee; and
 - c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;
40. At the election of the provider, the direct and indirect costs of providing therapy services to nonnursing facility residents or medicare part B therapy services, including purchase of service fees and operating or property costs related to providing therapy services.

History: Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-14. Resident days.

- 1. A resident day is any day for which service is provided or for which payment is ordinarily sought for the available use of a bed. The amount of remuneration has no bearing on whether a day should be counted or not. ~~Examples of days that must be included are hospital days and therapeutic leave days.~~

Medical--assistance--hospital--days--in--excess---of---fifteen consecutive--days--not--billable--to--the--department--are--not resident--days. Medical--assistance--hospital--days--in--a--public institution;---i.e.;---the---state---hospital---or---veterans' administration--hospital;--which--are--not--billable--to--the department--by--the--nursing--facility;--are--not--resident--days.

2. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
 - a. Identification of the resident;
 - b. Entries for all days, and not just by exception;
 - c. Identification of type of day, i.e., hospital, in-house;
 - d. Identification of the resident's classification; and
 - e. Monthly totals by resident, by classifications for all residents, and by type of day.
3. Residents--admitted--to--the--facility--through--a--hospice--program will--be--identified--as--private-pay--residents--for--census--and billing--purposes. A maximum of fifteen days per occurrence may be allowed for payment by the medical assistance program for hospital leave. Hospital days in excess of fifteen consecutive days not billable to the medical assistance program are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
4. A maximum of eighteen therapeutic leave days per rate year may be allowed for payment by the medical assistance program. Therapeutic leave days in excess of eighteen per year are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
5. Institutional leave days are not billable to the department and are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
6. Residents admitted to the facility through a hospice program or electing hospice benefits while in a facility must be identified as hospice residents for census and billing purposes.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; November 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-16. Rate determinations.

1. ~~Each~~ For each cost category, the actual rate is calculated using ~~the~~ allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care cost category and resident days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsections 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.
2.
 - a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of ~~inflation--indices~~ the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents ~~will~~ must be included as part of the indirect care cost rate.
 - b. A facility ~~will~~ shall receive an operating margin of three percent based on the lesser of the actual direct care and other direct care rates, exclusive of ~~inflation indices~~ the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The three percent operating margin ~~will--then~~ must be added to the rate for the direct care and other direct care cost categories.
 - c. Notwithstanding the provisions of subdivisions a and b, for the last five months of the rate year beginning January 1, 1994, the limit rate used to determine the operating margin for the direct care cost category is thirty-one dollars and twenty-two cents, the limit rate used to determine the operating margin for the other direct care cost category is ten dollars and thirty-one cents, and the limit rate used to determine the incentive for the indirect care cost rate is twenty-three dollars and thirty-two cents.
3. Limitations.
 - a. The department shall accumulate and analyze statistics on costs incurred by ~~the--~~nursing facilities. These

~~statistics~~ Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. ~~These--limitations~~ Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. ~~It shall be the option of the~~ The department ~~to may~~ may implement the ceilings ~~so--mentioned~~ at any time based upon the information available and ~~under guidelines--required--within--the--regulations--of--title--XIX.~~

b. The department ~~will~~ shall review, on an ongoing basis, aggregate payments to ~~nursing~~ nursing facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to ~~nursing~~ nursing facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.

c. All facilities except those nongeriatric physically handicapped facilities described in North Dakota Century Code section 50-24.4-13 ~~will~~ must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, 1992. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.

(1) The limit rate for each of the cost categories ~~will~~ must be established as follows:

(a) Historical costs for the report year ended June 30, 1992, as adjusted, ~~will~~ must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories.

(b) For the first seven months of the rate year beginning January 1, 1994, the rates as established in subparagraph a of this paragraph ~~will~~ must be ranked from low to high for each cost category. The eightieth percentile ranking ~~will~~ must be determined for the direct care and other direct care cost categories, and the sixtieth percentile ranking ~~will~~ must be determined for the indirect care cost category. The rate of each facility so ranked ~~will~~ must be

multiplied times 1.05165 to establish the limit rate for each category.

(c) For the last five months of the rate year beginning January 1, 1994, the limit rate for the direct care cost category is thirty-two dollars and three cents, for the other direct care cost category is ten dollars and fifty-eight cents, and for the indirect care cost category is twenty-three dollars and ninety-three cents.

(d) For the rate year beginning January 1, 1995, the limit rates established in subparagraph c will must be multiplied times the consumer price index increase (as described in subsection 4) to establish the limit rate for each cost category.

(e) For rate years beginning on or after January 1, 1996, the limit rate set for each cost category for the previous rate year will must be multiplied times the consumer price index increase (as described in subsection 4), if any, to establish the limit rate for each cost category.

(2) A facility which has with an actual rate that exceeds the limit rate for a cost category will shall receive the limit rate.

d. The actual rate for indirect care costs and property costs will must be the lesser of the rate established using actual census or ninety percent of licensed bed capacity available for occupancy. A licensed bed is not available for occupancy if the licensed bed is part of a remodeling, renovation, or construction project for the period the bed is not in service.

4. Adjustment factors for direct care, other direct care, and indirect care costs. The department has determined that the appropriate economic change index, for purposes of subsection 5 of North Dakota Century Code section 50-24.4-10, is the increase, if any, in the consumer price index for urban wage earners and clerical workers (CPI-W), all items, United States city average. For purposes of this subsection, the "consumer price index increase" means the percentage (rounded to the nearest one-tenth of one percent) by which that consumer price index for the quarter ending September thirtieth of the year immediately preceding the rate year (as prepared by the United States department of labor) exceeds that index for the quarter ending September thirtieth of the second year preceding the rate year. The consumer price index

increase must be used to adjust direct care, other direct care, and indirect care costs.

5. Rate adjustments.

a. Desk audit rate.

- (1) The cost report will must be reviewed taking into consideration the prior year's adjustments. The facility will must be notified by telephone or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department will shall review the information and make appropriate adjustments.
- (2) The desk audit rate will must be effective January first of each rate year unless the department specifically identifies an alternative effective date and will must continue in effect until a final rate is established.
- (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b of this subsection, private-pay rates may not exceed the desk audit rate except as provided for in ~~North-Dakota--Century--Code~~ section ~~50-24-4-19~~ 75-02-06-22 or subdivision c.
- (4) The facility may request a reconsideration of the desk rate; ~~pursuant to subsection 2 of North-Dakota Century--Code--section--50-24-4-17;~~ for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification. No decision on the request for reconsideration will of the desk rate may be given made by the department for the desk rate unless, after the facility has been notified that the desk rate is the final rate, the facility asks the department to issue a decision on that request for reconsideration.
- (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.
- (6) The desk rate may be adjusted to reflect errors or omissions for the report year which that result in a change of at least five cents per day for the rate weight of one.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate will must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.
- (2) The final rate will must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least five cents per day for the rate weight of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c of this subsection.
- (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
- (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures will must be used:
 - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate and, not including subsequent revisions, resulting in a change of at least five cents per day for the rate weight of one will must result in a change to the final rate. The change will must be applied retroactively as provided for in this section.
 - (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, and--which not including subsequent revisions, that would have resulted in a change of at least five cents per day for the rate weight of one had they been included, will must be included as an adjustment in the report year that the adjustment, error, or omission was found.
 - (c) Adjustments resulting from an audit of home office costs, and--which that result in a change of at least five cents per day for the rate weight of one, will must be included as an

adjustment in the report year in which the costs were incurred.

c. Pending decision rates for private-pay residents.

- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.
- (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-paying residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.
- (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-paying resident from the date the facility charges a private-paying resident the pending decision rate.
- (4) If the pending decision rate paid by a private-paying resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully

administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.

- d. ~~Adjustment--of--the--total--payment--rate.~~ The final rate as established ~~will~~ must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-paying residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least twenty-five cents per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

- a. The rate as established shall must be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.
- b. The rate as established shall must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate ~~will~~ must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.
- c. If the established rate exceeds the rate charged to a private-pay resident, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund ~~will~~ must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision ~~will~~ also ~~apply~~ applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
- d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility ~~will--be~~ are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or

adjustments will may not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

- e. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year ~~which that~~ exceed the established rate will may be made unless specifically provided for in this section.

7. Partial year.

- a. For a facility changing ownership during the rate period, the rate established for the previous owner will must be retained. The rate for the next rate period following the change in ownership will must be established:

- (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
- (2) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rate established for the previous owner forward using the adjustment factors in subsection 4.

- b. For a new facility, the department will shall establish an interim rates rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate will must be calculated using projected property costs and ~~certificate of--need~~ projected census. The interim rate will must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rates-are rate is effective will must be used to establish a final rates,--which--will--be--limited--to--the lesser-of-the-interim-or-actual-rates rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 will must be made. A retroactive adjustment to the property rate will must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs will must be the greater of actual census ~~or--certificate--of--need,~~ projected census, or census imputed at ninety-five percent of licensed beds.

- (1) If the effective date of the interim ~~rates~~ rate is on or after March first and on or before June thirtieth, the interim ~~rates-will~~ rate must be effective for the remainder of that rate year and ~~will~~ must continue through June thirtieth of the subsequent rate year. The facility ~~must~~ shall file by March first an interim cost report for the period ending December thirty-first of the year in which the facility first provides services. The interim cost report ~~is-due~~ March-first-and is used to establish the actual ~~rates~~ rate effective July first of the subsequent rate year. The partial year ~~rates~~ rate established based on the interim cost report ~~will~~ must include applicable incentives, margins, phase-ins, and adjustment factors and ~~will~~ may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years ~~will~~ must be used to determine the final ~~rates~~ rate for the ~~period~~ periods that the interim ~~rates-were~~ rate was in effect.
- (2) If the effective date of the interim ~~rates~~ rate is on or after July first and on or before December thirty-first, the interim ~~rates-will~~ rate must remain in effect through the end of the subsequent rate year. The facility ~~must~~ shall file a cost report for the partial report year ending June thirtieth of the subsequent rate year. This cost report ~~will~~ must be used to establish the ~~rates~~ rate for the next subsequent rate year. The facility ~~must~~ shall file by March first an interim cost report for the period July first through December thirty-first of the subsequent rate year. The interim cost report ~~is-due~~ on--March--first--and is used, along with the report year cost report, to determine the final ~~rates~~ rate for the ~~period--that~~ periods the interim ~~rates-were~~ rate was in effect.
- (3) If the effective date of the interim rate is on or after January first and on or before February twenty-ninth, the interim ~~rates-will~~ rate must remain in effect through the end of the rate year in which the interim ~~rates-become~~ rate becomes effective. The facility ~~must~~ shall file a cost report for the period ending June thirtieth of the current rate year. This cost report ~~will~~ must be used to establish the ~~rates~~ rate for the subsequent rate year. The facility ~~must~~ shall file by March first an interim cost report for the period July first through December thirty-first of the current rate year. The interim cost report ~~is~~ due-on-March-first-and is used, along with the report year cost report, to determine the final ~~rates~~ rate

for the period that the interim rates were rate was in effect.

(4) The final rates rate for direct care, other direct care, and indirect care costs established under this subdivision will must be limited to the lesser of the limit rates rate for the current rate year or the actual rates rate.

c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rates rate established for direct care, other direct care, and indirect care, based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate will must be effective at the time the project is completed and placed into service. The property rate for the subsequent rate year will must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates will must be adjusted using this methodology, except imputed census will must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

d. For a facility with a significant capacity increase, the rates rate established for direct care, other direct care, and indirect care, based on the last report year, must be applied to all licensed beds. An interim property rate will must be established based on projected property costs and projected census. The interim property rate will must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the department of health and ~~consolidated laboratories~~ through the end of the rate year. The facility ~~must~~ shall file by March first an interim property cost report following the rate year. The interim cost report ~~is due March first and~~ is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year will must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on

property costs actually incurred during the report year; and ~~will~~ may not be subject to retroactive costs settle-up. Subsequent property rates ~~will~~ must be adjusted using this methodology, except imputed census ~~will~~ must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

- e. For a facility ~~which~~ with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the rates established rate based on the report year ~~will~~ must be applied throughout the rate year for all licensed beds.
- f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.

8. One-time adjustments.

a. Adjustments to meet certification standards.

- (1) The department may provide for an increase in the established rate for additional costs ~~that~~ are incurred to meet certification standards. The survey conducted by the state department of health and ~~consolidated~~ laboratories must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that ~~will~~ must be increased to correct the deficiencies cited in the survey process.
- (2) The facility ~~must~~ shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health and ~~consolidated~~ laboratories. The request must:
 - (a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health and ~~consolidated~~ laboratories' health's certification survey;
 - (b) Identify the number of new staff or additional staff hours and the associated costs ~~that~~ will be required to meet the certification standards; and

(c) Provide a detailed list of any other costs necessary to meet survey standards.

(3) The department ~~will~~ shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate ~~will~~ must be adjusted to an amount not to exceed the limit rate.

(4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines ~~that~~ the funds were not ~~utilized~~ used for the intended purpose, an adjustment ~~will~~ must be made in accordance with subsection 5.

b. Adjustments for unforeseeable expenses.

(1) The department may provide for an increase in the established rate for additional costs ~~that--are~~ incurred to meet major unforeseeable expenses. Such The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.

(2) ~~The--facility--must~~ Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information to--the-medical-services-division-within sixty-days-after-first--incurring--the--unforeseeable expense:

(a) An explanation as to why the facility believes the expense was unforeseeable;

(b) An explanation as to why the ~~facility's~~ management facility believes the expense was beyond the managerial control of the facility; and

(c) A detailed breakdown of the unforeseeable expenses by expense line item.

(3) The department ~~will~~ shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on their background and knowledge of nursing care industry and business trends.

- (4) The department ~~will~~ shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate ~~will~~ must be adjusted upward not to exceed the limit rate.
- (5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not ~~utilized~~ used for the intended purpose, an adjustment ~~will~~ must be made in accordance with subsection 5.

c. Adjustment to historical operating costs.

- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 of this subdivision and when it has been determined ~~that~~ the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.
- (2) The following conditions must be met before a facility can receive the adjustment:
 - (a) The facility shall document ~~that~~, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
 - (b) The facility shall document ~~that~~ all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and
 - (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, ~~which-must-include~~ including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.
- (3) The adjustment ~~will~~ must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase ~~will~~ must be divided by standardized resident days and the amount calculated ~~will~~ must be added to the ~~actual~~ rate. This rate

~~will then be~~ is subject to any rate limitations that may apply.

- (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment ~~will~~ must be adjusted in accordance with the methodologies set forth in subsection 5.
- (5) If the actual cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement ~~will~~ may be made.

9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds five cents per day for the rate weight of one.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-17. Classifications.

1. ~~Any--resident~~ A facility shall complete a resident classification review for any resident occupying a licensed facility bed, except a respite care residents,--occupying-a licensed--nursing--facility--bed---must---have---a---resident classification--review, hospice inpatient respite care, or hospice general care resident.
2. ~~Residents-will~~ A resident must be classified in one of sixteen classes based on a resident classification review. If a resident classification review is not performed in accordance with subsection 3, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, the resident must be classified as special care B until the next required review is performed in accordance with subsection 3 for purposes of determining standardized resident days. A resident, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, who has not been classified must be billed at the reduced physical functioning A established rate. A respite care, hospice inpatient respite care, or hospice general inpatient care resident who is not classified ~~will~~ must be given a weight of one and five-tenths when determining standardized resident days.

3. Reviews must be conducted as follows:
 - a. The facility ~~will~~ shall review the resident within the first seven days after any admission or return from an acute hospital stay.
 - b. The facility ~~will~~ shall review the resident after twenty-five days, but within thirty days after any admission or return from an acute hospital stay.
 - c. The facility ~~will~~ shall review each resident twice each year. The reviews ~~will~~ must be conducted six months apart and ~~will~~ must be done according to a schedule established by the department for each report year.
 - d. The seven-day review ~~will~~ must take precedence over the thirty-day review and the biannual review, and the thirty-day review ~~will~~ must take precedence over the biannual review. For example, if resident A was admitted on June first and the biannual review was in June, resident A ~~would~~ may not be included in the June biannual review. On the other hand, if the biannual review was the second full week in July, resident A ~~would~~ must be included, even though ~~he-or-she~~ resident A had just had a thirty-day facility review on June thirtieth.
4. The resident classification review ~~is-to~~ must be completed based on the following criteria:
 - a. Assign point values for a resident's activities of daily living in the areas of:
 - (1) Eating - the process of getting food by any means into the body.
 - (2) Transfer - the process of moving between positions.
 - (3) Toileting - all processes involved with toileting.
 - b. Determine each resident's clinical group using the following hierarchy of criteria:
 - (1) Heavy rehabilitation - to qualify for heavy rehabilitation, a resident must require and receive restorative physical or occupational therapy five times per week for a minimum of two and one-half hours per week or requires and is receiving intensive bowel or bladder retraining. Residents receiving therapy separately reimbursable by a third party ~~cannot~~ may not be included in this group.
 - (2) Special care - to qualify for special care, a resident must not qualify as heavy rehabilitation and

must have an activity of daily living score of five or more and one or more of the following conditions or treatments:

- (a) Stage 4 decubitus.
 - (b) Comatose.
 - (c) Suctioning.
 - (d) Nasal gastric feeding.
 - (e) Parenteral feeding.
 - (f) Quadriplegia.
 - (g) Multiple sclerosis.
 - (h) Ventilator dependent.
- (3) Clinically complex - to qualify for clinically complex, a resident must not qualify as special care and must have one or more conditions or treatments characteristic of special care with an activity of daily living score of three or four; or must not qualify for special care and must have one or more of the following conditions or treatments:
- (a) Dehydration.
 - (b) Internal bleeding.
 - (c) Stasis ulcer.
 - (d) Terminally ill.
 - (e) Daily oxygen.
 - (f) Wound care.
 - (g) Chemotherapy.
 - (h) Transfusion.
 - (i) Dialysis.
 - (j) Daily respiratory care.
 - (k) Cerebral palsy.
 - (l) Urinary tract infection.
 - (m) Hemiplegia.

- (4) Special behavior - to qualify for special behavior, a resident must not qualify for clinically complex and must have one of the following conditions:
 - (a) Verbal disruption - level 4+.
 - (b) Physical aggression - level 4+.
 - (c) Disruptive, infantile, or socially inappropriate - level 4+.
 - (d) Hallucinations - level 2+.
 - (5) Reduced physical functioning - a resident who does not qualify for special behavior will must be classified as reduced physical functioning. For a resident who has a level 4+ rating for general behavior, one point will must be added to the activity of daily living score assigned in subdivision a of subsection 4.
5. Based on the resident classification review, each resident will must be classified into a case-mix class with a corresponding case-mix weight as follows:
- a. Heavy rehabilitation A; case-mix weight: 1.91.
 - b. Heavy rehabilitation B; case-mix weight: 2.24.
 - c. Special care A; case-mix weight: 2.45.
 - d. Special care B; case-mix weight: 2.67.
 - e. Clinically complex A; case-mix weight: 1.17.
 - f. Clinically complex B; case-mix weight: 1.81.
 - g. Clinically complex C; case-mix weight: 2.12.
 - h. Clinically complex D; case-mix weight: 2.63.
 - i. Special behavior A; case-mix weight: 1.16.
 - j. Special behavior B; case-mix weight: 1.48.
 - k. Special behavior C; case-mix weight: 1.90.
 - l. Reduced physical functioning A; case-mix weight: 1.00.
 - m. Reduced physical functioning B; case-mix weight: 1.29.
 - n. Reduced physical functioning C; case-mix weight: 1.48.

- o. Reduced physical functioning D; case-mix weight: 1.72.
 - p. Reduced physical functioning E; case-mix weight: 2.21.
6. The classification is effective the date the review is completed in all cases except for the admission review. The admission review is effective the date of admission.

History: Effective September 1, 1987; amended effective January 1, 1990; November 22, 1993; January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-20. Resident personal funds.

1. A facility may not require residents a resident to deposit personal funds with the facility.
2. Upon written authorization of a resident or the resident's legal representative, a facility ~~must~~ shall hold, safeguard, manage, and account for the resident's personal funds deposited with the facility.
3. The A facility may not charge the resident for holding, safeguarding, managing, or accounting for the resident's personal funds. Any related administrative costs, including bank charges, must be included in the daily rate. The A facility may not impose a charge against a resident's personal funds for any item or service ~~which is~~ included in the daily rate.
4. The A facility may maintain a resident's personal funds that do not exceed fifty dollars in a noninterest-bearing account. The A facility ~~must~~ shall deposit any resident's personal funds in excess of fifty dollars in an interest-bearing account that is separate from any of the facility's accounts and that credits all interest earned on the resident's account to ~~such~~ the account.
5. The A facility ~~must~~ shall maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds. An individual financial record must be available on request and a written accounting of transactions must be provided quarterly to the resident or the resident's legal representative.
6. Resident A resident's personal funds may not be commingled with any facility funds or with funds of any person other than another resident.

7. Upon death of a resident, the facility ~~must~~ shall promptly convey the resident's personal funds, and a final accounting of those funds, to the individual administering the resident's estate. For purposes of this section, an "individual administering the resident's estate" includes a person lawfully empowered to facilitate the transfer of small estates without the use of a personal representative.
8. The A facility ~~must~~ shall purchase a surety bond or provide self-insurance to ~~assure~~ ensure the security of all resident personal funds deposited with the facility.

History: Effective May 1, 1992; amended effective January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-21. Specialized rates for extraordinary medical care.

1. A specialized rate for an individual with extraordinary medical needs may be established if the criteria in both subdivisions a and b are met.
 - a. (1) The individual requires specialized therapies that are:
 - (a) Restorative in nature (restorative means the individual has the ability to improve);
 - (b) Medically necessary and provided in the facility;
 - (c) Of at least two different types; and
 - (d) Provided in excess of fifteen hours per week;
 - (2) The individual requires extensive pulmonary care resulting from:
 - (a) Suctioning and related tracheostomy care performed by a licensed nurse or therapist in excess of three and one-half hours in a twenty-four-hour period; or
 - (b) A drug-resistant respiratory infection;
 - (3) The individual requires total parenteral nutrition (TPN) and:
 - (a) The individual is not eligible for or has been denied medicare part A or B benefits; and

- (b) The individual requires total parenteral nutrition based on medical necessity for a minimum of three months; or
- (4) The individual requires the use of a ventilator and:
 - (a) Is dependent on the ventilator a minimum of six hours per day;
 - (b) Requires direct care by a licensed nurse, nurse aide, or therapist on a daily average of nine hours per day;
 - (c) Is physiologically stable; and
 - (d) Attempts to wean the individual from the ventilator have occurred during the acute hospital stay.
- b. Costs to provide direct care to the individual must exceed two and one-half times the actual direct care rate, adjusted for inflation, prior to limitations, for the individual's resident classification. Costs which that may be included in determining if the cost factor is exceeded include salaries and fringe benefits of all direct care staff, nursing supplies, drugs, dietary supplements, and specialized equipment costs.
- 2. A specialized rate ~~will~~ must be calculated for an individual who meets the criteria by subtracting the actual cost per day for direct care, prior to limitations, for the individual's classification from the total cost per day for the individual.
- 3. A one-time startup cost of one thousand dollars must be included in the initial specialized rate for the first thirty days after the effective date of the specialized rate.
- 4. All income received for a specialized rate must be offset proportionately to the affected cost categories.
- ~~4-~~ 5. The facility ~~must~~ shall report costs on a monthly basis for the first three full months after admission and on a quarterly basis thereafter. The specialized rates ~~will~~ must be adjusted to actual on a prospective basis based on the report submissions.
- ~~5-~~ 6. The specialized rate ~~will~~ must be paid in addition to the rate established for the individual's resident classification.

History: Effective November 22, 1993; amended effective January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4-19.2

75-02-06-22. Participation requirement. A facility must comply with the following provisions in order to be eligible to receive medical assistance payments.

1. A facility may not charge private-pay residents rates that exceed those rates approved by the department for medical assistance recipients, except that:
 - a. A facility may charge a higher rate for a private room.
 - b. A facility may charge for special services not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services. Special services must be available to all residents and residents must be free to select or decline the special services. Special services may not include services provided by the facility in order to comply with licensure or certification standards which, if not provided, would result in a deficiency or violation by the facility. Services beyond those required to comply with licensure or certification standards may not be charged separately as special services if the services were included as allowable costs used to establish the current established rate. Special services may include cable television, telephones, long-distance calls, nonroutine hair care such as permanents requested by a resident, and the additional cost of brand name supplies requested by a resident and not ordinarily stocked. A facility shall inform the resident or a person acting on behalf of the resident that a charge may be made and the amount of the charge at the time a request for the special services is made.
 - c. A facility may charge to hold a bed for a period in excess of the periods covered by subsections 3, 4, and 5 of section 75-02-06-14 if:
 - (1) The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge;
 - (2) For a medical assistance resident, the payment comes from sources other than from the resident's monthly income; and
 - (3) All residents are charged the same amount.
 - d. A facility may charge for medicare part A and part B coinsurance and deductibles.
2. A facility may not require, as a condition of admission, any applicant to pay a fee or a deposit, loan any money to the

- facility, or promise to leave all or part of the applicant's estate to the facility.
3. A facility may not require any resident to use a vendor of health care services who is a licensed physician or pharmacist chosen by the facility.
 4. A facility may not provide differential treatment on the basis of status with regard to public assistance.
 5. A facility may not discriminate in admission, services offered, or room assignment on the basis of status with regard to medical assistance. The collection and use by a facility of financial information of any applicant pursuant to a preadmission screening program does not raise an inference that the facility is using that information for any purpose prohibited by this chapter. Admission discrimination includes:
 - a. Basing admission decisions upon an assurance by the applicant to the facility, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek medical assistance for payment of facility care costs; or
 - b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.
 6. A facility may not require any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of the fee to the facility except as payment for the fair market value of renting or leasing space or equipment of the facility or purchasing support services, if those agreements are disclosed to the department.
 7. A facility may not refuse, for more than twenty-four hours, to accept a resident returning to the same bed or an available bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.
 8. A facility may not violate any rights of a health care facility resident as set forth in North Dakota Century Code section 50-10.2-02.
 9. Any facility certified as a nursing facility shall participate in medicare part A and part B with respect to at least thirty percent of the beds in the facility.
 10. If medicare covered services are provided to a resident who is simultaneously eligible for medical assistance and medicare, the facility shall bill for medicare part A and part B before billing medical assistance. The department may be billed only

- for charges not payable by medicare. Medicare part B covered services are not included in the daily rate.
11. A facility shall file on behalf of each resident or assist each resident in filing requests for any third-party benefits to which the resident may be entitled.
 12. A facility shall be certified to participate in the medical assistance program and have a provider agreement with the department.
 13. If a facility does not comply with the provisions of this section, the department may continue, if extreme hardship to the residents would otherwise result, to make medical assistance payments to the facility for a period not to exceed one hundred eighty days from the date of mailing a formal notice. In these cases, the department shall issue an order requiring the facility to correct the violation. If the violation is not corrected within the twenty-day period, the department may reduce the payment rate to the facility by up to twenty percent. The amount of the payment rate reduction must be related to the severity of the violation, and must remain in effect until the violation is corrected. The facility may seek reconsideration of or appeal the department's action as provided for in section 75-02-06-25.
 14. A facility may charge a higher rate for a private room used by a medical assistance resident if:
 - a. The private room is not medically necessary;
 - b. The resident, or a person acting on behalf of the resident, has requested the private room and the facility informs the person making the request, at the time of the request, of the amount of the payment and that the payment must come from sources other than a resident's monthly income; and
 - c. The payment does not exceed the amount charged to private-pay residents.
 15. A facility may not accept any payment to hold a bed prior to the admission of a resident.
 16. A facility shall readmit a resident whose leave exceeds the facility's bed hold period upon the first availability of a bed in a semiprivate room if the resident:
 - a. Requires the services provided by the facility; and

b. Is eligible for medical assistance.

History: Effective January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-23. Violation of chapter subjects facility to action. A facility that charges a private-pay resident a rate in violation of this chapter is subject to action for civil damages. The damages awarded may include three times the payments that result from the violation, together with costs and disbursements, including reasonable attorney's fees or their equivalent.

History: Effective January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-24. Exclusions.

1. A facility that exclusively provides residential services for the nongeriatric physically handicapped shall not be included in the calculation of the rate limitations and its rate must not be limited by such limitations. The facility rate must be established using the actual allowable historical costs adjusted by the indices under subsection 4 of section 75-02-06-16. Actual allowable historical costs must be determined using the applicable sections of the policies and procedures.
2. A facility may establish a rate for respite care, hospice inpatient respite care, or hospice general inpatient care services.

History: Effective January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-25. Notification of rates.

1. The department shall notify each facility of the desk audit rate on or before November twenty-second of the year preceding the rate year, except a facility that has requested and received a cost reporting deadline extension of fifteen days or less shall be notified on or before November thirtieth of the year preceding the rate year, and a facility that has requested and received a cost reporting deadline extension in excess of fifteen days shall be notified on or before December fifteenth of the year preceding the rate year.

2. The facility shall provide to all private-pay residents a thirty-day written notification of any increase in the rates for each classification. An increase in rates is not effective unless the facility has notified private-pay residents that the rate increase is effective by the first day of the second month following the date of notification by the department. If the facility does not notify private-pay residents by the first day of the first month following notification by the department, the established rate in effect at the time of notification by the department must remain in effect until the date the rate is payable by private-pay residents. No retroactive adjustment may be made to an established rate remains in effect because the facility did not promptly notify private-pay residents unless the adjustment would result in a decrease of at least five cents per day for the rate weight of one. A facility may make a rate change without giving a thirty-day written notice when the purpose of the rate change is to reflect a necessary change in the case-mix classification of a resident.
3. If the department fails to notify the facility of the desk rate, as provided in subsection 1, the time required for giving written notice, as provided for in subsection 2, must be decreased by the number of days by which the department was late in setting the rate.

History: Effective January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-26. Reconsiderations and appeals.

1. Reconsiderations.

- a. Any requests for reconsideration of the final rate must be filed with the department's medical services division within thirty days of the date of the rate notification.
- b. The department's medical services division shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

2. Appeals. A provider dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. An appeal may be perfected by mailing or delivering, on or before five p.m. on the thirty-first day after the date of mailing of the determination of the medical services division made with respect to a request for reconsideration, the information described in subdivisions a through e to the department, at the address the department designates. An appeal under this

section is perfected only if accompanied by written documents including:

- a. A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration;
- b. A statement of each disputed item and the reason or basis for the dispute;
- c. A computation and the dollar amount that reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
- d. The authority in statute or rule upon which the appealing party relies for each disputed item; and
- e. The name, address, and telephone number of the person to whom all notices regarding the appeal may be sent.

History: Effective January 1, 1996.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

CHAPTER 75-02-07

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-07, Provider Reimbursement - Basic Care Facilities.

A public hearing was conducted on August 3, 1995, in Bismarck, concerning proposed amendments to North Dakota Administrative Code Chapter 75-02-07, Provider Reimbursement - Basic Care Facilities, specifically amending section 75-02-07-17, Ratesetting.

The rules set out a procedure for implementing rate limits for expanded and new basic care facilities in the event appropriations are projected to be insufficient to meet the cost of benefits by expanded and new basic care facilities.

75-02-07-17. Ratesetting.

1. The department shall establish reasonable rates for facilities for the care and maintenance of individuals dependent in whole or in part upon ~~state--or--county~~ supplementation of ~~supplemental-security income benefits~~ provided under North Dakota Century Code chapter 50-24.5.
2. The department shall annually determine the allowable costs and shall adjust those costs to reflect changes projected in operational and labor costs for the year, beginning on July first and ending on June thirtieth of the following year. The rate thereby established must be called the audit rate.
3. The department shall rank all licensed beds, in facilities for which an audit rate is established, by the respective audit rate set for the bed, and determine the position in the ranking below which lie eighty percent of the ranked beds. The reasonable rate established for each facility must be the lesser of the facility's audit rate or the audit rate which has been established for the facility in which the bed thus determined is located. The reasonable rate must be effective from July first through June thirtieth of the following year.
4. ~~A county-social-service-board-shall-determine-the~~ payable rate must be determined for any resident whose care is, in whole or in part, paid ~~for-by-that-county-social-service-board~~ through North Dakota Century Code chapter 50-24.5. The payable rate ~~shall~~ must be an amount equal to forty-five dollars plus the least of:
 - a. The reasonable rate;

- b. The rate charged by the facility to residents not dependent upon state--or--county supplementation of supplemental-security income benefits provided under North Dakota Century Code chapter 50-24.5; or
 - c. A rate voluntarily agreed to by the facility; or
 - d. A reduced rate set under subsection 5.
5. ~~In--the--event--a--county--social--service--board--establishes--a--payable--rate--less--than--that--required--by--subsection--4;--any--county--social--service--board--expenditures--made--pursuant--to--that--rate--will--nonetheless--be--considered--by--the--department--in--determining--that--county--social--service--board's--expenditures--for--poor--relief--pursuant--to--North--Dakota--Century--Code--section--50-01-09.2.~~

NOTICE

~~5.--In--the--event--a--county--social--service--board--establishes--a--payable--rate--less--than--that--required--by--subsection--4;--any--county--social--service--board--expenditures--made--pursuant--to--that--rate--will--not--be--considered--by--the--department--in--determining--that--county--social--service--board's--expenditures--for--poor--relief--pursuant--to--North--Dakota--Century--Code--section--50-01-09.2.---The--amendment--made--under--this--subsection--becomes--effective--with--respect--to--rates--paid--for--services--furnished--on--and--after--July--1;--1991.~~

- a. If at any time the total number of licensed basic care beds in North Dakota exceeds one thousand three hundred eighty-two, before the beginning of each quarter beginning thereafter, the department shall review the sufficiency of appropriations provided to pay the estimated cost of supplements. If the appropriations appear insufficient, the department shall determine reduced rates for all facilities with substantial capacity increases and for all new facilities.
- b. The reduced rate for each facility subject to a reduced rate is determined by:
 - (1) Establishing the total appropriation available for supplements during that reduced rate quarter;
 - (2) Projecting the number of beds, in all facilities with substantial capacity increases and all new facilities, that will likely be occupied by persons eligible for a supplement during the reduced rate quarter;

- (3) Projecting expenditures for supplements, for that reduced rate quarter, in all facilities not subject to reduced rates;
 - (4) Projecting expenditures for supplements, during a reduced rate quarter, that would be made in all facilities with substantial capacity increases and in all new facilities, if those facilities were not subject to limits;
 - (5) Subtracting the amount projected under paragraph 3 from the amount determined under paragraph 1;
 - (6) Subtracting the amount determined under paragraph 5 from the amount projected under paragraph 4;
 - (7) Dividing the amount determined under paragraph 6 by the number projected under paragraph 2; and
 - (8) Reducing the reasonable rate set for that facility by the amount determined under paragraph 7.
- c. A facility is not subject to reduced rates if it is not a new facility or if it has not been subject to a substantial capacity increase. All new facilities and all facilities subject to a substantial capacity increase are subject to reduced rates.
- d. A reduced rate is effective during the reduced rate quarter for which it is established.
- e. A facility subject to a reduced rate must be informed of the reduced rate no later than the usual date supplement payment is made to the facility for services furnished during the first month of the reduced rate quarter.
- f. For purposes of this subsection:
- (1) "New facility" means a facility that was not a licensed facility on or before July 1, 1995.
 - (2) "Quarter" means one of the four periods occurring in each calendar year, beginning January first and ending March thirtieth, beginning April first and ending June thirtieth, beginning July first and ending September thirtieth, or beginning October first and ending December thirty-first.
 - (3) "Substantial capacity increase" means a capacity increase to a licensed capacity six or more licensed beds greater than that facility's licensed capacity on July 1, 1995, or a capacity increase equal to or

greater than one and one-tenth times that facility's licensed capacity on July 1, 1995, whichever is less.

(4) "Supplement" means payments provided or the provision of payments under subsection 3 of North Dakota Century Code section 50-24.5-02.

6. The payable rate shall must include a forty-five dollar per month clothing and personal needs allowance which must be reserved for each individual. Facilities shall ensure that this monthly clothing and personal needs allowance is reserved for its intended purpose.
7. Partial year.
 - a. For facilities changing ownership during the rate period, the rate established for the previous owner will must be retained.
 - b. For existing facilities adding beds, the rate for the new beds will must be the same as for the other similarly licensed beds in the facility.
 - c. New facilities will shall submit, for departmental approval, a proposed budget for operations for the period, at least three months but not more than fifteen months in duration, which ends on June thirtieth. The rate established based upon the approved budget shall must be treated as a final audit rate, except as provided in subsection 5, and shall must continue in effect until the beginning of the rate period next following after the end of the report period which coincides with the end of the budget period.
8. Adjustments and reconsideration procedures.
 - a. Rate adjustments may be made to correct errors subsequently determined and shall must also be retroactive to the beginning of the facility's rate period.
 - b. An adjustment must be made for a facility which has terminated participation in the program and has disposed of its depreciable assets or which has changed ownership. In this case, the regulations pertaining to gains and losses on disposable assets will must be effective.

- c. Any requests for reconsideration of the rate must be filed with the department for administrative consideration within thirty days of the date of the rate notification.

History: Effective July 1, 1989; amended effective April 1, 1991; July 1, 1995; January 1, 1996.

General Authority: NDCC 50-06-16, 50-24.5-02(8)

Law Implemented: NDCC 50-06-14-2 50-24.5-02(3)

CHAPTER 75-02-10

AGENCY SYNOPSIS: Amendments to North Dakota Administrative Code Chapter 75-02-10, Aid to Vulnerable Aged, Blind, and Disabled Persons specifically adopting a new section 75-02-10-10, County Administration.

A public hearing was conducted on August 3, 1995, in Bismarck, concerning proposed amendments to North Dakota Administrative Code Chapter 75-02-10, Aid to Vulnerable Aged, Blind, and Disabled Persons, specifically adopting a new section 75-02-10-10, County Administration.

The new section provides a formula, developed by the department in cooperation with the county social service boards, for distributing each county's share of basic care costs after August 1, 1995, as required by North Dakota Century Code section 50-24.5-06, as amended by section 22 of 1995 Senate Bill No. 2037.

75-02-10-10. County administration.

1. Except as provided in subsection 2, the county agency of the county where the applicant or recipient is living must be responsible for the administration of the program with respect to that applicant or recipient.
2. When a recipient moves from one county to another, the county agency in the outgoing county continues to be responsible for the administration of the program with respect to that recipient until the last day of the month after the month in which the recipient moved to the incoming county.
3. Each county's share of the total of all counties' shares of the cost of basic care supplementation under North Dakota Century Code chapter 50-24.5 must be determined, as of June first of each year, for purposes of the next calendar year, to be equal to one-fifth of the total of that county's proportion of the North Dakota totals of all the following factors:
 - a. The population of persons age sixty-five and older, as derived from the latest population estimates available from the United States bureau of the census;
 - b. The total taxable valuation of property subject to the general property tax, as derived from the table of values for taxable valuation for each county in the most recent report of property valuations available from the office of the state tax commissioner;

- c. The total number of aged, blind, and disabled recipients of medicaid benefits as derived from records of the department for the preceding calendar year;
 - d. The county per capita income for each county, as derived from compilations of the United States department of commerce, bureau of economic analysis, multiplied times the total population of each county, as derived from the latest population estimates available from the United States bureau of the census; and
 - e. The total average number of occupied basic care beds, in facilities for which rates are set pursuant to North Dakota Century Code section 50-06-14.3 or subsection 3 of North Dakota Century Code section 50-24.5-02, in the preceding calendar year, as derived from compiled reports of the department of health for each reported bed, multiplied times the reasonable daily rate for the basic care facility providing that bed, as determined by the department of human services pursuant to North Dakota Century Code section 50-06-14.3 or subsection 3 of North Dakota Century Code section 50-24.5-02, and in effect on the preceding December thirty-first, multiplied times three hundred sixty-five.
4. Each county's share of the total of all counties' shares of the cost of basic care supplementation under North Dakota Century Code chapter 50-24.5, for services provided during the period beginning August 1, 1995, and ending December 31, 1995, is:
- a. Adams - 0.2493 percent;
 - b. Barnes - 1.9637 percent;
 - c. Benson - 1.2411 percent;
 - d. Billings - 0.1138 percent;
 - e. Bottineau - 0.9896 percent;
 - f. Bowman - 0.3405 percent;
 - g. Burke - 1.4411 percent;
 - h. Burleigh - 10.9574 percent;
 - i. Cass - 7.6407 percent;
 - j. Cavalier - 0.7948 percent;
 - k. Dickey - 1.4605 percent;

- l. Divide - 1.7785 percent;
- m. Dunn - 0.5135 percent;
- n. Eddy - 0.4251 percent;
- o. Emmons - 0.9132 percent;
- p. Foster - 0.4064 percent;
- q. Golden Valley - 0.3553 percent;
- r. Grand Forks - 7.3561 percent;
- s. Grant - 1.2907 percent;
- t. Griggs - 0.3162 percent;
- u. Hettinger - 0.3071 percent;
- v. Kidder - 0.2863 percent;
- w. LaMoure - 2.4303 percent;
- x. Logan - 1.9355 percent;
- y. McHenry - 0.8156 percent;
- z. McIntosh - 0.5962 percent;
- aa. McKenzie - 1.0526 percent;
- bb. McLean - 1.6517 percent;
- cc. Mercer - 1.8049 percent;
- dd. Morton - 2.8878 percent;
- ee. Mountrail - 0.7769 percent;
- ff. Nelson - 0.6075 percent;
- gg. Oliver - 0.7991 percent;
- hh. Pembina - 4.4845 percent;
- ii. Pierce - 3.8049 percent;
- jj. Ramsey - 1.8323 percent;
- kk. Ransom - 0.6385 percent;
- ll. Renville - 0.6723 percent;

mm. Richland - 2.2331 percent;
nn. Rolette - 0.9241 percent;
oo. Sargent - 0.4712 percent;
pp. Sheridan - 0.8287 percent;
qq. Sioux - 0.2349 percent;
rr. Slope - 0.0821 percent;
ss. Stark - 1.9958 percent;
tt. Steele - 0.2331 percent;
uu. Stutsman - 9.9988 percent;
vv. Towner - 0.4909 percent;
ww. Traill - 0.8604 percent;
xx. Walsh - 2.0701 percent;
yy. Ward - 6.6444 percent;
zz. Wells - 1.0650 percent; and
aaa. Williams - 3.9359 percent.

History: Effective January 1, 1996.

General Authority: NDCC 50-06-15, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

FEBRUARY 1996

STAFF COMMENT: Chapter 75-05-00.1 contains all new material and is not underscored so as to improve readability.

ARTICLE 75-05

HUMAN SERVICE CENTER LICENSURE STANDARDS

Chapter	
75-05-00.1	Human Service Center Licensure
75-05-01	Administration and Center Management
75-05-02	Physical Plant Management
75-05-03	Clinical Services
75-05-04	Client Management
75-05-05	Specialized Services
75-05-06	Human Service Center Essential Client Services and Eligibility

**CHAPTER 75-05-00.1
HUMAN SERVICE CENTER LICENSURE**

Section	
75-05-00.1-01	Definitions
75-05-00.1-02	License Required
75-05-00.1-03	Department to Conduct Human Service Center Licensure Reviews
75-05-00.1-04	Designation of Chairperson of Licensure Team
75-05-00.1-05	Licensure Team
75-05-00.1-06	Programs and Services Reviewed

75-05-00.1-07	Licensure Team Reporting Procedures
75-05-00.1-08	Issuance of Licensure Team Report to the Human Service Center
75-05-00.1-09	Action on Conditions
75-05-00.1-10	Provisional Licensure
75-05-00.1-11	Licensure Team Review Followup
75-05-00.1-12	Licensure
75-05-00.1-13	Licensure Report Maintenance

75-05-00.1-01. Definitions. As used in this article:

1. "Condition" means that the human service center does not meet a standard contained in this article.
2. "Department" means the department of human services.
3. "Recommendation" means a suggestion offered by the licensure team to strengthen and enhance the programs and services offered by the center. Recommendations do not have to be satisfied by the human service centers to complete licensure.
4. "Standard" means a requirement for licensure that may not be waived by the department.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-02. License required. A human service center may not operate without first having obtained a license issued by the department under North Dakota Century Code section 50-06-05.2.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-03. Department to conduct human service center licensure reviews. The department shall conduct a review of departmental licensure standards, procedures, and rules prior to the departmental biannual licensure review of the human service center.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-04. Designation of chairperson of licensure team. The executive director of the department shall designate an individual from within the department to serve as chairperson of the licensure team that evaluates the regional human service centers.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-05. Licensure team. The chairperson designated under section 75-05-00.1-04 shall develop a licensure team to conduct onsite reviews at each regional human service center. The licensure team may be composed of any of the following individuals:

1. A psychologist or a psychiatrist;
2. A psychiatric nurse;
3. A representative from the aging services division;
4. A representative from the alcohol and drug services division;
5. A representative from the children and family services division;
6. A representative from the developmental disabilities division;
7. A representative from the management services division;
8. A representative from the mental health services division;
9. A representative from the vocational rehabilitation services division; and
10. A regional human service center consumer or a member of the consumer's family.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-06. Programs and services reviewed. The licensure team shall review the following major programs and services:

1. Administration;
2. Physical plant;
3. Clinical services;
4. Client management; and

5. Specialized services.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-07. Licensure team reporting procedures. At the conclusion of the review, each team member shall write a report on the programs and services reviewed. Each report must contain:

1. A description of programs and services;
2. Strengths of the programs and services reviewed;
3. Concerns;
4. Conditions; and
5. Recommendations.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-08. Issuance of licensure team report to the human service center. Within thirty days after the site visit to the human service center, the licensure team report of the review must be sent to the regional director.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-09. Action on conditions. The human service center shall have ninety days to satisfy the cited condition or to develop and implement a plan to satisfy the cited condition.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-10. Provisional license. If the human service center does not satisfy the cited condition or does not develop and implement a plan to satisfy the cited condition, a provisional license may be

issued. The provisional license may be in effect for a maximum of three months.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-11. Licensure team review followup. After the human service center has corrected the cited conditions or has developed a plan to correct the cited conditions, at least two members of the original licensure team shall conduct followup visits to verify that the human service center has met the conditions or completed their correction plan. Site compliance with the previous survey's conditions and recommendations must be reviewed during the next survey.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-12. Licensure. The department shall issue a license when a human service center has met all of the licensure standards outlined in this article.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-13. Licensure report maintenance. All reports of the licensure reviews must be retained on file in the department's central office. Individual site followup reviews must also be retained.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-01

75-05-01-01. Definitions. As used in this article:

1. "Acute treatment services" means a group of core services designed to address the needs of vulnerable children, adolescents, adults, elderly, and families who have problems.
2. "Addiction evaluation" means an assessment by an addiction counselor to determine the nature or extent of possible alcohol abuse, drug abuse, or chemical dependency.
3. "Admission process" means an initial face-to-face contact with the client intended to define and evaluate the presenting problem and make disposition for appropriate services.
4. "Aftercare services" means activities provided ~~to individuals~~ for an individual with serious mental illnesses illness and who are is in an inpatient facility and ready for discharge. These services assist ~~them~~ an individual in gaining access to needed social, psychiatric, psychological, medical, vocational, housing, and other services in the community.
5. "Case management and aftercare for ~~individuals~~ an individual with serious mental illnesses illness" means services which will provide or assist ~~individuals~~ an individual with serious mental illnesses illness in gaining access to needed medical, psychological, social, educational, vocational, housing, and other services.
6. "Client" means ~~a person~~ an individual who receives clinical or extended services from the human service center and for whom ~~an individualized service~~ a client record is maintained.
7. "Client record" means a compilation of those events and processes that describe and document the evaluation, care, treatment, and service of the client.
8. "Clinical services" means a variety of services, including acute treatment services, emergency services, extended care services, medications, ~~medical~~ services, community consultation and education, psychological services, and regional intervention services to meet the care and treatment needs of clients.
- 8- 9. "Clinical staff privileges" means approval by of human service center staff, who have been identified in by the written quality--assurance--plan, regional director to render client care and treatment services within well-defined limits, based on the individual's professional qualifications, experiences, competence, ability, and judgment.

- 9- 10. "Community home counselor" means a ~~person~~ an individual who provides care, supervision, and training for ~~individuals~~ an individual with serious mental ~~illnesses~~ illness or serious emotional disturbance in a community residential care facility, and assists residents a resident in reorientation to the community; ~~and is responsible for the upkeep and maintenance of the facility.~~
- ~~10-~~ 11. "Community living supervisor" means a professional who is responsible for the planning and implementation of training and treatment in a community residential care facility for ~~individuals~~ an individual with serious mental ~~illnesses~~ illness.
- ~~11-~~ 12. "Community residential service" means a variety of residential options which may include transitional living, supported living, crisis residential, in-home residential services, and other residential services necessary to assist an individual in becoming successful and satisfied in ~~their~~ the individual's living environment.
- ~~12-~~ 13. "Community supportive care service" means the use of noncenter staff to assist ~~individuals~~ an individual with serious mental ~~illnesses~~ illness to remain in the community.
- ~~13-~~ 14. "Crisis residential services" means temporary housing to provide crisis intervention, treatment, and other supportive services necessary for an individual to achieve stabilization and crisis resolution.
- ~~14-~~ "DSM-III-R" means the third edition revised of the diagnostic and statistical manual of mental disorders of the American psychiatric association.
15. "Department" means the department of human services.
16. "Diagnosis" means the process of identifying specific mental or physical disorders based on ~~DSM-III-R and ICD-9-CM~~ standard diagnostic criteria.
17. "Educational programs" means planned, time-limited educational programs ~~such as,~~ including child management or parenting courses.
18. "Emergency services" means a service that is available at all times to handle crisis situations.
19. "Extended care services" means services provided to ~~individuals~~ an individual with serious mental illness to maintain or promote social, emotional, and physical well-being through opportunities for socialization, work participation, education, and other self-enhancement activities. Extended care services include ~~partial care,~~ community residential

services, work skills development, community supportive care services, ~~seriously-mentally-ill~~ case management and aftercare services, and psychosocial rehabilitation centers.

20. "Extended services" means a federally mandated [34 CFR part 363.50(a)(2)] component designed to provide employment-related, ongoing support for ~~individuals~~ an individual in supported employment ~~upon completion of training~~. This Extended services may include job development, replacement in the event job loss occurs, and, except for ~~these individuals~~ an individual with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite.
21. "Group counseling" or "group therapy" means a form of treatment in which a group of clients, with similar problems, meet with a counselor or therapist to discuss difficulties, provide support for each other, gain insight into problems, and develop better methods of ~~meeting their problems~~ problem solving.
22. "Human service center" means a facility ~~which was~~ established in accordance with the provisions of North Dakota Century Code section 50-06-05.3.
23. "Human service council" means a group appointed in accordance with the provisions of North Dakota Century Code section 50-06-05.3.
24. "~~ICD-9-CM~~" ~~means the 1990 international classification of diseases (ninth revision, seventh edition) clinical modification.~~
25. "Individual counseling" or "individual therapy" means a form of treatment in which a counselor or therapist works with a client on a one-to-one basis.
25. "Individual plan" means a document which describes an individual plan of treatment or service for each client, including a description of the client's problems and goals for treatment and the individuals responsible for initiating and implementing the plan.
26. "Individual service plan (ISP)" means a ~~document that identifies the services to be provided to mental retardation developmental disabilities case management clients~~ an individual plan that identifies service needs of the eligible client and the services to be provided, and which is developed by the mental retardation development disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.

27. ~~"Individual treatment plan (ITP)" means a document which describes an individual plan of treatment or service for each client, including a description of the client's problems, goals, and objectives for treatment and of individuals responsible for developing and implementing the plan.~~
28. "Individual with a serious mental illness" means a chronically mentally ill individual as defined in subsection 0.1 of North Dakota Century Code section 57-38-01.
- 29- 28. "Individualized written rehabilitation program (IWRP)" means a statement of the client's rehabilitation goal and a detailed outline of the program to be followed in achieving the goal. The individualized written rehabilitation program is not a contract, but is rather a tool in the rehabilitation process used for ~~information~~ informational, planning, and assessment purposes. ~~It requires participatory~~ Participatory planning by the counselor and the client is required to establish communication and a mutual understanding of the goals and the objectives.
- 30- 29. "Medication review" means prescription monitoring and consultation ~~to, with~~ with a client regarding ~~the client's use of medication,~~ performed by a psychiatrist or medical doctor, ~~or by a registered nurse or a licensed practical nurse under the direction and supervision of a psychiatrist or physician regarding the client's use of medication.~~
- 31- 30. "Mental retardation-developmental disabilities case management" means ~~activities provided to eligible persons with mental retardation-developmental disabilities which will assist them in gaining access to needed social, medical, educational, vocational, residential, and other services in the community~~ services which will assist an individual with mental retardation and related conditions in gaining access to needed medical, social, educational, vocational, and other services, review of client outcomes and satisfactions, monitoring and evaluation of services, and includes related paperwork, collaterals with significant others and other agencies, phone contacts, and consultation with other staff, supervisors, and peers.
- 32- 31. "Mental retardation-developmental disabilities case manager" means a qualified mental retardation professional who is responsible for providing a single point of entry, program coordination, and monitoring, and review for assigned clients.
32. "Mental status" means an evaluation of an individual's appearance, posture, mood, affect, attitude toward assessment, orientation, speech, recent and remote memory, abstract reasoning, insight, judgments, preoccupations, hallucinations, delusions, and suicidal or homicidal ideation.

33. "Minorities" means all individuals who are ethnic black, hispanic, Asian or Pacific islander, American Indian, or Alaskan native.
- 33- 34. "Multidisciplinary team" means at least three staff members representing two different professions, disciplines, or services. At least one of the three must be a psychiatrist or psychologist.
- 34- 35. "Outreach" means the process of reaching into a community systematically for the purposes of identifying persons individuals in need of services, alerting and referring persons an individual and their--families an individual's family to the availability of services, locating needed services, and enabling persons an individual to enter and accept the service delivery system.
35. ~~---"Partial--care"--means--center--or--community--based--rehabilitative services--provided--to--mentally--ill--persons--to--maintain--and promote--social,--emotional,--and--physical--well-being--through opportunities--for--socialization,--therapy,--work--participation, education,--and--other--self-enhancement--activities.~~
36. "Program" means an organized system of services designed to meet the service needs of clients.
37. "Progress notes" means the documentation in the client's record which describes the client's progress or lack of progress in treatment.
38. "Psychiatric evaluation" means the assessment or evaluation of a client by a psychiatrist.
39. "Psychiatrist" means a physician, with three years of approved residency training in psychiatry, who is American board of psychiatry and neurology eligible, and who is licensed to practice medicine in the state of North Dakota.
40. "Psychological evaluation" means the assessment or evaluation of a client by or under the supervision of a licensed psychologist.
41. "Psychologist" means a professional who holds a doctor's degree in psychology and who is licensed by the state of North Dakota or who qualifies as a psychologist under North Dakota Century Code section 43-32-30.
42. "Psychosocial rehabilitation center" means a facility whose staff may provide socialization, social skill building, information and referral, and community awareness for the purpose of enhancing the ability of individuals an individual with serious mental illnesses illness to live in the community.

43. ~~"Quality--assurance"--means--an--ongoing--process--which systematically--monitors--and--evaluates--the--quality--and appropriateness--of--client--care--and--other--agency--services; provides--a--method--problem--identification;--provides--corrective action--if--needed;--and--monitors--outcomes.~~ "Qualitative and quantitative indicator" means an expected standard of care or outcome that can be measured.
44. "Regional aging services ~~coordinator~~ program administrator" means a ~~person~~ an individual assigned the responsibility to plan, develop, implement, and assess programs under the Older Americans Act.
45. "Regional mental retardation-developmental disabilities program administrator" means a professional designated by the regional director who is responsible for the overall management and administration of the mental retardation-developmental disabilities case management system.
46. "Regional director" means the human service professional who is appointed by the executive director of the department to be responsible for the overall management and administration of the human service center.
47. "Regional intervention service" means a service unit within a human service center which provides crisis intervention and support services in a community as an alternative to state hospital admission.
48. "Regional representative of county social services programs" means a ~~person~~ an individual, designated by the regional director of the human service center, to whom is delegated the responsibility ~~for~~ of supervising and assisting with county social service board programs as assigned.
49. "Residential treatment team" means multidisciplinary staff who make decisions regarding admissions, treatment, training, and disposition of clients in the community residential service.
50. "Risk management" means an ongoing process of systematically reviewing the activities which monitor and evaluate the quality and appropriateness of clients', ~~staff~~ staffs', and visitors' safety and protection.
51. ~~"Service--record"--means--a--compilation--of--those--events--and processes--that--describe--and--document--the--evaluation;--care; treatment;--and--service--of--the--client.~~ "Semi-independent living arrangement" means services which are provided to an individual with serious mental illness in the individual's chosen environment to assist and enhance an individual's abilities to be successful and satisfied in the individual's living environment. Services may include assessment,

education and training, monitoring, financial assistance, advocacy, or other supported activities.

52. "Seriously mentally ill (SMI) day treatment" means center or community-based services provided to individuals to maintain or promote social, emotional, and physical well-being through opportunities for socialization, therapy, work preparation, education, and other self-enhancement activities.
53. "SMI group care" means the provision of meals and lodging-related services to an individual in a twenty-four-hour per day community-based living environment established for an individual who does not need the protection offered in an institutional setting, but is not yet ready for independent living.
- 52- 54. "Staff orientation and inservice training" means orientation of new employees and inservice training of staff provided or approved by the department.
- 53- 55. "Supervision of county social services" means the activities of supervision, consultation, evaluation, licensure, certification of various county social service programs, program planning, implementation, monitoring, receiving and reviewing reports, generation of statistical reports, staff development, and inservice training of county social service board staff and board members.
- 54.--"~~Supported--living-services~~"--means--services--which--are--provided--to--individuals--with--serious--mental--illnesses--in--their--chosen--environment--to--assist--and--enhance--their--abilities--to--be--successful--and--satisfied--in--their--living--environment. Services--may--include--assessment,--education--and--training; monitoring;--financial--assistance;--advocacy;--or--other--supported activities.
- 55.--"~~Transitional--living~~"--means--the--provision--of--meals--and--lodging--related--services--to--an--individual--in--a--twenty-four-hour--per--day--community-based--living--environment established--for--individuals--who--do--not--need--the--protection offered--in--an--institutional--setting;--but--are--not--yet--ready--for independent--living.
56. "Utilization review" means a program designed to ensure optimal use of center resources to determine if professionally recognized standards are being practiced for service utilization.
57. "Vocational adjustment counseling" means assisting the individual and the individual's family to understand and accept any physical or mental limitations placed on activities because of a disability. This includes working with the client, teacher, trainer, and employer to help the client

learn adaptive behavior or techniques to attain the vocational objective and function appropriately in the family and community.

58. "Vocational assessment {diagnosis and evaluation}" means acquisition and analysis of medical, psychological, vocational, educational, and social information to determine the effect of a handicapping condition on preparing for or obtaining employment. This also includes the medical and psychological consultations, as well as consultations with social workers, teachers, and employers, on behalf of a specific client.
59. "Vocational rehabilitation administrator" means the professional responsible for the overall management and implementation of all vocational rehabilitation services within a region.
60. "Vocational rehabilitation counselor" means the professional who provides vocational counseling and guidance, placement services, and assists ~~physically--and--mentally-handicapped persons-to-become-vocationally-competent~~ an individual with physical or mental disabilities.
61. "Work skills development" means a range of services designed to assess clients' vocational strengths and weaknesses, provide prevocational skills training, job exploration, and followup.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-02. Administration.

1. The regional director shall have direct responsibility for the overall management and implementation of services and programs of the human service center and must be a full-time employee.
2. The regional director shall employ personnel who shall meet applicable federal and state laws, rules, and court orders. The employed personnel shall meet the criteria for employment as set forth by state merit system standards and the central personnel division. All human service center employees are department employees.
3. The human service center shall have a system of verifying licensure for all employees, who, by state law, are required to have a license to perform assigned duties.

4. The regional director shall appoint supervisory staff to provide performance evaluations of personnel.
5. The regional director shall develop an organizational chart which reflects the line of authority of staff.
- 4- 6. Where If necessary, the regional director may contract for services with nonemployees according to the department's policies.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-03. Human service council.

1. The human service center shall have a human service council appointed in accordance with North Dakota Century Code section 50-06-05.3.
2. The regional director shall maintain an accurate list of all human service council members, together with ~~their~~ council members' addresses and telephone numbers.
3. The human service council shall meet at least quarterly.
4. The human service council shall develop bylaws to govern its activities.
5. The human service council shall keep minutes of all meetings and, when the minutes have been approved, a copy must be sent to the executive director of the department.

History: Effective November 1, 1987; amended effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-04. Fiscal management.

1. The regional director shall designate a business manager who shall oversee the financial management of the center.
2. The business manager, or the business manager's delegate designee, shall:
 - a. Prepare the biennial budget;
 - b. Collect data for ratesetting purposes;

- c. Maintain Collect and enter data into the departmental data collection systems;
- d. Close audit recommendations;
- e. Timely and accurately respond to financial information requests;
- f. Supervise all assets, inventories, and receivables under the control of the human service center; and
- g. Manage day-to-day business affairs of the human service center, including collection and payment of bills consistent with the departmental manuals; and
- h. Follow established departmental contracting procedures.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-06. Staff orientation and inservice training.

- 1. ~~There--must--be~~ The human service center shall develop and implement a written plan for the orientation and inservice training of all new employees. The orientation program must:
 - a. ~~The---orientation---program--must--be~~ Be initiated upon employment and completed within thirty working days; and
 - b. ~~The--orientation-program-must-include~~ Include policies and procedures of the department and, operations of the human service center, and any other information deemed necessary by the regional director and the supervisor of the person individual being employed.
- 2. Employees of the human service center shall attend inservice training programs ~~at-the-human-service-center-as--it--pertains to-their-program~~ relevant to the human service center programs and clients.
- 3. All orientation training and inservice training must be documented.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-07. Quality assurance.

1. The regional director shall appoint a committee or an individual who is responsible for coordinating and monitoring the activities for the quality assurance program at the human service center.
2. The committee's or individual's functions shall be to develop a written quality assurance plan which is updated at least every two years and shall provide for, as a minimum, the following components:
 - a. Client, staff, and visitor safety and protection (risk management), including, at least:
 - (1) Infection control;
 - (2) Compliance with the life safety code of the national fire protection association applicable to buildings under the center's control;
 - (3) Protection of clients' rights as required by section 75-05-01-09;
 - (4) Internal and external disaster controls; and
 - (5) Management of episodes of aggressive and violent client behavior in facilities operated by the center.
 - b. Use of appropriate methods for the performance evaluation of personnel.
 - c. A system for credentialing and granting or withholding clinical staff privileges.
 - d. A utilization review program to assure quality client care, which reviews appropriateness of admissions, services provided, duration of service, and underutilization and overutilization of personnel and financial resources and outcome or followup studies.
 - e. A plan for the review of individual treatment and services provided. Repealed effective February 1, 1996.

History: Effective--November--1,--1987;--amended--effective--December--1, 1991.

General Authority: NDCG-50-06-05-2

Law Implemented: NDCG-50-06-05-2

75-05-01-08. Data collection Utilization review.

1. The human service centers ~~must~~ shall comply with the requirements of the department's data collection system which

~~includes, but is not limited to, data concerning the number of clients served and the types of services received.~~

2. The human service center shall implement a utilization review program to assess quality client care, which reviews appropriateness of admissions, services provided, duration of service, underutilization and overutilization of personnel and financial resources, and outcome or followup studies.
3. The regional director shall designate committees or individuals to provide a client record review program of individual treatment and services provided as outlined in chapter 75-05-04. The client record review program must include both qualitative and quantitative indicators as defined by departmental policy.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-09. Emergency management.

1. The regional director shall adopt and maintain a written emergency management plan which provides crisis counseling for disaster emergencies in counties within the center's catchment area. The emergency management plan must be available on the premises. Clients must be instructed in the plan's implementation unless the instruction would be injurious to the client's well-being. The emergency management plan must be coordinated with the local office of emergency management.
2. The regional director shall adopt and maintain a written emergency management plan within the human service center and other facilities which are operated by the center.
3. ~~The emergency management plan must be available on the premises and clients must be instructed in its implementation when appropriate.~~
4. Evacuation drills at the human service center must be conducted and documented yearly annually. Evacuation drills at the residential facilities which are operated by the center must be conducted and documented at least every six months.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-10. Clients' rights.

1. ~~The--persons~~ Individuals responsible for admissions shall provide all human service center clients, and the clients' families or guardians, as appropriate, with a written statement regarding the exercise and protection of the clients' civil rights. ~~This~~ The statement must include the assurance of civil rights for all clients of the human service center regardless of the clients' race, color, religion, national origin, sex, age, political beliefs, or handicap in accordance with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act, the Americans with Disabilities Act of 1990, and the North Dakota Human Rights Act (North Dakota Century Code chapter 14-02.4).
2. The clients, and families, custodians, or guardians, as appropriate, must receive written information concerning their rights under each program within the human service center from which the client is receiving services.
3. Each client, and family or guardian, as appropriate, will receive written information describing:
 - a. The conditions under which a decision, action, or inaction may be appealed;
 - b. The method of filing the appeal;
 - c. The various steps in the appeal; and
 - d. The assistance which can be furnished in the preparation and submission of the appeal.
4. The human service center shall provide assistance in obtaining protective or advocacy services, if ~~needed--and--appropriate~~ necessary.
5. Clients' rights ~~will~~ may not be limited, unless the limitation is essential to protect the clients' safety, the safety of others, or is determined to be of therapeutic value. The restriction ~~will~~ must follow the limitations and restrictions of the patient's rights according to North Dakota Century Code section 25-03.1-41.
6. This article may not be construed as creating, for the benefit of a client, or a client's family or guardian, any civil right or other right.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-01-11. Risk, safety, and security management.

1. The human service center shall develop and implement a procedure for infection control based on recognized guidelines, such as occupational safety and health association bloodborne pathogen standards.
2. The human service center shall develop and implement a procedure for the management of episodes of aggressive and violent client, staff, and visitor behavior in facilities operated by the center.
3. The regional director shall designate a risk manager who shall oversee the risk management of the center.
4. The risk manager, or the risk manager's designee, shall:
 - a. Develop and maintain the workers compensation bureau's risk management program for the center;
 - b. Collect data and file reports as needed for workers' compensation, liability, fire and tornado, bonding fund, and any other entities providing insurance or the equivalent for the center, its staff, or its assets;
 - c. File claims as needed with the insuring entities;
 - d. Close recommendations resulting from reviews by loss control staff; and
 - e. Actively promote risk management throughout the human service center.

History: Effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-02

75-05-02-01. Building and grounds. ~~The center shall have available documentation that facilities occupied by the center meet local fire and safety regulations. Repealed effective February 1, 1996.~~

History: Effective November 1, 1987.

General Authority: NDCC-50-06-05.2

Law Implemented: NDCC-50-06-05.2

75-05-02-02. Physical environment. ~~The human service center shall establish and maintain an environment that enhances the positive self-image of clients and preserves their human dignity.~~

1. ~~There must be~~ The human service center shall have outside parking which must be well-marked with lighting for safety. ~~There must be designated handicapped parking space available for staff, clients, and public usage.~~
2. The human service center, and all buildings ~~under the control of which the center~~ owns, leases, or rents, shall meet the minimum requirements of North Dakota Century Code section 48-02-19 and shall provide accessibility to services in accordance with the accessibility requirements of section 504 of the Rehabilitation Act of 1973, as amended, and in accordance with the Americans With Disabilities Act of 1990.
3. ~~Waiting room and reception areas must be comfortable in their design, location, and furnishings, and must accommodate the client's and staff's needs.~~
 - a. ~~Public restrooms must be accessible to persons with disabilities, and available for clients, visitors, and staff.~~
 - b. ~~A public telephone must be available for client use. In addition, a telephone must be available for handicapped clients which must not exceed forty-eight inches [1219.20 millimeters] at the highest working part and must include amplification. One telecommunication device for the deaf must be available for hearing handicapped.~~
 - c. ~~Drinking units must be accessible to persons with disabilities and must not present a hazard to visually impaired persons, according to 1986 American national standards institute standards section 4.15.~~
4. ~~Direct outside air ventilation must be provided to all rooms by forced ventilation, air conditioning, or operable windows.~~

5. All furnishings must be clean, in good repair, and appropriate to the age and disabling condition of clients, staff, and visitors.

6. Offices and group therapy or counseling rooms must be appropriately decorated, and furniture and equipment must be in good usable repair and must meet the needs of the clients and staff. The offices and group therapy or counseling rooms must have ample room and furniture must be fully accessible to accommodate the client, family members, and guardian. The human service center shall comply with the life safety code of the national fire protection association applicable to buildings that the center owns, leases, or rents.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-03

75-05-03-01. Acute treatment services.

1. Outpatient services.

- a. Each human service center will ~~will~~ shall define and provide general outpatient services to vulnerable children, adolescents, adults, elderly, and families who have problems as outlined in ~~the document entitled, --"Essential Services--and--Functions---Regional-Human-Service-Centers, revised-August-19,-1990"~~ chapter 75-05-06.
- b. Each human service center shall develop ~~polices-and-procedures-for-implementation~~ written program descriptions of each program provided by the center.
- c. Outpatient services must be available to clients during the day and on designated evenings or weekends.
- d. All significant client contacts and treatment provided must be documented in the client's record.
- e. ~~When-appropriate,-outpatient-services-provided-by~~ With the client's permission, acute treatment service outpatient services must be coordinated with other private and public agencies.

2. ~~Addiction--service:~~ The human service center shall have an addiction service program which meets the requirements of article 33-08, ~~--chapters--33-08-01--through--33-08-08,~~ article 75-05, article 75-09, and North Dakota Century Code section 23-01-03.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-02. Emergency services.

1. The human service center shall maintain or contract for a twenty-four-hour emergency service. As At a minimum, telephone or face-to-face contact must be part of this the service. All contacts must be documented.
2. Emergency service personnel ~~must~~ shall be trained to handle crisis situations. Training must include, ~~but-not-be--limited-to:~~ suicide intervention; violent behavior of clients; and crisis telephone calls. ~~This--training--must--be--documented.~~

The human service center shall document training in the employee's personnel file.

3. Face-to-face crisis counseling must be provided in an environment which is conducive to treatment and control of the client in the event of suicide or violent behavior.
4. A complete list of community resources must be available to emergency service personnel and updated on an annual basis.
5. Any An individual receiving emergency services must be given information ~~about~~ concerning available resources and treatment services.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-03. Extended care services.

1. Partial-care.

~~a. The regional director shall designate a person who shall supervise the partial-care service.~~

~~b. Treatment and training modalities offered to clients must include, but are not limited to: individual therapy; group therapy; daily living skills training; and prevocational skills training.~~

~~c. An evaluation of the client's progress in partial care must be documented in the client's record on at least a monthly basis. Attendance must be documented as it occurs. Crisis situations will be documented in the client's record at the first opportunity following the crisis.~~

2. Community residential services.

a. The regional director shall designate a community living supervisor to supervise the community residential services.

b. The human service center shall provide or contract for, as a minimum, at least two of the following options:

(1) Transitional living services SMI group care.

(a) Transitional living service SMI group care facilities ~~must~~ shall:

- [1] Comply with the provisions of the chapter entitled "Lodging Rooming Houses" of the 1985 life safety code. The community living supervisor shall assure that the appropriate officials provide onsite review and documentation of review once every two years;
 - [2] House no more than fourteen clients;
 - [3] Have the ability to house both male and female clients while accommodating privacy for individuals;
 - [4] Provide at least one full bathroom for every four clients; and
 - [5] Have bedrooms which are outside rooms, accommodate one or two clients, provide each client with a bed appropriate for his or her the client's size and weight, with a clean and comfortable mattress, bedding appropriate for weather and climate, and provide other appropriate bedroom furniture.
- (b) The staff of the transitional living service facility shall:
- [1] Assure that the client's individual ~~treatment~~ plan includes input from the community home counselors ~~as-well-as~~ and the residential treatment team.
 - [2] Maintain an inventory of the client's personal belongings when the client enters the transitional living facility.
- (c) A brochure of ~~client's~~ client rights according to section 75-05-01-10 must be given to all new residents of the transitional facility upon admission.
- (2) ~~Supported--living--services~~ Semi-independent living arrangement.
- (a) The human service center shall develop policies and procedures that ~~will-include--at-a--minimum,~~ assure--that facilitate conformance with all local building and fire safety codes are ~~conformed~~ and encourage that safe and sanitary conditions are maintained.

(b) Human service center staff shall develop policies and procedures to assure ensure that supportive living services are being provided in the client's residence.

(c) An evaluation of the client's progress in supportive living services must be documented in the client's record on at least ~~on~~ a monthly basis.

(3) Crisis residential services.

(a) Human service center staff shall develop policies and procedures to assure that safe and effective crisis residential services are provided.

(b) Documentation of the individual's progress shall must occur daily.

3- 2. Work skills development.

a. The human service center shall either provide or contract for:

(1) Methods to assess the abilities of individuals with serious mental illnesses as related to employment;

(2) Prevocational skills development and training;

(3) Job exploration; and

(4) Followup.

b. The human service center shall document the client's progress in work skills development ~~must be documented~~ at least monthly.

4- 3. Case management and aftercare services for individuals an individual with serious mental illnesses illness.

a. Case management must be available to all eligible individuals with serious mental illness throughout the human service center's catchment area.

b. Case management for individuals an individual with serious mental illnesses-will illness must be identified on the client's individual treatment plan and will must be documented in the progress notes ~~when it occurs~~.

c. Aftercare services will must be made available to all individuals with serious mental illness in an inpatient facility who are returning to the region after

discharge. The regional director shall designate one or more staff members to provide aftercare services.

d. The human service center ~~will~~ shall, through case management services, ~~assure~~ ensure that extended services are provided for ~~individuals~~ an individual with serious mental ~~illnesses~~ illness who ~~have~~ has completed the training and stabilization components of the supported employment program and continues to require ongoing support services to maintain competitive employment.

e. If individual plans dictate, case management services must provide or arrange for daily living skills training in the community.

5- 4. **Community supportive care services.**

a. The human service center shall provide or contract with a private, nonprofit group to provide a community supportive care program. ~~This~~

b. The program must include:

a- (1) Designation of an individual to serve as the community supportive care supervisor;

b- (2) Assignment of responsibility to the community supportive care supervisor for the recruitment, scheduling, and training of all community supportive caregivers; and

e- (3) Provision of companionship services for ~~individuals~~ an individual with serious mental ~~illnesses~~ illness who ~~have~~ has been referred by a multidisciplinary ~~team staff.~~ These services may include, but are not limited to: transportation; assisting in meal preparation; leisure activities; and assisting in shopping for food, clothes, and other essential items by community supportive caregivers.

6- 5. **Psychosocial rehabilitation centers.**

a. The human service center shall provide or contract for the operation of a psychosocial rehabilitation center.

b. The psychosocial rehabilitation center shall:

(1) Provide evening and weekend activities;

(2) Be open seven days a week; and

(3) ~~Provide~~ Be located in an ADA accessible location in the community which provides a minimum of forty ~~forty~~ fifty

hours of programming a week. Ten of the fifty hours must be during evening hours. "Evening hours" means after six p.m. This does not include support groups.

(4) Develop a written plan delineating expected programs and services provided.

(5) Employ a full-time director and part-time staff sufficient to provide services.

c. The psychosocial rehabilitation center shall have an ~~advisory-council-composed-of-client-members~~ a mechanism for client member participation in policy formation.

d. The regional director shall appoint a human service center staff member as a liaison between the human service center and the psychosocial rehabilitation center.

e. The psychosocial rehabilitation center shall provide written monthly ~~activity~~ activity reports to the human service center and the division of mental health services.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-04. Medications.

1. The human service center shall have written policies and procedures designed to ~~assure~~ ensure that all medications are administered safely and properly in accordance with state laws.
2. Medication orders must be written only by a physician or other professional licensed by law and permitted by such license to write medication orders and who are is in direct care and treatment of clients.
3. All prescribed medications must be recorded in the client's record.
4. When medications are prescribed by a physician and administered by human service center staff, the physician's orders must be signed and a record of the administration must be kept.
5. There must be a system of checking to detect unhealthy side effects or toxic reactions.

6. Medication storage areas must be well lighted, safely secured, and maintained in accordance with the security requirements of federal, state, and local laws.
7. Each The human service center shall inform each client who receives medications prescribed at a human service center must be---informed of the benefits, risks, side effects, and consequences of medication noncompliance. At a minimum, a ~~record--that--such--information--was--provided--must--be--made--in--a--progress--note--written--by~~ the person individual prescribing the medication shall record that this information was provided. A client's signed informed consent statement by--the--client is acceptable in addition to the ~~progress--note~~ record, but not in lieu of the ~~progress--note~~ record. The ~~progress--note~~ record must include:
 - a. A statement that a discussion regarding medications prescribed has occurred.
 - b. Documentation that a specific discussion of tardive dyskinesia has occurred, if that is a potential side effect of the antipsychotic medication.
 - c. If the client, in the opinion of the ~~person~~ individual prescribing the medication, does not appear to understand the discussion, the ~~progress--note--in--the--client's--service~~ record must document discussions with the client's guardian, the client's family, or other responsible individuals.
8. An assessment instrument used to detect signs of tardive dyskinesia must be administered ~~to--all--clients~~ every six months or as medically indicated to all clients on antipsychotic medications for which tardive dyskinesia is a potential side effect.
9. Each human service center shall have written policies and procedures for self-administered medication programs. Documentation of training received must be entered in the client's record.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-05. Medical Psychiatric services. The regional director shall employ or contract with a psychiatrist to be the medical director. The medical director ~~should~~ shall provide consultation, treatment, and psychiatric evaluations for clients at the human service center and shall provide input in program planning and development of services.

Psychiatric services must be available at a minimum of one hundred sixty hours per month.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-06. Community consultation and education. The human service center shall:

1. Maintain a ~~written~~--plan systematic approach for providing information to the general public and local agencies regarding center services.
2. Have a systematic approach for informing clients and agencies about center services and how to access those services.
3. Respond to requests for educational presentations and inservice training for public and private agencies, as staff time allows, or refer the requests to other community resources.
4. Provide technical assistance to communities in assessing mental health needs and service options.
5. Document the number of hours, clients, and type of activity spent on community consultation and education.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-07. Psychological services.

1. The regional director shall employ or contract with one or more psychologists who meet the requirements of North Dakota Century Code chapter 43-32.
2. Psychological services include: psychological evaluations, psychological consultations, and psychotherapy services.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-08. Regional intervention service.

1. The regional director shall designate staff to coordinate, administer, and supervise the regional intervention system service.
2. The regional intervention service must assess all individuals who are under consideration for voluntary admission to the North Dakota state hospital.
3. The regional intervention service must refer clients to appropriate community-based treatment in lieu of state hospital admission, when available.

History: Effective December 1, 1991; amended effective February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-04

75-05-04-01. Admission process.

1. The regional director shall designate admission personnel who are responsible for the initial contact with the individual and the individual's family to define and evaluate the presenting problems and make disposition for appropriate necessary services.
2. If, in the judgment of the admission personnel, the contact which has been made is of an emergency nature, the admission personnel shall comply with emergency service procedures.
3. If, in the judgment of the admission personnel, the contact which has been made is not of an emergency nature, the admission personnel shall determine if the human service center can provide the treatment or services required by that the individual and the individual's family can--be appropriately-provided-by--the--center require. Upon such determination that required services are available, the admission personnel shall assure that an appointment is scheduled.
4. A signed application for services must be completed at the time of admission.
5. The initial admission process must involve a face-to-face interview with the ~~clients~~ client and include the following:
 - a. ~~Statement~~ A statement of the presenting problems-;
 - b. ~~Social~~ The client's social history ~~to--include--when appropriate,~~ including family background, psychiatric history, developmental history, educational history, and employment-;
 - c. ~~Medical~~ The client's medical history ~~to--include--any encompassing~~ relevant findings of previous physical or psychiatric evaluations, psychiatric mental status, a list of the client's current medications and allergies, and additional evaluations, as deemed necessary. If the client is being considered for community residential services, a physical examination must have been completed within the last three months-; and
 - d. ~~Signed~~ A signed release of information form from the client and the client's parent or guardian, when deemed necessary.

6. Upon completion of the admission process, a provisional diagnosis must be made and a treatment plan developed.
7. Within ten working days from date of admission, which is the time when the client and the staff member first meet to begin the admission process, a case staffing must be held with a multidisciplinary team to confirm or revise the diagnosis and treatment plan, or reassign the client to an appropriate member of the professional staff.
8. If the client is being referred for community residential services, the client shall, if possible, visit the residential facility. If arrangements can be made, an overnight stay must be considered.
9. 7. If the human service center or the unit to which the client has been referred cannot provide appropriate services, the professional staff person member shall document, in writing in the individual's admission file client record, the reasons why he or she the client is not provided services. A professional staff person will, with the individual's approval, assist him or her in referral to appropriate services. The human service center shall have a mechanism to review service needs and formulate recommendations for applicants, when the initial unit to which the client was referred cannot provide services. The applicant shall be informed of the results of the review and the results must be documented in the individual's admission file or client record.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-03. Individual treatment plans.

1. Each client who has been admitted for service to the human service center shall have an individual treatment plan that is based on the admission data and needs of the client.
2. Overall development and implementation of the individual treatment plan are the responsibility of the professional staff member assigned the client.
3. The individual treatment plan must be developed in accordance with the following time-lines:
 - a. Clients whose diagnosis indicates a mental disorder (based on DSM-III-R or ICD-9-CM classification) or psychoactive substance use disorder or individual and family dysfunction who are eligible for clinical services shall

have an individual treatment plan (ITP)-developed-within ten-working-days-from-the-date-of-admission.

- b. Clients who are eligible for vocational rehabilitation services shall have an individual written rehabilitation program (IWRP).
- c. Clients who are eligible for mental retardation-developmental disabilities case management shall have a case plan and an individual services plan (ISP).
4. The individual treatment plan shall ~~must~~ contain the client's name ~~of-the-client~~, problems ~~of-the-client~~, service strategies to resolve problems, goals ~~and--planned-outcomes~~, names of staff members responsible for service strategies, and the signature of the case manager. In the case of clients who are eligible for medical assistance benefits, and receiving clinic service, ~~there-must-be-documentation-of~~ the client record must document physician approval.
5. The professional staff member assigned the client shall review the individual treatment plan with the client and shall document such the review in the client's record.
6. Upon completion of the admission process, admission personnel shall make a provisional diagnosis and initiate a treatment plan.
7. Within twenty working days from date of admission, which is the time when the client and the staff member first meet to begin the admission process, the multidisciplinary team must hold a case staffing to confirm or to revise the diagnosis and treatment plan, or to reassign the client to an appropriate member of the professional staff.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-04. Progress notes. Progress notes must be entered into the client's service record and must include, be updated after each visit, ~~the-client's-progress-towards-meeting-the-goals-of-the-individual-treatment-plan~~. The human service center shall develop and implement an acceptable format to update client records which meet the goals of the individual plan. ~~Partial-care-activities--must--be--documented--in--the-individual--client's--service--record--at--least-monthly~~. Group therapy progress notes must be documented in the individual client's service

record at least weekly. The date, signature, and title of the staff member making an entry must be included with each entry.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-05. Individual treatment plan review. Individual treatment plans must be reviewed For clinical services, the case manager and the case manager's supervisor shall review individual plans at least every six months, except for chronic cases, which must be reviewed at least every twelve months. The individual written rehabilitation program For vocational rehabilitation services, the vocational rehabilitation counselor and the client must be reviewed review and evaluated evaluate the individual written rehabilitation program at least every twelve months by the vocational rehabilitation counselor and the client. For developmental disabilities case management and the client, the counselor and the client must review the file individual service plan at least every twelve months.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-06. Completion of treatment or service.

1. A The case manager shall enter a treatment or service completion statement must be entered in the client's progress notes when clients have not received treatment in six months or when termination is mutually agreed upon by the client and service provider the case manager, or when it has been determined by a multidisciplinary team that a client no longer needs treatment or that treatment is inappropriate.
2. When the service completion statement has been finalized, the closure must be entered on the data collection system.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-08. Records maintenance.

1. The regional director shall designate a staff person member who is responsible for the safekeeping of each client's record.

2. All data and information in the client's record is confidential.
 - a. Records must be maintained in accordance with federal and state confidentiality requirements.
 - b. Upon written request, the client's record is available to the client, or to any person individual designated by the client, for review unless a legally sufficient basis for denying the client access to the record has been established. The human service center shall establish policies which encourage clients to seek professional assistance while undertaking a review of records, and which prevent the alteration of any record during a review.
3. The human service center shall comply with department policies and procedures concerning records management.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-05

75-05-05-01. Mental retardation-developmental disabilities program - Case management.

1. The regional director shall designate a regional mental retardation-developmental disabilities program administrator.
2. The average caseload of the mental retardation-developmental disabilities case management unit must be no more than sixty clients per case manager.
3. Mental retardation-developmental disabilities case management ~~services--will~~ eligibility must be provided determined in accordance with chapter 75-04-06. Individuals found eligible for mental retardation-developmental disabilities case management prior to the effective date of chapter 75-04-06 may be maintained in services in accordance with departmental policy.
4. The human service center will shall maintain and implement written procedures to provide for:
 - a. Client intake and admission;
 - b. Review of client rights upon intake and at least annually thereafter for adult clients;
 - c. Review of 34 CFR 303, part H, parental rights for infants and toddlers, age zero through two years, in accordance with part H requirements;
 - d. Assignment of a mental retardation-developmental disabilities case manager;
 - ~~e. A client or a client's legal representative to request a change in case manager.~~
 - d- e. Development of case planning and an individual service plan;
 - e- f. The completion of program reviews;
 - g. Completion of level of care screening;
 - h. Completion of preadmission screening annual resident review;
 - f- i. A regional referral committee to coordinate adult referrals;

- g. j. A regional review team to review out-of-home placement options for children;
 - h. k. Interregional transfers;
 - i. l. Case closings;
 - m. Orientation and training of developmental disabilities case managers;
 - n. Periodic record reviews; and
 - o. A regional quality improvement planning process.
5. A human service center that operates programs subject to licensure under chapter 75-04-01 ~~must~~ shall maintain a current license from the division of developmental disabilities for those programs. Programs in compliance with chapter 75-04-01 ~~will not be~~ are not subject to human service center licensure standards.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-05-02. Vocational rehabilitation.

1. The regional director shall designate a full-time vocational rehabilitation administrator.
2. The vocational rehabilitation administrator shall establish annual performance goals and objectives ~~identifying;--as--a minimum;--the--following:~~
 - ~~a.--Number-of-clients-to-be-served-and-rehabilitated;~~
 - ~~b.--Major-regional-initiatives-in-service-delivery;--and~~
 - ~~c.--Job-placement-activities.~~
3. The vocational rehabilitation administrator shall follow the appeals procedures outlined in chapter 75-01-03 and shall inform all clients or potential clients of the client assistance program.
4. Client files must be monitored to assure appropriateness of services ~~using-the-status-life-guidelines.~~
 - a. At least ten percent of the client files ~~will~~ must be reviewed annually using the case review schedule. A

report of the results and recommendations of the review must be available to the regional director.

~~b. All activities from referral status to closure will be conducted in compliance with federal regulations [34 CFR part 361].~~

5. The vocational rehabilitation administrator monitors the obligation of funds and bills paid to assure ensure that funds are appropriately expended or canceled.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-05-03. Supervision and direction of county social services.

1. The regional director shall designate a regional representative of county social services programs.
2. With respect to child protective services, the regional representative shall:
 - a. Review all reports of suspected child abuse and neglect in the region and determine if ~~they~~ the reports are ~~investigated~~ assessed in accordance with North Dakota Century Code ~~chapter~~ chapters 50-25.1 and ~~chapter~~ 75-03-19;
 - b. Determine if the ~~investigative~~ assessment completion timeframes and appropriate child protective services are provided in accordance with North Dakota Century Code chapter 75-03-19;
 - c. Provide technical assistance in child abuse and neglect services;
 - d. Provide final ~~determinations--of--probable--cause--or--no~~ probable-cause decisions for all child abuse and neglect cases in the region;
 - e. Provide investigative services for reports of institutional child abuse or neglect in the region;
 - f. Assure Ensure county access to a multidisciplinary child protection team;
 - g. Assure Ensure that child abuse and neglect information is entered into ~~date~~ the department's data base;

- h. Provide or arrange for an orientation in children's services ~~for--counties~~ for appropriate county social service board staff personnel.
3. With respect to foster care services for children, the regional representative shall:
- a. Monitor all placements and review all court orders for compliance with the provisions of title I of the Adoption Assistance and Child Welfare Act of 1980 [Pub. L. 96-272, 42 U.S.C. 670 et seq.] and section 427 of title IV-B of the Social Security Act [42 U.S.C. 627];
 - b. Chair each county or multicounty permanency planning committee in the region and ~~assure--they--meet--in~~ ensure conformance with section 75-03-14-06;
 - c. Review all foster care placements and pending placements with the appropriate permanency planning committee;
 - d. Issue approvals or denials for group, therapeutic foster care, and residential foster care placements for the region;
 - e. Review all foster care grievances in the region to determine ~~if~~ whether they are carried out in compliance with state law and policy;
 - f. Maintain a regional log of all children in foster care;
 - g. Approve and arrange for specialized ~~therapeutic~~ and shelter foster care service payments for all appropriate cases in the region;
 - h. Develop and supervise special projects in the region;
 - i. Conduct an annual licensing study of each group home or residential child care facility in the region and forward the study and recommendation to the department;
 - j. Review each family foster care licensing study conducted in the region and, approve, and issue the license, or deny the license and provide appropriate notice to the applicant;
 - k. ~~Where--appropriate,--revoke~~ Revoke foster care licenses and provide notice to the licensee;
 - l. Provide technical assistance and interpretation of policies, procedures, rules, and laws related to foster care services; and

- m. Provide or arrange for regular inservice training related to foster care issues for county social workers, division of juvenile services staff, and private agencies.
4. With respect to early childhood services (day care services), the regional representative shall:
 - a. Approve, deny, or revoke all early childhood home, group, and center license applications, ~~as--well--as~~ license applications for preschool educational facilities, and applications for standard compliance certification, and provide formal notification to all applicants;
 - b. Provide technical assistance regarding policies, procedures, rules, and laws for early childhood services in the region; and
 - c. Provide or arrange ~~for~~ inservice training for early childhood licensing staff regionwide.
 5. With respect to unmarried minor parent services, the regional representative shall provide technical assistance to the county social service board for services to unmarried minor parents.
 6. With respect to crippled children's services, the regional representative shall:
 - a. Provide technical assistance to county social service staff in the administration of crippled children's services; and
 - b. ~~Coöperate~~ Assist in and coordinate with the department's division of crippled children's services and the county social service boards for the provision of all crippled children field clinics.
 7. With respect to adult family foster care licensure services, the regional representative shall:
 - a. Review each adult family foster care licensing study conducted in the region ~~and,~~ approve and issue the license, or deny the license and provide ~~appropriate~~ timely notice to applicant;
 - b. ~~Where--appropriate,-revoke~~ Revoke adult family foster care licenses and provide notice to the licensee; and

- c. Provide technical assistance and interpretation of policies, procedures, rules, and laws related to adult family foster care licensure standards.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-05-05. Aging services. The regional director shall designate a regional aging services coordinator program administrator. The regional aging services coordinator, or a designee, program administrator shall:

1. Develop a plan of advocacy for services to older persons Support the state plan on aging and elder rights advocacy activities in the region.
2. Conduct or arrange for public hearings:
 - a. Concerning concerning the state plan on aging; and
 - b. Concerning, including the state funding plan for title-III the various titles of the Older Americans Comprehensive Service Amendments of 1973 [Pub. L. 93-29, 42 U.S.C. 3021 et seq.] Act as amended [Pub. L. 89-73, 42 U.S.C. 3001 note].
3. Publish and distribute information to older persons, including a newsletter published a minimum of six times per year to older individuals, agencies, and organizations serving older individuals.
4. Provide and document technical assistance to service providers case managers on:
 - a. Senior organizations' development and operation Stewardship activities, as identified by the administration in aging;
 - b. Program and service development and implementation;
 - c. Resource development Targeting resources and services;
 - d. Funding requests under title-III the various titles of the Older Americans Comprehensive Service Amendments of 1973 Act, as amended, [Pub. L. 93-29 89-73, 42 U.S.C. 3021 et seq. 3001 note];
 - e. Title-III The Older Americans Act audit resolution; and
 - f. Program and service accessibility.

5. Provide and document technical assistance to family members, agencies, organizations, and individuals working with older individuals.
6. Review and evaluate title-III Older Americans Act funding requests and grant or contract revisions for fiscal and programmatic accuracy and compliance with grant application and contracting requirements.
- 6- 7. Conduct and document a minimum of two formal onsite programmatic and fiscal assessments of all title-III Older Americans Act funded service-providers case managers, one of which must be a yearend assessment.
8. Monitor monthly case manager requests for reimbursements and payments and resolve any discrepancies.
- 7- 9. Provide or arrange for program training for title-III Older Americans Act funded service-providers case managers, as appropriate.
- 8- 10. Provide or arrange for community education in--areas--of gerontology which supports selected federal and state initiatives or state plan objectives.
- 9- 11. Implement selected federal and state aging program initiatives included in the state plan on aging and evaluate--the--results of-such-initiatives.
12. Provide training and technical assistance to entities administering mill levy match funds under North Dakota Century Code section 57-15-56.
13. Provide and document the provision of information and supportive activities for aging service programs, including adult protective services, home and community-based services, and long-term care ombudsman.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

TITLE 92
Workers' Compensation

JANUARY 1996

CHAPTER 92-01-02

92-01-02-02.2. Additional twenty-five percent rehabilitation allowance benefit payment. Eligibility for the additional twenty-five percent rehabilitation allowance will be determined when either of the following conditions are met:

1. A claimant who maintains a second domicile during such time the claimant is participating in a formalized rehabilitation training program shall be granted an additional twenty-five percent weekly rehabilitation allowance while in training. Maintenance of a second domicile requires the ownership and upkeep of the claimant's primary home, and ownership, lease, or rental of a second residence, while in training.
2. If a claimant elects to commute to and from school on a daily basis rather than maintain a second domicile, the claimant shall be granted an additional twenty-five percent weekly rehabilitation allowance, provided:
 - a. The distance from the claimant's residence to the school or training institution equals or exceeds thirty miles; and
 - b. The training program requires the claimant's regular attendance on a daily (five days per week) basis.

~~The additional twenty-five percent weekly rehabilitation allowance is to be calculated as a percentage of the claimant's present weekly lost-time benefit rate, including dependency allowance payments.~~ Repealed effective January 1, 1996.

History: Effective June 1, 1990.

General Authority: NDCC 65-02-08, 65-05-1-06.1

Law Implemented: NDCC 65-05-1-06.1

92-01-02-02.3. First report of injury.

1. An employer's notice of injury filed with the bureau pursuant to North Dakota Century Code section 65-05-01.4 must be the C2 form or any other written submission which clearly contains at least the following information:
 - a. The injured worker's name and address.
 - b. The injured worker's social security number.
 - c. The employer's name and address.
 - d. The employer's workers' compensation account number.
 - e. A description of the nature of the injury.
 - f. The location where the injury occurred.
 - g. A description of how the injury occurred.
 - h. A description of the type of work done by the injured worker.
 - i. The name and address of the injured worker's medical provider, if known.
 - j. The names and addresses of any witnesses to the injury, if known.
2. Following receipt of the employer's notice of injury, the bureau shall determine whether a claim has been filed by the injured worker. If no claim has been filed, the bureau shall notify the injured worker by regular mail addressed to the worker at the address given by the employer or at the last known address of the worker that the employer's notice has been received and shall inform the worker of the filing requirements of North Dakota Century Code section 65-05-01.

History: Effective January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-01.4, 65-05-01.5

92-01-02-11.1. Fees Attorney fees. Fees Following an attempt to resolve a dispute through the worker adviser program, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid as follows: during a period of constructive denial; when an order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; when an order reducing or denying benefits is submitted to binding arbitration and the employee prevails; or when an informal decision reducing or denying benefits is submitted to binding dispute resolution and the employee prevails; and when the bureau notifies the employee to be available for vocational testing, which is the vocational assessment meeting or any formal standardized testing designed to measure interest, personality, aptitude, or intelligence, subject to the following:

1. Attorneys must be paid at the rate of seventy dollars per hour for all actual and reasonable time other than travel time when the matter is submitted to binding arbitration and at the rate of eighty-five dollars per hour for all actual and reasonable time other than travel time when the matter is submitted to formal administrative hearing, to binding arbitration, or to binding dispute resolution and the employee prevails. Attorneys must be paid at the rate of seventy dollars per hour for all actual and reasonable time other than travel time when the matter is submitted to binding dispute resolution and the employee prevails. Traveltime must be paid at the rate of forty dollars per hour.
2. Legal assistants and third year law students or law school graduates with a doctor of laws degree who are not licensed attorneys practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys ~~must~~ may be paid at the rate of up to forty dollars per hour for all actual and reasonable time other than traveltime. Traveltime must be paid at the rate of twenty dollars per hour. A "legal assistant" means any person with a bachelor's degree, in a legal assistant or paralegal program, from an accredited college or university, or a legal assistant certified as such by the national association of legal assistants.
3. ~~Subject only to subsection 6, total~~ Total fees paid by the bureau for all legal services in connection with a claim may not exceed the following:
 - a. ~~No fees may be paid prior to any of the following: constructive denial of a claim; issuance of a pretermination notice informing an employee that the bureau intends to discontinue or suspend benefits; issuance of an administrative order; or issuance of an informal decision; except as otherwise provided by this section.~~ Except for initial determination of

compensability, attorney fees may not exceed twenty percent of the amount awarded.

- b. The sum of four hundred twenty dollars, plus reasonable costs incurred, for legal services following issuance of a pretermination notice, if an administrative order discontinuing or suspending benefits is not subsequently issued within sixty days or following the issuance of a pretermination notice if benefits are subsequently reinstated without the issuance of an administrative order.
- e. At a rate of seventy eighty-five dollars per hour the sum of seven hundred dollars, plus reasonable costs incurred, for legal services in connection with an offer by the bureau to make a lump sum settlement pursuant to subsection 1 of North Dakota Century Code section 65-05-25.
- d. At a rate of seventy dollars per hour, the sum of five hundred dollars, plus reasonable costs incurred, for legal services when the bureau has notified the employee to be available for vocational testing.
- e. c. The total sum of eighteen one thousand eight hundred dollars, plus reasonable costs incurred, following constructive denial of a claim, or issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if the employee prevails before an evidentiary hearing or deposition is scheduled by the bureau the formal hearing request is resolved by settlement before the evidentiary hearing is held.
- f. d. The total sum of three thousand six hundred dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing or deposition is scheduled by the bureau or following such hearing or deposition is held.
- g. e. The total sum of six four thousand dollars, plus reasonable costs incurred, if the employee prevails following a employee's district court appeal is settled prior to submission of briefs. The total sum of five thousand five hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
- h. f. The total sum of seven thousand two hundred six thousand five hundred dollars, plus reasonable costs incurred, if the employee prevails following an appeal to the employee's North Dakota supreme court appeal is settled prior to hearing. The total sum of seven thousand two

hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

- i. g. If the bureau has awarded benefits and the employer requests a rehearing, the bureau may, in its discretion, pay the employee's attorney fees and costs in connection with the rehearing. Total fees paid pursuant to this section may not exceed the sum of ~~fifteen~~ one thousand five hundred dollars.
- j. h. The total sum of ~~two-thousand~~ six hundred dollars, plus reasonable costs incurred, for services in connection with binding arbitration, if the employee requests ~~binding arbitration. The total sum of eight hundred fifty dollars, plus reasonable costs incurred, for services in connection with binding arbitration, if the employer requests binding arbitration~~ prevails, provided further that the fees may not exceed twenty percent of the amount awarded.
- k. i. The total sum of one thousand dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails. The total sum of five hundred dollars plus reasonable costs incurred, if the employer requests binding dispute resolution and the employee prevails.
4. The maximum fees specified in subdivisions c, d, e, f, and g, and h of subsection 3 include all fees paid by the bureau to one or more attorneys representing the employee in connection with the same claim at all stages in the proceedings, ~~including these fees paid according to subdivisions b, e, and d of subsection 3.~~ The hourly rate specified in subsection 1 and subdivision b of subsection 3 is applicable to fees paid pursuant to North Dakota Century Code sections 65-02-08, 65-02-15, and 65-02-27 after August 1, 1995. A "claim" includes all matters affecting rights of an employee in connection with one or more work injuries that are or reasonably could be included in a single administrative order or application for benefits.
5. Upon application of the employee's attorney and a finding by the bureau that the legal or factual issues involved in the dispute are unusually complex, the bureau may approve payment of reasonable fees in excess of the maximum fees provided by subdivisions e c and f d of subsection 3. If the bureau approves payment of fees d in excess of the maximum fees provided by subdivisions e c and f d of subsection 3, the bureau shall set a new maximum fee, which may not be exceeded. Upon application of the employee's attorney to the appellate court and a finding by the court that the legal or factual issues involved in the appeal were unusually complex, the court may approve payment of reasonable fees in excess of the

maximum fee provided by subdivisions g e and h f of subsection 3. All applications for additional fees in excess of the maximum fees must contain a concise statement of the reasons for the request, including a summary of the factual or legal issues, or both, justifying such request, and an explanation concerning why the issues are unusually complex. Factors that must be considered in determining whether the factual or legal issues are unusually complex include:

- a. The extent of the prehearing and posthearing discovery;
 - b. The number of depositions;
 - c. The number of legal or factual issues in dispute; and
 - d. Whether the legal issues or relevant statutes have been previously interpreted by the North Dakota supreme court.
6. All time must be recorded in increments of no more than six minutes (one-tenth of an hour). Contemporaneous time records must be kept and made available to the bureau, upon request made at any time within two years of the date recorded.
7. "Minimum" billings in increments greater than six minutes (one-tenth of an hour) are not permitted.
8. If the bureau is obligated to pay the employee's attorney fees, the attorney shall submit to the bureau a final statement upon resolution of the matter on forms provided by the bureau for that purpose, or on other forms acceptable to the bureau. ~~An attorney representing an employee in a binding arbitration proceeding may submit monthly fee statements.~~ All statements must show the name of the employee, claim number, date of the statement, 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, or nor will seek payment of any fees or costs from the employee relative to the same services. The bureau may deny fees and costs that are determined to be excessive or frivolous.
9. The following costs will be reimbursed:
- a. Actual postage.
 - b. Actual toll charges for long-distance telephone calls.
 - c. Copying charges, at twenty 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 bureau.
 - e. Other reasonable and necessary costs, not to exceed one hundred dollars. Other costs in excess of one hundred dollars may be reimbursed only upon agreement, in advance, by the bureau. Costs for typing and clerical or office services will not be reimbursed.
10. The following costs are not allowable:
- a. Facsimile charges.
 - b. Express mail.
 - c. Additional copies of transcripts.
 - d. Costs incurred to obtain medical records.
 - e. Online computer-assisted legal research.
 - f. Copy charges for documents provided by the bureau.

~~An attorney who accepts compensation from the bureau for services pursuant to North Dakota Century Code section 65-02-08 and this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees.~~

Fees for reporters must be: The sum of twenty-five dollars per hour, for appearance at hearing or other proceeding; plus, two dollars and fifty cents per page for transcription and original transcript, and twenty cents per page for additional copies. The bureau shall also reimburse 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.

General Authority: NDCC 65-02-08, 65-02-15

Law Implemented: NDCC 65-02-08, ~~65-02-17~~ 65-02-15, 65-10-03

92-01-02-14. Procedure for penalizing employers accounts for failure to make payroll reports. ~~When an employer fails to make payroll reports, the underwriter shall:~~

- 1. ~~Set up an account (including an application listing one employee) for the purpose of assigning a number; If an~~

employer has an open account with the bureau, the bureau shall send annually to the employer a form on which the employer shall report payroll expenditures for the preceding payroll year. Electronic report of payroll information in a format approved by the bureau also is acceptable.

- a. An employer shall complete its payroll report and return it to the bureau no later than the fifteenth day of the month after the employer's payroll year expires. If the employer's payroll report is not timely received by the bureau, the bureau shall notify the employer, by regular mail addressed to the last known address of the employer, of the delinquency of the report and the penalties provided by North Dakota Century Code section 65-04-12 and this section.
 - b. On the last day of the month following the month in which the employer's payroll year expired, the bureau shall assess a penalty of five hundred dollars and shall notify the employer of the further penalties provided by North Dakota Century Code section 65-04-12 and this section.
 - c. On the fifteenth day of the second month following the expiration of the employer's payroll year, the bureau shall assess a penalty of one thousand five hundred dollars and shall cancel the employer's account. The bureau shall notify the employer by regular mail addressed to the employer's last known address that the employer is uninsured.
2. Request--a--payroll-report;--and If the employer does not have an open account with the bureau, the bureau shall select an employer account number and send the employer a payroll report form by regular mail. The bureau shall notify the employer of the penalties provided by North Dakota Century Code section 65-04-12 and this section.
3. --If--the-report-is-not-provided;--recommend-to-the-director-that a-penalty-be-fixed-by-order-in-an-amount-not--to--exceed--five hundred-dollars.

The--policyholder--services--director--is--the--person--appointed-by-the director-to-head-the-department-at--the--bureau--which--sets--rates--and collects--employers'--premiums.---The--bureau--employs--one-policyholder services-director-and-two-assistant-policyholder-services-directors.

The employer shall submit the completed payroll report within fifteen days of the bureau's request. An unsigned or incomplete submission shall be deemed a failure or refusal to furnish the report. If the payroll report is not timely received by the bureau, the bureau shall

assess a penalty of two thousand dollars and shall notify the employer that the employer is uninsured.

History: Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996.

General Authority: NDCC 65-02-08, 65-04-12

Law Implemented: NDCC 65-04-12

92-01-02-17. Reporting payroll for period of noncompliance. If the noncompliance period of a new account is less than twelve months, the following procedure will apply: The payroll will be prorated on a basis of the maximum of one-twelfth of the statutory payroll cap per month per employee for the period of time involved. If the salary paid is less than the amount of one-twelfth of the statutory payroll cap per month, the full amount is reportable. If an employee ceased employment during the noncompliance period, the gross payroll of the employee is prorated over the period of noncompliance up to a maximum of one-twelfth of the statutory payroll cap per month for the period of noncompliance. An account in noncompliance is uninsured until a completed application for workers' compensation insurance coverage pursuant to North Dakota Century Code section 65-01-05 and chapter 65-04 is received by the bureau.

History: Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-01 65-09-01

92-01-02-19. Employer relief after third-party recovery. Upon third-party recovery pursuant to North Dakota Century Code section 65-01-09 in claims which have been assumed accepted by the bureau and where the employer's ~~merit~~ experience rating has been affected, relief will be given to the employer from the date of ~~the-actual-recovery~~ injury to the balance of the experience rating period. Relief will be given to the extent of the actual net recovery made by or on behalf of the bureau, after deduction from the gross recovery of the costs and attorney fees allowable under North Dakota Century Code section 65-01-09.

"Relief will be given" indicates that the amount of money recovered by the bureau in a third-party action will be deducted from the amount charged against the employer's ~~merit~~ experience rating. This may result in a decreased premium for that employer in the future. The bureau may not refund any credit balance resulting from such relief. An account that has been canceled is not entitled to relief under this section.

Relief will also be given to the extent of the employer reimbursement paid by the employer pursuant to North Dakota Century Code section 65-05-07.2, provided that the net recovery made by or on behalf of the bureau is equal to or exceeds the total chargeable expenditures

made by the bureau on the claim plus the reimbursement made by the employer. An employer who has not timely paid reimbursement under North Dakota Century Code section 65-05-07.2 forfeits any right to relief for that reimbursement.

History: Effective June 1, 1990; amended effective January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-01-09, 65-04-04.3, 65-04-17, 65-05-07.2

92-01-02-20. Classification of employments - Premium rates. Classifications and premium rates, taking into consideration hazards and risks of different occupations, must be those classifications contained in the document entitled "North Dakota Workers Compensation Bureau Classification Manual", 1995 edition, and premium rates contained in the document entitled, "ND Workers Compensation Bureau Summary---of Premium/Loss--Information Rates", 1994 1995 edition, which is are hereby adopted by reference thereto and incorporated within this section as though set out in full herein.

Premium rates must be adjusted annually as recommended by the bureau's actuaries based upon the criteria set forth in North Dakota Century Code section 65-04-01.

The minimum premium charge for all classifications accounts will be one hundred twenty-five dollars per year ~~except--for--the--following~~ volunteer-classifications.

Classification-No.

7710-----Fire--department;--volunteer-----minimum-will-be
fifty-dollars

7715-----Civil--defense-volunteer-disaster---minimum-will
be-fifty-dollars

9830-----Civil--air--patrol;--volunteer---minimum-will-be
one-hundred-ten-dollars

9385-----Volunteer-programs---minimum-will-be-one-hundred
fifty-dollars

9840-----Vocational---training---and---work---evaluation
programs;--volunteer-----minimum--will--be---one
hundred-fifty-dollars

History: Effective June 1, 1990; amended effective July 1, 1990; July 1, 1991; July 1, 1992; July 1, 1993; July 1, 1994; January 1, 1996.

General Authority: NDCC 65-02-08, 65-04-01

Law Implemented: NDCC 65-04-01

92-01-02-23. Installment payment of premiums.

1. On March thirty-first of each year, the bureau shall establish the quarterly interest rate to be charged to those accounts renewing between July first of that year and June thirtieth of the following year, which elect to pay premium by quarterly installments. For the purposes of North Dakota Century Code section 65-04-20, the interest rate is the three-year annualized--rate--of--the--total--funds--invested--by--the--bureau--as--indicated--in--the--bureau's--March--thirty--first--investment measurement--review.--Should--the--March--thirty--first--investment measurement--review--not--be--available--by--July--first--for--any reason;--the--most--recent--investment--measurement--review--applies base rate posted by the Bank of North Dakota plus two and one-half percent. The interest rate may not be lower than six percent.
2. Premium subject to installments will be limited to the premium for the advance premium only. Prior period premium deficiencies must be paid in full within the original premium due date. Policy periods beginning on or after July 1, 1991, will be eligible for installment payments under this section. The--annual--interest--rate--for--each--employer--will--be--based--on the--rate--in--effect--at--the--start--of--the--policy--period.
3. Default on payment of any installment payment will cause the entire premium balance to be due immediately.

History: Effective November 1, 1991; amended effective January 1, 1996.

General Authority: NDCC 65-02-08, 65-04-20

Law Implemented: NDCC 65-04-20, 65-04-24

92-01-02-23.1. Payment by credit card. The bureau, in its sole discretion, may accept payment by credit card for premiums, penalties, interest, reimbursements, or any other payment that is due the bureau. The bureau shall surcharge the payment for any credit card fees incurred by the bureau as a result of the payment.

History: Effective January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 54-06-08.2

92-01-02-24. Rehabilitation services.

1. When an employment opportunity suited to an employee's educational, experience, and marketable skills is identified within thirty-five miles [56.33 kilometers] from the employee's home, the appropriate priority option must be identified as return to related occupation in the local job market pool under subdivision e e of subsection 4 of North Dakota Century Code section 65-05.1-01, and relocation expense

under subsection 3 of North Dakota Century Code section 65-05.1-06.1 may not be paid.

2. The bureau may make an award of services to move an employee's household to the locale where the employee has actually located work under subdivision f of subsection 2 of North Dakota Century Code section 65-05.1-06.1 only when the employee identifies the job he will perform, his employer, and his destination. A relocation award must be the actual cost of moving the household to the location where work has been obtained. A minimum of two bids detailing the costs of relocation must be submitted to the bureau for review and approval prior to incurring the cost. The relocation award must also include per diem expenses, as set forth under subsection 2 of North Dakota Century Code section 65-05-28, for the employee only. No per diem expenses may be paid for the employee's family. Reimbursement for mileage expenses may not be paid for more than one motor vehicle.
3. When the rehabilitation award is short-term or long-term training, the award must include the actual cost of books, tuition, and school supplies which are required by the school. The school must provide documentation of the costs necessary for completion of the program in which the employee is enrolled. Reimbursable school costs may not exceed those charged to other students participating in the same program. The award for school supplies may not exceed twenty-five dollars per quarter or thirty dollars per semester unless the employee obtains prior approval of the bureau upon showing that such expenses are reasonable and necessary. A rehabilitation award for short-term or long-term training may include tutoring assistance to those employees who require such services to maintain a passing grade. Payment of tutoring services will only be authorized when these services are not available as part of the training program. The award for tutoring services may not exceed the usual and customary rate established by the school. A rehabilitation award for short-term or long-term training may include other expenses an expense such as association dues or subscriptions a subscription only if such that expense is a course requirement.
4. An award for short-term or long-term training which includes an additional twenty-five percent lost-time allowance to maintain two domiciles as provided in subdivision b of subsection 2 of North Dakota Century Code section 65-05.1-06.1 shall may continue only ~~for such time~~ during which the time the employee is actually enrolled or participating in the training program, and is actually maintaining two domiciles.
5. An employee who is required to be in attendance at a training facility for at least three days a week is determined to be attending on a daily basis for purposes of determining

eligibility for the twenty-five percent second domicile allowance.

6. An award of a specified number of weeks of training contemplates that training must be completed during the specified period of weeks, and rehabilitation benefits may be paid only for the specified number of weeks of training.

History: Effective November 1, 1991; amended effective January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05.1

92-01-02-25. Permanent impairment disputes. A dispute as to the percentage of an employee's permanent impairment must be resolved in accordance with this section.

1. Definitions. In this section:

- a. "Dispute" means an employee has reached maximum medical improvement in connection with a work injury, the employee's doctor has filed with the bureau a report of the rating of impairment of function, and the bureau fails or refuses to award permanent impairment benefits based upon that report within thirty days of receipt of the report.
- b. "Maximum medical improvement" means the level of recovery at which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based on reasonable medical probability and the clinical findings, determined over a period of time (usually twelve months) indicate the medical condition is stable and well-established.
- c. "Medical specialists" means those professionals who have had instruction in the use of the American medical association's "Guides to the Evaluation of Permanent Impairment" relating to the evaluation of permanent impairment, agree to have their names listed by the bureau as medical specialists, and who are:
 - (1) Licensed chiropractors who are board-certified chiropractic orthopedists (diplomates of the American board of chiropractic orthopedists).
 - (2) Licensed physicians who are board-certified medical specialists.
 - (3) Licensed physical therapists and licensed occupational therapists, who may conduct range of motion and strength testing under the general direction of a licensed physician. The physician

must review the results of the testing and report to the bureau the rating of permanent impairment as required by North Dakota Century Code chapter 65-05.

2. An employee is entitled to payment of attorney fees pursuant to North Dakota Century Code section 65-02-08 in connection with permanent impairment benefits if, after the employee has reached maximum medical improvement, the bureau issues an administrative order reducing or denying permanent impairment benefits or the bureau fails or refuses to issue an order within ninety days of the date a report is received by the bureau which meets all the requirements of North Dakota Century Code section 65-05-12 and this section. After a formal order has been issued by the bureau, payment of attorneys' fees is governed by North Dakota Century Code sections 65-02-08, ~~65-02-17~~, and 65-10-03.
3. All permanent impairment reports must be filed on forms approved by the bureau.
4. All ratings of permanent impairment must be in accordance with the standards for the evaluation of permanent impairment as published in the latest edition of the American medical association's "Guides to the Evaluation of Permanent Impairment", unless proven otherwise by clear and convincing medical evidence. Any rating of impairment not based on the American medical association's "Guides to the Evaluation of Permanent Impairment" must include a statement explaining why those standards were not used and an explanation of the method used to evaluate impairment, along with a copy of the standards or guidelines, or both, followed in rating the impairment. The DSM III-R must be used to diagnose psychiatric or mental conditions and to assist in rating of impairments of those conditions. All reports must include the opinion of the physician or chiropractor on the cause of the impairment.
5. An employee is not entitled to an award for permanent impairment until after the employee is at maximum medical improvement. Upon receipt of a report from the employee's doctor indicating the employee has reached maximum medical improvement and evidence the employee has a permanent impairment as a result of the work injury, the bureau shall send a form to the employee on which the employee shall identify all body parts the employee believes are permanently impaired due to the work injury. The employee must complete the form and return it to the bureau. The bureau shall then forward the report to the employee's doctor and instruct the doctor to examine the employee and report to the bureau any rating of impairment of function resulting from the work injury.

6. If the employee's doctor fails or refuses to determine permanent impairment and submit a report to the bureau as required by North Dakota Century Code section 65-05-12 and this section, the bureau shall schedule an evaluation with an appropriate medical specialist, who shall submit the required report.
7. The bureau shall establish a list or lists of all medical specialists within the state. The bureau may, in its discretion, include in the list or lists medical specialists from other states if there is an insufficient number of specialists in a particular specialty within the state who agree to be listed. In the event of a dispute, the bureau shall furnish the list or lists of appropriate specialists to the employee. The bureau and the employee, if they cannot agree on selection of an independent medical specialist, shall choose a specialist by striking names from the appropriate list or lists until a name is chosen.
8. In the event of a dispute involving an employee who resides outside of North Dakota, the bureau shall have the sole discretion to determine whether it will require the employee to return to this state for an independent evaluation. If the bureau approves an independent evaluation in another state, the bureau and the employee, if they cannot agree on a specialist, shall choose a specialist by striking names from a list of approved workers' compensation specialists in the other state, if such a list is available, or from some comparable list of appropriate medical specialists in that state.
9. Upon receipt of a report from the employee's doctor, if there is no dispute, or, in the event of a dispute, upon receipt of a report from the independent medical specialist, the bureau shall issue an order awarding or denying permanent impairment benefits.

History: Effective November 1, 1991; amended effective January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-12, ~~65-05-12.1~~ 65-05-12.2

92-01-02-26. Binding arbitration. Binding arbitration pursuant to North Dakota Century Code sections section 65-02-15 and ~~65-02-17~~ is governed by this section.

1. A request for binding arbitration may be filed with the North Dakota workers compensation bureau by an aggrieved employee or employer no later than thirty days after notice of an administrative order has been given as required by North Dakota Century Code section 28-32-13 and in lieu of a petition for reconsideration or rehearing or an appeal filed pursuant to North Dakota Century Code chapter 28-32. The request for

binding arbitration must be in writing and must include a statement of the specific grounds upon which relief is requested. An aggrieved employee is an employee whose benefits have been reduced or denied by formal administrative order issued in accordance with North Dakota Century Code section 28-32-13.

2. An employee is not entitled to an arbitration proceeding in cases in which the employee seeks a lump sum in lieu of medical expenses, or ~~a lump sum in lieu of~~ disability benefits under North Dakota Century Code section 65-05-25, or in cases where there is dispute concerning medical care, resolution of which is governed by dispute resolution procedures under North Dakota Century Code section 65-02-20, or in any case in which the employee is not responsible for medical charges under subsection 4 of North Dakota Century Code section 65-05-07, in cases where the amount in dispute is greater than three thousand dollars, or in any case where the dispute is the compensability of a medical condition.
3. An employer is not entitled to an arbitration proceeding in any dispute where an employee's claim is not chargeable to the employer.
4. ~~Upon receipt of a request for binding arbitration, the bureau shall serve notice on the nonrequesting party by certified mail. The nonrequesting party is deemed to have consented to binding arbitration unless the nonrequesting party files a written objection to arbitration within twenty days from the date of mailing of the notice.~~
 - a. ~~If the nonrequesting party files a timely notice of refusal to consent to arbitration, the matter is deemed submitted for formal hearing. If an employer objects to binding arbitration, and the matter proceeds through formal hearing, the employee is entitled to payment of attorneys' fees in the hearing whether or not the employee prevails.~~
 - b. ~~If the employee seeks arbitration, the employer is a party entitled to notice where payments to the employee are chargeable to the employer. If the risk of payments are not chargeable to any employer, the employee is entitled to binding arbitration upon filing of the request with the bureau.~~
5. The bureau will contract with one or more qualified arbitrators to provide arbitration services. Qualified arbitrators are individuals who:
 - a. Are members of the American arbitration association with experience in adjudicating workers' compensation matters; or

- b. Are deemed qualified by ~~the director~~ based upon substantial experience, training, education, fair judgment, independence, and neutrality. Qualified If the bureau contracts with more than one qualified arbitrator under this subsection, arbitrators will be placed on a register and selection will be sequential from the top name on the register on a rotating basis.
- 6- 5. One qualified arbitrator shall hear and decide a dispute. The arbitrator may be changed only upon a showing of financial interest, personal involvement, or good cause by the requesting party within fifteen days of the date the bureau ~~notifies--the~~ parties are notified of the name of the arbitrator.
- 7- 6. Prehearing conferences may be held upon agreement of the bureau and all parties. However, written filing or stipulation by the parties and the bureau shall be the preferred method for providing the other parties notice of witnesses and new evidence. The issues for resolution must be confined to those in dispute as a result of the bureau's administrative order from which arbitration is requested. The following rules apply to facilitate prehearing procedures:
- a. The requesting party shall file with the bureau, and serve upon the nonrequesting party by regular mail, a written statement identifying:
- (1) A general statement of the issues in dispute.
 - (2) The names and addresses of witnesses to be called, and whether the witness will testify at the hearing, or via deposition.
 - (3) Additional documentary evidence that will be submitted.
 - (4) The nature of the documents that are required from the claim file or employer file. An objection to introduction of any part of the bureau's file into evidence must be made prior to hearing, or the objection is deemed waived.
 - (5) Whether the party demands to cross-examine, at bureau expense, the vocational expert who submitted a vocational plan under North Dakota Century Code section 65-05.1-02.1, or medical experts retained by the bureau for the purpose of providing an independent medical opinion and relied on by the bureau to refute the employee's treating doctor.
- b. If the nonrequesting party intends to participate in the hearing, it must also file with the bureau, and serve upon

the requesting party, a statement identifying any witnesses to be called, any new documentary evidence that will be submitted, and whether there is an objection to any part of the claim or employer files.

c. The After receipt of written statements of the parties, the bureau shall serve upon the parties a written statement including:

- (1) The specification of issue or issues.
- (2) The names and addresses of witnesses the bureau will call, and whether the witness will appear at the hearing or via deposition.
- (3) Additional documentary evidence that will be submitted.
- (4) The nature of the documents that it will submit from the employee claim file, or the employer file.

8- 7. Arbitration hearings must be in accordance with the following procedures:

- a. Witness fees and mileage shall be paid by the party or bureau at whose instance the witness appears. The arbitrator may for good cause order the bureau to pay statutory witness fees and expenses for a party's lay witness upon written application of a party. Costs to transcribe a witness's testimony must be paid by the party or bureau at whose instance the witness appears.
- b. If timely demanded by the requesting party, and if relevant to the issue or issues to be decided, the bureau must make available for cross-examination, at its expense, the vocational expert who submitted a vocational plan under North Dakota Century Code section 65-05.1-02.1, and medical experts retained by the bureau for the purpose of providing an independent medical opinion and relied on by the bureau to refute the employee's treating doctor.
- c. The parties and the bureau have a continuing obligation to disclose the names of witnesses that will be called, and to identify additional documentary evidence that will be submitted. If the requesting party or the bureau did not provide at least ten days' written notice in advance of the hearing, the arbitrator must grant a motion to postpone the hearing at the instance of the aggrieved party or bureau, or may exclude such evidence or witness. In the event the arbitrator allows the evidence to be submitted, or the witness to testify, the other party or the bureau may submit rebuttal documents or testimony not

previously disclosed, but must provide advance notice of its intent to do so.

- d. Testimony may be presented to the arbitrator at the arbitration proceeding or via deposition transcript. Deposition transcripts may not be admitted unless prior notice of the deposition and opportunity for cross-examination was provided to any interested party and the bureau.
- e. The parties and the bureau may waive oral hearing before the arbitrator, and stipulate to submission to the arbitrator based upon briefs, documentary evidence, and depositions.
- f. The arbitration proceeding must be held in the region where the requesting party resides, or, if the requesting party resides out of state, in Bismarck, North Dakota. Hearings may be conducted by telephonic conference call, and any witness may testify by telephonic conference call upon agreement of the parties and the bureau. Hearings need not be recorded, but may be recorded upon instance of any party or the bureau. The party requesting the recording is responsible for the cost of recording the hearing and the cost of any transcript.
- g. After the parties and bureau have exchanged written filing, entered a prehearing stipulation, or held a prehearing conference, the bureau will schedule, the date and time of depositions and hearing. Twenty days advance notice of hearing is required, unless the parties and the bureau waive such notice.
- h. The bureau shall provide the interested parties and the arbitrator copies of the relevant documentary evidence from the bureau's file (including any deposition transcripts) at least ten days prior to the arbitration hearing. Upon agreement, or order of the arbitrator, the deposition of an expert may be taken after the lay witnesses testify at the hearing.
- i. The employee must bear the burden of proof as provided under North Dakota Century Code section 65-01-11. The employee may make an initial opening statement, followed by the employer, and bureau. The employee shall present its case, or rest upon the record, followed by the employer and bureau. Following submission of all evidence, the parties may make a closing argument. The employee may make the initial closing statement, with rebuttal after the employer and bureau close, ~~or waive initial-closing-and-make-the-last-closing-argument.~~

- j. Only such evidence as--is relevant and material to the dispute may be received. The arbitrator is the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence is not required. The arbitrator may direct the submission of additional evidence or briefs following the hearing.
 - k. Witnesses must be sworn as required by law. The arbitrator may subpoena witnesses or documents upon request of a party or the bureau. If the witness or documents are not forthcoming, the party, bureau, or arbitrator may seek an order of the district court to compel such documents to be submitted, or such witness to testify as provided in subsection 7 of North Dakota Century Code section 28-32-09.
 - l. Following the close of the hearing, the arbitrator shall issue a written decision, which must be set forth in findings of fact, conclusions of law, and order. The decision must be based upon, and in accordance with, applicable substantive law. The order must be signed by the arbitrator and served upon all parties by certified mail.
 - m. Any party or the bureau may request reconsideration upon written application filed with the arbitrator and served on the other party and the bureau within ten days of the arbitrator's decision. The arbitrator may deny the request with or without explanation, issue an amended order, or order that the proceedings be reopened for submission of additional evidence or briefs.
 - n. There shall not be any discovery except by the consent of the parties and the bureau.
 - o. Should any party fail to appear at a hearing after proper notice under subdivision g, the arbitrator shall proceed with the hearing and shall issue a decision based on the record and evidence adduced at the hearing and the party failing to appear shall be deemed to have waived the right to testify and to present other relevant evidence.
- 9- 8. The bureau retains continuing jurisdiction over the decision of the arbitrator, pursuant to North Dakota Century Code sections--65-02-18--and section 65-05-04. The director of the bureau may review an arbitration decision upon motion of any party or the bureau. The motion must be in writing, and filed with the director within thirty days of the final decision of the arbitrator. The motion must be accompanied by specific grounds for the review and must be served upon all parties and the bureau. The director will specify whether briefs are required. The director will limit exercise of continuing

jurisdiction to reverse the decision of an arbitrator to instances where:

- a. The arbitration decision is contrary to law; or
- b. The arbitration decision has no rational basis.

The director may refuse to exercise continuing jurisdiction without explanation. Where the director reverses an arbitration decision, the director will issue findings of fact, conclusions of law, and order.

- ~~10-~~ 9. These rules govern any petition for arbitration made following issuance of an administrative order after August 1, 1993 1995. ~~In order to facilitate uniformity of decision, and speedy resolution of dispute, these rules will also govern any arbitration request made prior to August 1, 1993, by stipulation of the parties and the bureau provided that an arbitration proceeding had not already been held under the former arbitration rules~~ To determine whether the amount in dispute is no greater than three thousand dollars, the bureau shall deduct any amount awarded in connection with the issue in dispute for the total amount allegedly due the injured worker. If the difference is three thousand dollars or less, the dispute over the amount allegedly due the injured worker is properly in the arbitration process. If it is undetermined what the ultimate amount is which is allegedly due the injured worker in relation to the issue in dispute, the dispute will be resolved through the administrative hearing process pursuant to North Dakota Century Code chapter 28-32.

History: Effective November 1, 1991; amended effective January 1, 1994; January 1, 1996.

General Authority: NDCC 28-32-05, 28-32-05.1, 65-02-08

Law Implemented: NDCC 65-02-15, 65-02-17

92-01-02-35. Determining medically stationary status.

1. An injured employee's condition must be determined to be medically stationary when the attending doctor or a preponderance of medical opinion declares the employee either "medically stationary", "medically stable", or uses other language meaning the same thing.
2. When there is a conflict in the medical opinions as to whether or not an employee is medically stationary, more weight must be given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and clear and concise reasoning.
3. When there is not a preponderance of medical opinion stating an employee is or is not medically stationary, deference must

generally be given to the opinion of the attending doctor. However, in cases in which expert analysis is important, deference must be given to the opinion of the doctor with the greatest expertise in, and understanding of, the employee's condition.

4. If there is a conflict as to the date upon which an employee became medically stationary, the following conditions govern the determination of the medically stationary date. The date an employee is medically stationary is the earliest date that a preponderance is established under this section. The date of examination, not the date of the report, controls the medically stationary date.
5. A concurrence with another doctor's report is an agreement in every particular, including the medically stationary impression and date, unless the concurring doctor expressly states to the contrary.
6. An employee is medically stationary on the date specified by a doctor. When a specific date is not indicated but the opinion states the employee is medically stationary, an employee is presumed medically stationary on the date of the last examination.
7. ~~The employee will be presumed to be medically stationary when the employee no longer requires medical services, or when:
a. The employee has not sought medical care for a period in excess of sixty days, unless so instructed by the attending doctor; and
b. The bureau has notified the employee, by regular mail to the last known address of the employee, that inactive status of the claim may be requested for failure to seek medical services.~~
8. ~~Unless the attending doctor has declared, or a preponderance of medical opinion is that, the employee is medically stationary on an earlier day, the employee is presumed to be medically stationary ten days from the expected date of response to the bureau's notification letter pursuant to subsection 7, unless subsequent medical evidence based on actual examination of the employee affirmatively and persuasively establishes that the employee was not and could not have been medically stationary on that date.~~

9. ~~If the employee is incarcerated or confined in some other manner and unable to freely seek medical treatment, the bureau shall arrange for medical examinations to be completed at the facility where the employee is located or at some other location accessible to the employee.~~

History: Effective January 1, 1994; amended effective January 1, 1996.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-48. Elements of filing.

1. For purposes of this section, the following terms have the meanings given unless the context clearly indicates a different meaning:
 - a. "Appropriate record" means a legible medical record or report from a provider, or any other relevant and material information, substantiating the type, nature, extent, and work-relatedness, if any, of an injury, and adequate to verify the level, type, and extent of services provided.
 - b. "Bill" or "billing" means a provider's statement of charges and services rendered for treatment of a work-related injury.
 - c. "Bill review" means the review or audit of medical bills and any associated medical records by a contractor for the North Dakota workers compensation bureau and may include review for duplications, omissions, actual delivery of billed services and items, accuracy of charges and associated coding, and improper concurrent billing for services involving evaluation or treatment, or both, of both work-related and nonwork-related problems.
 - d. "Claim application" means the worker's claim for injury (SFN 2828), form C1.
 - e. "Employer's report" means the employer's report of injury (SFN 13660), form C2.
 - f. "Doctor's report" means the doctor's report of injury (SFN 10015), form C3 or other appropriate record that includes the information requested on form C3.
 - g. "Provider" is as defined in subsections 13 and 22 of North Dakota Century Code section 65-01-02.
 - h. "Reapplication" means worker's notice of reapplication (SFN 16829), form C4, or correspondence signed by the injured employee requesting additional benefits.

- i. "Wage verification" means federal and state income tax returns; W-2 forms; daily, weekly, biweekly, semimonthly, or monthly employer payroll statements; and income statements prepared in accordance with generally accepted accounting practices.
2. The elements of filing for an application for workers' compensation are deemed satisfied when the bureau has received the following items:
 - a. Form C1 completed and signed by the employee;
 - b. Form C2 completed and signed by the employer or the employer's report is deemed admitted pursuant to North Dakota Century Code section 65-01-14;
 - c. Form C3 or appropriate record completed and signed by the provider;
 - d. Wage verification as requested by the bureau, if disability benefits are claimed; and
 - e. Appropriate records from the provider; ~~and~~
 - f. ~~The claim has been assigned to the appropriate rate classification and proper coverage verified by the policyholder services department~~ necessary to determine the type, nature, extent, and work-relatedness, if any, of the injury or disability.
 3. The elements of filing for a reapplication are deemed to be satisfied when the bureau is in receipt of the following items:
 - a. Form C4 or correspondence requesting benefits signed by the employee;
 - b. Wage verification as requested by the bureau, if disability benefits are claimed; and
 - c. Appropriate records from the provider.
 4. The elements of filing for payment of a medical bill are deemed satisfied when the bureau is in receipt of the following items:
 - a. A bill or billing from the provider or employee;
 - b. Appropriate records from the provider or employee; and
 - c. A bill review has been completed.

5. If the bureau requests additional material information from the employee in order to process the claim reapplication and the employee does not provide the information as requested, elements of filing are not deemed satisfied until the employee provides the information as requested.

History: Effective January 1, 1994; amended effective January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-08

92-01-02-49.1. Determination of employment status. A person may apply to the bureau for a determination of whether that person is an employer as that term is defined by North Dakota Century Code title 65. A person claiming not to be an employer under the Workers Compensation Act has the burden of proving by a preponderance of the evidence that the person is not an employer. The request for a determination must be in writing and must be supported by evidence of the employment status of the requesting party. If the party is asserting an independent contractor relationship, the party must submit copies of written contracts, if any, establishing the relationship. The bureau may request, and the party shall promptly provide, any additional relevant information bearing on the issue of the employer status of the party. After review of the evidence, the bureau shall issue an administrative order determining the employment status of the requesting party under North Dakota Century Code title 65. This determination is effective for no more than one year from the date of the order and may be reconsidered or revoked at any time by the bureau. The requesting party has a continuing obligation to notify the bureau of any material change in that party's business relationships, and a failure to notify the bureau of a material change shall nullify the bureau's certification as of the date of the change.

History: Effective January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-09-01

92-01-02-51. Amnesty period for employers, employees, and providers. A sixty-day-amnesty period provided for persons who willfully have made false claims or false statements to obtain payment from the bureau, or who willfully have misrepresented payroll and as a result have not paid the proper amount of premium, is established for the period to begin Tuesday, January 16, 1996, and to end Friday, March 15, 1996. The request for amnesty must be received, in writing, at the bureau no later than five p.m. central standard time on March 15, 1996.

History: Effective January 1, 1996.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-25

